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Affecting Calendar Numbers:

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DOCKET

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329-09-BZ

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330-09-BZ

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331-09-BZ

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332-09-BZ

1462 East 27th Street, West side 320' north of intersection of East 27th Street & Avenue O., Block 7680, Lot(s) 80, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a dwelling. R-2 district.

333-09-BZ

350 Troy Avenue, Northwest corner of Troy Avenue and Carroll Street., Block 1406, Lot(s) 44, Borough of **Brooklyn, Community Board: 9**. Variance to allow extension to existing school, contrary to bulk regulations. R-4 district.

334-09-A

132 Ocean Avenue, West side of Ocean Avenue 110 Feet south of mapped 8th Street., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction not fronting a mapped street, contrary to Section 36, Article 3 of the General City Law. R4 district.

1-10-A

527 East 86th Street, Approximately 116 feet east of Foster Avenue fronting East 86th Street., Block 7965, Lot(s) 33, Borough of **Brooklyn, Community Board: 18**. Appeal contesting the Department of Buildings Order of Closure . R5 district.

2-10-BZ

310 East 14th Street, Block front on east side of Second Avenue between 13th and 14th Streets., Block 455, Lot(s) 1,5,7,60, Borough of **Manhattan, Community Board: 2**. Special Permit (73-641) for the enlargement of a nine-story medical building. C1-6A/C1-7A district.

3-10-A

29-46 145th Street, 145th Street between 29th Road and Bayside Avenue., Block 4786, Lot(s) 41, (tent) 48, Borough of **Bronx, Community Board: 7**. Construction within the mapped street, contrary to GCL. R2A district.

4-10-A

29-45 145th Street, 145th Street between 29th Road and Bayside Avenue., Block 4786, Lot(s) 41 (tent) 52, Borough of **Bronx, Community Board: 7**. Construction within and not fronting the mapped street, contrary to GCL. R2A district.

5-10-BZ

205 Spencer Street, East side of Spencer Street between Willoughby and Dekalb Avenues., Block 1763, Lot(s) 12, Borough of **Brooklyn, Community Board: 3**. Final Determination of the DOB R6 district.

6-10-BZ

2147 Mill Avenue, Northeast side of Mill Avenue between Avenue U and Strickland Avenue., Block 8463, Lot(s) 65, Borough of **Brooklyn, Community Board: 18**. Variance to legalize existing restaurant, contrary to use regulations. R2 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

FEBRUARY 2, 2010, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 2, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

16-36-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner
SUBJECT – Application October 27, 2009 – Extension of Term (§11-411) for the continued operation of an existing Gasoline Service Station (Gulf) which expired on November 1, 2007; Waiver of the Rules. C2-2/R5 zoning district.
PREMISES AFFECTED – 1885 Westchester Avenue, southeast corner of the intersection between Westchester Avenue and White Plains Road, Block 3880, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

111-71-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Erol Bayrdktar, lessee.
SUBJECT – Application December 15, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (Shell) which expired on October 28, 2009; Waiver of the Rules. C2-2/R3-2 zoning district.
PREMISES AFFECTED – 185-25 North Conduit Avenue, north west corner of Springfield Boulevard, Block 13094, Lot p/o 63, Borough of Queens.

COMMUNITY BOARD #12Q

35-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 103rd Street Realty LLC c/o Glenwood Management Corporation, owner.

SUBJECT – Application December 9, 2009 – Extension of Time to obtain a Certificate of Occupancy for a (UG16) Contractors' Establishment on the ground floor of a two-story building which expired on December 9, 2009. R7A zoning district.

PREMISES AFFECTED – 345-347 East 103rd Street, north side of East 103rd Street, between First and York Avenues, Block 1675, Lots 21 and 22, Borough of Manhattan.

COMMUNITY BOARD #11M

252-09-A

APPLICANT – Marc A.Chiffert, P.E., for Gani Realty Corporation, owner.

SUBJECT – Application September 9, 2009 – Appeal challenging the NYC Fire Department determination that the proposed building being constructed on a private street less than 38ft wide does not provide a proper fire access road for Fire Department emergency vehicles. R8 zoning district.

PREMISES AFFECTED – 2788 Grand Concourse Boulevard, between Miriam Street and East 197th Street, Block 3304, Lot 103 & 171, Borough of Bronx.

COMMUNITY BOARD #15BX

306-09-A

APPLICANT – New York City Department of Buildings
OWNER – Luis Cuji

SUBJECT – Application November 9, 2009 – An appeal filed by the Department of Buildings seeking to revoke the Certificate of Occupancy as it was issued in error due to failure to comply with various provisions of the Zoning Resolution, Building Code and Multiple Dwelling Law. R5 zoning district.

PREMISES AFFECTED – 37-48 60th Street, West side of 60th Street 38th and 37th Avenues. Block 1214, Lot 84. Borough of Queens.

COMMUNITY BOARD #1Q

312-09-A thru 323-09A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 340 CS Holdings, LLC, owner.

SUBJECT – Application November 24, 2009 – An Appeal seeking a common law vested right to complete construction commenced under the prior R6/C1-3 zoning district. R6A /C2-4 & R6B zoning district.

PREMISES AFFECTED – 340 Court Street, 283-291 Union Street, 292-298 Sackett Street, Block 339, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #6BK

DISMISSAL CALENDAR

184-07-BZ & 185-07-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER: Domenick Licata

SUBJECT – Application for dismissal for lack of prosecution.

PREMISES AFFECTED – 32 Fountain Avenue, west side, between Atlantic Avenue and Wells Street, Block 4154, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #5BK

CALENDAR

255-08-BZ & 256-08-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER: Moustafa Gouda

SUBJECT – Application for dismissal for lack of prosecution.

PREMISES AFFECTED – 1994-1996 Madison Avenue, west side of Madison Avenue between East 127th and East 128th Streets, Block 1752, Lot 16, 116, Borough of Manhattan.

COMMUNITY BOARD #11M

with Petrus Avenue, Block 5595, Lot 11, Borough of Staten Island.

COMMUNITY BOARD #3SI

Jeff Mulligan, Executive Director

FEBRUARY 2, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 2, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radoncic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yards (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD # 1Q

272-09-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Bob Roberts, owner; The Fitness Place Astoria N.Y. Inc., lessee.

SUBJECT – Application September 24, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment on the cellar, first and second floors in an existing two-story building. The proposal is contrary to ZR §32-10. C4-2 zoning district.

PREMISES AFFECTED – 32-62 Steinway Street, north side, 281' east of 34th Avenue, Block 656, Lot 61, Borough of Queens.

COMMUNITY BOARD #1Q

294-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Shree Ram FLP, owner.

SUBJECT – Application October 16, 2009 – Special Permit (§73-125) to permit a one-story ambulatory diagnostic and treatment health care facility. R3A zoning district.

PREMISES AFFECTED – 3768 Richmond Avenue, west side of Richmond Avenue, 200' south of the intersection

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JANUARY 12, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

615-57-BZ

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

SUBJECT – Application November 17, 2009 – Extension of Time to obtain a Certificate of Occupancy and waiver of the rules for a Gasoline Service Station (*Exxon*) which expired on January 22, 2009. C1-3/R5B zoning district.

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

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joshua Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of time to obtain a certificate of occupancy, which expired on January 22, 2009; and

WHEREAS, a public hearing was held on this application on December 12, 2009 after due notice by publication in *The City Record*, and then to decision on January 12, 2010; and

WHEREAS, the site is located on the north side of Horace Harding Expressway between Kissena Boulevard and 154th Place, in a C1-3 (R5B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 14, 1958 when, under the subject calendar number, the Board granted a variance to permit the reconstruction of a gasoline service station with accessory services; and

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

WHEREAS, on January 9, 2007, the Board granted an extension of term, to expire on June 5, 2013; a condition of the grant was that a certificate of occupancy be obtained by October 9, 2007; and

WHEREAS, most recently, on July 22, 2008, the Board granted an extension of time to obtain a certificate of occupancy, which expired January 22, 2009; and

WHEREAS, the applicant states that it obtained two temporary certificates of occupancy subsequent to the previous grant, expiring August 12, 2009, but that the Department of Buildings will not grant them a final certificate of occupancy without an extension of time from the Board; and

WHEREAS, therefore, the applicant now seeks an additional six month extension of time to obtain a certificate of occupancy; and

WHEREAS, based upon the above, the Board finds that the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 14, 1958, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy, to expire on July 12, 2010; *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by July 12, 2010;

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

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

Adopted by the Board of Standards and Appeals January 12, 2010.

217-96-BZ

APPLICANT – Joseph P. Morsellino, for Silverbell Investments, owner; Enterprise Rent a Car, lessee.

SUBJECT – Application September 15, 2009 – Extension of Term of a previously granted Variance (§72-21) for the continued use of an existing car rental facility (*Enterprise*) with accessory outdoor storage of rental cars (UG 8) which expired on October 7, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on October 7, 1998; and Waiver of the Rules. C1-2/R-2 zoning district.

PREMISES AFFECTED – 165-01 Northern Boulevard, northeast corner 165th Street and Northern Boulevard, Block 53340, Lot 8, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

MINUTES

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of a car rental facility (Use Group 8) which expired on October 7, 2007, and an extension of time to obtain a certificate of occupancy, which expired on October 7, 1998; and

WHEREAS, a public hearing was held on this application on November 17, 2009 after due notice by publication in *The City Record*, with a continued hearing on December 15, 2009, and then to decision on January 12, 2010; and

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

WHEREAS, Community Board 7, Queens, recommends approval of this application, with the following conditions: (1) the barbed wire be removed from the top of the fence surrounding the property; (2) the landscaping on the site be maintained; (3) garbage be stored in a locked bin on the site; (4) a “No Left Turn” exit sign be installed on the fencing for safety reasons; and (5) the fence be improved and maintained; and

WHEREAS, the subject site is located on the northeast corner of Northern Boulevard and 165th Street, within a C1-2 (R2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 7, 1997 when, under the subject calendar number, the Board granted a variance to permit the legalization and expansion of an existing car rental facility with accessory outdoor storage of rental cars (Use Group 8) located in a portion of a one-story commercial building, to expire on October 7, 2007; a condition of the grant was that a certificate of occupancy be obtained by October 7, 1998; and

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

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

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to there being multiple open applications for the subject premises at DOB, which needed to be resolved; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted a letter from the operator of the site, stating that: (1) the barbed wire will be removed from the top of the fence; (2) trees will be planted and maintained in the sidewalk planting areas at the front of the property, as per the BSA-approved plans; (3) the latch to the gate that encloses the garbage will be repaired; (4) a “No Left Turn” sign will be installed on the lot; and (5) the fence will be repaired; and

WHEREAS, in addition, the applicant submitted photographs reflecting that the barbed wire has been removed

and the fence has been repaired; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the signage complies with C1 district regulations; and

WHEREAS, in response, the applicant submitted a revised plot plan including a post sign on the site, a revised signage analysis reflecting that the applicant’s signage complies with C1 district regulations, and permits issued by DOB for the signage on the site; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time 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 October 7, 1997, so that as amended this portion of the resolution shall read: “to extend the term for ten years from October 7, 2007, to expire on October 7, 2017, and to permit an extension of time to obtain a certificate of occupancy, to expire on July 12, 2010; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval and to the drawings filed with this application marked ‘Received September 15, 2009’-(3) sheets and ‘November 20, 2009’-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on October 7, 2017;

THAT signage shall comply with C1 district regulations;

THAT a “No Left Turn” sign shall be installed on the site in accordance with the BSA-approved plans;

THAT all landscaping shall be provided and maintained in accordance with the BSA-approved plans;

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

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

THAT a new certificate of occupancy shall be obtained by July 12, 2010;

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

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

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

(DOB Application No. 420073039)

Adopted by the Board of Standards and Appeals, January 12, 2010.

195-99-BZ

APPLICANT – Eric Palatnik, P.C., for Theodore Zorbas, owner.

SUBJECT – Application September 18, 2009 – Extension of Term (§11-411) for the continued use of a Gasoline Service Station (*Shell*) which expires on November 10, 2009. R-6

MINUTES

zoning district.

PREMISES AFFECTED – 112 Atlantic Avenue, south east corner of Atlantic Avenue and Henry Street, Block 285, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for a gasoline service station (Use Group 16) with accessory uses, which expired on November 10, 2009; and

WHEREAS, a public hearing was held on this application on November 17, 2009, after due notice by publication in *The City Record*, with a continued hearing on December 15, 2009, and then to decision on January 12, 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 6, Brooklyn, recommends approval of this application, with the following conditions: (1) tow trucks and other vehicles not be permitted to park on the street; and (2) paid parking be prohibited on the site; and

WHEREAS, the site is located on the southeast corner of the intersection at Atlantic Avenue and Henry Street, within an R6 zoning district; and

WHEREAS, the site is currently occupied by a gasoline service station (Use Group 16) with accessory uses; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 22, 1960 when, under BSA Cal. No. 741-59-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station, lubricatorium, minor auto repairs, car wash, office, sales and storage and parking of motor vehicles for a term of 15 years; and

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

WHEREAS, most recently, on February 8, 2000, under the subject calendar number, the Board granted an application under ZR § 11-411 to re-establish the expired variance for a gasoline service station with accessory uses, to expire November 10, 2009; and

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

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted an affidavit from the operator stating that there is no paid parking on the site and

that the tow trucks will be moved off of the street; and

WHEREAS, at hearing, the Board directed that the applicant to keep the dumpster closed and maintain the garbage collection area in good condition; and

WHEREAS, the Board also directed the applicant to revise the plans to reflect the actual location of the garbage collection area; and

WHEREAS, in response, the applicant submitted photographs reflecting that there is now a lid for the dumpster; and

WHEREAS, the applicant also revised the plans to reflect a new planter on the northwest corner of the site; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated February 8, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from November 10, 2009, to expire on November 10, 2019; *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 30, 2009’-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 10, 2019;

THAT there shall be no parking of tow trucks and other vehicles on the street;

THAT there shall be no paid parking on the site;

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

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

THAT the Department of Buildings must ensure compliance 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. 320026627)

Adopted by the Board of Standards and Appeals, January 12, 2010.

136-01-BZ

APPLICANT – Eric Palatnik, P.C., for Cel-Net Holding, Incorporated, owner.

SUBJECT – Application April 25, 2008 – Extension of Time to complete construction and obtain a Certificate of Occupancy for a Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements; Amendment to reduce amount of commercial floor area; Waiver of the Rules. M1-4/R7A (Hunters Point Subdistrict) zoning district.

PREMISES AFFECTED – 11-11 44th Drive, Northside between 11th and 21st Streets. Block 447, Lot 13, Borough of Queens.

MINUTES

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to complete construction and obtain a certificate of occupancy, and an amendment to the previously-approved plans; and

WHEREAS, a public hearing was held on this application on December 8, 2009, after due notice by publication in *The City Record*, and then to decision on January 12, 2010; and

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

WHEREAS, the subject site is located on the north side of 44th Drive, between 11th Street and 21st Street, within an M1-4 (R7A) zoning district; and

WHEREAS, on June 11, 2002, the Board granted an application under ZR § 72-21, to permit, in an M1-4 zoning district, an increase in floor area for a wholesale office with accessory storage (Use Group 10) and the legalization of the existing encroachment into the rear yard; and

WHEREAS, substantial construction was to be completed by June 11, 2006 in accordance with ZR § 72-23; and

WHEREAS, on March 28, 2006, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, to expire on March 28, 2008; and

WHEREAS, the applicant states that the owner no longer intends to construct the additional 23,788 sq. ft. of floor area approved under the original grant; and

WHEREAS, the applicant submitted revised plans indicating that the increase in floor area has been eliminated such that the total floor area of the proposed building will remain at 31,784 sq. ft., but represents that other construction may be necessary which requires the requested extension of time to complete construction; and

WHEREAS, the applicant also requests an extension of time to obtain a certificate of occupancy to reflect the legalization of the rear yard encroachment, and an amendment of the plans to reflect that the previously-approved enlargement will not be constructed; and

WHEREAS, based upon the above, the Board finds that the requested extension of time and amendment to the 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 June 11, 2002, so that as

amended this portion of the resolution shall read: “to permit an extension of time to complete construction and obtain a certificate of occupancy, to expire on July 12, 2010; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 30, 2009”- (6) sheets and *on further condition*:

THAT substantial construction shall be completed by July 12, 2010;

THAT a new certificate of occupancy shall be obtained by July 12, 2010;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 400838894)

Adopted by the Board of Standards and Appeals, January 12, 2010.

156-03-BZ

APPLICANT – Steven M. Sinacori, Esq., of Akerman Senterfitt, for RKO Plaza LLC & Farrington Avenue Developers, LLC, owner.

SUBJECT – Application November 30, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a seventeen story mixed-use commercial / community facility / residential condominium building which expired on December 13, 2009. C2-2/R6 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of Northern Boulevard, between Prince Street and Farrington Street, Block 4958, Lot 38 & 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Angela Smith.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, within a C2-2 (R6) zoning district, the construction of a 17-story mixed-use commercial/community facility/residential building, which expired on December 13, 2009; and

WHEREAS, a public hearing was held on this application on December 15, 2009 after due notice by

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publication in *The City Record*, and then to decision on January 12, 2010; and

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

WHEREAS, the subject site is located on the north side of Northern Boulevard, between Prince Street and Farrington Street, within a C2-2 (R6) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since December 12, 2005 when, under the subject calendar number, the Board granted a variance to permit the proposed development of a 200-unit, 17-story mixed-use commercial/community facility/residential building, with ground level retail, second floor community facility space, and 229 accessory parking spaces in a three-level below-grade parking garage; and

WHEREAS, substantial construction was to be completed by December 13, 2009, in accordance with ZR § 72-23; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 13, 2005, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of two years, to expire on January 12, 2012; *on condition:*

THAT substantial construction shall be completed by January 12, 2012;

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. 401622669)

Adopted by the Board of Standards and Appeals, January 12, 2010.

197-05-BZ

APPLICANT – Marvin Mitzner, Esq., for B&E 813 Broadway Realty, owner.

SUBJECT – Application April 17, 2009 – Amendment to a variance (§72-21) to allow full commercial coverage on the ground floor and an increase in commercial FAR in a mixed use building. C6-1 zoning district.

PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42’ south of East 12th Street, Block 563, Lots 33

& 34, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....5

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted the construction of an 11-story mixed-use building with ground floor commercial space and 40 dwelling units, which does not comply with residential FAR, open space ratio, height, setback, and dwelling count, contrary to ZR §§ 23-142, 33-432, and 23-22; and

WHEREAS, a public hearing was held on this application on July 28, 2009, after due notice by publication in *The City Record*, with continued hearings on August 25, 2009, September 15, 2009, October 20, 2009, and November 24, 2009, and then to decision on January 12, 2010; and

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

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

WHEREAS, the site is located on the west side of Broadway, between East 11th Street and East 12th Street, within a C6-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 1, 2008 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted the construction of an 11-story mixed-use building with ground floor commercial space and 40 dwelling units, which does not comply with residential FAR, open space ratio, height, setback, and dwelling count, contrary to ZR §§ 23-142, 33-432, and 23-22; and

WHEREAS, the original approval reflected a residential FAR of 5.6, a commercial FAR of 0.4, a total FAR of 6.0, and a rear yard with a depth of 43’-11”;

WHEREAS, the applicant initially sought to amend the grant to permit (1) full lot coverage for the commercial use on the first floor and (2) an increase in the commercial FAR from 0.4 to 0.83 and total FAR from 6.0 to 6.43; and

WHEREAS, the applicant asserted that the changes were required due to an unforeseen increase in development costs relating to the need for a sub-cellar to accommodate accessory residential uses and a reduction in the commercial and residential rentable space due to the requirement for a second elevator; and

WHEREAS, specifically, the applicant asserted that the building was not marketable for residential use without an accessory gym, storage space, and recreational space for residents, thus the sub-cellar was required; and

WHEREAS, further, the applicant asserted that the

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addition of a sub-cellar would allow additional space on the cellar level to be dedicated to necessary storage for the first floor commercial use; and

WHEREAS, the applicant proposed to add the commercial floor area in order to compensate for the additional costs associated with adding a sub-cellar and a second elevator and for the loss of approximately 1,500 sq. ft. of rentable residential floor area attributed to the elevator; and

WHEREAS, in support of the request, the applicant submitted a financial analysis, testimony from a real estate broker, and information on purportedly comparable residential buildings with the proposed amenities; and

WHEREAS, during the hearing process, the Board stated that it did not find a nexus between the relief sought and the purported hardship; and

WHEREAS, specifically, the Board found the financial analysis and purported requirement for additional floor area and amenities unconvincing and that the cited residential buildings could be distinguished from the subject building; and

WHEREAS, the applicant revised the proposed cellar and sub-cellar plans and the financial analysis on multiple occasions; and

WHEREAS, the Board remained unconvinced that a need for additional commercial floor area had been substantiated and that the request reflected the minimum variance; and

WHEREAS, ultimately, the applicant revised the proposed plans to reflect a building with (1) no increase in the commercial floor area, (2) the addition of a second elevator, and (3) the addition of a sub-cellar; and

WHEREAS, the Board notes that the use of the cellar will be strictly limited to commercial (Use Group 6) storage space and will only be accessible by employees of the commercial use and will not offer general access to the public or be used in any manner that suggests a direct extension of the first floor commercial operation; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance, specifically with regard to its findings pursuant to ZR §§ 72-21(b), (c), and (e); and

WHEREAS, accordingly, the Board finds the proposed variance, as amended, continues to reflect the minimum variance and the Board has determined that it is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 1, 2008, so that as amended this portion of the resolution shall read: "to permit the noted addition of a second elevator, a sub-cellar, and other related plan changes; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received January 6, 2010"-(17) sheets; and *on further condition*:

THAT the residential FAR shall be limited to 5.6 and the commercial FAR shall be limited to 0.4;

THAT the use of the cellar shall be strictly limited to

accessory storage associated with the first floor Use Group 6 use;

THAT the cellar shall not be generally accessible from the Use Group 6 use except for storage purposes;

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. 104072076)

Adopted by the Board of Standards and Appeals, January 12, 2010.

389-37-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Rosemarie Fiore, Georgette Fiore and George Fiore, owner.
SUBJECT – Application June 10, 2009 – Extension of Term (§11-411) of a previously granted Variance for the operation of a UG8 parking lot which expired on June 13, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on December 12, 2004 and Waiver of the Rules. R5/C1-2 zoning district.

PREMISES AFFECTED – 31-08 -31-12 45th Street, southwest corner of 45th Street and 31st Avenue, Block 710, Lot 5, 6, 17, 18, 19, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for adjourned hearing.

75-95-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for The Rupert Yorkville Towers Condominium, owner; TSI East 91 d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on January 28, 2006 for the operation of a Physical Culture Establishment (*New York Sports Club*); Waiver of the Rules. C2-8 zoning district.

PREMISES AFFECTED – 1635 Third Avenue, Easterly side of Third Avenue between East 91st Street and East 92nd Street. Block 1537, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

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ACTION OF THE BOARD – Laid over to February 2, 2010, at 10 A.M., for decision, hearing closed.

5-96-BZ

APPLICANT – Sheldon Lobel, P.C. for Saint John's Place, LLC c/o Ulltra Parking Systems Incorporated, owner; Park Right Corporation, lessee.

SUBJECT – Application January 20, 2009 – Extension of Term (§11-411) to permit the operation a one-story public parking garage for no more than 150 cars (UG 8), which expired on March 18, 2007; Amendment to change the parking layout; and an Extension of Time to obtain a certificate of occupancy, which expired on March 18, 1998. R7-1 zoning district.

PREMISES AFFECTED – 564/92 St. John's Place, South side of Saint John's Place approximately 334' west of Classon Avenue, Block 1178, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to February 2, 2010, at 10 A.M., for decision, hearing closed.

223-98-BZ

APPLICANT – Andrea Claire/Peter Hirshman for Jilda Realty Corporation, owner.

SUBJECT – Application October 29, 2009 – Extension of Term of a previous variance that permits the operation of an automotive service station (UG 16B) which will expire on February 1, 2010; Amendment to allow used car sales (UG 16B); Extension of Time to obtain a Certificate of Occupancy which expired on June 10, 2003; Waiver of the Rules. R6B zoning district.

PREMISES AFFECTED – 51-59 Maujer Street, aka 451-459 Lorimer Street, northeast corner of the intersection of Maujer Street and Lorimer Street, Block 2785, Lot 31 & 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Peter Hirshman, Andrea Claire, Gerald Esposito and Mario Avolone.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for continued hearing.

163-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 503 Broadway LLC, owner; TSI Soho LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application September 16, 2009 – Extension of Term for a special permit (§73-36) which will expire on

June 28, 2010 for the operation of a Physical Culture Establishment (*New York Sports Club*); Waiver of the Rules. M1-5B zoning district.

PREMISES AFFECTED – 503 Broadway, westerly side of Broadway between Broome Street and Spring Street, Block 484, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to February 2, 2010, at 10 A.M., for decision, hearing closed.

405-01-BZ

APPLICANT – Eric Palatnik, P.C., for United Talmudical Academy, owner.

SUBJECT – Application November 24, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a five-story school and synagogue (UG 3 & 4) which expired on November 12, 2006. R5/C2-3 zoning district.

PREMISES AFFECTED – 1275 36th Street, between Clara Street and Louisa Street, Block 5310, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to February 9, 2010, at 10 A.M., for decision, hearing closed.

26-02-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; A & A Automotive Corporation, lessee.

SUBJECT – Application November 23, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (*Mobil*) which expires on January 28, 2010. C1-2/R3X zoning district.

PREMISES AFFECTED – 1680 Richmond Avenue, north west corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Cindy Bachan.

THE VOTE TO CLOSE HEARING –

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

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Negative:.....0

ACTION OF THE BOARD – Laid over to February 9, 2010, at 10 A.M., for decision, hearing closed.

265-08-BZ

APPLICANT – Richard Bass, Herrick, Feinstein, LLP, for 70 Wyckoff LLC, owner.

SUBJECT – Application December 8, 2009 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the legalization of residential units in a manufacturing building which expired on December 23, 2009. M1-1 zoning district.

PREMISES AFFECTED – 70 Wyckoff Avenue, south east corner of Wyckoff Avenue and Suydam Street, Block 3221, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Richard Bass.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 9, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

205-05-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Sheila Cardinale, lessee.

SUBJECT – Application September 1, 2009 – Amendment of a previously granted General City Law Section 35 waiver to permit the construction of a single family home within the bed of a mapped street. R4 zoning district.

PREMISES AFFECTED – 47 Graham Place, north side of Graham Place, approximately 60’ west of mapped Beach 204th Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 26, 2009, acting on Department of Buildings Application No. 410223253, reads in pertinent part:

“A1 The existing building to be reconstructed and altered lies within the bed of a mapped street

contrary to General City Law Article 3, Section 35

A2 The proposed upgraded private disposal system is in the bed of a mapped street contrary to General City Law Article 3, Section 35 and Department of Buildings policy;” and

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

WHEREAS, on May 16, 2006, under the subject calendar number, the Board granted an application under Section 35 of the General City Law to legalize an existing home with a rear extension in the bed of a mapped street; and

WHEREAS, the applicant represents that the owner has decided to revise the plans to reflect the reconstruction and enlargement of the existing home rather than the legalization of the existing conditions, thus necessitating the applicant to file the subject application; and

WHEREAS, a public hearing was held on this application on December 15, 2009, after due notice by publication in the *City Record*, and then to decision on January 12, 2010; and

WHEREAS, by letter dated December 9, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections, with the following conditions: (1) the entire building be fully sprinklered in conformity with the sprinkler provisions of the New York City Fire Code § 29-503.8.2, Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code (the “Building Code”); and (2) the entire building be provided with interconnected smoke alarms, which shall be designed and installed in accordance with Building Code § 28-907.2.10; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the entire building will be fully sprinklered; and

WHEREAS, the Board notes that the Fire Department’s approval was also conditioned on the inclusion of interconnected smoke alarms; and

WHEREAS, by letter dated September 30, 2009, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 19, 2009, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated August 26, 2009, acting on Department of Buildings Application No. 410223253 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received November 23, 2009 (1) sheet; that the

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proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition:*

THAT the entire building shall be fully sprinklered in conformity with the sprinkler provisions of the New York City Fire Code § 29-503.8.2, Local Law 10 of 1999 and Reference Standard 17-2B of the Building Code;

THAT the entire building shall be provided with interconnected smoke alarms, which shall be designed and installed in accordance with Building Code § 28-907.2.10;

THAT this 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, January 12, 2010.

262-09-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Maria Larkin, lessee.

SUBJECT – Application September 14, 2009 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street, contrary to General City Law Section 36 and located within the bed of a mapped street (B204th Street), contrary to General City Law Section 35 and Department of Buildings Policy. R4 Zoning District. PREMISES AFFECTED – 711 Bayside Drive, north side of mapped 204th Street, 28.63’ south of Bayside Drive, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 9, 2009, acting on Department of Buildings Application No. 410233849, reads in pertinent part:

“A1 – The proposed enlargement is on a site located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3, Sect.

35 of the General City Law.

A2– The site and building is not fronting on an official mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3, Sect. 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 (26 - 401.1) of the Administrative Code of the City of New York.

A3– The private disposal system is in the bed of a mapped street contrary to Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated November 13, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 1, 2009, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 19, 2009, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 9, 2009, acting on Department of Buildings Application No. 410233849, is modified by the power vested in the Board by Sections 35 and 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received September 14, 2009” – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition:*

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

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

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

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

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Adopted by the Board of Standards and Appeals,
January 12, 2010.

263-09-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, owner; Michael & Christine Salica, lessees.

SUBJECT – Application September 14, 2009 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street, contrary to General City Law Section 36, and located within the bed of a mapped street (B216th), contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 28 Tioga Walk, west side of Tioga Walk, 18.32’ south of paved Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 9, 2009, acting on Department of Buildings Application No. 420020907, reads in pertinent part:

“A1 – The proposed enlargement is on a site located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3, Sect. 35 of the General City Law.

A2 – The site and building is not fronting on an official mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3, Sect. 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 (26 - 401.1) of the Administrative Code of the City of New York .

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated November 13, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 1, 2009, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 19, 2009, the

Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 9, 2009, acting on Department of Buildings Application No. 420020907, is modified by the power vested in the Board by Sections 35 and 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received September 14, 2009” – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals,
January 12, 2010.

62-08-A

APPLICANT – Eric Palatnik, P.C. for Benny Ulloa, owner.

SUBJECT – Application March 27, 2009 – Proposed construction not fronting on a legally mapped street, contrary to General City Law, Section 36. R1-2 zoning district.

PREMISES AFFECTED – 398 Nugent Street, Nugent Street, North of Saint George Road, Block 2284, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Carol Donovan and Kathleen C. Merghan.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for continued hearing.

199-09-A thru 213-09-A

APPLICANT – Eric Palatnik, P.C., for Gino Savo, owner.

SUBJECT – Application June 29, 2009 – Proposed construction of 15, two-story, one family homes not fronting

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on a mapped street, contrary to General City Law Section 36. R3A /R3-2 Zoning District.

PREMISES AFFECTED – 165, 161, 159, 155, 153, 151, 149, 145, 143, 141, 137, 135, 131, 129, 127, Roswell Avenue, Block 2641, Lot 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 10 A.M., for continued hearing.

245-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Adelphi Luxury Development, LLC, owner.

SUBJECT – Application August 21, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning district. R6B Zoning District.

PREMISES AFFECTED – 120 Adelphi Street, west side of Adelphi Street, 252’ north of the intersection of Adelphi Street and Myrtle Avenue, Block 2044, Lots 74 and 75, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most and A. Calvo.

For Opposition: Enid Braun.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to January 26, 2010, at 10 A.M., for decision, hearing closed.

249-09-A

APPLICANT – Bryan Cave LLP, for 363 Lafayette Street, LLC,owner.

SUBJECT – Application August 27, 2009 – Appeal challenging Department of Building's determination that permit for the subject premises expired and became invalid because the permitted work was not commenced within 12 months from the date of issuance, per Title 28, §28-105.9 of the Administrative Code.

PREMISES AFFECTED – 363 Lafayette Street, (371 Lafayette Street, 21 Great Jones Street) east side of Lafayette Street, between Bond and Great Jones Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 10 A.M., for continued hearing.

265-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Incorporated, owner; John Strong, lessee.

SUBJECT – Application September 15, 2009 – Reconstruction and enlargement of an existing single family home and the upgrade of a private disposal system located within the bed of a mapped street, contrary to General City Law Section 35 and Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 165 Ocean Avenue, east side of Ocean Avenue, 130’ south of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Laid over to February 2, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 12, 2010
1:30 P.M.**

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

ZONING CALENDAR

53-09-BZ

APPLICANT – Harold Weinberg, P.E., for David Salamon, owner.

SUBJECT – Application April 6, 2009 – Variance (§72-21) for the construction of a three-family home on a vacant undersized lot. This application seeks to vary floor area (§23-141); front yard (§23-45) side yard (§23-461) and parking (§25-161) in an R5 zoning district.

PREMISES AFFECTED – 540 Schenck Avenue, southwest corner of Dumont Avenue, between Schenck Avenue and Hendrix Street, Block 4075, Lot 118, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 30, 2009, acting on Department of Buildings Application No. 310305158, reads in pertinent part:

“The proposed erection of a three family three story residence in Use Group 2 in an R5 zoning district:

1. Creates non-compliance with respect to one front yard and is contrary to Section 23-45 of the Zoning Resolution.
2. Is contrary to Sections 23-32 and 23-33 which requires a minimum lot area of 1,700 square feet;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the proposed construction of a three-story three-family home that does not comply with the zoning requirements for lot area and front yards, contrary to ZR §§ 23-32, 23-33 and 23-45; and

WHEREAS, a public hearing was held on this application on July 28, 2009 after due notice by publication in *The City Record*, with continued hearings on September 22, 2009, November 10, 2009, and December 15, 2009, and then to decision on January 12, 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, Brooklyn, recommends approval of this application; and

WHEREAS, the adjacent property owner testified in opposition to this application, citing concerns that the proposed home will be built on a portion of her property; and

WHEREAS, in response to the adjacent neighbor, the applicant provided a survey reflecting the lot lines of the subject site, and the Board notes that the proposed plans reflect that no construction will take place beyond the subject lot lines; and

WHEREAS, certain other members of the community testified in opposition to this application, citing the following primary concerns: (1) the proposed home is not compatible with neighborhood character; (2) the proposed home would overburden the existing sewer system; and (3) the proposed home will decrease property values in the surrounding area; and

WHEREAS, the site is located on the southwest corner of Dumont Avenue and Schenck Avenue, within an R5 zoning district; and

WHEREAS, the site has a width of 20 feet, a depth of 80 feet, and a total lot area of 1,600 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a three-story three-family home; and

WHEREAS, the proposed home will have the following complying parameters: 1,980 sq. ft. of floor area (1.25 FAR); a lot coverage of approximately 41 percent; 940 sq. ft. of open space; a side yard with a width of 37’-0” along the western lot line; a front yard with a depth of 10’-0” along the eastern lot line; a wall height of 30’-0”; a total height of 30’-0”; and three parking spaces; and

WHEREAS, however, the applicant proposes not to provide a front yard along the northern lot line (two front yards with minimum depths of 18’-0” and 10’-0”, respectively, are required); and

WHEREAS, the applicant originally proposed to construct a three-story three-family home with a floor area of 2,640 sq. ft. (1.65 FAR) and two parking spaces, which necessitated additional waivers for floor area and parking; and

WHEREAS, during the course of the hearing process the applicant revised its proposal to provide a floor area of 1,980 sq. ft. (1.25 FAR) and three parking spaces, thereby eliminating the floor area and parking waivers; and

WHEREAS, the applicant has provided documentation establishing that the subject lot is an undersized lot pursuant to ZR § 23-32; and

WHEREAS, the applicant submitted Department of Finance records and other evidence reflecting that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the two adjoining lots; and

WHEREAS, the applicant states that front yard relief is necessary, for reasons stated below; thus, the instant application was filed; and

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WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the subject corner lot is small and narrow; and

WHEREAS, the applicant represents that the pre-existing lot width of 20'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the Board notes that a three-family home is permitted as-of-right in an R5 zoning district, but that a waiver is required for the site's substandard lot size; and

WHEREAS, the applicant states that the subject site is a corner lot, which requires front yards with widths of 18'-0" and 10'-0", respectively; and

WHEREAS, the applicant states that the building would have a maximum exterior width of 10'-0" if front yard regulations were complied with fully; and

WHEREAS, the applicant represents that subtracting the widths of the exterior walls would leave a complying home with a maximum interior width of 8'-0"; and

WHEREAS, accordingly, the applicant represents that the front yard waiver is necessary to create a building with a sufficient width; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 200-ft. radius diagram reflecting that the subject lot is both the smallest and narrowest corner lot in the surrounding neighborhood; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable front yard regulations; and

WHEREAS, the applicant provided a financial analysis indicating that, due to the narrow width and small size of the subject lot, development of the proposed three-family home is necessary in order to provide a reasonable rate of return; and

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

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that that it complies with all relevant bulk regulations; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R5 zoning district regulations for use, FAR, side yards, lot coverage, open space, height, and parking; and

WHEREAS, the applicant submitted evidence that the subject site was occupied by a three-story five-family building dating from 1940; and

WHEREAS, the applicant submitted a land use map identifying 14 multiple dwellings with three units or more located within three blocks of the subject site; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding

neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historical lot dimensions; and

WHEREAS, as noted above, the applicant originally proposed to construct a three-story three-family home with a floor area of 2,640 sq. ft. (1.65 FAR) and two parking spaces, which necessitated additional waivers for floor area and parking; and

WHEREAS, the Board directed the applicant to revise the proposal to reflect compliance with floor area requirements (1.25 FAR is the maximum permitted) and parking requirements (three parking spaces are the minimum required), thereby eliminating the floor area and parking waivers; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R5 zoning district, a three-story three-family home that does not comply with the zoning requirements for lot area and front yards, contrary to ZR §§ 23-32, 23-33 and 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 1, 2009"–(9) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 1,980 sq. ft. (1.25 FAR); a lot coverage of approximately 41 percent; 940 sq. ft. of open space, a side yard with a width of 37'-0" along the western lot line; a front yard with a depth of 10'-0" along the eastern lot line; a wall height of 30'-0"; a total height of 30'-0"; and parking for a minimum of three cars, as per the BSA-approved plans;

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

THAT there shall be no habitable room in the cellar;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 12, 2010.

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164-09-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Palanker, owner.

SUBJECT – Application April 29, 2009 – Special Permit (§73-622) for enlargement of an existing two-family home, contrary to floor area, lot coverage and open space (§23-141) and rear yard (ZR §23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 124 Irwin Street, between Hampton Avenue and Oriental Boulevard, Block 8751, Lot 416, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated March 31, 2009, acting on Department of Buildings Application No. 310304612, reads:

- “1. Proposed floor area ratio contrary to ZR 23-141(a).
2. Proposed open space contrary to ZR 23-141(a).
3. Proposed lot coverage is contrary to ZR 23-141.
4. Proposed rear yard contrary to 23-47;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, lot coverage and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on July 21, 2009 after due notice by publication in *The City Record*, with continued hearings on August 25, 2009, October 6, 2009, November 10, 2009, and November 24, 2009, and then to decision on January 12, 2010; and

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

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

WHEREAS, representatives of the Manhattan Beach Community Group testified in opposition to this application, citing apparent inconsistencies in the plans and concerns about compliance with attic space limitations and the perimeter wall height; and

WHEREAS, certain members of the community testified in opposition to this application; and

WHEREAS, the subject site is located on the west side of Irwin Street, between Hampton Avenue and Oriental

Boulevard, in an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 2,823 sq. ft. (0.47 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,823 sq. ft. (0.47 FAR) to 5,938 sq. ft. (0.99 FAR); the maximum permitted floor area is 3,600 sq. ft. (0.60 FAR, with an attic bonus); and

WHEREAS, the applicant proposes to provide an open space of approximately 54 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of approximately 46 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-9” (a minimum rear yard of 30’-0” is required); and

WHEREAS, at hearing the Board questioned which portions of the original home were being retained; and

WHEREAS, in response, the applicant submitted revised plans showing that portions of the foundation walls and first floor walls are being retained; and

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

WHEREAS, in response to the opposition’s concerns, the Board directed the applicant to resolve any inconsistencies in the plans; and

WHEREAS, accordingly, the applicant submitted revised plans which reconcile the location of windows and other related notations; and

WHEREAS, additionally, the Board notes that DOB will review the proposed attic and that the proposed perimeter wall height complies with zoning district regulations; and

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-1 zoning district, the enlargement of a single-family home, which does not

MINUTES

comply with the zoning requirements for FAR, open space, lot coverage and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received December 10, 2009”-(15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 5,938 sq. ft. (0.99 FAR); an open space of approximately 54 percent; a lot coverage of approximately 46 percent; a side yard with a minimum width of 5’-0” along the northern lot line; a side yard with a minimum width of 9’-8” along the southern lot line; a rear yard with a minimum depth of 20’-9”; a perimeter wall height of 21’-0”, and a total height of 35’-0”, as illustrated on the BSA-approved plans;

THAT there shall be a maximum of 905.5 sq. ft. of floor area in the attic, which shall be reviewed and approved by DOB;

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

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

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

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, January 12, 2010.

218-09-BZ

CEQR #10-BSA-002K

APPLICANT – Jeffrey A. Chester, for Rich Gene Realty Corporation, owner; McDonald’s Corporation, lessee.

SUBJECT – Application July 8, 2009 – Special Permit (§73-243) to allow an accessory drive-through facility to an eating and drinking establishment (*McDonald’s*). C1-3/C8-2 zoning district.

PREMISES AFFECTED – 57 Empire Boulevard, between Mckeever Place and Bedford Avenue, bounded by Sullivan Place on south, Block 1306, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jeffrey A. Chester.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated June 10, 2009, acting on Department of Buildings Application No. 320027458, reads:

“Accessory drive-through facility not permitted in a C1-3 zone pursuant to ZR § 32-15. Refer to Board of Standards & Appeals for renewal of special permit. Drive through facility shall be permitted in C1-3, only as provided in ZR 73-243 through BSA approval;” and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site partially within a C1-3 (R6) zoning district and partially within a C8-2 zoning district, the operation of an accessory drive-through facility on the C1-3 (R6) portion of the site, in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on October 27, 2009, with continued hearings on November 24, 2009 and December 15, 2009, and then to decision on January 12, 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 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site encompasses an entire city block, bounded by Sullivan Place to the north, McKeever Place to the east, Empire Boulevard to the south, and Franklin Avenue to the west; and

WHEREAS, the site is divided by a zoning district boundary line, with the northern portion of the lot located within a C1-3 (R6) zoning district, and the southern portion of the lot located within a C8-2 zoning district; and

WHEREAS, the proposed accessory drive-through facility is permitted as-of-right in the C8-2 zoning district, but a special permit is required for the drive-through facility in the C1-3 (R6) zoning district, pursuant to ZR § 73-243; and

WHEREAS, the subject site has a total lot area of 38,804 sq. ft. and is occupied by a McDonald’s restaurant; and

WHEREAS, on December 4, 1990, under BSA Cal. No. 895-89-BZ, the Board granted a special permit for the development of a drive-through facility accessory to an eating and drinking establishment, for a term of five years; the special permit lapsed on December 4, 1995; and

WHEREAS, the applicant seeks to re-establish the special permit for a period of five years and to make minor changes to the plans; and

WHEREAS, the applicant represents that the special permit lapsed due to management oversight; and

WHEREAS, the applicant states that the site is operated in substantial compliance with the Board-approved plans from the 1990 grant; and

WHEREAS, the applicant represents that the only significant change to the site since the prior grant is the

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addition of a 679 sq. ft. play area in 1996, which increased the size of the existing restaurant to 5,710 sq. ft. and required the removal of four parking spaces; and

WHEREAS, the applicant submitted a building permit and zoning analysis reflecting that the play area was constructed pursuant to valid permits and is in compliance with the underlying zoning district regulations; and

WHEREAS, under ZR § 73-243, the application must demonstrate that: (1) the drive-through facility provides reservoir space for not less than ten automobiles; (2) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; (3) the eating and drinking establishment with accessory drive-through facility complies with accessory off-street parking regulations; (4) the character of the commercially-zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle; (5) the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity; and (6) there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant submitted a site plan indicating that the drive-through facility provides reservoir space for a ten-car queue; and

WHEREAS, the applicant represents that the facility will cause minimal interference with traffic flow in the immediate vicinity of the subject site; and

WHEREAS, in support of this representation, the applicant provided a traffic analysis indicating that the operation of the proposed accessory drive-through facility will generate a total of 36 new vehicle trips during any peak hour, which is below the CEQR threshold of 50 vehicle trips during any peak hour; and

WHEREAS, the applicant represents that the facility fully complies with the accessory off-street parking regulations for the C1-3 (R6) zoning district; and

WHEREAS, in support of this representation, the applicant submitted a proposed site plan providing 40 accessory off-street parking spaces, which is more than double the requirement of 19 parking spaces pursuant to ZR § 36-21; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward the motor vehicle; and

WHEREAS, the applicant has submitted photographs of the premises and the surrounding streets, which supports this representation; and

WHEREAS, the applicant represents that the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, the applicant states that the restaurant and drive-through facility are oriented toward Empire Boulevard, which is on the portion of the site within a C8-2 zoning district and is characterized by commercial uses; and

WHEREAS, the applicant further states that the main points of ingress and egress to the site, located on Empire Boulevard and McKeever Place, are contained within the C8-2

portion of the site; and

WHEREAS, the applicant represents that the fact that the proposed drive-through facility has operated at this site without complaints since 1990, when the Board granted the original special permit, is further evidence that it does not have an adverse impact on residences in the surrounding area; and

WHEREAS, the applicant states that there are no residential uses located adjacent to the site; and

WHEREAS, the applicant further states that the nearest residential use is located to the north of the site, and that a black wrought iron fence with a height of five feet and landscaping are located on the northern side of the site to provide buffering; and

WHEREAS, at hearing, the Board questioned whether the signage on the site was in compliance with the C1-3 (R6) and C8-2 zoning district regulations; and

WHEREAS, in response, the applicant submitted a signage analysis and drawings illustrating the dimensions of each sign on the site, reflecting that the signage is in compliance with the relevant zoning district regulations; and

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-243 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10-BSA-002K dated November 13, 2009; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration 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

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Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-243 and 73-03 to permit, on a site partially within a C1-3 (R6) zoning district and partially within a C8-2 zoning district, the operation of an accessory drive-through facility in connection with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 10, 2009"- (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 12, 2015;

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

THAT parking and queuing space for the drive-through shall be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering shall be maintained as indicated on the BSA-approved plans;

THAT exterior lighting shall be directed away from the nearby residential uses;

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

THAT all signage shall conform with the underlying C1-3 or C8-2 zoning district regulations, as applicable;

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

THAT substantial construction 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 plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, January 12, 2010.

231-09-BZ

CEQR #10-BSA-011M

APPLICANT – Valerie G. Campbell, Esq. c/o Kramer Levin Naftalis & Frankel LLP for 71 Laight Street, LLC, owner.

SUBJECT – Application July 21, 2009 – Variance (§72-21) to allow for the construction of a six-story mixed use building, contrary to use and parking regulations (ZR §42-10, §13-10). M1-5/TMU Special District.

PREMISES AFFECTED – 412-414 Greenwich Street, Southwest corner of Laight and Greenwich Streets, on the block bounded by Greenwich, Laight, Washington and Hubert Streets. Block 217, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Michael Sillerman.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, decision of the Manhattan Borough Commissioner, dated July 6, 2009, acting on Department of Buildings Application No. 120081614, reads:

“Proposed Use Group 2 (residential) in M1-5 (TMU) zoning district is contrary to ZR 42-10. Refer to Board of Standards and Appeals . . .

Proposed 12 accessory parking spaces in M1-5 (TMU) zoning district is contrary to ZR 13-10. Refer to Board of Standards and Appeals.

Proposed FAR is contrary to ZR 43-12 in that it exceeds the maximum of 5.0 FAR in M1-5 (TMU-Area B2) zoning district;” and

WHEREAS, to permit, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B2) and the Tribeca North Historic District, the construction of a six-story and penthouse residential building with limited ground floor retail use and 12 accessory parking spaces, which is contrary to ZR §§ 42-10 and 13-10; and

WHEREAS, a public hearing was held on this application on November 10, 2009, after due notice by publication in the *City Record*, with a continued hearing on December 8, 2009, and then to decision on January 12, 2010; and

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

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of Greenwich Street and Laight Street, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B2) and the Tribeca North Historic District; and

WHEREAS, the site has 125 feet of frontage on Greenwich Street, 80 feet of frontage on Laight Street, and a lot area of approximately 9,968 sq. ft.; and

WHEREAS, the site is occupied by a one-story (1.0 FAR) freight loading building currently used for parking, which will be demolished in anticipation of construction (the “Existing Building”); and

WHEREAS, the applicant initially proposed to construct a six-story and penthouse building with 55,055 sq. ft. of floor area (5.52 FAR), 18 residential units (UG 2), unrestricted ground floor retail (UG 6), and 12 accessory parking spaces in the cellar (six parking spaces is the maximum number permitted within the subject zoning district); and

WHEREAS, during the hearing process, the applicant revised the application to reflect 54,824 sq. ft. of floor area (5.5 FAR) and limited retail use on the ground floor; the other parameters remained as initially proposed; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in complying with applicable zoning district regulations: (1) the Existing Building is small and obsolete for

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modern commercial or manufacturing use; and (2) there are poor subsurface conditions, including loose to medium-dense soil, shallow groundwater level, and pockets of compressible material; and

WHEREAS, the applicant represents that the Existing Building, which was built in 1956 as an adjunct to the historic six-story warehouse building located at 401 Washington Street is functionally obsolete; and

WHEREAS, specifically, the applicant represents that the one-story, non-fireproof Existing Building, with an FAR of 1.0 significantly underutilizes the site in terms of use and floor area; a maximum FAR of 5.0 is permitted for a conforming use in the subject zoning district; and

WHEREAS, the applicant represents that the one-story Existing Building cannot structurally sustain any vertical enlargement without a complete reworking of the foundation system, including adding new columns and a new foundation; and

WHEREAS, the applicant submitted letters from an architect and an engineer that support the assertions about the Existing Building's inability to feasibly support an enlargement; and

WHEREAS, the applicant represents that there are only three other potential development sites within a 400-ft. radius of the site, which are occupied by similarly small buildings or are otherwise built out to a significant amount below the available bulk of 5.0 FAR as the subject site; these include a total of eight tax lots within three assemblage parcels on blocks 223 and 224; there is only one vacant lot within the 400-ft. radius; and

WHEREAS, specifically, the applicant distinguishes the three other sites for either (1) not being wholly within the historic district, (2) being within the C6-2A zoning district, or (3) being partially vacant; and

WHEREAS, the applicant represents that the majority of the sites within a 400-ft. radius of the site are occupied by buildings with greater FAR and more stories than the Existing Building and are eligible for conversion to Loft Dwellings or Joint Living-Work Quarters for Artists pursuant to ZR § 111-02; and

WHEREAS, the applicant notes that the current use of the site for parking is a pre-existing non-conforming use which is not permitted as of right in the Special Tribeca Mixed Use District (Area B2); and

WHEREAS, the applicant represents that there are poor subsurface conditions at the site, including loose to medium-dense soil, shallow groundwater level, a portion of the site's location within the 100-year flood plain, and pockets of compressible material, which result in premium construction costs; and

WHEREAS, in support of this assertion, the applicant submitted an engineering report that details the subsurface conditions and distinguishes it from nearby sites; and

WHEREAS, the applicant attributes the subsurface conditions to the site's location at and beyond Manhattan's old shoreline, which is a condition affecting approximately 20 percent of the total Tribeca North Historic District; and

WHEREAS, the applicant represents that a shallow

foundation system is not feasible as it would require a site-wide dewatering system and underpinning of adjacent building and the over-excavation of compressible materials; and

WHEREAS, accordingly, the applicant represents that a deep foundation system is required, which will include drilled piles; and

WHEREAS, the applicant represents that a portion of the site is located within the 100-year flood plain and the remainder is located within the 500-year flood plain; the applicant represents that less than 15 percent of the sites within the Tribeca Historic District are within the 500-year flood plain and less than 10 percent of the district is within the 100-year flood plain; and

WHEREAS, specifically, the applicant represents that, within a 400-ft. radius of the site, 23 lots are within the 100-year flood plain, of which six are underdeveloped to a similar degree as the site and of those six, only three are also located within the historic district; and

WHEREAS, the applicant represents that the location within the flood plain requires an additional pressure slab and additional foundation wall strength and that foundation waterproofing would be required up to ground surface, which is normally only required halfway up the cellar wall; and

WHEREAS, the applicant represents that a cellar must be provided for the mechanicals and that there are not any additional costs associated with constructing a full cellar that can also accommodate the parking, which is required to offset the premium construction costs; and

WHEREAS, the applicant submitted an engineering report of the subsurface conditions, which reflects the noted conditions; 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 provided an initial feasibility study analyzing five scenarios: (1) a new as of right commercial building with a courtyard; (2) a new as of right commercial building with a rectangular layout; (3) a residential/commercial building without a penthouse and with an FAR of 5.1; (4) a residential/commercial building with a courtyard and an FAR of 5.0; and (5) the original proposal for a residential/commercial building with an FAR of 5.52; and

WHEREAS, the applicant's financial analysis reflected that only the initial proposal would realize a reasonable rate of return; and

WHEREAS, the Board directed the applicant to review alternate proposals including (1) a residential/commercial building without a cellar and with the mechanicals relocated, (2) the elimination of the parking waiver, and (3) a residential/commercial building with an FAR of 5.5 to reflect the FAR of the adjacent C6-2A zoning district and that is expected to be adopted with the proposed Tribeca rezoning, and to limit the retail use as permitted as of right under the current Special Tribeca Mixed-Use District (Area B2) regulations; and

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WHEREAS, the revised financial analysis reflects that the current proposal provides the applicant with a reasonable rate of return; and

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

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

WHEREAS, the applicant states that the immediate area is a mix of residential and commercial uses, with some remaining industrial and warehouse uses; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other such uses, some of which are proposed to occupy the adjacent site at 401 Washington Street; and

WHEREAS, additionally, the applicant notes that there is a five-story store and loft building at 70 Laight Street, a ten-story warehouse with residential uses at 74 Laight Street, a seven-story residential building at 78 Laight Street, and other similarly-sized buildings are under construction and conversion in the area; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 18 dwelling units is compatible with the neighborhood character; and

WHEREAS, the Board notes that there are no bulk regulations for a residential building in an M1-5 zoning district, but that the proposed FAR of 5.5 and all other bulk parameters would be permitted in the adjacent C6-2A zoning district and under the provisions of the proposed Tribeca rezoning; and

WHEREAS, the applicant notes that the proposed building is designed to replicate the massing and design of the historic six-story warehouse building, located immediately to the west at 401 Washington Street with details that echo those of the historic building; and

WHEREAS, the Board notes that the floor heights, fenestration, and building height, among other parameters, are aligned with and closely match the 401 Washington Street building; and

WHEREAS, the applicant received a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated March 17, 2008; and

WHEREAS, the applicant states that the majority of the mechanicals will be located in the cellar, in accordance with LPC's direction to maintain them out of view; and

WHEREAS, the applicant asserts that the inclusion of six more parking spaces than are permitted by the zoning district regulations is compatible with the neighborhood character and that the site is currently occupied with a building used exclusively for parking, which is a legal pre-existing use that would not be permitted under the current zoning; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, photographs, and building information reflecting the uses in the immediate vicinity of the site; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title but is rather due to the inherent conditions of the site; and

WHEREAS, the applicant represents that the proposed use and bulk, which matches the envelope of the 401 Washington Street Building, reflect the minimum waivers necessary to compensate for the additional construction costs associated with the uniqueness of the site; and

WHEREAS, at hearing, the Board directed the applicant to eliminate the request for unlimited retail use and to reduce the FAR request to 5.5 as is contemplated by the C6-2A zoning district regulations and the proposed Tribeca rezoning; and

WHEREAS, in response, the applicant eliminated the request for unlimited retail use on the first floor and reduced the FAR to 5.5; and

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 10BSA131M, dated October 28, 2009; 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 impacts; and

WHEREAS, DEP approved the Remedial Action Plan and Construction Health and Safety Plan on December 2, 2009; and

WHEREAS, DEP has 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

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WHEREAS, the applicant proposes to fuel the fossil fuel-fired HVAC equipment with natural gas and to locate the equipment's exhaust(s) at least 41 feet from the southern lot line of the subject site to avoid any potential for significant air quality impacts at adjacent sites; and

WHEREAS, the applicant proposes 35 dBA of window-wall noise attenuation on the north facade (Laight Street) and 30 dBA of window-wall noise attenuation on the east facade (Greenwich Street) of the proposed building with central air-conditioning as an alternate means of ventilation in order to achieve an interior noise level of 45 dBA in each residential unit; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B2) and the Tribeca North Historic District, the construction of a six-story and penthouse residential building with limited ground floor retail and 12 accessory parking spaces, which is contrary to ZR §§ 42-10 and 13-10; *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 January 6, 2010"–four (4) sheets and "Received January 11, 2010"–seven (7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: six stories; 18 residential units; a total floor area of 54,824 sq. ft. (5.5 FAR); a streetwall height of 74'-1"; and a total height of 85'-1";

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

THAT DOB shall review and confirm compliance for egress, light and air, and all other relevant sections of the Multiple Dwelling Law and Building Code;

THAT all construction shall be performed in conformance with the plans approved by the LPC and associated with the Certificate of Appropriateness, dated March 17, 2008;

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

THAT the fossil fuel-fired HVAC equipment shall be fueled by natural gas and the equipment's exhaust(s) shall be located at least 41 feet from the southern lot line of the subject site;

THAT 35 dBA of window-wall noise attenuation shall be provided on the north facade (Laight Street) and 30 dBA of window-wall noise attenuation shall be provided on the east facade (Greenwich Street) of the proposed building with central air-conditioning as an alternate means of ventilation;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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

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

Adopted by the Board of Standards and Appeals, January 12, 2010.

269-09-BZ

APPLICANT – Dennis D. Dell'angelo, R.A., for Jehoshua Cohen, owner.

SUBJECT – Application September 21, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (§23-47) and the legalization of a prior one story enlargement at the front of the existing home. R-5 zoning district.

PREMISES AFFECTED – 1938 East 12th Street, west side of East 12th Street, between Avenue S and Avenue T, Block 7290, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Marc Dell'angelo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 11, 2009, acting on Department of Buildings Application No. 320064577, reads:

- "1) Proposed lot coverage is contrary to Sec. 23-141 of the NYC Zoning Resolution.
 - 2) Proposed horizontal enlargement provides less than the required 8'-0" side yard contrary to Sec. 23-461 of the NYC Zoning Resolution.
 - 3) Proposed horizontal enlargement provides less than the required rear yard of 30'-0" contrary to Sec. 23-47 of the NYC Zoning Resolution;"
- and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R5 zoning district, the proposed enlargement and partial legalization of a semi-detached single-family home, which does not comply with the zoning requirements for lot coverage, side yards and rear yard,

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contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on November 17, 2009 after due notice by publication in *The City Record*, with a continued hearing on December 8, 2009, and then to decision on January 12, 2010; and

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

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

WHEREAS, the subject site is located on the west side of East 12th Street, between Avenue S and Avenue T, in an R5 zoning district; and

WHEREAS, the subject site has a total lot area of 2,000 sq. ft., and is occupied by a semi-detached single-family home with a floor area of approximately 1,534 sq. ft. (0.76 FAR); and

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

WHEREAS, the subject home initially had a floor area of approximately 1,399 sq. ft. (0.70 FAR), and was subsequently enlarged to its current floor area of 1,534 sq. ft. (0.76 FAR); and

WHEREAS, the applicant now seeks to legalize the prior enlargement and to permit a further increase in the floor area from 1,534 sq. ft. (0.76 FAR) to approximately 2,253 sq. ft. (1.12 FAR); the maximum permitted floor area is 2,500 sq. ft. (1.25 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 61 percent (55 percent is the maximum permitted); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 3'-9" along the southern lot line (a minimum width of 8'-0" is required); and

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

WHEREAS, at hearing, the Board directed the applicant to confirm that the existing enlargement to the subject home is structurally sound; and

WHEREAS, in response, the applicant submitted an affidavit from the architect stating that the previously constructed enlargement at the front of the second floor is structurally sound; and

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

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

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

outweighed by the advantages to be derived by the community; and

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for lot coverage, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 30, 2009"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 2,253 sq. ft. (1.25 FAR); a lot coverage of 61 percent; a side yard with a minimum width of 3'-9" along the southern lot line; a rear yard with a minimum depth of 20'-0"; a wall height of 25'-0"; and a total height of 30'-0", as illustrated on the BSA-approved plans;

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

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

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

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, January 12, 2010.

195-07-BZ

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance (§72-21) to allow hotel and retail uses below the floor level of the second story, contrary to use regulations (§42-14(d)(2)), M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

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COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 1:30 P.M., for deferred decision.

214-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 3210 Riverdale Associates, LLC, owner.

SUBJECT – Application September 18, 2007 – Variance (§72-21) to allow a public parking garage and increase the maximum permitted floor area in a mixed residential and community facility building, contrary to §22-10 and §24-162. R6 zoning district.

PREMISES AFFECTED – 3217 Irwin Avenue, aka 3210 Riverdale Avenue, north side of West 232nd Street, Block 5759, Lots 356, 358, 362, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 1:30 P.M., for adjourned hearing.

160-08-BZ

APPLICANT – Dominick Salvati and Son Architects, for HJC Holding Corporation, owner.

SUBJECT – Application June 11, 2008 – Variance (§72-21) to permit the legalization of commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B), which is contrary to §22-00. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Bounded by Fountain, Stanley, Euclid and Wortman Avenues, Block 4527, Lot 61, 64, 67, 74-78, 80, 82, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Peter Hirschman, Frank Angelino and Jack Freeman.

For Opposition: Ronald J. Dillon.

ACTION OF THE BOARD – Laid over to March 2, 2010, at 1:30 P.M., for continued hearing.

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation and Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to permit the construction of a six-story community facility building (*Congregation & Yeshiva Machzikei Hadas*), contrary to ZR §42-00. M2-1 zoning district.

PREMISES AFFECTED – 1247 38th Street, east side of 38th Street, between 13th and 12th Avenue, Block 5295, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 9, 2010, at 1:30 P.M., for decision, hearing closed.

14-09-BZ

APPLICANT – Eric Palatnik, P.C., for Orenstein Brothers, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application January 26, 2009 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store and automotive laundry (UG 16B). C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2294 Forest Avenue, Southeast intersection of Forest Avenue and South Avenue, Block 1685, Lot 15, 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 1:30 P.M., for continued hearing.

29-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to legalize and enlarge a synagogue (*Chabad Israeli Center*), contrary to lot coverage, front yards, side yards, and parking regulations. R3X zoning district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to February 23, 2010, at 1:30 P.M., for continued hearing.

161-09-BZ

APPLICANT – Rizzo Group, for 25 Garfield Sparta, LLC, owner.

SUBJECT – Application April 23, 2009 – Variance (§72-21) for the development of two residential buildings (20 dwelling units) contrary to rear yard equivalent, floor area, lot coverage, minimum distance between buildings and minimum distance between legally required window regulations (§§23-532, 23-145, 23-711, 23-861). R6B zoning district.

PREMISES AFFECTED – 580 Carroll Street (25 Garfield Place) Carroll Street/Garfield Place, between Fourth and Fifth Avenue, Block 951, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES – None.

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ACTION OF THE BOARD – Laid over to February 9, 2010, at 1:30 P.M., for adjourned hearing.

214-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for LAL Astor Avenue Management Co., LLC, owner.

SUBJECT – Application June 29, 2009 – Special Permit (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR §22-14. R4-1 zoning district.

PREMISES AFFECTED – 1464 Astor Avenue, south side of Astor Avenue, 100' east of intersection with Fenton Avenue, Block 4389, Lot 26, 45, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Adam Rothkrug and Hiram Rothkrug.

For Opposition: Council Member James Vacca, Thomas Lucania, John A. Fratta, Anjali Kochar, Frank Tirabasso, Joseph A. McManus, Sal Castorine, Christopher Evangeliou, and Frank V.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 1:30 P.M., for continued hearing.

239-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.

SUBJECT – Application August 5, 2009 – Variance (§72-21) to allow for the development of a six-story community facility building (*NYU Center for Academic and Spiritual Life*), contrary to lot coverage (§24-11) and height and setback regulations (§§24-522, 33-431). R7-2/C1-5 and R7-2 Districts.

PREMISES AFFECTED – 238 Thompson Street, aka 56 Washington Square South, block bounded by Thompson and West 3rd Streets, Laguardia Place, Washington Square South Block 538, Lot 27, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Elise Wagner, Lynn Brown, Lori Mazer, Jorge Silvetti, Judah Sarna, Susan Field, Vincent Delucia, Khalice L., R Ben Maddy and Lawrence Ferrasa.

For Opposition: David Reck of Community Board 2 and Enrich Hahn and R.I.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to February 9, 2010, at 1:30 P.M., for decision, hearing closed.

246-09-BZ

APPLICANT – Jordan Most of Sheldon Lobel, P.C., for Louisiana Purchase, LLC, owner.

SUBJECT – Application August 21, 2009 – Variance (§72-21) to allow for the construction of a four story assisted living facility (*Brooklyn Boulevard ALP*) contrary to floor area, dwelling units and parking regulations (§§ 23-141/62-321, 23-22, 25-23). R5 district.

PREMISES AFFECTED – 636 Louisiana Avenue, western side of Louisiana Avenue at its intersection with Twin Pines Drives, Block 8235, Lot 140, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most and Robert Pauls.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to February 2, 2010, at 1:30 P.M., for decision, hearing closed.

247-09-BZ

APPLICANT – Michael T. Sillerman, Esq., c/o Kramer Levin et al, for Central Synagogue, owner.

SUBJECT – Application August 26, 2009 – Variance (§72-21) to allow for expansion of the community house for the Central Synagogue (UG 4), contrary to floor area and height and setback regulations. (§§33-12, 81-211, 33-432). C5-2, C5-2.5 MiD zoning districts.

PREMISES AFFECTED – 123 East 55th Street, north side of East 55th Street between Park Avenue and Lexington Avenue, 127.5', Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Michael Sillerman.

For Opposition: Jordan Most, Howard Goldman and Brad Becker.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to February 23, 2010, at 1:30 P.M., for decision, hearing closed.

271-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 132-40 Metropolitan Realty, LLC, owner; Jamaica Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 21, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Planet Fitness*) on the first, second, and third floors of an existing three-story building. C2-3 zoning district.

PREMISES AFFECTED – 132-40 Metropolitan Avenue,

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between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street. Block 9284, Lot 19, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 1:30 P.M., for continued hearing.

302-09-BZ

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.

SUBJECT – Application October 30, 2009 – Special Permit pursuant (§73-50) to legalize an encroachment within 30-foot open area required at a rear lot line coincident with a residential zoning district boundary line (§43-302). M1-2 zoning district.

PREMISES AFFECTED – 820 39th Street, south side, 150'0" east of 8th Avenue between 8th Avenue and 9th Avenue, Block 916, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to January 26, 2010, at 1:30 P.M., for decision, hearing closed.

307-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Zahava Hurwitz and Steven Hurwitz, owner.

SUBJECT – Application November 9, 2009 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to open space and floor area (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1358-1360 East 28th Street, West side of East 28th Street between Avenue M and Avenue N. Block 7663, Lot 73 & 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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February 4, 2010

DIRECTORY

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DOCKET

New Case Filed Up to January 26, 2010

7-10-A

93 Hillside Avenue, North side of Hillside Avenue, 130' east of the mapped Beach 18th Street., Block 16340, Lot(s) p/o 50, Borough of **Queens, Community Board: 14**. Construction within the mapped street, contrary to GCL. R4 district.

8-10-BZ

58-14 Beach Channel Drive, Northeast corner of the intersection of Beach 59th Street and Beach Channel Drive., Block 16004, Lot(s) 96, Borough of **Queens, Community Board: 14**. Variance to allow legalization of existing supermarket, contrary to use regulations R4 district.

9-10-BZ

231-10 Northern Boulevard, Northwest corner of 232nd Street., Block 8164, Lot(s) 30, Borough of **Queens, Community Board: 11**. Variance to permit proposed restaurant use to an existing one story building, contrary to use regulations. R1-2 district.

10-10-A

1882 East 12th Street, West side of East 12th Street, approximately 75' north of Avenue S., Block 6817, Lot(s) 41, Borough of **Brooklyn, Community Board: 15**. Appeal for common law vested rights to continue development under the prior zoning district. R4-1 district.

11-10-BZ

562 Court Street, Southwest corner of Court Street and Garnet Street., Block 382, Lot(s) 37, Borough of **Brooklyn, Community Board: 6**. Special Permit (73-36) to allow the operation of a physical culture establishment. C2-3(R6) 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

FEBRUARY 9, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 9, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

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 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

297-99-BZ

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Company, LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application January 15, 2010 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil) which expires on February 12, 2010. C2-2/R6-B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

369-03-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 99-01 Queens Boulevard LLC, owner; TSI Rego Park LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application December 3, 2009 – Amendment to a variance granted pursuant to §72-21 allowing the operation of a physical culture establishment (New York Sports Club) in a C1-2/R7-1 zoning district. Amendment seeks to allow a change in the owner/operator; a decrease in floor area, modification of the days and hours of operation, and eliminate a condition of the previous Board resolution requiring the applicant to enter into an agreement with a local parking facility to provide a minimum of 20 parking spaces on a monthly basis and provide first priority for up to ten additional spaces per day if required by PCE members.

PREMISES AFFECTED – 99-01 Queens Boulevard, Northwest corner of Queens Boulevard and 67th Street, Block 2118, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEALS CALENDAR

300-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Seanna & John Tobin, lessees.

SUBJECT – Application October 29, 2009 – Reconstruction and enlargement of an existing single family dwelling and the upgrade of an existing non conforming private disposal system located in the bed of a mapped street is contrary to General City Law Section 35 and Department of Buildings Policy.

PREMISES AFFECTED – 635 Highland Place, east side Highland Place, partially in the bed of mapped Beach 202nd Street, Block 16350, Lot p/o300, Borough of Queens.

COMMUNITY BOARD #14Q

310-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Lorraine & Terence Crossan, lessees.

SUBJECT – Application November 23, 2009 – Proposed reconstruction and enlargement of an existing single family home located within the bed of a mapped street. R4 zoning district.

PREMISES AFFECTED – 14 State Road, north side of Rockaway Point Boulevard, Block 16350, Lot p/o 50, Borough of Queens.

COMMUNITY BOARD #14Q

FEBRUARY 9, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 9, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

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 12th Street and Homecrest Avenue, eastside of Avenue S, Block 7291, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

273-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application September 24, 2010 – Variance (§72-21) for the construction of a two-story one family home contrary to side yards (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 117-40 125th Street, west side of 125th Street, 360’ north of intersection with Sutter Avenue, Block 11746, Lot 64, Borough of Queens.

COMMUNITY BOARD #10Q

329-09-BZ

APPLICANT – Eric Palatnik, P.C., for Yevgenya Loffe, owner.

SUBJECT – Application December 18, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 26 Falmouth Street, Block 8744, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2-10-BZ

APPLICANT – Akerman Senterfitt LLP, for The New York Eye & Ear Infirmary, owner.

SUBJECT – Application January 6, 2010 – Special Permit pursuant to ZR §73-641 to allow for the enlargement of a community facility (New York Eye and Ear Infirmary) within the required rear yard equivalent contrary to ZR §33-283. C1-6A/C1-7A Zoning Districts.

PREMISES AFFECTED – 310 East 14th Street, block front on east side of Second Avenue between 13th and 14th Streets, Block 455, Lot 1, 5, 7, 60, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JANUARY 26, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

826-86-BZ, 827-86-BZ and 828-86-BZ

APPLICANT – Eric Palatnik, P.C. for North Shore Tower Apartments, Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application April 3, 2009 – Extension of Term for a Special Permit (§73-11) to allow non-accessory radio towers and transmitting equipment on the roof of a 33-story multiple dwelling (*North Shore Towers*) which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained; and Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, Northeast corner of 26th Street. Block 8489, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term of special permits for non-accessory radio towers and transmitting equipment on the roofs of three existing 33-story residential buildings, an extension of time to obtain a certificate of occupancy, and to amend the requirement for obtaining a new certificate of occupancy; and

WHEREAS, a public hearing was held on this application on June 23, 2009, after due notice by publication in *The City Record*, with continued hearings on July 28, 2009, September 15, 2009, October 27, 2009, and December 8, 2009, and then to decision on January 26, 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 13, Queens, recommends disapproval of this application, citing potential health and safety concerns; and

WHEREAS, Queens Borough President Helen Marshall provided written testimony in support of this application; and

WHEREAS, residents of the subject building provided written and oral testimony in opposition to this application (the “Opposition”); and

WHEREAS, the Opposition had the following primary concerns: (1) potential health risks associated with radio frequency emissions from the antennae; and (2) the applicant will exceed the limitation of 75 antennae per building; and

WHEREAS, the site is located on the northeast corner of Grand Central Parkway and 267th Street, within an R3-2 zoning district; and

WHEREAS, the site consists of three identical 33-story buildings; one building is located on the eastern portion of the site and is the subject of BSA Cal. No. 828-86-BZ (hereinafter, “Building 1”); a second building is located on the southern portion of the site and is the subject of BSA Cal. No. 827-86-BZ (hereinafter, “Building 2”), and a third building is located on the western portion of the site and is the subject of BSA Cal. No. 826-86-BZ (hereinafter, “Building 3”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 29, 1988 when, under the subject calendar numbers, the Board granted special permits under ZR § 73-30 for the legalization of non-accessory radio towers and transmitting equipment on the roofs of three existing 33-story residential buildings, for a term of ten years each; and

WHEREAS, on March 6, 2001, under the subject calendar numbers, the Board extended the terms of the special permits and granted an amendment to permit the legalization of the 62 existing antennae and the installation of 13 additional antennae on each building, to expire on March 28, 2008; and

WHEREAS, the applicant now requests another extension of the term; and

WHEREAS, as to the time period to obtain certificates of occupancy, the applicant states that new certificates of occupancy have not been obtained since the most recent extension of term, due in part to the fact that there are open Department of Buildings (“DOB”) applications within the buildings, unrelated to the special permit use, which precludes each building, as a whole, from being able to obtain a certificate of occupancy; and

WHEREAS, given the uncertainty as to if and when all open DOB applications will be resolved, the applicant seeks to amend the prior resolutions to remove the condition that a new certificate of occupancy be obtained; and

WHEREAS, the applicant states that, given the outstanding applications in the building, it is not feasible to obtain final certificates of occupancy for the buildings within any reasonable amount of time; and

WHEREAS, at the Board’s direction, the applicant has agreed to obtain temporary certificates of occupancy in lieu of final certificates of occupancy for each building; and

WHEREAS, the Board notes that pursuant to the prior grants, the site is currently limited to no more than 75 antennae per building; and

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WHEREAS, at the time of the applicant's initial filing, the number of antennae on the roofs of the buildings exceeded the limit from the prior grants; and

WHEREAS, at the Board's direction, the applicant reduced the number of antennae on the buildings and conducted testing of the radiofrequency emissions from each building; and

WHEREAS, the applicant submitted an analysis of the radiofrequency emissions (hereinafter, the "Radiofrequency Analysis") for each of the buildings, which found that an area on the roof of Building 1 exceeds the Federal Communication Commission ("FCC") general public standards but is within the occupational standards; and

WHEREAS, the Radiofrequency Analysis states that in order to comply with the FCC general population standards, the applicant is required to inform the general population, who may enter onto the rooftop areas, of the potential for increased exposure to radio emissions through the posting of appropriate notifications at all access points to the rooftop; and

WHEREAS, the applicant has submitted photographs of the required notice signs at each access door to the main rooftop area of Building 1, in addition to a warning sign at the affected area at the rooftop; and

WHEREAS, the Radiofrequency Analysis also states that the applicant has implemented the proper procedures on the rooftop of Building 1, and therefore the site remains in full compliance with all FCC standards and guidelines; and

WHEREAS, the applicant notes that the rooftop of Building 1 is only accessible to the general population in case of emergency and is currently managed as a secured area; and

WHEREAS, at hearing, the Board directed the applicant to install a barrier around the area of the rooftop of Building 1 that exceeds the general public standards to prevent access to that area by the general public; and

WHEREAS, in response, the applicant submitted revised plans reflecting the installation of a barricade around the area of the rooftop of Building 1 that exceeds the general public standards; and

WHEREAS, the applicant also submitted an affidavit from the principal of Continental Communications, the subject lessee, stating that the number of antennae on the general rooftop at each building will not exceed 75 and the emissions will not exceed the FCC guidelines for general population exposures, and that the FM Radio Broadcast Antenna located on the bulkhead above the rooftop of Building 1 will permanently remain in its current position on the bulkhead and the area which exceeds the general population limits will not be moved to any other location; and

WHEREAS, as to the safety and health concerns raised by the Opposition, the Board appreciates the concerns expressed by these neighbors, but notes that it may not consider arguments about health risks related to such installations, as such consideration is pre-empted by federal law, pursuant to Section 332(c) of the Federal Telecommunications Act of 1996; and

WHEREAS, the Board notes that, as discussed above, the site is in full compliance with all FCC standards and guidelines; and

WHEREAS, additionally, the Board notes that, as per the BSA-approved drawings, the number of antennae on each roof is limited to 75; and

WHEREAS, based upon the above, the Board finds that the requested extension of term, extension of time to obtain a temporary certificate of occupancy, and amendment to the requirement for obtaining a new certificate of occupancy are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolutions, dated March 29, 1988, so that as amended this portion of the resolutions shall read: "to extend the term for five years from the date of this grant, to expire on January 26, 2015 and to grant an extension of time to obtain a temporary certificate of occupancy to July 26, 2010; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked "Received December 7, 2009"-(3) sheets; and *on further condition*:

THAT the term of the grant shall expire on January 26, 2015;

THAT the number of accessory antennae on each building shall not exceed 75, in accordance with the BSA-approved drawings;

THAT no additional FM Radio Broadcast Antennae shall be installed on Building 1;

THAT no equipment shall overhang the parapet wall of the subject premises;

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

THAT a temporary certificate of occupancy shall be obtained by July 26, 2010;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 410070925)

Adopted by the Board of Standards and Appeals, January 26, 2010.

140-92-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Evangel Church, owner.

SUBJECT – Application December 19, 2008 – Amendment of variance (§72-21) which allowed an enlargement of an existing school (UG 3). The amendment would further enlarge the school, contrary to height and setback (§43-43). M1-2/R5D & M1-2/R5B (Special Long Island City Mixed Use District).

PREMISES AFFECTED – 39-21 Crescent Street, southerly side of Crescent Street between 39th Avenue and 40th

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Avenue, Block 396, Lot 10 & 36, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, in an M1-3D zoning district, a five-story and cellar enlargement of an existing four-story and cellar non-conforming school with accessory uses (Use Group 3) which did not provide the required rear yard equivalent and exceeded the maximum height limit; and

WHEREAS, a public hearing was held on this application on October 27, 2009, after due notice by publication in *The City Record*, with continued hearings on November 24, 2009 and December 15, 2009, and then to decision on January 26, 2010; and

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

WHEREAS, Community Board 1, Queens, recommends approval of the proposed enlargement; and

WHEREAS, this application was brought on behalf of the Evangel Christian School (the “School”), a not-for-profit institution; and

WHEREAS, the subject site is a through lot bounded by Crescent Street to the north and 27th Street to the south, between 39th Avenue and 40th Avenue, partially within an M1-2/R5B zoning district and partially within an M1-2/R5D zoning district; and

WHEREAS, on May 9, 1995, the Board granted a variance pursuant to ZR § 72-21, which permitted, in an M1-3D zoning district, a five-story and cellar horizontal enlargement of an existing four-story and cellar non-conforming school with accessory uses (Use Group 3) which did not provide the required rear yard equivalent and exceeded the maximum height limit; and

WHEREAS, the applicant notes that since the time of the original grant the site has been rezoned from an M1-3D district to M1-2/R5B and M1-2/R5D zoning districts; as a result of the rezoning, there is no longer a use objection because the use conforms with the new zoning districts’ use regulations; and

WHEREAS, the School currently occupies 86,589 sq. ft. of floor area, comprising a four-story school portion fronting on Crescent Street, a five-story church portion fronting on 27th Street, and a two-story school portion fronting on 27th Street; and

WHEREAS, the School now proposes a four-story

vertical enlargement to the existing two-story school portion fronting on 27th Street, which will add 17,020 sq. ft. of floor area, for a total floor area of 103,609 sq. ft. (1.80 FAR), and will increase the wall height to 96’-1 ¾” (60’-0” is the maximum permitted) for that portion of the building; and

WHEREAS, the enlargement will be occupied by (1) a computer lab, four classrooms, and bathrooms on the third floor; (2) five classrooms and bathrooms on the fourth floor; (3) a science lab, a chapel/multi-function room, offices, and bathrooms on the fifth floor; and (4) a prayer room, a conference room, offices, and bathrooms on the sixth floor; and

WHEREAS, the applicant states that the proposed enlargement encroaches into the sky exposure plane, contrary to ZR § 43-43; and

WHEREAS, the applicant represents that since the time of the original grant, the student enrollment at the School has increased to 500 students, and that the requested enlargement is necessary to satisfy the School’s programmatic needs; and

WHEREAS, the applicant states that overcrowding has forced the School to convert accessory use rooms, such as the choir room, audio/visual room, and bookstore into classrooms, to convert a storage room into an office, and to convert a multi-function room into a cafeteria; and

WHEREAS, the applicant further states that the school serves students from first grade through high school, and there is a programmatic need to separate the younger students from the high school students, for both scholastic and safety interests; and

WHEREAS, the applicant represents that the proposed enlargement would alleviate the current overcrowded conditions and would also allow for the separation of the high school from the other grades; and

WHEREAS, the applicant states that the proposed enlargement would also provide proper offices and counseling space, as well as other accessory uses for the school; and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence to establish that there is a programmatic need for the proposed enlargement; and

WHEREAS, the applicant represents that there are several other six-story and larger buildings in the surrounding area; and

WHEREAS, the applicant further represents that the easterly portion of the enlargement, which is closest to adjoining structures, will be set back from the street to minimize its impact; and

WHEREAS, the applicant notes that the use of the site is now in conformance with the zoning district regulations, and the proposed FAR of 1.8 is well below the maximum permitted FAR of 4.8; and

WHEREAS, the applicant also requests that the Board amend the previous grant to remove the conditions requiring (1) attended parking to minimize any potential traffic or parking impacts, and (2) crossing guards at each of the corners adjacent to the school to aid children walking to school; and

WHEREAS, as to the attended parking, the applicant

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represents that the parking lot use is limited during the week to teachers and staff, and on Sunday to parishioners; and

WHEREAS, the applicant further represents that most of the cars arrive to the site at the same time and that, due to there being limited on-site reservoir space, attended parking would lead to significant traffic congestion in the surrounding area as cars queued in the street; and

WHEREAS, at hearing, the Board questioned the number of parking spaces that should be provided if the condition for attended parking is removed, considering that many of the spaces are tandem parking spaces which generally require an attendant; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the Department of Buildings (“DOB”) will review and approve the parking layout at the site; and

WHEREAS, as to the condition relating to crossing guards, the applicant represents that crossing guards are unnecessary because, of the 90 students under the age of ten that attend the School, 65 arrive by school buses, the majority of the remainder arrive by car, and the few who arrive by foot are accompanied by adults; and

WHEREAS, the applicant submitted a letter from the Department of Transportation School Safety Engineering Office, stating that it has no objection to the removal of the crossing guard because the School has adequate signs and markings such that the removal of the crossing guard will not affect the safety of the students; and

WHEREAS, the applicant represents that the Community Board has no objection to the proposed elimination of the conditions related to the use of attended parking and a crossing guard; and

WHEREAS, accordingly, the Board agrees that it is appropriate to eliminate the aforementioned conditions related to attended parking and crossing guards from the prior grant, on the condition that the parking layout is subject to DOB approval; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board’s findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, continues to reflect the minimum variance and the Board has determined that it is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated May 9, 1995, so that as amended this portion of the resolution shall read: “to permit the noted modification to the plans to reflect the four-story vertical enlargement of the existing two-story building, contrary to ZR § 43-43; *on condition* that all work shall substantially conform to drawings filed with this application and marked “Received January 20, 2010”-(8) sheets; and *on further condition*:

THAT the parking layout, including the number of spaces, is subject to DOB review and approval;

THAT substantial construction shall be completed in accordance with the BSA-approved plans by January 26, 2014;

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. 410183821)

Adopted by the Board of Standards and Appeals, January 26, 2010.

818-59-BZ

APPLICANT – Akerman Senterfitt for 139 East 33rd Street Corporation, owner; Central Parking System of NY, Incorporated, lessee.

SUBJECT – Application July 24, 2009 – Extension of Term (§11-411) to permit the use of surplus parking spaces of an accessory garage to a multiple dwelling for transient parking which expired on July 6, 2001. C1-9 & C6-1 zoning district.

PREMISES AFFECTED – 139 East 33rd Street, north side of 33rd Street and north west corner of 220/226 Lexington Avenue, Block 889, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for decision, hearing closed.

582-83-BZ

APPLICANT – Carole S. Slater for Torri Associates c/o LaSeven, Incorporated, owner.

SUBJECT – Application December 23, 2009 – Extension of Term for a previously granted Variance (§72-21) to permit the conversion of an existing six story building for commercial use with retail stores on the ground floor which expired on January 10, 2004; Amendment to permit (UG6) use in the cellar and to eliminate the Term; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 215 East 58th Street, North side of East 58th Street, between Second and Third Avenues. Block 1332, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Carole Slater and Neil Weisbard.

THE VOTE TO CLOSE HEARING –

MINUTES

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

ACTION OF THE BOARD – Laid over to February 2, 2010, at 10 A.M., for decision, hearing closed.

603-86-BZ

APPLICANT – H. Irving Sigman, P.E., for 8826 Parsons LLC, owner.

SUBJECT – Application September 3, 2009 – Extension of Term for a Variance (§72-21) allowing the construction of retail stores (UG 6), which expired on September 8, 2007; Amendment to the accessory open parking area and refuse area and request to eliminate the term; Waiver of the Rules. R7A (Downtown Jamaica Special District) zoning district. PREMISES AFFECTED - 88-34 Parsons Boulevard, a/k/a 88-26/34 Parsons Boulevard. North west corner of Parsons Boulevard and 89th Avenue, Block 9762, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 2, 2010, at 10 A.M., for adjourned hearing.

813-87-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Gwynne Five LLC, owner; TSI Cobble Hill LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on April 12, 2008 for the operation of a Physical Culture Establishment (*New York Sports Club*); Waiver of the Rules. C2-3 (R6) zoning district.

PREMISES AFFECTED – 110 Boerum Place, Westerly side of Boerum Place 0 feet northerly of Dean Street, Block 279, Lot 1, Borough of Brooklyn

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to March 2, 2010, at 10 A.M., for continued hearing.

21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hadarth Latchinarain, owner.

SUBJECT – Application September 21, 2009 – Extension of Term (§72-01 & 72-22) of a previous variance that permits the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on July 24, 2009; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, located on the northern corner corner of Linden Boulevard and Montauk Avenue, Block 4478, Lot 24, Borough of

Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Josh Rhinesmith.

For Opposition: Ronald J. Dillon.

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for continued hearing.

62-96-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 200 Madison LLC, owner; TSI East 36 LLC d/b/a The New York Sports Club, lessee.

SUBJECT – Application November 23, 2009 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on February 4, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on January 10, 2007 and Waiver of the Rules. C5-2 zoning district.

PREMISES AFFECTED – 200 Madison Avenue, west side of Madison Avenue between East 35th Street and East 36th Street, Block 865, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for decision, hearing closed.

75-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Matthew Realty LLC, c/o Nathan Katz Realty, LLC, owner; TVR Communications, lessee.

SUBJECT – Application October 26, 2009 – Extension of Term of a previously granted Variance (§72-21) to permit a real estate office (UG6) in a residential district which expires on July 25, 2010; amendment to change use (within the same UG6 office use). R5 zoning district.

PREMISES AFFECTED – 60-69 Woodhaven Boulevard, east side of Woodhaven Boulevard, north of Eliot Avenue, Block 3089, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 2, 2010, at 10 A.M., for decision, hearing closed.

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375-02-BZ

APPLICANT – Moshe M. Friedman, for Congregation Tzolsa D’Shlomo, owner.

SUBJECT – Application June 4, 2009 – Amendment to a variance to modify plans for a house of worship and rectory; Extension of time to complete construction and obtain a Certificate of Occupancy. R5 zoning district.

PREMISES AFFECTED – 1559 59th Street, north side of 59th Street, 400’ west from the intersection of 59th Street and 16th Avenue, Block 5502, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for decision, hearing closed.

208-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Shell Road, LLC, owner; Orion Caterers, Incorporated, lessee.

SUBJECT – Application November 9, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG9 catering hall which expired on October 19, 2009. R4/C1-2/M1-1 OP zoning district.

PREMISES AFFECTED – 255 Shell Road, east side of Shell Road, between Avenue X and Bouck Court, Block 7192, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for continued hearing.

291-03-BZ

APPLICANT – Stuart A. Klein, Esq., for 6202-6217 Realty LLC, owner.

SUBJECT – Application June 5, 2009 – Extension of term of a variance (§72-21) for construction of a new residential building; amendment to add increase the number of dwelling units, FAR, height and parking spaces. M1-1/R5B zoning districts.

PREMISES AFFECTED – 1380 62nd Street, corner of 62nd Street and 14th Avenue, Block 5733, Lots 35, 36, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Yaakov Goldstein.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for continued hearing.

311-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Block 2285 Lite Corporation, owner.

SUBJECT – Application July 8, 2009 – Amendment to a previously granted Variance (§72-21) for a proposed one family dwelling which is contrary to lot coverage (§105-33) and maximum height (§23-631) regulations. R1-2(NA-1) zoning district.

PREMISES AFFECTED – 380 Lighthouse Avenue, south side of Lighthouse Avenue, 579’ west of Winsor Avenue, Block 2285, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 2, 2010, at 10 A.M., for decision, hearing closed.

111-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application to reopen pursuant to court remand (Appellate Division) to revisit the findings of a Special Permit (§73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and perimeter wall height (§23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD# 15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 10 A.M., for continued hearing.

58-07-BZ

APPLICANT – Eric Palatnik, P.C., for Vito Savino, owner.

SUBJECT – Application October 27, 2009 – Amendment to previously granted variance for a residential building to include two additional objections: dwelling unit size (§23-23) and side yard regulations (§23-461(a)). R3A zoning district.

PREMISES AFFECTED – 18-02 Clintonville, Block 4731, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #7BK

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APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 10 A.M., for continued hearing.

196-08-BZ

APPLICANT – Gage Parking Consultants, for 53-10 Associates, owner.

SUBJECT – Application October 13, 2009 – Amendment of a previous grant for public parking garage; amendment would enclose rooftop parking. C6-2 (Special Clinton District) zoning district.

PREMISES AFFECTED – 792 Tenth Avenue / 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Jeremiah Candean and John Meyer.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for continued hearing.

APPEALS CALENDAR

245-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Adelphi Luxury Development, LLC, owner.

SUBJECT – Application August 21, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning district. R6B Zoning District.

PREMISES AFFECTED – 120 Adelphi Street, west side of Adelphi Street, 252’ north of the intersection of Adelphi Street and Myrtle Avenue, Block 2044, Lots 74 and 75, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development; and

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in *The City Record*, with a continued hearing on January 12, 2010, and then to decision on January 26, 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, State Senator Velmanette Montgomery provided written testimony requesting that the Board give careful consideration to the objections of the residents of the community; and

WHEREAS, Council Member Letitia James provided written testimony in opposition to this application; and

WHEREAS, the Fort Greene Association provided written testimony in opposition to this application; and

WHEREAS, several members of the community, collectively known as the “Opposition,” provided written and oral testimony in opposition to this application; and

WHEREAS, the Opposition raised the following primary concerns: (1) the construction delays at issue were of the applicant’s own making; (2) substantial construction of the building has not been completed; and (3) that the applicant is not completing the work in a timely manner; and

WHEREAS, the subject site is located on the west side of Adelphi Street, between Myrtle Avenue and the Brooklyn-Queens Expressway, within an R6B zoning district; and

WHEREAS, the subject site has approximately 50 feet of frontage along Adelphi Street, a depth of 100 feet, and a total lot area of 4,973 sq. ft.; and

WHEREAS, the site is proposed to be developed with an 11-story residential building (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of 27,451 sq. ft.; and

WHEREAS, the development complies with the former R6 zoning district parameters; and

WHEREAS, however, on July 25, 2007 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Fort Greene / Clinton Hill Rezoning, which rezoned the site from R6 to R6B; and

WHEREAS, on November 3, 2004, Alteration Permit No. 301859246-01-EW-OT (hereinafter, the “Foundation Permit”) was issued by the Department of Buildings (“DOB”) permitting foundation work in connection with New Building Application No. 301952652; on July 12, 2007, New Building Permit No. 301952652-01-NB (hereinafter, the “New Building Permit”) was issued by DOB permitting construction of the Building; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

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

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which

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involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a "minor development"; and

WHEREAS, for a "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated September 3, 2009, DOB stated that the New Building Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of July 25, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the foundation; 90 percent of cinder block work; 70 percent of the elevator shaft; 50 percent of the steel structure, fire stairs and balconies; ten percent of work on the sewer, water main and sprinkler main; and two percent of the electrical roughing; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the Foundation Permit; a payment report prepared by an independent consultant detailing construction progress at the site; a construction contract; a breakdown of the construction costs by line item and percent complete; an affidavit from the general contractor enumerating the completed work; copies of lien waivers evidencing payments made by the applicant; and photographs of the building's interior and exterior; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before July 25, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$1,092,150, or 15 percent, of the \$7,460,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted a construction contract, a lien waiver, and a payment report prepared by an independent consultant; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, in response to concerns raised by the Opposition, the applicant states that the construction delays at issue were largely caused by a discrepancy between the stated deed dimensions of the tax lots comprising the zoning lot and

MINUTES

the surveyed dimensions, as well as subsequent financing delays; and

WHEREAS, the applicant further states that the Opposition's claim regarding the owner's purported pattern of unfinished projects has no bearing on the findings of ZR § 11-332, and notes that the applicant has been working to develop three parcels in the area that was rezoned, and was forced to reallocate construction resources to best preserve its rights for each development, which was complicated due to financing issues; and

WHEREAS, the applicant represents that the project will be completed in a reasonable timeframe; and

WHEREAS, the Board has reviewed the amount construction performed pursuant to valid permits and does not find the Opposition's concerns about delays or the applicant's reasons for delays to be relevant to the analysis for vesting, pursuant to ZR § 11-332; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permit, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332; and *Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew Building Permit No. 301952652-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on January 26, 2012.

Adopted by the Board of Standards and Appeals, January 26, 2010.

300-08-A

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

SUBJECT – Application December 9, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior M1-3 zoning district regulations. M1-2 /R5B zoning district.

PREMISES AFFECTED – 39-35 27th Street, east side of 27th Street, 125' northeast of the intersection of 27th Street and 40th Avenue, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Marvin Mitzner and Steven Baharestani.
For Opposition: Steven Maffei, Claudia Chan, Barbara Lorine, Nicholas Sermoneta, Vienna Ferreri, Gerald Walsh, Geo L. Stamatiades, Noni Pratt, Mary Carallo, Megan Friedman, Melinda Parino, Dianne L. Martin.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for continued hearing.

315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC., owner.

SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for a condominium hotel on the basis that the approved plans allow for exceedance of maximum permitted floor area. M1-6 zoning.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Stuart A. Klein.

For Opposition: Mark Davis, DOB; Paul Selver.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for continued hearing.

57-09-A thru 158-09-A

APPLICANT – Eric Palatnik, P.C. for Maguire Avenue Realty Corporation, owner.

SUBJECT – Application April 15, 2009 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations. R3-2 (SSRD) zoning district.

PREMISES AFFECTED – Maguire Woods, Santa Monica Lane, Moreno Court, El Camino Loop, Malibu Court, Foothill Court and Moreno Court, Maguire Woods in the Woodrow section of Staten Island. Block 6979, Lots 64 thru 362, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for continued hearing.

257-09-BZY & 258-09-BZY

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.

SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning District. R5 Zoning District.

PREMISES AFFECTED – 88-36 & 88-38 144th Street, 86.63' from corner of 88th Road and 144th Street, Block 9683, Lot 15 & 16, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga Kundu.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to February

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9, 2010, at 10 A.M., for decision, hearing closed.

259-09-BZY & 261-09-BZY

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.
SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning district. R5 Zoning District.

PREMISES AFFECTED – 139-48 88th Road, 88-30 144th Street and 88-34 144th Street, corner of 88th Road and 144th Street, Block 9683, Lot 13 & 14, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga Kundu.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 9, 2010, at 10 A.M., for decision, hearing closed.

280-09-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 330 West 86th Street, LLC, owner.

SUBJECT – Application January 26, 2010 – Appeal challenging Department of Building's authority under the City Charter to interpret or enforce provisions of Article 16 of the General Municipal Law as it applies to the construction of a proposed 16 story+ penthouse. R10A Zoning district.

PREMISES AFFECTED – 330 West 86th Street, south side of West 86th street, 280' west of the intersection of Riverside Drive and West 86th Street, Block 1247, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Al. Fredricks and Paul Selver.

For Opposition: Mark Davis.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, JANUARY 26, 2010 1:30 P.M.

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

ZONING CALENDAR

43-09-BZ

CEQR #09-BSA-100K

APPLICANT – Harold Weinberg, P.E., for Paul S. Grosman, owner.

SUBJECT – Application March 10, 2009 – Special Permit (§73-19) to allow a school (*Southside Charter High School*) in a recently constructed building, contrary to use regulations. M1-2 district.

PREMISES AFFECTED – 198 Varet Street, southside 170'-6" west of White Street, between White Street and Bushwick Avenue, Block 3117, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 5, 2009, acting on Department of Buildings Application No. 301100671 reads in pertinent part:

“The proposed change in use to a school in Use Group 3 in an M1-2 zoning district is contrary to Section 42-00 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site within an M1-2 zoning district, the proposed operation of a high school (Use Group 3), contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in the *City Record*, with a continued hearing on December 15, 2009, and then to decision on January 26, 2010; and

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

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, City Council Member Diana Reyna provided testimony in support of this application; and

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WHEREAS, New York State Assemblyman Joseph Lentol provided testimony in support of this application; and

WHEREAS, the application is brought on behalf of The Williamsburg Charter High School (the "School"); and

WHEREAS, the site is located on the south side of Varet Street, between White Street and Bushwick Avenue, in an M1-2 zoning district; and

WHEREAS, the site has a lot area of 21,817 sq. ft.; and

WHEREAS, the site is currently occupied by an eight-story building with a floor area of approximately 104,722 sq. ft., which is occupied by commercial uses on the first floor and mezzanine, and which is otherwise vacant; and

WHEREAS, the applicant proposes to occupy the existing building for use as a high school (Use Group 3); and

WHEREAS, the applicant represents that the proposed school meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M1 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that the proposed building will serve an estimated 1,000 students from ninth through 12th grade in year one, and is anticipated to eventually reach a full capacity of 1,200 students; and

WHEREAS, the School's program includes 28 classrooms, art rooms, science labs, a student center, fitness center, multi-purpose room, and administrative offices; and

WHEREAS, the applicant states that the School's program requires a minimum lot area of 20,000 sq. ft., a building with a floor area of at least 104,000 sq. ft., and a flexible floor plate configuration; and

WHEREAS, the applicant further represents that close proximity to multiple sources of public transportation is necessary to accommodate the School's programmatic need of being easily accessible to students; and

WHEREAS, the applicant states that the School has an additional programmatic need to be located within either the 11211, 11222 or 11206 zip codes in the Williamsburg neighborhood of Brooklyn, as per the School's New York State Department of Education Charter; and

WHEREAS, the applicant further states that due to the School's Charter requirements and because the majority of the students are anticipated to live in the Williamsburg area, it conducted a search for a suitable location for the School in that area; and

WHEREAS, the applicant represents that it conducted a three-year search, during which it specifically evaluated the feasibility of six Brooklyn buildings: 268 Norman Avenue, 248 Kent Avenue, 77 Commercial Street, 28 Debevoise Street, 41 Varick Avenue, and 400 McGuinness Boulevard; and

WHEREAS, the applicant states that, of the six buildings it evaluated, only 28 Debevoise Street and 77

Commercial Street are located in zoning districts where the School would be permitted as-of-right; and

WHEREAS, the applicant further states that 28 Debevoise Street was found to be structurally unsuitable due to the building's narrow column widths which would have made it infeasible to build adequately sized classrooms, and 77 Commercial Street was found to be both economically infeasible due to its high acquisition costs and geographically remote and therefore not readily accessible by public transportation; and

WHEREAS, therefore, the applicant concluded that neither of the sites within zoning districts where the use would be permitted as of right, and none of the other sites, would be able to accommodate the proposed school; and

WHEREAS, the applicant maintains that the results of the site search reflect that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

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

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

WHEREAS, the applicant submitted a land use map which reflects that the northeast corner of the subject lot is within 400 feet of an R6 zoning district where the proposed use would be permitted as-of-right; and

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

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

WHEREAS, the applicant represents that there are no industrial emission sources among the uses in the surrounding area; and

WHEREAS, the applicant states that adequate separation from noise, traffic and other adverse effects of the surrounding M1-2 zoning district will be provided through the building's existing metal stud walls with R22 insulation and the use of double-glazed windows; and

WHEREAS, the applicant represents that there will be little traffic entering Varet Street near the subject site because the site fronts upon a lightly traveled one-way street; and

WHEREAS, the Board finds that the conditions surrounding the site, the construction of the building, and the installation of double-glazed windows will adequately separate the School from noise, traffic and other adverse effects of any of the uses within the surrounding M1-2 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

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

WHEREAS, the applicant states that the School will

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not provide bus service and that the students, who are all of high school age, will travel independently by foot or mass transit; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation (“DOT”); and

WHEREAS, by letter dated April 8, 2009, DOT states that it has no objection to the proposed school; and

WHEREAS, the Board finds that the above-mentioned measures maintain safe conditions for children going to and from the School; and

WHEREAS, the applicant submitted an Environmental Assessment Statement which indicated that the School will not generate a significant number of vehicle trips and will not have a significant adverse impact on traffic; and

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

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

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 09BSA100K, dated November 20, 2009; 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 reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP approved the Construction Health and Safety Plan on December 28, 2009; 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, DEP reviewed the applicant’s stationary source screening analysis for the subject building’s proposed HVAC equipment and the pollutant concentrations associated with active industrial/manufacturing facilities within a 400-ft. radius of the subject site, and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts relative to HVAC emissions and significant impacts from surrounding industrial/manufacturing uses on the proposed project are not anticipated; and

WHEREAS, based on the results of noise monitoring, a window-wall noise attenuation of 30 dBA with central air-conditioning or individual window air-conditioning units as an alternate means of ventilation are proposed in order to achieve an interior noise level of 45 dBA; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a school (Use Group 3), on a site within an M1-2 zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received May 20, 2009” - (15) sheets and “Received June 17, 2009” - (2) sheets; and *on further condition*:

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

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

THAT 30 dBA of window-wall noise attenuation, with central air-conditioning or individual window air-conditioning units as an alternate means of ventilation, shall be maintained in the proposed building;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 26, 2010.

180-09-BZ
CEQR #09-BSA-114R

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Steven Smith, owner.

SUBJECT – Application June 1, 2009 – Variance (§72-21) to allow for a commercial building (UG6) contrary to use regulations (§22-00). R3-1 zoning district.

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PREMISES AFFECTED – 1735 Richmond Avenue, 296.35’ north of the intersection of Richmond Avenue and Croft Place, block 2072, Lot 28, 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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 30, 2009, acting on Department of Buildings Application No. 510066232, reads in pertinent part:

“Proposed commercial use, zoning use group 6, is not permitted as-of-right in R3-1 residential zoning district, and is contrary to ZR 22-00, therefore, this application is referred to the Board of Standards and Appeals for approval;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-1 zoning district, the construction of a two-story commercial building (Use Group 6) which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on October 20, 2009 after due notice by publication in *The City Record*, with continued hearings on November 24, 2009 and December 15, 2009, and then to decision on January 26, 2010; and

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

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

WHEREAS, the subject site is located on the east side of Richmond Avenue, between Victory Boulevard and Croft Place, within an R3-1 zoning district; and

WHEREAS, the site has approximately 46’-0” of frontage on Richmond Avenue, a depth of approximately 305’-0”, and a lot area of 13,679 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant one-and-one-half story home and detached garage, which will be demolished in anticipation of the proposed development; and

WHEREAS, the building is proposed to have a total floor area of 4,992 sq. ft. (0.36 FAR), with two retail spaces at the first floor, two offices at the second floor, and 19 accessory parking spaces at the rear of the site; and

WHEREAS, commercial use is not permitted in the subject R3-1 zoning district, thus the applicant seeks a use variance to permit the proposed Use Group 6 uses; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the site’s irregular shape; (2) the

absence of a sanitary sewer connection; (3) the site’s location on a heavily-trafficked arterial road; and (4) the preponderance of adjacent commercial uses; and

WHEREAS, as to the site’s irregular shape, the applicant notes that the site has a depth of approximately 305 feet, which is more than six times its width of approximately 46 feet, for a total lot area of 13,679 sq. ft.; and

WHEREAS, the applicant represents that this width-to-depth ratio impedes the development of the site for a conforming use; and

WHEREAS, specifically, the applicant states that the irregular and unique configuration of the lot constrains the development of the site to its full density, as the yard requirements limit the site to two one-family homes despite the available floor area of 6,840 sq. ft., a significant amount for two homes which exceeds what would be marketable or contextual with nearby residential development; and

WHEREAS, the applicant represents that the development of two single-family homes on the site would require the establishment of a new connection to the nearest sanitary sewer; and

WHEREAS, therefore, the applicant represents that the only as-of-right schemes available at the site include: (1) one single-family home without a sewer connection; or (2) two single-family homes with a new connection to the nearest sanitary sewer; and

WHEREAS, the applicant submitted letters from two real estate brokers as well as the previous owner of the site, stating that the site has been marketed as a one-family home since October 2006 and there has been no interest in residential use of the property despite significant price reductions; and

WHEREAS, as to the lack of a sanitary sewer connection, the applicant states that the nearest available sanitary sewer is located in Croft Place, more than 350 feet from the site; and

WHEREAS, the applicant submitted a New York City sewer index map indicating the extension that would be necessary to connect the subject site to the nearest available sanitary sewer in Croft Place; and

WHEREAS, the applicant represents that extending the sanitary sewer in Croft Place to the subject site would be cost-prohibitive; and

WHEREAS, in support of this statement, the applicant submitted a cost estimate from its engineer, which stated that it would cost at least \$245,000 to extend the existing sanitary sewer in Croft Place to the subject site; and

WHEREAS, as to the site’s location, the applicant states that Richmond Avenue is an eight-lane north/south arterial roadway approximately 120’-0” in width; and

WHEREAS, the applicant represents that the high volume of traffic and the resultant noise on Richmond Avenue inhibits the residential use of the property; and

WHEREAS, the applicant asserts that an abundance of commercial uses in the surrounding area also diminishes the marketability of the site for a conforming residential use; and

WHEREAS, the applicant submitted a land use map of the area reflecting that, of the 17 lots fronting Richmond Avenue between Victory Boulevard and Carnegie Avenue, 12

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are occupied by commercial uses while the subject site is one of only two lots that are occupied by a residential use; and

WHEREAS, the land use map submitted by the applicant also reflected that the uses immediately adjacent to the subject site include a Use Group 6 telephone exchange to the south, a Use Group 16 automobile laundry and repair shop to the north, and an accessory parking lot for a diner located on Victory Boulevard to the east; and

WHEREAS, the Board does not find the location on an arterial roadway or the preponderance of adjacent commercial uses to be unique conditions to the site, however, when considered in combination with the irregular shape of the lot and the lack of a sewer connection, these conditions create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) an as-of-right community facility development; and (2) the proposed Use Group 6 retail/office development; and

WHEREAS, the study concluded that the as-of-right scenario would not result in a reasonable return, but that the proposed building would realize a reasonable return; and

WHEREAS, at the Board's direction the applicant also examined two as-of-right residential scenarios; and

WHEREAS, the applicant concluded that neither of the residential scenarios were feasible because of the high cost associated with constructing an extension to the sanitary sewer in Croft Place and because they did not allow the development of the site to its full density; and

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

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

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

WHEREAS, the applicant has submitted a land use map of the area indicating that within a 400-ft. radius of the site, nine out of 11 lots with frontage along the east and west sides of Richmond Avenue, including the subject site, have been developed for commercial uses; and

WHEREAS, the applicant states that the uses immediately adjacent to the rear portion of the site, which will be used for parking, include a Use Group 6 telephone exchange to the south, an accessory parking lot for a diner to the east, and a vacant commercial lot to the north; and

WHEREAS, the Board notes that the proposed 0.36 FAR complies with the maximum 0.50 FAR permitted for an as-of-right building in the subject zoning district; and

WHEREAS, the applicant notes that the proposed 19 parking spaces exceed the 17 spaces that would be required in the adjacent C1-2 zoning district; and

WHEREAS, the applicant initially proposed to set back

the subject commercial building approximately 100 feet from Richmond Avenue, with parking located at the front and rear of the building; and

WHEREAS, at the Board's direction, the applicant submitted revised plans reflecting that the subject building will be situated at the front of the site with all parking located at the rear; and

WHEREAS, at hearing, the Board requested that the applicant provide landscaped areas at the front of the site along Richmond Avenue, and at the rear of the site to provide a buffer for the adjacent lots; and

WHEREAS, in response, the applicant provided revised plans reflecting that there will be a landscaped area along Richmond Avenue and shrubbery planted along the rear of the site; and

WHEREAS, at hearing, the Board also requested that the applicant provide a pedestrian walkway from the front of the site to the rear of the site; and

WHEREAS, in response, the applicant submitted revised plans with a 3'-0" wide striped pedestrian walkway along the driveway to the rear parking lot; and

WHEREAS, at hearing, the Board questioned whether patrons would be able to make a right turn onto Richmond Avenue when exiting the site, due to a traffic control striping for a turning lane in front of the site that requires all traffic in that lane to proceed to Victory Boulevard; and

WHEREAS, in response, the applicant states that it will request that the Department of Transportation ("DOT") adjust the start of the turning lane, or it will require patrons to proceed to Victory Boulevard; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09BSA114R, dated May 28, 2009; 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

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Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-1 zoning district, the proposed construction of a two-story commercial building, which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 8, 2009"- six (6) sheets; and on further condition:

THAT the following are the bulk parameters of the proposed building: a total floor area of 4,992 sq. ft. (0.36 FAR); a rear yard with a depth of 186'-6"; a front yard with a depth of 10'-0"; a side yard with a depth of 16'-0" along the southern lot line; a total height of 23'-0"; and 19 parking spaces, as indicated on the BSA-approved plans;

THAT landscaping shall be provided and maintained as per the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 26, 2010.

224-09-BZ

CEQR #10-BSA-008Q

APPLICANT – Sheldon Lobel, P.C., for Springfield-Hempstead Realty, LLC, owner; Walgreens Company, lessee.

SUBJECT – Application July 8, 2009 – Special Permit (§73-52) to allow for accessory commercial parking to be located in the residential portion of a split zoning lot. C2-3/R3-2 and R3-2 zoning districts.

PREMISES AFFECTED – 218-51 aka 218-59 Hempstead Avenue, Northwest corner of intersection of Hempstead Avenue, Block 10766, Lot 38, 46, 48, 51, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, January 26, 2010.

302-09-BZ

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.

SUBJECT – Application October 30, 2009 – Special Permit pursuant (§73-50) to legalize an encroachment within 30-foot open area required at a rear lot line coincident with a residential zoning district boundary line (§43-302). M1-2 zoning district.

PREMISES AFFECTED – 820 39th Street, south side, 150'0" east of 8th Avenue between 8th Avenue and 9th Avenue, Block 916, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated October 20, 2009, acting on Department of Buildings Application No. 302349965, reads in pertinent part:

"The enlargement of a one story building in an M1-2 zoning district to a five story hotel in Use Group 5 abutting an R6 zoning district is required to provide an open area not higher than curb level and at least 30 feet in depth within the manufacturing district as per Section 43-302 Zoning Resolution;" and

WHEREAS, this is an application under ZR §§ 73-50 and 73-03, to permit, on a site within an M1-2 zoning district abutting an R6 zoning district, the legalization of a five-story hotel building which encroaches into a required 30-foot open area at the rear of the site, contrary to ZR § 43-302; and

WHEREAS a public hearing was held on this application on January 12, 2010, after due notice by publication in *The City Record*, and then to decision on January 26, 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

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

WHEREAS, the site is located on the south side of 39th Street, between Eighth Avenue and Ninth Avenue; and

WHEREAS, the site has 75 feet of frontage on 39th Street, a depth of approximately 100 feet, and a total lot area of 7,508 sq. ft.; and

WHEREAS, the subject site is occupied by a five-story hotel building; and

WHEREAS, the existing building has a floor area of 14,957 sq. ft. (1.99 FAR) and a height of 60 feet; and

WHEREAS, the subject site is located within an M1-2 zoning district that abuts an R6 zoning district to its rear; and

WHEREAS, the applicant notes that the subject hotel building was constructed pursuant to approved plans filed the Department of Buildings (“DOB”), and that DOB subsequently audited the plans and, during the review process, ultimately issued the noted objection; thus, the applicant now seeks to legalize the construction; and

WHEREAS, pursuant to ZR § 43-302, an open area not higher than curb level and at least 30 feet in depth is required on a zoning lot within an M1-2 zoning district with a rear lot line that abuts the rear lot line of a zoning lot in a residential district; and

WHEREAS, the existing five-story hotel building includes a one-story portion with a height of approximately 16 feet on the western side of the rear of the site, which results in an open area of approximately two feet; therefore, the existing building without the open area with a depth of 30 feet across the rear of the site does not comply with ZR § 43-302; and

WHEREAS, an open area with a depth of 30 feet is provided on the eastern side of the rear of the site, across approximately one-third of the site; and

WHEREAS, under ZR § 73-50, the Board may grant a waiver of rear yard requirements set forth in ZR § 43-302 in appropriate cases; and

WHEREAS, the applicant represents that an encroachment into the required open area at the rear of the site has existed continuously since 1927, when the Department of Buildings originally issued a certificate of occupancy for a one-story file factory and two car garage; and

WHEREAS, the applicant further represents that the existing and proposed Use Group 5 hotel use is allowed in many districts which are also zoned residential, and the hotel use is more compatible with the adjacent R6 zoning district than more noxious manufacturing uses that are permitted as-of-right in the subject M1-2 zoning district, including the Use Group 16 auto repair shop with an accessory Use Group 17 paint spraying booth, which formerly occupied the site; and

WHEREAS, the applicant notes that the maximum height of the existing one-story encroachment into the required open area is less than 23 feet and therefore would be considered a permitted obstruction as set forth in ZR § 43-23 within the subject zoning district if the lot did not abut

a residential zoning district, which triggers the open area requirement; and

WHEREAS, the applicant further notes that in residential districts, including the adjacent R6 zoning district, community facility uses may encroach into the rear yard up to a height of 23 feet; and

WHEREAS, the applicant states that the three homes abutting the rear of the site each have rear yards with a depth of 30 feet, such that the nearest residential use is 30 feet from the subject site’s rear lot line; and

WHEREAS, the applicant further states that the existing one-story encroachment into the required open area is entirely enclosed and is set back approximately two feet, thereby providing a buffer from the adjoining residential properties; and

WHEREAS, the Board finds that the rear yard waiver will not have an adverse affect on the surrounding area; and

WHEREAS, therefore the Board has determined that the application meets the requirements of ZR § 73-03(a) in that the disadvantages to the community at large are outweighed by the advantages derived from such special permit; and that the adverse effect, if any, will be minimized by appropriate conditions; and

WHEREAS, the proposed project will not interfere with any pending public improvement project and therefore satisfies the requirements of ZR §73-03(b); and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§73-50 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 to grant a special permit under ZR §§ 73-50 and 73-03, to permit, on a lot within an M1-2 zoning district abutting an R6 zoning district, the legalization of a five-story hotel building which encroaches within the 30-foot open area required by ZR § 43-302, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received January 13, 2010” – (8) sheets, and “January 21, 2010” – (1) sheet; and *on further condition*;

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

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

THAT substantial construction be completed in accordance with ZR § 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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 26, 2010.

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195-07-BZ

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance (§72-21) to allow hotel and retail uses below the floor level of the second story, contrary to use regulations (§42-14(d)(2)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 1:30 P.M., for deferred decision.

256-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Hayden Rester, owner.

SUBJECT – Application November 5, 2007 – Variance (§72-21) to permit a three-story, five-unit residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph. Block 1339, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD # 8BK

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 March 2, 2010, at 1:30 P.M., for decision, hearing closed.

97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the legalization of an existing school (*Central UTA*) (UG 3). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik and Miram Rothkrug.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 2,

2010, at 1:30 P.M., for decision, hearing closed.

186-08-BZ

APPLICANT – Petrus Fortune, P.E., for Kevin Mast. Chairman, Followers of Jesus Mennonite Church, owner.

SUBJECT – Application July 10, 2008 – Special Permit (§73-19) to allow the legalization and enlargement of a school (*Followers of Jesus Mennonite Church & School*) in a former manufacturing building, contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 3065 Atlantic Avenue, northwest corner of Atlantic Avenue and Shepherd Avenue, Block 3957, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 2, 2010, at 1:30 P.M., for decision, hearing closed.

197-08-BZ

APPLICANT – Stuart A. Klein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application July 23, 2008 – Variance (§72-21) to permit a four-story and penthouse residential building, contrary to §23-141 (FAR, open space ratio), §23-22 (number of dwelling units), §23-45 (front yard), §23-462 (side yard), and §23-631 (wall height). R4 district.

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Stuart A. Klein and Jay Goldstein.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for decision, hearing closed.

28-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 133 Equity Corp., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 133 Taaffe Place, east side of Taaffe Place, 142’-2.5” north of intersection of Taaffe Place and Myrtle Avenue, Block 1897, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

For Opposition: Suellon L.

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ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for continued hearing.

162-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Steinway 30-33, LLC, owner; Steinway Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application April 27, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Planet Fitness*) in the cellar, first, and second floors in an existing two-story building; Special Permit (§73-52) to extend the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district. C4-2A/R5 zoning districts.

PREMISES AFFECTED – 30-33 Steinway Street, east side of Steinway Street, south of 30th Avenue, Block 680, Lot 32, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safain.

ACTION OF THE BOARD – Laid over to February 23, 2010, at 1:30 P.M., for continued hearing.

235-09-BZ

APPLICANT – Eric Palatnik, P.C., for Calvary Baptist Church of Jamaica, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) to permit the development of a five-story not-for-profit residence for the elderly (*Calvary Baptist Church*). Proposal is contrary to floor area (§23-144), number of dwelling units (§23-221), height (§23-631), side yards (§23-462), rear yard (§23-471), and parking (§25-23). R3-2 zoning district.

PREMISES AFFECTED – 162-25 112th Road, Guy Brewer Boulevard and 112th Road, Block 12183, Lot 35 (tent), Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: State Senator Smiths Person, Eric Palatnik, Warren Gardner, Josh Mudikowski and Nelly Minella.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 1:30 P.M., for continued hearing.

248-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemil's Petroleum, Incorporated, owner.

SUBJECT – Application August 26, 2009 – Special Permit (§11-411 & §11-412) for re-instatement of an automotive service station (UG16) which expired on July 24, 1991; Amendment to modify layout of the site; and Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 3031 Bailey Avenue, northwest corner of Bailey Avenue and Albany Court, Block 3266, Lot 85, Borough of The Bronx.

COMMUNITY BOARD #8BX

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 February 23, 2010, at 1:30 P.M., for decision, hearing closed.

264-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for Joseph Ashkenaki, owner; LRHC Flatbush NY, LLC, lessee.

SUBJECT – Application September 15, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Lucille Roberts*) on the second and third floors of a three-story commercial building. C4-4A zoning district.

PREMISES AFFECTED – 927 Flatbush Avenue, aka 927-933 Flatbush Avenue, aka 21-33 Snyder Avenue, Block 5103, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 23, 2010, at 1:30 P.M., for decision, hearing closed.

281-09-BZ

APPLICANT – Marcie Kesner, Kramer Levin Naftalis & Frankel LLP, for Bayrock/Sapir Organization LLC, owner; WTS International, Incorporated, lessee.

SUBJECT – Application October 7, 2009 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*WTS International*) on the fifth and sixth floors in a building under construction. M1-6 zoning district.

PREMISES AFFECTED – 246 Spring Street, Spring Street, Sixth Avenue, Dominick Street, Varick Street. Block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Marcie Kesner.

ACTION OF THE BOARD – Laid over to February 23, 2010, at 1:30 P.M., for continued hearing.

292-09-BZ

APPLICANT – Martyn & Don Weston, for Barbara Aal-Albar LLC, owner; Third Avenue Auto Corporation, lessee.

SUBJECT – Application October 15, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Lucille Roberts*) on the second and third floors of a three-story commercial building. C4-4A

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zoning district.

PREMISES AFFECTED – 9310-9333 Third Avenue, North east corner of 94th Street, Block 6107, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Don Weston.

ACTION OF THE BOARD – Laid over to February 23, 2010, at 1:30 P.M., for continued hearing.

293-09-BZ

APPLICANT – Eric Palatnik, Esq., for Rami Esses, owner.

SUBJECT – Application October 15, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to open space and floor area (§23-141(a)). R-2 zoning district.

PREMISES AFFECTED – 2501 Avenue M, northeast corner of Avenue M and Bedford Avenue, Block 7643, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 23, 2010, at 1:30 P.M., for decision, hearing closed.

311-09-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Matalon, owner.

SUBJECT – Application November 24, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)), side yard (§23-461(a)) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1092 East 22nd Street, between Avenue J and K, Block 7603, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 2, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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February 10, 2010

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DOCKET

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12-10-A

1734 Staint John's Place, West side of Howard Avenue, south side of St. John's Place and north side of Eastern Parkway Extension., Block 1473, Lot(s) 34, 35, 36, 37, Borough of **Brooklyn, Community Board: 16**. Appeal to prohibit the erection of building. R6 district.

13-10-BZ

79 Amherst Street, East Side of Amherst Street, North Hampton Avenue., Block 8727, Lot(s) 24, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of a single family home R3-1 district.

14-10-BZ

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15-10-BZ

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16-10-BZ

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17-10-A

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18-10-BZ

50 East 42nd Street, Southeast corner of Madison Avenue and 42nd Street., Block 1276, Lot(s) 51, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to allow the operation of a physical culture establishment. C5-3 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

FEBRUARY 23, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 23, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

834-60-BZ

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

SUBJECT – Application October 20, 2009 – Extension of Term for the continued use of a Gasoline Service Station (Gulf) with minor auto repairs which expired on March 7, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on March 2, 2000; an Amendment to legalize an accessory convenience store and Waiver of the Rules. C2-4/R-7A, R-5B zoning district.

PREMISES AFFECTED – 140 Vanderbilt Avenue, northwest corner of Myrtle Avenue and Vanderbilt Avenue, Block 2046, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD #2BK

280-01-BZ

APPLICANT – Cozen O'Connor, Esqs., for Perl binder Holdings, LLC, owners.

SUBJECT – Application February 3, 2010 – Extension of Time to Complete Construction and Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the construction of a mixed-use building which expires on May 7, 2010. C1-9 zoning district.

PREMISES AFFECTED – 663-673 Second Avenue, west side of Second Avenue from 36th Street to 37th Street, Block 917, Lot 21, 24, Borough of Manhattan.

COMMUNITY BOARD #6M

238-08-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER: Chim Yidel Lafkowitz

SUBJECT – Application for dismissal for lack of prosecution.

PREMISES AFFECTED – 876 Kent Avenue, west side of Kent Avenue, approximately 91' north of the intersection of Myrtle Avenue, Block 1897, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEALS CALENDAR

64-07-A

APPLICANT – Stuart A. Klein, for Sidney Frankel, owner.

SUBJECT – Application September 14, 2009 – Appeal for a common law vested right to continue construction commenced under the prior R6 zoning district. R4-1 Zoning District

PREMISES AFFECTED – 1704 Avenue N, southeast corner lot at the intersection of East 17th Street and Avenue N, Block 6755, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

12-10-A

APPLICANT – Slater & Beckerman, LLP for Lex Rex, LLC, owner; Atlantic Commons Cornstone L.P., lessee.

SUBJECT – Application January 27, 2010 – Proposed construction of a 5 story, 18 unit affordable housing building within the 30 foot required setback of Eastern Parkway Extension, contrary to Administrative Code Section 18-112. R6 zoning district.

PREMISES AFFECTED – 1734 Saint John's Place, West side of Howard Avenue, south side of St. John's Place and north side of Eastern Parkway Extension. Block 1473, Lots 34, 35, 36, 37, Borough of Brooklyn.

COMMUNITY BOARD #16BK

FEBRUARY 23, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 23, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

297-09-BZ

APPLICANT – Marvin Mitzner, Esq., for 180 Ludlow Development LLC, owner.

SUBJECT – Application October 20, 2009 – Variance (§72-21) to allow for the conversion of a recently constructed commercial building for residential use, contrary to rear yard regulations. (ZR 23-47) C4-4A zoning district.

PREMISES AFFECTED – 180 Ludlow Street, east side of Ludlow Street approximately 125' south of East Houston Street, Block 412, Lot 48, 49, 50, Borough of Manhattan.

COMMUNITY BOARD #3M

CALENDAR

328-09-BZ

APPLICANT – Bryan Cave LLP, for The Abraham Joshua Heschel School, owner.

SUBJECT – Application December 14, 2009 – Variance (§ZR 72-21) to allow for the construction of a community facility (*The Abraham Joshua Heschel School*) contrary to height and setback, and rear yard requirements. (ZR §33-432, §23-634, §33-432) C6-2/C4-7 zoning districts.

PREMISES AFFECTED – 28-34 West End Avenue, 246-252 West 61st Street, West End Avenue and West 61st Street, Block 1152, Lot 58, 61, Borough of Manhattan.

COMMUNITY BOARD #7M

330-09-BZ

APPLICANT – Eric Palatnik, P.C., for Zhenia Levinsky, owner.

SUBJECT – Application December 18, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space, lot coverage and floor area (§23-141) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 230 Amherst Street, between Oriental Boulevard and Esplanade, Block 8738, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #15BK

332-09-BZ

APPLICANT – Moshe M. Friedman, for Mordechai Treff, owner.

SUBJECT – Application December 22, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141(a)); less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1462 East 27th Street, west side 320' north of intersection of East 27th Street and Avenue O, Block 7680, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 2, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

582-83-BZ

APPLICANT – Carole S. Slater for Torri Associates c/o LaSeven, Incorporated, owner.

SUBJECT – Application December 23, 2009 – Extension of Term for a previously granted Variance (§72-21) to permit the conversion of an existing six story building for commercial use with retail stores on the ground floor which expired on January 10, 2004; Amendment to permit (UG6) use in the cellar and to eliminate the Term; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 215 East 58th Street, North side of East 58th Street, between Second and Third Avenues. Block 1332, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Carole Slater.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an amendment of a previously granted variance permitting the conversion of a six-story building from community facility use into an office building with retail use on the first floor, which will: (1) permit Use Group 6 retail use in the cellar; (2) eliminate the term of 20 years which expired on January 10, 2004; and

WHEREAS, a public hearing was held on this application on January 26, 2010 after due notice by publication in *The City Record*, and then to decision on February 2, 2010; and

WHEREAS, Community Board 6, Manhattan, stated that it has no objection to this application, but recommends a five-year term; and

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

WHEREAS, the site is located on the north side of East 58th Street, between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 10, 1984 when, under the subject

calendar number, the Board granted a variance to permit the conversion of a six-story building from community facility use into a Use Group 6 office building with retail use on the first floor, to expire on January 10, 2004; and

WHEREAS, the applicant now requests that retail use be permitted in the cellar; and

WHEREAS, the applicant states that permitting retail use in the cellar would enable the building’s retail tenants to utilize the cellar as a showroom providing them with additional space for display and to locate their offices in a less prominent location; and

WHEREAS, the applicant states that, since the time of the original grant, the use of the cellar for storage and as a showroom exclusively for the ground floor tenant has been continuous; and

WHEREAS, the applicant submitted evidence indicating that the cellars and/or basements of ten buildings on East 58th Street contain retail uses; and

WHEREAS, the applicant represents that, given the preponderance of retail uses in the cellars of surrounding buildings, the use of the subject building’s cellar for retail use which is compatible with the existing uses in the neighborhood; and

WHEREAS, the applicant also seeks to eliminate the term of the grant; and

WHEREAS, the applicant represents that there have been no changes to the building since the grant of the variance and the same hardships that prevented the building from being used for a conforming use at that time still exist, including a rear yard with a depth of ten feet, interior layout constraints, and insufficient access to legal light and air; and

WHEREAS, the applicant states that the site is located at the center of the City’s interior design and furnishings industry and that East 58th Street, between Second and Third Avenue, has been renamed “Designer Way” by the City; and

WHEREAS, the applicant represents that the surrounding area consists of entirely commercial buildings or buildings with cellar and ground floor retail uses, and that the area has become even more commercial in nature since the time of the original grant; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that Use Group 6 uses are located in every building on both the north and south side of East 58th Street, either in the cellar and ground floor or within the entire building; and

WHEREAS, accordingly, the Board finds the requested elimination of the term appropriate, given the inherent hardships on the site and the preponderance of commercial uses in the surrounding area; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to permit retail use in the cellar and to eliminate the term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, as adopted on January 10, 1984, so that as amended this portion of the resolution shall read: “to eliminate the term and to permit Use Group 6 retail use in the

MINUTES

cellar; *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received December 23, 2009"- (4) sheets; and *on further condition*:

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

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

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

(DOB App. No. 120187136)

Adopted by the Board of Standards and Appeals, February 2, 2010.

75-95-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for The Ruprert Yorkville Towers Condominium, owner; TSI East 91 d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on January 28, 2006 for the operation of a Physical Culture Establishment (*New York Sports Club*); Waiver of the Rules. C2-8 zoning district.

PREMISES AFFECTED – 1635 Third Avenue, Easterly side of Third Avenue between East 91st Street and East 92nd Street. Block 1537, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on January 28, 2006, and a waiver of the condition that a certificate of occupancy be obtained within one year of the grant; and

WHEREAS, a public hearing was held on this application on December 8, 2010, after due notice by publication in *The City Record*, with a continued hearing on January 12, 2010, and then to decision on February 2, 2010; and

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

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

WHEREAS, the PCE is located on the east side of Third Avenue, between East 91st Street and East 92nd Street, within a C2-8 zoning district; and

WHEREAS, the site is occupied by a multi-story mixed-use residential/commercial building; and

WHEREAS, the PCE use occupies 31,220 sq. ft. of floor area at the basement and first floor, with an additional 680 sq. ft. of floor space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 28, 1997 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of nine years, to expire on January 28, 2006; a condition of the grant was that a certificate of occupancy be obtained by January 28, 1998; and

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

WHEREAS, the applicant further seeks a waiver of the condition that a certificate of occupancy be obtained within one year of the grant; and

WHEREAS, the applicant represents that a new certificate of occupancy was not obtained within one year of the original grant because there are open Department of Buildings ("DOB") applications within the building, unrelated to the special permit use, which preclude the building as a whole from being able to obtain a certificate of occupancy; and

WHEREAS, given the uncertainty as to if and when all open DOB applications will be resolved, the applicant seeks to amend the prior resolution to remove the condition that a new certificate of occupancy be obtained, or in the alternative, requests a minimum of two years to obtain a certificate of occupancy; and

WHEREAS, the applicant states that, given the outstanding applications in the building, it is not feasible to obtain a final certificate of occupancy for the building within any reasonable amount of time; and

WHEREAS, the applicant further seeks the approval of minor interior modifications to the layout of the PCE; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and modifications to the BSA-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 January 28, 1997, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from January 28, 2006, to expire on January 28, 2016, *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and that all work shall substantially conform to drawings filed with this application and marked "Received October 8, 2009"- (3) sheets and "December 29, 2009"-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on January 28, 2016;

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

THAT a new certificate of occupancy shall be obtained by February 2, 2012;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 120139082)

Adopted by the Board of Standards and Appeals, February 2, 2010.

5-96-BZ

APPLICANT – Sheldon Lobel, P.C. for Saint John's Place, LLC c/o Ulltra Parking Systems Incorporated, owner; Park Right Corporation, lessee.

SUBJECT – Application January 20, 2009 – Extension of Term (§11-411) to permit the operation a one-story public parking garage for no more than 150 cars (UG 8), which expired on March 18, 2007; Amendment to change the parking layout; and an Extension of Time to obtain a certificate of occupancy, which expired on March 18, 1998. R7-1 zoning district.

PREMISES AFFECTED – 564/92 St. John's Place, South side of Saint John's Place approximately 334' west of Classon Avenue, Block 1178, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Josh Rinesmith

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of a one-story parking garage, an extension of time to obtain a certificate of occupancy, and an amendment to permit certain modifications to the site; 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 October 6, 2009, November 24, 2009 and Jan, and then to decision on February 2, 2010; and

WHEREAS, Community Board 8, Brooklyn, recommends approval of this application; 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, the premises is located on the south side of

St. John's Place, between Classon Avenue and Franklin Avenue, within an R7-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 22, 1919 when, under BSA Cal. No. 263-19-BZ, the Board granted a variance to permit the construction of a one-story building to be used for the storage of more than five motor vehicles; and

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

WHEREAS, on January 18, 1966, under BSA Cal. No. 327-63-BZ, the Board granted a change in use to permit the assembly of mirrors into frames, the storage and cutting of sheet glass, the manufacturing of plastic and wood frames and novelties, with an off-street loading berth; and

WHEREAS, most recently, on March 18, 1997, under the subject calendar number, the Board reinstated the expired variance and legalized a change in use to a public parking garage for not more than 150 cars (Use Group 8), to expire on March 18, 2007; and

WHEREAS, the applicant now requests an additional ten-year term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant also seeks an amendment to the previously approved plans to legalize the modification of the parking layout and the installation of 75 two-level automobile stacking devices; and

WHEREAS, the applicant states that the previously approved parking layout did not provide sufficient room for vehicle circulation due to the dense layout of the garage and the lack of aisles between the spaces; and

WHEREAS, the applicant represents that the installation of the proposed stacking devices will allow for better vehicle circulation; and

WHEREAS, the applicant states that it is not seeking to increase the number of vehicles occupying the garage beyond the 150 previously permitted; and

WHEREAS, the Board finds the amendment to the parking layout appropriate, subject to Department of Buildings review of the proposed automobile stacking devices for compliance with Materials and Equipment Acceptance Division (“MEA”) requirements; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on March 18, 1997, so that as amended this portion of the resolution shall read: “to extend the term for ten years from March 18, 2007, to expire on March 18, 2017, to grant an extension of time to obtain a

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certificate of occupancy to February 2, 2011, and to permit the noted site modifications *on condition* that all work and the site layout shall substantially conform to drawings as filed with this application, marked “Received January 20, 2009”-(1) sheet, “June 24, 2009”-(1) sheet and “February 1, 2010”- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on March 18, 2017;

THAT DOB shall review the automobile stacking devices for compliance with MEA requirements;

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

THAT a new certificate of occupancy shall be obtained by February 2, 2011;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB App. No. 310233841)

Adopted by the Board of Standards and Appeals, February 2, 2010.

163-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 503 Broadway LLC, owner; TSI Soho LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application September 16, 2009 – Extension of Term for a special permit (§73-36) which will expire on June 28, 2010 for the operation of a Physical Culture Establishment (*New York Sports Club*); Waiver of the Rules.

M1-5B zoning district.

PREMISES AFFECTED – 503 Broadway, westerly side of Broadway between Broome Street and Spring Street, Block 484, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expires on June 28, 2010; and

WHEREAS, a public hearing was held on this

application on January 12, 2010, after due notice by publication in *The City Record*, and then to decision on February 2, 2010; and

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

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

WHEREAS, the PCE is located on the west side of Broadway, between Broome Street and Spring Street, in an M1-5B zoning district within the SoHo Cast Iron Historic District; and

WHEREAS, the site is occupied by a five-story commercial building; and

WHEREAS, the PCE use is located on the third floor, with elevator access from the first floor, and occupies a total floor area of 24,657 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 28, 2000 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on June 28, 2010; and

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

WHEREAS, the Board notes that the Landmarks Preservation Commission issued a Certificate of Appropriateness for the third-floor sign at the subject site on July 27, 1999, and it remains unchanged; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on June 28, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from June 28, 2010, to expire on June 28, 2020, *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and that all work shall substantially conform to drawings filed with this application and marked “Received September 16, 2009”-(6) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 28, 2020;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 102100496)

Adopted by the Board of Standards and Appeals, February 2, 2010.

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75-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Matthew Realty LLC, c/o Nathan Katz Realty, LLC, owner; TVR Communications, lessee.

SUBJECT – Application October 26, 2009 – Extension of Term of a previously granted Variance (§72-21) to permit a real estate office (UG6) in a residential district which expires on July 25, 2010; amendment to change use (within the same UG6 office use). R5 zoning district.

PREMISES AFFECTED – 60-69 Woodhaven Boulevard, east side of Woodhaven Boulevard, north of Eliot Avenue, Block 3089, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted variance permitting, within an R5 zoning district, the conversion of a building from a medical office use to a Use Group 6 real estate management office use, which expires on July 25, 2010 and a change to another office use within Use Group 6; and

WHEREAS, a public hearing was held on this application on December 15, 2009 after due notice by publication in *The City Record*, with a continued hearing on January 26, 2010, and then to decision on February 2, 2010; and

WHEREAS, Community Board 6, Queens, recommends approval of this application; and

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

WHEREAS, the site is located on the east side of Woodhaven Boulevard, between Eliot Avenue and Whetherole Street, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 25, 2000 when, under the subject calendar number, the Board granted a variance to permit the conversion of a building from a medical office use to a Use Group 6 real estate management office use, to expire on July 25, 2010; and

WHEREAS, by letter dated April 25, 2001, the Board permitted the modification of the interior layout of the subject site and confirmed that a sprinkler system was not a condition of the Board’s original grant; and

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

WHEREAS, the applicant further requests a change in use from a Use Group 6 real estate management office use to another Use Group 6 office use; and

WHEREAS, the applicant states that the site is proposed to be used as the office headquarters for a company that is a supplier of television and audio equipment for hospitals; and

WHEREAS, the applicant represents that the proposed use is in keeping with the scope and intent of the prior variance grant, as the proposed office would operate five days per week whereas the real estate management office operated six days per week, the two uses would have a similar number of employees at the site on a daily basis, and the proposed use would have fewer daily visitors to the site; and

WHEREAS, the applicant further represents that the site will not be used for the storage of equipment and there will be no deliveries of equipment to the site, as these activities occur at a separate warehouse and distribution facility; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, as adopted on July 25, 2000, so that as amended this portion of the resolution shall read: “to extend the term for ten years from July 25, 2010, to expire on July 25, 2020, and to permit the change in use from a Use Group 6 real estate management office to a Use Group 6 office; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received October 26, 2009”- (4) sheets and “January 12, 2010”-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on July 25, 2020;

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

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB App. No. 401069482)

Adopted by the Board of Standards and Appeals, February 2, 2010.

311-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Block 2285 Lite Corporation, owner.

SUBJECT – Application July 8, 2009 – Amendment to a previously granted Variance (§72-21) for a proposed one family dwelling which is contrary to lot coverage (§105-33) and maximum height (§23-631) regulations. R1-2(NA-1) zoning district.

PREMISES AFFECTED – 380 Lighthouse Avenue, south side of Lighthouse Avenue, 579’ west of Winsor Avenue,

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Block 2285, Lot 1, 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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted a single-family home which did not comply with the zoning requirements for lot area, rear yard, and front yard, and which required modification of certain natural area conditions, to construct a single family home which is contrary to the previously-approved plans and does not comply with zoning regulations for lot coverage or height, contrary to ZR §§ 105-33 and 23-661; and

WHEREAS, a public hearing was held on this application on October 20, 2009, after due notice by publication in *The City Record*, with continued hearings on November 17, 2009, December 15, 2009, and January 26, 2010, and then to decision on February 2, 2010; and

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

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

WHEREAS, City Council Member James S. Oddo provided testimony in opposition to this application; and

WHEREAS, a representative of the Lighthouse Hill Civic Association testified in opposition to this application; and

WHEREAS, the subject site is located on the south side of Lighthouse Avenue, between Winsor Avenue and St. George Road, in an R1-2 zoning district within Special Natural Area District NA-1; and

WHEREAS, the Board has had jurisdiction over the subject site since February 8, 2005 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the construction of a single-family detached home which did not comply with the zoning requirements for lot area, rear yard, and front yard, and which required modification of the existing topography, alteration of botanic environments or removal of trees and the alteration of other natural features, contrary to ZR §§ 105-50, 105-241, 105-423 and 105-432; and

WHEREAS, the applicant states that, subsequent to the Board's grant, it discovered that the plans associated with the variance did not comply with lot coverage or height requirements, pursuant to ZR §§ 105-33 and 23-661; and

WHEREAS, specifically, the applicant proposes a home with a lot coverage of 22 percent (12.5 percent is the maximum permitted) and a height of 48'-7" at its peak (30'-0" is the maximum permitted); and

WHEREAS, the applicant states that the site is sloped, from an elevation of 120 feet along the northern lot line, adjacent to Lighthouse Avenue, to an elevation of less than 84 feet along the southern lot line, such that the site meets the definition of "steep slope" as set forth in ZR § 105-11(b)(1); and

WHEREAS, the applicant represents that this slope resulted in a discrepancy in the computation of the permitted height for the original grant, because when calculated from the grade at Lighthouse Avenue, the proposed building complies with the maximum permitted height of 30 feet, but when measured from the rear, the slope of the site results in a substantial portion of the home exceeding the permitted height; and

WHEREAS, the applicant represents that it is not possible to provide a reasonable amount of floor area within the maximum permitted height; and

WHEREAS, the applicant notes that the lot coverage requirement of ZR § 105-33 would limit the proposed home to a maximum footprint of 1,221 sq. ft.; and

WHEREAS, the applicant states that reducing the proposed lot coverage of 2,154 sq. ft. would further restrict the amount of buildable floor area, or would alternatively require an increased waiver with respect to the proposed height; and

WHEREAS, the applicant represents that the proposed amendment will not negatively affect the character of the neighborhood, or impact adjacent uses, as there is only one home adjacent to the subject site, and it is separated by an open area approximately 74 feet in width; and

WHEREAS, the applicant states that the adjacent home is also located at grade that is approximately 10 feet higher than the subject site, so that there is no visual impact from the height of the proposed home; and

WHEREAS, the applicant also seeks to modify the previously approved plans for the subject site; and

WHEREAS, the applicant now proposes a home with a floor area of 3,109 sq. ft., (0.32 FAR) and an open space ratio ("OSR") of 245 percent; the previously-approved plans reflected a home with a floor area of 2,943 sq. ft. (0.30 FAR) and an OSR of 253 percent; and

WHEREAS, the applicant notes that the proposed FAR and OSR are in compliance with the subject zoning district regulations; and

WHEREAS, at hearing, the Board directed the applicant to reduce the height of portions of the roof so as to reduce the degree of non-compliance; and

WHEREAS, in response, the applicant submitted revised plans reflecting a reduction in height for the majority of the home; and

WHEREAS, at hearing, the Board questioned whether the proposal, which would eliminate a number of trees from the site, is in compliance with ZR § 105-32 and the tree requirements of the Special Natural Area District; and

WHEREAS, in response, the applicant submitted revised drawings and a tree chart that reflect that the proposal includes 18 trees and 30 tree credits, which exceeds the 10 trees and 20 tree credits that are required; and

WHEREAS, finally, the applicant requests an elimination

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of the condition of the prior grant which does not permit bedrooms to be located in the cellar of the proposed home; and

WHEREAS, the Board notes that the previous grant approved a home with three levels, and that the applicant reduced the home to two levels in order to address the height waiver; and

WHEREAS, as a result, the applicant states that two bedrooms are now located in the cellar because the proposed home only has two levels; and

WHEREAS, accordingly, the Board finds the elimination of the condition prohibiting bedrooms in the cellar appropriate, pursuant to Department of Buildings (“DOB”) review; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 8, 2005, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the plans which do not comply with zoning regulations related to lot coverage and height, contrary to ZR §§ 105-33 and 23-661; *on condition* that all work shall substantially conform to drawings filed with this application and marked “Received December 11, 2009”-(11) sheets and “January 11, 2010”-(3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,109 sq. ft. (0.32 FAR); a maximum lot coverage of 22 percent; a maximum total height of 48’-7”; an open space ratio of 245 percent; a front yard with a depth of 10’-0”; a side yard with a width of 15 feet along the eastern lot line; a side yard with a depth of 101 feet along the western lot line; a rear yard with a depth of 20’-0”; and three parking spaces, as reflected on the BSA-approved plans;

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

THAT substantial construction shall be completed in accordance with the BSA-approved plans by February 2, 2014;

THAT 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. 500733646)

Adopted by the Board of Standards and Appeals, February 2, 2010.

16-36-BZ

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

SUBJECT – Application October 27, 2009 – Extension of Term (§11-411) for the continued operation of an existing Gasoline Service Station (*Gulf*) which expired on November

1, 2007; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue, southeast corner of the intersection between Westchester Avenue and White Plains Road, Block 3880, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for continued hearing.

111-71-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Erol Bayrdktar, lessee.

SUBJECT – Application December 15, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (*Shell*) which expired on October 28, 2009; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 185-25 North Conduit Avenue, north west corner of Springfield Boulevard, Block 13094, Lot p/o 63, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Cindy Bachan.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for decision, hearing closed.

35-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 103rd Street Realty LLC c/o Glenwood Management Corporation, owner.

SUBJECT – Application December 9, 2009 – Extension of Time to obtain a Certificate of Occupancy for a (UG16) contractors' establishment on the ground floor of a two-story building which expired on December 9, 2009. R7A zoning district.

PREMISES AFFECTED – 345-347 East 103rd Street, north side of East 103rd Street, between First and York Avenues, Block 1675, Lots 21 and 22, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: James Power.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for decision, hearing closed.

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DISMISSAL CALENDAR

184-07-BZ & 185-07-BZ

APPLICANT – NYC Board of Standards and Appeals
OWNER: Domenick Licata
SUBJECT – Dismissal for lack of prosecution of an application for a variance to allow a residential building, contrary to use regulations. M1-1 zoning district.
PREMISES AFFECTED – 32 Fountain Avenue, west side, between Atlantic Avenue and Wells Street, Block 4154, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeal, February 2, 2010.

255-08-BZ & 256-08-BZ

APPLICANT – NYC Board of Standards and Appeals
OWNER: Moustafa Gouda
SUBJECT – Dismissal for lack of prosecution of an application for a variance to allow residential buildings, contrary to lot area regulations. R7-2 zoning district.
PREMISES AFFECTED – 1994-1996 Madison Avenue, west side of Madison Avenue between East 127th and East 128th Streets, Block 1752, Lot 16, 116, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 10 A.M., for postponed, new dismissal calendar.

APPEALS CALENDAR

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 97th Avenue, Block 10007, Lot 108, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 10 A.M., for adjourned hearing.

252-09-A

APPLICANT – Marc A. Chiffert, P.E., for Gani Realty Corporation, owner.
SUBJECT – Application September 9, 2009 – Appeal challenging the NYC Fire Department determination that construction of a proposed building on a private street does not provide proper fire access for emergency vehicles. R8 zoning district.

PREMISES AFFECTED – 2788 Grand Concourse Boulevard, between Miriam Street and East 197th Street, Block 3304, Lot 103 & 171, Borough of Bronx.

COMMUNITY BOARD #15BX

APPEARANCES –

For Applicant: Marc A. Chiffert.

For Opposition: Anthony Scaduto of Fire Department, Robert Sweeney and Julian Bazel.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 9, 2010, at 10 A.M., for decision, hearing closed.

265-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Incorporated, owner; John Strong, lessee.
SUBJECT – Application September 15, 2009 – Reconstruction and enlargement of an existing single family home and the upgrade of a private disposal system located within the bed of a mapped street, contrary to General City Law Section 35 and Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 165 Ocean Avenue, east side of Ocean Avenue, 130' south of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 10 A.M., for adjourned hearing.

306-09-A

APPLICANT – New York City Department of Buildings
OWNER – Luis Cuji
SUBJECT – Application November 9, 2009 – Appeal seeking to revoke the Certificate of Occupancy for failure to comply with provisions of the Zoning Resolution, Building Code and Multiple Dwelling Law. R5 Zoning district.
PREMISES AFFECTED – 37-48 60th Street, West side of 60th Street 38th and 37th Avenues. Block 1214, Lot 84, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Egnatios-Beene.

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For Opposition: Richard Soleymanzadeh.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for continued hearing.

312-09-A thru 323-09A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 340 CS Holdings, LLC, owner.

SUBJECT – Application November 24, 2009 – Appeal seeking a common law vested right to complete construction commenced under the prior R6/C1-3 zoning district. R6A /C2-4 & R6B zoning district.

PREMISES AFFECTED – 340 Court Street, 283-291 Union Street, 292-298 Sackett Street, Block 339, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Gary Tarnoff.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 2, 2010
1:30 P.M.**

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

ZONING CALENDAR

246-09-BZ

CEQR #10-BSA-016K

APPLICANT – Jordan Most of Sheldon Lobel, P.C., for Louisiana Purchase, LLC, owner.

SUBJECT – Application August 21, 2009 – Variance (§72-21) to allow for the construction of a four story assisted living facility (*Brooklyn Boulevard ALP*) contrary to floor area, dwelling units and parking regulations (§§ 23-141/62-321, 23-22, 25-23). R5 district.

PREMISES AFFECTED – 636 Louisiana Avenue, western side of Louisiana Avenue at its intersection with Twin Pines Drives, Block 8235, Lot 140, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 29, 2009, acting on Department of Buildings Application No. 320123914, reads in pertinent part:

- “1. 23-141(d) ZR Maximum Floor Area Ratio permitted is 1.25; proposed FAR 62-321 ZR exceeds allowable.
2. 23-22 ZR Proposed number of dwelling units exceeds allowable density.
3. 25-23 ZR Proposed number of parking spaces does not meet minimum required quantity;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R5 zoning district, a proposed four-story 174-unit assisted living facility which does not comply with zoning regulations for floor area ratio (FAR), number of dwelling units, and parking, and is contrary to ZR §§ 23-141, 62-321, 23-22, and 25-23; and

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in the *City Record*, with a continued hearing on January 12, 2010, and then to decision on February 2, 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 18, Brooklyn, recommends approval of this application; and

WHEREAS, New York State Senator John L. Sampson provided testimony in support of this application; and

WHEREAS, certain community members provided testimony in support of this application; and

WHEREAS, the subject site is located on the west side of Louisiana Avenue, between Twin Pines Drive and Vandalia Avenue, within an R5 zoning district; and

WHEREAS, the subject lot has 260 feet of frontage on Louisiana Avenue, a depth ranging from 297 feet to 308 feet, and a total lot area of 78,818 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-story assisted living facility (Use Group 2) in accordance with the New York State Assisted Living Program (“ALP”); and

WHEREAS, the proposed building will have the following complying parameters: 40,626 sq. ft. of open space; a lot coverage of 48.5 percent; a total height of 40 feet; a side yard with a width of 15’-0” along the northern lot line; a side yard with a width of approximately 53’-0” along the southern lot line; a front yard with a depth of 10’-0”; a rear yard with a depth of approximately 30’-0”; and one loading berth; and

WHEREAS, however, the applicant proposes to provide

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a floor area of 118,275 sq. ft. (98,523 sq. ft. is the maximum permitted), an FAR of 1.50 (the maximum FAR is 1.25), 174 dwelling units (130 is the maximum permitted), and 54 parking spaces (148 is the minimum required); and

WHEREAS, the applicant states that the proposed building will be occupied by: (1) a lobby, multi-purpose recreation room, library/computer room, television room, beauty/make-up room, arts and crafts room, dining room, chapel, kitchens, administrative offices, and storage space on the first floor; (2) medical offices and 57 dwelling units on the second floor; (3) 60 dwelling units on the third floor; and (4) 57 dwelling units on the fourth floor; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the site's soil has a poor load-bearing capacity; and (2) there is a high water table at the site; and

WHEREAS, as to the load-bearing capacity of the soil, the applicant submitted a report from its engineer stating that soil boring tests reflect soil rated at 11-65 to a depth between 20 and 25 feet; and

WHEREAS, the applicant states that 11-65 soils have the poorest load bearing capacity; and

WHEREAS, as to the water table, the applicant represents that the water table was found to be between ten and 11 feet below grade; and

WHEREAS, the applicant submitted boring tests to substantiate this assertion; and

WHEREAS, the applicant represents that the effect of these conditions is that a cellar is not feasible; and

WHEREAS, specifically, the applicant represents that the construction of a cellar is costly and would require special safety measures and that, even without a cellar, the noted conditions result in the need for a more expensive pile foundation; and

WHEREAS, the applicant represents that the cellar level is essential to the development of a viable assisted living facility because it houses many of the required services and ancillary uses; and

WHEREAS, accordingly, because a cellar cannot be provided, a number of service related uses necessary for the operation of the assisted living facility, which could otherwise be located underground and would not contribute to the floor area, must be accommodated on the first floor; and

WHEREAS, the applicant represents that the inability to locate any essential aspects of the assisted living facility below grade results in the need for the floor area waiver; and

WHEREAS, the applicant notes that if the subject site qualified as a community facility use, it would be eligible for a City Planning special permit pursuant to ZR § 74-902, which allows Use Group 3 nursing care facilities to reach an FAR of 2.0 in an R5 zoning district; and

WHEREAS, the applicant states that the New York State Department of Health ("DOH") regulates assisted living facilities that are eligible to receive Medicaid funds, and requires that the appropriateness of ALP services be determined by initial and periodic reassessments provided by the ALP; and

WHEREAS, the applicant submitted a letter from DOH reflecting that the proposed assisted living facility has received approval from DOH for 176 ALP beds, to be accommodated in 174 dwelling units; and

WHEREAS, the applicant states that the lack of a full-size kitchen and the provision of substantial common areas in assisted living facilities leads to the creation of smaller units and a higher unit density than would otherwise be permitted in typical multi-family housing; and

WHEREAS, the applicant further states that assisted living facilities are dominated by studios and one-bedroom units, and that there is virtually no market for two-bedroom units due to the nature of the use; and

WHEREAS, the applicant represents that every assisted living facility requires the same support service infrastructure, including a kitchen, dining room, recreational space, lounge space, chapel, laundry, salon, staff office space, and medical treatment rooms; and

WHEREAS, in support of this statement, the applicant submitted floor plans for a similar assisted living facility located in Queens (the "Boulevard ALP"), which reflected that the Boulevard ALP devoted a comparable amount of square footage per floor to essential service space as the proposed building; and

WHEREAS, specifically, the floor plans submitted by the applicant reflect that the Boulevard ALP devotes 25.6 percent of square footage per floor to essential service space and the proposed assisted living facility would devote 26.2 percent of square footage to essential service space; and

WHEREAS, the applicant identified another ALP, the Regency of Borough Park, as also being comparable but noted that, as a conversion of an existing building, it faced certain design limitations, which may not be present in new construction; and

WHEREAS, the applicant states that the proposed 174 dwelling units are required to offset the cost of building this infrastructure, and that the R5 bulk provisions constrain the applicant from devoting additional floor area to the dwelling units; and

WHEREAS, the applicant submitted plans reflecting that the proposed units comply with the Zoning Resolution requirements for minimum unit size, as well as New York State Department of Social Services and DOH regulations; and

WHEREAS, the applicant states that the proposed parking waiver is necessary because providing the required 148 parking spaces would dramatically alter the unit count or configuration of the proposed assisted living facility, creating either fewer beds or many more two-bedroom units, which would make the project financially infeasible; and

WHEREAS, the applicant represents that the proposed 54 spaces will provide ample parking for the proposed building because the residents of an assisted living facility are generally facility bound and do not own automobiles or generate any vehicular or transit trips; and

WHEREAS, the applicant states that the move to the assisted living facility involves a transition for automobile driving tenants from car ownership to non-car ownership; and

WHEREAS, the applicant notes that at the Boulevard

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ALP, which provides 239 beds in 201 units and 140 parking spaces, approximately 26 of the parking spaces are used on a regular basis by staff and visitors; and

WHEREAS the applicant represents that no more than three spaces at the Boulevard ALP have ever been allocated to residents who own automobiles, and none of those three were able to drive; and

WHEREAS, the applicant notes that the proposed 54 parking spaces would comply with the parking requirements for a non-profit residence for the elderly, pursuant to ZR § 25-25; and

WHEREAS, the applicant represents that although the program of the proposed assisted living facility will operate similar to a non-profit residence for the elderly, the owner of the proposed facility is not a non-profit and therefore does not qualify for the increased FAR and reduced parking that would otherwise be available; and

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

WHEREAS, the applicant provided a financial analysis for (1) an as-of-right residential building; (2) an as-of-right ALP building with a cellar; (3) an as-of-right ALP building without a cellar; and (4) the proposed building; and

WHEREAS, the applicant concluded that the as-of-right scenarios would not result in a reasonable return due to the unique physical conditions of the site, but that the proposed assisted living facility would realize a reasonable return and has submitted evidence in support of that assertion; 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 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 submitted a radius diagram reflecting that the subject site is surrounded by a four-story adult care facility to the south, a 17-story residential building across Louisiana Avenue to the east, and a three-story townhouse condominium development to the north; and

WHEREAS, the radius diagram also reflected that the rear of the subject site abuts the Fresh Creek Basin wetlands, and therefore there are no neighbors to the rear of the proposed building; and

WHEREAS, the applicant notes that the FAR waiver is only necessary due to the inability to locate essential floor area in the cellar, and that the envelope of the proposed building otherwise complies with the bulk requirements of the subject R5 zoning district; and

WHEREAS, at hearing, the Board questioned what effect the Pierhead and Bulkhead line that crosses a portion of the

property has on the proposed development; and

WHEREAS, in response, the applicant submitted a letter from the Department of Buildings ("DOB") stating that it has no objection to considering any land above water that projects seaward of the bulkhead up to the shore line as part of the upland lot which can be developed, provided the applicant submit a survey showing the elevations of all upland areas; and

WHEREAS, the applicant submitted a survey confirming the upland elevations of the site; and

WHEREAS, the applicant submitted evidence indicating that the subject site is not within the Tidal Wetland Boundary, is not within the definition of tidal wetlands as defined in Local Law 21-2009, and is not under New York State Department of Environmental Conservation jurisdiction; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique subsurface soil conditions; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA136K, dated August 20, 2009; 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

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required findings under ZR § 72-21 and grants a variance to permit, on a site within an R5 zoning district, a four-story 174-unit assisted living facility which does not comply with zoning regulations for FAR, number of dwelling units, and parking, and is contrary to ZR §§ 23-141, 62-321, 23-22, 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 January 29, 2010"- (18) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 118,275 sq. ft.; a maximum FAR of 1.50; 40,626 sq. ft. of open space; a lot coverage of 48.5 percent; a total height of 40 feet; a side yard with a width of 15'-0" along the northern lot line; a side yard with a width of approximately 53'-0" along the southern lot line; a front yard with a depth of 10'-0"; a rear yard with a depth of approximately 30'-0"; 174 dwelling units; 54 parking spaces; and one loading berth;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 2, 2010.

309-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 147th Avenue Building Corporation, owner.

SUBJECT – Application December 19, 2008 – Variance (§72-21) for the construction of a three story, two-family home, contrary to front yards (§23-45) and floor area (§23-141). R4-1 zoning district.

PREMISES AFFECTED – 1717 Pitman Avenue, northwest corner of intersection of Digney Avenue and Pitman Avenue, Block 5049, Lot 21, 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 March 2, 2010, at 1:30 P.M., for decision, hearing closed.

44-09-BZ

APPLICANT – Philip L. Rampulla, for Tony Chrampanis, owner.

SUBJECT – Application March 11, 2009 – Variance (§72-21) to allow for a two-story commercial building (UG 6) with accessory parking, contrary to use regulations (§22-00). R3-1 district.

PREMISES AFFECTED – 2175 Richmond Avenue, Eastside of Richmond Avenue 39.80' south of Saxon Avenue, Block 2361, Lot 12(tent), 14, 17, 22, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 1:30 P.M., for adjourned hearing.

182-09-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Mita, Inc., owner.

SUBJECT – Application June 4, 2009 – Variance (§72-21) to legalize the existing UG 3 novitiate and UG 4 house of worship (*Congregation Mita*), contrary to §§ 24-35 (side yard) and 24-36 (rear yard). R7-2 zoning district.

PREMISES AFFECTED – 612 West 180th Street, 180th Street between Wadsworth and St. Nicholas Avenues, Block 2162, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Todd Dale and Carlo Nuzzi.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 2, 2010, at 1:30 P.M., for decision, hearing closed.

253-09-BZ

APPLICANT – MetroPCS New York, LLC, for Jangla Realty Corp., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application September 4, 2009 – Special Permit (§73-30) to install public utility wireless telecommunications facility on roof of existing building. R4 zoning district.

PREMISES AFFECTED – 53-00 65th Place, southwest corner of 53rd Avenue and 65th Place, Block 2374, Lot 160, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: John Coughlin and Robert Thoms.

For Opposition: Susan Kohl and Walter Sanchez.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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ACTION OF THE BOARD – Laid over to February 23, 2010, at 1:30 P.M., for decision, hearing closed.

Adjourned: P.M.

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radoncic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 1:30 P.M., for continued hearing.

272-09-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Bob Roberts, owner; The Fitness Place Astoria N.Y. Inc., lessee.

SUBJECT – Application September 24, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Lucille Roberts*) on the cellar, first and second floors in an existing two-story building. C4-2 zoning district.

PREMISES AFFECTED – 32-62 Steinway Street, north side, 281' east of 34th Avenue, Block 656, Lot 61, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Jeffrey Chester.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 1:30 P.M., for continued hearing.

294-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Shree Ram FLP, owner.

SUBJECT – Application October 16, 2009 – Special Permit (§73-125) to legalize a one-story ambulatory diagnostic and treatment health care facility. R3A zoning district.

PREMISES AFFECTED – 3768 Richmond Avenue, west side of Richmond Avenue, 200' south of the intersection with Petrus Avenue, Block 5595, Lot 11, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to February 23, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

BULLETIN

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February 17, 2010

DIRECTORY

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DOCKET

New Case Filed Up to February 9, 2010

19-10-BZ

100 Oak Point Avenue, south of the Bruckner Expressway, west of Barry Street and Oak Point Avenue., Block 2604, Lot(s) 174, Borough of **Bronx, Community Board: 2.** (Special Permit 73-482) to permit accessory group parking facility. M3-1 district.

20-10-BZ

1470 Third Avenue, North west corner of East 83rd Street & Third Avenue., Block 1512, Lot(s) 33, Borough of **Manhattan, Community Board: 8.** Special Permit (73-36) to allow the operation of a physical culture establishment. C1-9 district.

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

CALENDAR

MARCH 2, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 2, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

224-07-BZ thru 226-07-BZ

APPLICANT – NYC Board of Standards and Appeals
OWNER: Marvin Welz
SUBJECT – Application for dismissal for lack of prosecution.
PREMISES AFFECTED – 1940/1942/1946 54th Street, south side of 54th Street, between 19th and 20th Avenue, Block 5495, Lot 48, Borough of Brooklyn.
COMMUNITY BOARD #12BK

APPEALS CALENDAR

303-09-BZY

APPLICANT – Ray Chen, for 517 53rd Street Inc, owner.
SUBJECT – Application October 30, 2009 – Extension of time (§11-332) to complete construction of an enlargement commenced prior to the text amendment of September 30, 2009. C4-3 zoning district
PREMISES AFFECTED – 517 53rd Street, between 5th and 6th Avenue, Block 608, Lot 69, Borough of Brooklyn.
COMMUNITY BOARD #7BK

334-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Gregory Pfeifer, lessee.
SUBJECT – Application December 30, 2009 – Reconstruction and enlargement of a single family home not fronting on a mapped street contrary to General City Law Section 36. Upgrade of private disposal system in the bed of a service road contrary to Department of Buildings Policy. R4 zoning district.
PREMISES AFFECTED – 132 Ocean Avenue, west side Ocean Avenue, 110' south mapped 8th Avenue, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

MARCH 2, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 2, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

239-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for YHA New York Inc., owner.
SUBJECT – Application October 24, 2007 – Variance (§72-21) to permit a Use Group 4 community youth center in the cellar and a portion of the first floor in a proposed three-story and penthouse mixed-use building. The proposal is contrary to ZR §24-35 (side yard). R5 district.
PREMISES AFFECTED – 57-38 Waldron Street, south side of Waldron Street, 43.71' west of 108th Street, east of Otis Avenue, Block 1959, Lot 27, Borough of Queens.
COMMUNITY BOARD #4Q

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 (ZR §72-21) to allow for a seven story mixed use building contrary to use regulations. (ZR §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

282-09-BZ

APPLICANT – Steven Williams, P.E., for KC&V Realty, LLC, owner; Richard Ortiz, lessee.
SUBJECT – Application October 7, 2009 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Ritchie's Gym*) on the third floor of a four-story commercial building. C4-3 zoning district.
PREMISES AFFECTED – 54-19 Myrtle Avenue, northeast corner of Myrtle Avenue, intersection of Palmetto Street and Myrtle Avenue, Block 3445, Lot 9, Borough of Queens.
COMMUNITY BOARD #5Q

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 9, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

405-01-BZ

APPLICANT – Eric Palatnik, P.C., for United Talmudical Academy, owner.

SUBJECT – Application November 24, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a five-story school and synagogue (UG 3 & 4) which expired on November 12, 2006. R5/C2-3 zoning district.

PREMISES AFFECTED – 1275 36th Street, between Clara Street and Louisa Street, Block 5310, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction of a five-story school and synagogue; and

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in *The City Record*, and then to decision on February 9, 2010; and

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

WHEREAS, Community Board 12, Brooklyn, states that it has no objection to this application; and

WHEREAS, the site is located on the southeast corner of the intersection of Clara Street and 36th Street, within a C2-3 (R5) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 12, 2002 when, under the subject calendar number, the Board granted a variance to permit the construction of a five-story school building and synagogue (Use Groups 3 and 4); and

WHEREAS, substantial construction was to be completed by November 12, 2006, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed due to financing issues; and

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

WHEREAS, at hearing, the Board inquired about the current use of the site; and

WHEREAS, in response, the applicant stated that the existing building has recently been vacated and the synagogue is now prepared to demolish the existing building in anticipation of construction; and

WHEREAS, additionally, the Board asked the applicant to confirm whether the programmatic needs and building requirements have changed in the intervening years; and

WHEREAS, the applicant represents that the synagogue's needs remain as originally presented and the plans to accommodate those needs are unchanged; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 12, 2002, so that as amended this portion of the resolution shall read: "to grant an extension of time to complete construction for a term of four years, to expire on February 9, 2014; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction shall be completed by February 9, 2014;

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. 301234251)

Adopted by the Board of Standards and Appeals February 9, 2010.

26-02-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; A & A Automotive Corporation, lessee.

SUBJECT – Application November 23, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (*Mobil*) which expires on January 28, 2010. C1-2/R3X zoning district.

PREMISES AFFECTED – 1680 Richmond Avenue, north west corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

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COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for an automobile service station (Use Group 16) with accessory uses; and

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in *The City Record*, and then to decision on February 9, 2010; and

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

WHEREAS, the site is located on the northwest corner of the intersection at Richmond Avenue and Victory Boulevard, within a C1-2 (R3X) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 6, 1970 when, under BSA Cal. No. 141-69-BZ, the Board granted a variance authorizing the premises to be occupied by an automotive service station with accessory uses for a term of fifteen years; and

WHEREAS, on December 10, 2002, under the subject calendar number, the variance was reinstated to permit the legalization of the existing automotive service station for a term of ten years from the date of the grant, to expire December 10, 2012; a condition of the grant was that a new certificate of occupancy be obtained by December 10, 2006; and

WHEREAS, on January 13, 2009, the Board granted an extension of time to obtain a certificate of occupancy and amended the grant to permit the conversion of a portion of the service building to an accessory convenience store, and to permit other minor site modifications; and

WHEREAS, most recently, on July 28, 2009, the Board granted an extension of time to obtain a certificate of occupancy, to expire on January 28, 2010; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated December 10, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to February 9, 2011; *on condition* that the use and operation of the site shall comply with BSA-approved

plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by February 9, 2011;

THAT all signage shall comply with C1 zoning district regulations;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 510027515)

Adopted by the Board of Standards and Appeals February 9, 2010.

265-08-BZ

APPLICANT – Richard Bass, Herrick, Feinstein, LLP, for 70 Wyckoff LLC, owner.

SUBJECT – Application December 8, 2009 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the legalization of residential units in a manufacturing building which expired on December 23, 2009. M1-1 zoning district.

PREMISES AFFECTED – 70 Wyckoff Avenue, south east corner of Wyckoff Avenue and Suydam Street, Block 3221, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Richard Bass.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a four-story residential building; and

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in *The City Record*, and then to decision on February 9, 2010; and

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

WHEREAS, the site is located on the southeast corner of Wyckoff Avenue and Suydam Street, within an M1-1 zoning

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district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 23, 2009 when, under the subject calendar number, the Board granted a variance to legalize the residential conversion of an existing four-story manufacturing building; a condition of the grant was that a new certificate of occupancy be obtained by December 23, 2009; and

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

WHEREAS, the applicant represents that delays resulting from the need to resolve Department of Buildings (“DOB”) objections, obtain permits to implement DOB requirements, and to complete the required physical changes prevented the owner from obtaining a new certificate of occupancy within the prescribed time frame; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated June 23, 2009, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to August 9, 2011; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by August 9, 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. 310199969)

Adopted by the Board of Standards and Appeals February 9, 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 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 10 A.M., for continued hearing.

297-99-BZ

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Company, LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application January 15, 2010 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (*Mobil*) which expires on February 12, 2010. C2-2/R6-B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Cindy Bachan.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 2, 2010, at 10 A.M., for decision, hearing closed.

369-03-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 99-01 Queens Boulevard LLC, owner; TSI Rego Park LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application December 3, 2009 – Amendment to a variance (§72-21) for a physical culture establishment (*New York Sports Club*) to change in the owner/operator, decrease floor area, modify days and hours of operation, and eliminate parking condition. C1-2/R7-1 zoning district.

PREMISES AFFECTED – 99-01 Queens Boulevard, Northwest corner of Queens Boulevard and 67th Street, Block 2118, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 10 A.M., for continued hearing.

78-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Young Israel of New York Hyde Park, owner.

SUBJECT – Application January 25, 2010 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for proposed expansion of an existing synagogue which expired on September 20, 2009; Waiver of the Rules. R-2 zoning district.

PREMISES AFFECTED – 264-15 77th Avenue, southwest corner of 265th Street and 77th Avenue, Block 8538, Lot 29

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and 31, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 2, 2010, at 10 A.M., for decision, hearing closed.

DISMISSAL CALENDAR

255-08-BZ & 256-08-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER: Moustafa Gouda

SUBJECT – Dismissal for lack of prosecution of an application for a variance to allow residential buildings, contrary to lot area regulations. R7-2 zoning district.

PREMISES AFFECTED – 1994-1996 Madison Avenue, west side of Madison Avenue between East 127th and East 128th Streets, Block 1752, Lot 16, 116, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Trevis Savage and Gouranga Kundu.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, February 9, 2010.

APPEALS CALENDAR

249-09-A

APPLICANT – Bryan Cave LLP, for 363 Lafayette Street, LLC, owner.

SUBJECT – Application August 27, 2009 – Appeal challenging Department of Building's determination that the permit for the subject premises expired and became invalid because the permitted work was not commenced within 12 months from the date of issuance, per Title 28, §28-105.9 of the Administrative Code.

PREMISES AFFECTED – 363 Lafayette Street, (371 Lafayette Street, 21 Great Jones Street) east side of Lafayette Street, between Bond and Great Jones Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, February 9, 2010.

257-09-BZY thru 258-09-BZY

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.
SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning District. R5 Zoning District.

PREMISES AFFECTED – 88-36 & 88-38 144th Street, 86.63' from corner of 88th Road and 144th Street, Block 9683, Lot 15 & 16, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga Kundu.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a three-story residential building currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on December 8, 2009, after due notice by publication in *The City Record*, with a continued hearing on January 26, 2010, and then to decision on February 9, 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, the subject site is located on the west side of 144th Street, between 88th Road and 89th Avenue, in an R5 zoning district; and

WHEREAS, the subject site has approximately 36'-8" of frontage along 144th Street and a depth of approximately 103'-0"; and

WHEREAS, the site is proposed to be developed with a three-story residential building (the "Building"); and

WHEREAS, the development complies with the former R6 zoning district parameters; and

WHEREAS, however, on September 10, 2007 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Jamaica Plan Rezoning, which rezoned the site from R6 to R5; and

WHEREAS, on May 15, 2007, New Building Permit Nos. 402531079-01-NB and 402531060-01-NB (hereinafter,

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the “New Building Permits”) were issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

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

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

WHEREAS, for a “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the

relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated January 21, 2010, DOB stated that the New Building Permits were lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and were timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of September 10, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permits and until September 10, 2009, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the footings and foundation; 100 percent of the shoring; 100 percent of excavation and backfill; and 100 percent of the drywell and detention tank; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the New Building Permits; a breakdown of the construction costs by line item and percent complete; copies of cancelled checks; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before September 10, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$35,998, or approximately 12 percent of the \$311,998 cost to complete; and

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WHEREAS, as noted, the applicant has submitted copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332; and

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit Nos. 402531079-01-NB and 402531060-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on February 9, 2012.

Adopted by the Board of Standards and Appeals, February 9, 2010.

259-09-BZY thru 261-09-BZY

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.
SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning district. R5 Zoning District.

PREMISES AFFECTED – 139-48 88th Road, 88-30 144th Street and 88-34 144th Street, corner of 88th Road and 144th Street, Block 9683, Lot 13 & 14, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a three-story residential building currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on December 8, 2009, after due notice by publication in *The City Record*, with a continued hearing on January 26, 2010, and then to decision on February 9, 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, the subject site is located on the southeast corner of 144th Street and 88th Road, in an R5 zoning district; and

WHEREAS, the subject site has approximately 86’-8” of frontage along 144th Street and a depth of approximately 42’-3”;

WHEREAS, the site is proposed to be developed with a three-story residential building (the “Building”); and

WHEREAS, the development complies with the former R6 zoning district parameters; and

WHEREAS, however, on September 10, 2007 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Jamaica Plan Rezoning, which rezoned the site from R6 to R5; and

WHEREAS, on May 11, 2007, May 14, 2007 and May 15, 2007, New Building Permit Nos. 402531042-01-NB, 402531051-01-NB and 402531033-01-NB (hereinafter, the “New Building Permits”) were issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

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

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

WHEREAS, for a “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two

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terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated January 21, 2010, DOB stated that the New Building Permits were lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and were timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of September 10, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permits and until September 10, 2009, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the footings and foundation;

100 percent of the shoring; 100 percent of excavation and backfill; and 100 percent of the drywell and detention tank; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the New Building Permits; a breakdown of the construction costs by line item and percent complete; copies of cancelled checks; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before September 10, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$54,000, or approximately 14 percent of the \$375,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332; and

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit Nos. 402531042-01-NB, 402531051-01-NB and 402531033-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on February 9, 2012.

Adopted by the Board of Standards and Appeals, February 9, 2010.

265-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Incorporated, owner; John Strong, lessee.

SUBJECT – Application September 15, 2009 – Reconstruction and enlargement of an existing single family home and the upgrade of a private disposal system located within the bed of a mapped street, contrary to General City

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Law Section 35 and Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 165 Ocean Avenue, east side of Ocean Avenue, 130’ south of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 9, 2009, acting on Department of Buildings Application No. 420046854, reads in pertinent part:

“A1 – The existing building to be reconstructed and altered lies within the bed of a mapped street contrary to General City Law, Article 3, Section 35; and

A2– The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings policy;”
and

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in the *City Record*, and then to continued hearing on February 2, 2010 with closure and decision on the same date; and

WHEREAS, by letter dated February 1, 2010, the Fire Department states that it has reviewed the subject proposal and has no objections provided the building is fully sprinklered; and

WHEREAS, by letter dated October 1, 2009, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 19, 2009, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 9, 2009, acting on Department of Buildings Application No. 420046854, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received January 21, 2010”– one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the home 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, February 9, 2010.

300-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Seanna & John Tobin, lessees.

SUBJECT – Application October 29, 2009 – Reconstruction and enlargement of an existing single family dwelling and upgrade of an existing non conforming private disposal system located in the bed of a mapped street, contrary to General City Law Section 35 and Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 635 Highland Place, east side Highland Place, partially in the bed of mapped Beach 202nd Street, Block 16350, Lot p/o300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 22, 2009, acting on Department of Buildings Application No. 420078659, reads in pertinent part:

“A1 – The existing building to be reconstructed and altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

A-2 – The proposed upgraded private disposal system is in the bed of a mapped street contrary to General City Law Article 3, Section 35 and Department of Buildings Policy; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in the *City Record*, with closure and decision on the same date;

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and

WHEREAS, by letter dated November 13, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated December 1, 2009, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated February 5, 2010, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 22, 2009, acting on Department of Buildings Application No. 420078659, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received February 9, 2010" – one(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, February 9, 2010.

310-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Lorraine & Terence Crossan, lessees.

SUBJECT – Application November 23, 2009 – Proposed reconstruction and enlargement of an existing single family home located within the bed of a mapped street, contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 14 State Road, north side of Rockaway Point Boulevard, Block 16350, Lot p/o 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated November 18, 2009, acting on Department of Buildings Application No. 420059796, reads in pertinent part:

“A1 – The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in the *City Record*, with closure and decision on the same date; and

WHEREAS, by letter dated December 10, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated December 9, 2009, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated February 5, 2010, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated November 18, 2009, acting on Department of Buildings Application No. 420059796, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received November 23, 2009" – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, February 9, 2010.

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REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 9, 2010
1:30 P.M.

199-09-A thru 213-09-A

APPLICANT – Eric Palatnik, P.C., for Gino Savo, owner.
SUBJECT – Application June 29, 2009 – Proposed construction of 15, two-story, one family homes not fronting on a mapped street, contrary to General City Law Section 36. R3A /R3-2 Zoning District.

PREMISES AFFECTED – 165, 161, 159, 155, 153, 151, 149, 145, 143, 141, 137, 135, 131, 129, 127, Roswell Avenue, Block 2641, Lot 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for decision, hearing closed.

217-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 514-516 East 6th Street, owner.

SUBJECT – Application July 7, 2009 – An appeal seeking to vary the applicable provisions under the Multiple Dwelling Law as it applies to the enlargement of non-fireproof tenement buildings. R7-2 zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of East 6th Street, between Avenue A and B, Block 401, Lots 17 and 18, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin Mitzner.

For Opposition: Harvey Epstein.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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

ZONING CALENDAR

195-07-BZ

CEQR #08-BSA-011M

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance (§72-21) to allow hotel and retail uses below the floor level of the second story, contrary to use regulations (§42-14(d)(2)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Randall Minor.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 29, 2009, acting on Department of Buildings Application No. 104557221, reads in pertinent part:

“ZR 42-14(D)(2)(B) & (3)(B). Proposed UG 5 & 6 uses below level of second story (i.e. 1st floor & 2 cellar levels) are not permitted in M1-5B ZD;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5B zoning district within the NoHo Historic District, the construction of a seven-story 50-room hotel building with hotel and retail uses below the level of the second floor, which is contrary to ZR § 42-14; and

WHEREAS, a public hearing was held on this application on August 11, 2009, after due notice by publication in the *City Record*, with continued hearings on October 6, 2009, and October 27, 2009, and then to decision on February 9, 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 2, Manhattan, recommends approval of the application, with the following

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conditions: (1) the second floor courtyard be a primarily planted area not to be used for food and drink service; (2) the physical culture establishment in the cellar not obtain a liquor license; (3) the roof space not obtain a liquor license and not be used for food or beverage service; and (4) no amplified music be located in exterior spaces; and

WHEREAS, the site is located on the northwest corner of the intersection of Bond Street and Lafayette Street, in an M1-5B zoning district within the NoHo Historic District; and

WHEREAS, the site has 60'-3½" of frontage along Bond Street, 100'-6¼" of frontage along Lafayette Street, and a total lot area of 6,471 sq. ft.; and

WHEREAS, the site is occupied by a two-story and mezzanine building, a one-story structure formerly used as an automotive service station, parking, and an advertising sign, all of which will be demolished or replaced; and

WHEREAS, the proposed building will have a floor area of 31,910 sq. ft. (4.93 FAR), an additional 15,259 sq. ft. of floor space located at the cellar and sub-cellar levels, a wall height of 69'-2", and a total height of 80'-3"; and

WHEREAS, the proposal provides for the following uses: (1) a spa/fitness center and accessory meeting rooms to the hotel use at the sub-cellar level; (2) accessory storage, laundry, offices, and mechanical use at the cellar level; (3) an eating and drinking establishment without entertainment (Use Group 6C) and a hotel lobby at the first floor; (4) a hotel lounge and rooms at the second floor; (5) hotel rooms at the third through sixth floors; and (6) a mechanical room and hotel rooms at the seventh floor; and

WHEREAS, the applicant represents that the proposed spa/fitness center at the sub-cellar level will initially be an amenity only for hotel guests, but that it will eventually be made available to the public through a separate entrance on Lafayette Street, at which point an application will be made pursuant to ZR § 73-36 to operate a physical culture establishment on the site; and

WHEREAS, the applicant states that the proposed Use Group 5 hotel use is permitted as-of-right at and above the level of the second floor, but that the subject variance is required for the proposed hotel and retail uses below the second floor, which are prohibited pursuant to ZR § 42-14; 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) poor subsurface soil conditions; (2) the site is adjacent to the Lexington Avenue subway line; and (3) the historic use of the site as an automotive service station has resulted in soil contamination; and

WHEREAS, as to the subsurface soil conditions, the applicant states that the site is burdened by poor soil conditions which require additional excavation, foundation, and underpinning measures; and

WHEREAS, specifically, the applicant submitted a report from its engineering consultant (the "Subsurface Report") stating that excavation on the site to a depth of 20 feet will be necessary because soil borings indicate the presence of uncontrolled fill and loose sand to that depth throughout much of the site; and

WHEREAS, the applicant represents that even if the owner constructed a building with only one cellar, it would still have to remove the unstable material below the single cellar level from 12 to 20 feet below grade in order to provide a sound subsurface base for the mat foundation; and

WHEREAS, the applicant represents that since the site must be excavated to a depth of 20 feet even for a single cellar level, it is prudent to complete the small amount of additional excavation necessary to provide a sub-cellar level and recoup some of the foundation costs through the additional floor space; and

WHEREAS, according to the Subsurface Report, excavating to a depth of 20 feet necessitates additional removal of fill and sand in the excavation, the installation of deep underpinning to carry the loads of several adjacent buildings, and an excavation support system to brace the adjacent subway; and

WHEREAS, as to the adjacency to the subway, the applicant represents that the eastern boundary of the site coincides with the Lexington Avenue subway line below grade; and

WHEREAS, accordingly, the applicant states that the New York City Transit Authority ("NYCTA") has requirements for the design and construction of an excavation support system at this location; and

WHEREAS, specifically, the applicant states that a raker and waler system will have to be installed along with shoring to brace the adjacent subway in accordance with NYCTA design and performance guidelines; and

WHEREAS, additionally, the applicant represents that the NYCTA requires monitoring of the tunnel structure during foundation construction; and

WHEREAS, the Subsurface Report supports these assertions and documents the anticipated expenses of the noted supplemental measures; and

WHEREAS, as to the soil contamination, the applicant represents that remedial work will be required due to the industrial character of the historic uses on the lot; and

WHEREAS, the applicant states that three underground storage tanks associated with the former automotive service station located on the site were legally closed in 2006, and that the results of testing that was performed at that time confirmed the presence of elevated mercury and semi-volatile organic compound levels in the soil on the site; and

WHEREAS, the applicant submitted an environmental report and cost estimates documenting the expected testing and remediation of the soil, including the potential inclusion of a vapor barrier, due to its historic use as an automotive service station; and

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

WHEREAS, the applicant submitted a feasibility study that analyzed: (1) an as-of-right office development; (2) an as-of-right hotel development; and (3) the proposed hotel development; and

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WHEREAS, the applicant concluded that the as-of-right scenarios would not result in a reasonable return, due to the unique physical conditions of the site and the resulting premium construction costs, but that the proposed hotel building would realize a reasonable return and has submitted evidence in support of that assertion; and

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

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

WHEREAS, as to bulk, the applicant notes that the proposed 4.93 FAR complies with the maximum 5.0 FAR permitted for an as-of-right hotel building in the subject zoning district, and that no bulk waivers are requested; and

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

WHEREAS, the applicant notes that the proposed hotel use is permitted as-of-right at and above the second floor and that the subject variance is only necessary for the proposed hotel and retail uses located below the second floor; and

WHEREAS, the applicant states that the proposed hotel use, with ground floor retail, is consistent with the character of the area, which includes many other such uses; and

WHEREAS, in support of the above statements, the applicant submitted a 400-ft. radius diagram, showing the various uses in the immediate vicinity of the site; and

WHEREAS, specifically, the radius diagram showed that there are 13 eating and drinking establishments in the immediate vicinity of the site, including a restaurant located adjacent to the site, at 6 Bond Street, and a restaurant located one block from the site, at 9 Great Jones Street; and

WHEREAS, the radius diagram also reflects that there are several physical culture establishments in the vicinity of the site, including the Great Jones Spa located one block from the site; and

WHEREAS, as noted above, the applicant represents that the proposed spa/fitness center at the sub-cellar level will initially be an amenity only for hotel guests, but that it will eventually be made available to the public through a separate entrance on Lafayette Street, at which point an application will be made pursuant to ZR § 73-36 to operate a physical culture establishment on the site; and

WHEREAS, as to the Community Board's requested conditions, the applicant provided revised plans showing a landscaped area at the northwest portion of the second floor, and states that the operator will consider limiting the hours of operation and the activities of the outdoor seating area; and

WHEREAS, the Board notes that the applicant must comply with all relevant provisions of the Noise Code; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of Use Group 5 and 6 uses below the second floor will not impact nearby conforming uses; and

WHEREAS, the applicant received a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated December 7, 2009; 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 the result of the site's unique subsurface soil conditions; and

WHEREAS, the applicant asserts that the request to include uses which would be permitted above the first floor of the building on the first floor and below without any other waivers is the minimum variance; and

WHEREAS, the Board finds that this proposal is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site and to afford the owner relief; and

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA011M dated February 5, 2010; 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the EAS determined that there could be potential hazardous materials impacts during construction and occupancy of the proposed hotel due to historical land uses; 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 impacts; and

WHEREAS, the applicant has submitted a hazardous materials sampling protocol prepared by a qualified consultant and including a health and safety plan ("Sampling Protocol"), which has been approved by DEP, and the applicant proposes to test and identify any potential hazardous materials pursuant to the approved Sampling Protocol and, if such hazardous materials are found, to submit a hazardous materials remediation plan, including a

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health and safety plan, (as approved by DEP, the "Remediation Plan") for approval by DEP prior to the commencement of any construction or demolition activities at the site; and

WHEREAS, prior to the issuance of any building permit by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or other permit which permits soil disturbance, applicant proposes to obtain from DEP either: (A) a Notice of No Objection ("Notice of No Objection") upon the occurrence of the following: (i) applicant has completed the project-specific DEP approved Sampling Protocol to the satisfaction of DEP; and (ii) DEP has determined in writing that the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project, or (B) a Notice to Proceed ("Notice to Proceed") in the event that DEP has determined in writing that: (i) the project-specific Remediation Plan has been approved by DEP and (ii) the permit(s) for grading, excavation, foundation, alteration, building or other permit which permits soil disturbance or construction of the superstructure for the project facilitate the implementation of the DEP approved Remediation Plan; and

WHEREAS, prior to the issuance of any temporary or permanent Certificate of Occupancy by DOB, applicant proposes to obtain from DEP either: (A) a Notice of Satisfaction ("Notice of Satisfaction") in the event that DEP determines in writing that the DEP approved project-specific Remediation Plan has been completed to the satisfaction of DEP, or (B) a Notice of No Objection in the event that DEP determines in writing that the work has been completed as set forth in the project-specific DEP approved Sampling Protocol and the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, in an M1-5B zoning district within the NoHo Historic District, the construction of a seven-story 50-room hotel building with hotel and retail uses below the level of the second floor, which is contrary to ZR § 42-14, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 21, 2010"--ten (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the

proposed building: seven stories, a maximum floor area of 31,910 sq. ft. (4.93 FAR), with an additional 15,259 sq. ft. of floor space located at the cellar and sub-cellar levels, a wall height of 69'-2", and a total height of 80'-3";

THAT prior to the issuance of any building permit by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or other permit which permits soil disturbance, the applicant or successor shall obtain from DEP, as applicable, either a Notice of No Objection or a Notice to Proceed, and in the event a Notice to Proceed is obtained, a Notice of Satisfaction, and shall comply with all DEP requirements to obtain such notices;

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 No Objection, or Notice of Satisfaction;

THAT the use of the site shall comply with all relevant provisions of the Noise Code;

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

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

THAT construction shall 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, February 9, 2010.

235-09-BZ

CEQR #10-BSA-012Q

APPLICANT – Eric Palatnik, P.C., for Calvary Baptist Church of Jamaica, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) to permit the development of a five-story not-for-profit residence for the elderly (*Calvary Baptist Church*). Proposal is contrary to floor area and open space (§23-144), number of dwelling units (§23-221), height and setback (§23-631), side yards (§23-462 (a)), and parking (§25-23). R3-2 zoning district.

PREMISES AFFECTED – 162-25 112th Road, Guy Brewer Boulevard and 112th Road, Block 12183, Lot 35 (tent), Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

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THE RESOLUTION –

WHEREAS, decisions of the Queens Borough Commissioner, dated January 22, 2010, acting on Department of Buildings Application No. 420026670, reads in pertinent part:

- “1. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district exceeds the floor area ratio and open space ratio permitted by section ZR 23-144.
2. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district exceeds the max. number of dwelling units permitted by sect. 23-221.
3. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district exceeds the maximum aggregate width of walls on one side permitted by sect. ZR 23-463.
4. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district exceeds the height and setback permitted by sect. ZR 23-631.
5. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district does not provide the amount of parking required by sect. ZR 25-25;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, a proposed five-story non-profit residence for the elderly which does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”), number of dwelling units, aggregate width of walls, height and parking, and is contrary to ZR §§ 23-144, 23-221, 23-463, 23-631, and 25-25; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in the *City Record*, and then to decision on February 9, 2010; and

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

WHEREAS, this application is brought on behalf of the Calvary Baptist Church of Jamaica (the “Church”), a not-for-profit religious entity; and

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

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, New York City Council Member Thomas White, Jr. provided testimony in support of this application; and

WHEREAS, New York City Council Member Leroy Comrie provided testimony in support of this application; and

WHEREAS, New York State Senator Shirley L. Huntley provided testimony in support of this application; and

WHEREAS, New York State Senator Malcolm A. Smith provided testimony in support of this application; and

WHEREAS, the subject site is located on the northwest corner of 112th Road and Guy R. Brewer Boulevard, within an R3-2 zoning district; and

WHEREAS, the subject lot is irregularly shaped with 226 feet of frontage along Guy R. Brewer Boulevard, 95 feet of frontage along 112th Road, and a total lot area of approximately 25,732 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant notes that there is an active study at the Department of City Planning which is considering a rezoning of the surrounding area, including the subject site, to an R5B district; as proposed, the rezoning would reduce the degree of the requested waivers, as discussed in more detail below; and

WHEREAS, the applicant originally proposed a six-story, 67-unit building with a floor area of 79,999 sq. ft. (3.11 FAR), an OSR of 14.5 percent, a total height of 59’-8” , and which required additional waivers for front and side yards; and

WHEREAS, the applicant now proposes to construct a five-story 58-unit building with the following non-complying parameters: a floor area of 60,183 sq. ft. (24,445 sq. ft. is the maximum permitted); an FAR of 2.34 (the maximum permitted FAR is 0.95); an OSR of 23 percent (the minimum required OSR is 66.5 percent); 58 dwelling units (36 is the maximum permitted); a total height of 50’-0” (35’-0” is the maximum permitted); an aggregate wall width of 176’-5” along Guy Brewer Boulevard (125’-0” is the maximum permitted); and 16 parking spaces (20 is the minimum required); and

WHEREAS, the applicant states that the proposed building will be occupied by: (1) a lobby, support and social services rooms, a superintendent’s apartment, and five units on the first floor; (2) 13 units on the second through fifth floors; and (3) storage, a boiler room, and mechanical space in the cellar; and

WHEREAS, the applicant states that the following is a unique physical condition which creates an unnecessary hardship in developing the site in compliance with applicable regulations: the site’s subsurface soil contamination; and

WHEREAS, the applicant states that three 550 gallon underground storage tanks are located on the site; and

WHEREAS, the applicant submitted a report from an environmental consultant stating that, based on soil borings taken at the site, gasoline and fuel oil impacts were identified adjacent to the underground storage tanks; and

WHEREAS, the applicant submitted a financial analysis indicating that the cost to remove the underground storage tanks and approximately 750 yards of contaminated soil is \$207,450; and

WHEREAS, the applicant states that, in order to reduce the costs of construction and to offset the remediation costs, the Church is only constructing a small cellar for storage, the boiler room and related mechanical equipment; and

WHEREAS, however, the applicant notes that the cellar level is essential to the development of a non-profit residence for the elderly because it houses many of the required services and ancillary uses; and

WHEREAS, accordingly, because it is cost prohibitive to provide a cellar, a number of service related uses necessary for the operation of the non-profit residence for the elderly, which could otherwise be located underground and would not contribute to the floor area, must be accommodated on the first

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floor, thereby increasing the degree of non-compliance with floor area and height requirements; and

WHEREAS, additionally, the applicant states that the proposed waivers are necessary to construct a facility that meets the Church's programmatic needs of providing affordable and supportive housing for grandparents and older adults who are the sole caregivers to minors, and providing on-site social service programs to the residents; and

WHEREAS, the applicant represents that the proposed facility qualifies as a non-profit residence for the elderly pursuant to the definition set forth in ZR § 12-10; and

WHEREAS, specifically, the proposal satisfies the ZR § 12-10 criteria for a non-profit residence for the elderly in the following ways: (1) the building will have a minimum of 90 percent occupancy by elderly families, the head or spouse of which is 62 years of age or over, or by single elderly persons who are sixty-two years of age or over; (2) it will contain non-housekeeping units especially designed for elderly persons or families; (3) it consists of one building which contains related accessory social and welfare facilities, primarily for residents, which will also be made available to the community, including community rooms, workshops and other essential service facilities, and that these facilities will occupy approximately seven percent of the total proposed floor area of the building; and (4) it will be constructed with the assistance of mortgage financing procured through the New York State Division of Housing and Community Renewal and will be maintained on a non-profit basis by Calvary Baptist Grandparent Housing, a wholly owned subsidiary of the Church; and

WHEREAS, the applicant states that the proposed development will allow the Church to increase the number of grandparents who are the sole caregivers to minors that can be served in the surrounding area and provide residents with a modern, functional facility; and

WHEREAS, the applicant represents that nearly 20 percent of young children in Queens are being raised by their grandparents, many of whom are elderly individuals on a fixed income; and

WHEREAS, the applicant further represents that in buildings where senior housing is available children are often prohibited, and that buildings that accept children often are not equipped to meet the needs of the elderly, leaving few practical options for inter-generational housing; and

WHEREAS, the applicant states that the proposed building will help to overcome the shortage of facilities for inter-generational housing by providing a non-profit residence for the elderly which is specifically oriented towards households where a minor is being cared for by a grandparent; and

WHEREAS, the applicant states that the supportive and social services conducted in the allocated space on the first floor will include parenting classes, respite care, counseling and support groups, summer programs for children, educational workshops, after-school tutoring, stress reduction and exercise classes, and referral of medical

and legal services; and

WHEREAS, the applicant represents that the funding for the project will derive from the New York State Division of Housing and Community Renewal's allocation of Tax Credits and Housing Trust Fund, which will provide the necessary funding for 80 percent of the project; and

WHEREAS, the applicant further represents that it will receive funding from the New York State Housing Finance Agency ("HFA") in anticipation of the development of the facility; and

WHEREAS, by letter dated May 1, 2009, HFA stated that the proposed development is eligible for tax exempt bond and four percent "as of right" tax credit financing for 57 units which will be affordable to households with incomes at or below 30 percent of Area Median Income and where a minor is being cared for by a grandparent; and

WHEREAS, the applicant represents that if the requested variance is not granted, the financial assistance from HFA may not be available, thereby preventing the construction of the proposed building; and

WHEREAS, the applicant represents that the proposed 57 units are necessary to generate sufficient income to fund the operating costs of both the residential component of the project as well as the social services space; and

WHEREAS, in support of this statement, the applicant submitted a report from the project's sponsor stating that the proposed 57 units are necessary to allow for a debt coverage ratio of 1.16 percent, which is acceptable for the agency that will be underwriting the tax exempt bonds that will finance the project; and

WHEREAS, the applicant states that the proposed parking waiver is necessary because providing the required 20 parking spaces would prevent the construction of a floor plate large enough to accommodate sufficient floor area to satisfy the Church's programmatic needs and to make the project financially feasible; and

WHEREAS, the applicant represents that the proposed 16 parking spaces will provide ample parking for the proposed building because many of the residents of a non-profit residence for the elderly do not own automobiles or generate any vehicular or transit trips; and

WHEREAS, the applicant states that the proposed aggregate width of walls waiver is necessary in order to minimize the height waiver required by the proposed building; and

WHEREAS, the applicant represents that complying with the aggregate width of walls requirement would necessitate constructing a significantly taller building in order to satisfy the Church's programmatic needs; and

WHEREAS, the applicant further represents that the surrounding neighborhood is characterized by two- and three-story homes spread amongst five- and six-story developments, and that a waiver of the aggregate width of walls requirement enables the Church to provide a building which is more in keeping with the character of the neighborhood than a taller, narrower structure; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate

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and in conjunction with the programmatic needs of the Church, create practical difficulties and unnecessary hardships in developing the site in strict conformity with current zoning; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Church is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant represents that the land uses surrounding the site are characterized by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant submitted an aerial study reflecting that Guy R. Brewer Boulevard is characterized by a series of two- and three-story homes spread amongst taller five- and six-story developments; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there is an R5 zoning district one block north of the subject site, where a four- and six-story senior residence is located; and

WHEREAS, the applicant states that there is also an R6 zoning district located approximately two blocks southeast of the subject site, where two eight-story residential buildings are located; and

WHEREAS, as noted above, there is an active study at the Department of City Planning which is considering a rezoning of the surrounding area, including the subject site, to an R5B district; and

WHEREAS, the applicant submitted a zoning analysis comparison chart reflecting that a rezoning of the site to an R5B district would eliminate the need for the waivers related to the number of dwelling units and the aggregate width of walls, and would significantly reduce the degree of the FAR, OSR, height and parking waivers; and

WHEREAS, specifically, the zoning analysis comparison chart indicates that under the proposed R5B district, the maximum permitted number of dwelling units would increase from 36 to 66, the maximum permitted floor area would increase from 24,445 sq. ft. (0.95 FAR) to 50,177 sq. ft. (1.95 FAR), the minimum required OSR would decrease from 66.5 percent to 23.1 percent, the maximum permitted total height would increase from 35 feet to 40 feet, the minimum required number of parking spaces would decrease from 20 to 18, and there would be no maximum aggregate wall width requirement; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the unique site conditions and the Church's programmatic needs; and

WHEREAS, as noted above, the applicant originally proposed a six-story, 67-unit building with a floor area of 79,999 sq. ft. (3.11 FAR), an OSR of 14.5 percent, a total height of 59'-8", and which required additional waivers for front and side yards; and

WHEREAS, the Board finds that the revised proposal, which reduced the waivers for FAR, OSR, number of dwelling units and height, and eliminated the waivers for front and side yards, 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, on May 7, 2009, the applicant's consultant identified petroleum-impacted soil surrounding the three out-of-service 550 gallon underground petroleum storage tanks on the subject property; and

WHEREAS, based on that identified soil contamination, the applicant's consultant notified the New York State Department of Environmental Conservation ("DEC") and DEC assigned Spill Number 09-01810 to the subject property; and

WHEREAS, in order to address DEC's requirements and to bring the subject property back into regulatory compliance, the consultant prepared and submitted to DEC a Proposed Subsurface Investigation and Remedial Action Work Plan ("RAWP") dated July 20, 2009, and submitted a detailed proposal to DEC for the proper removal of the underground storage tanks; and

WHEREAS, DEC approved the Proposed Subsurface Investigation and RAWP in a November 17, 2009 letter to the applicant and requested that a detailed Remedial Investigation Report be submitted after the RAWP activities were completed; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA132Q, dated December 22, 2009; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental

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Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-2 zoning district, a five-story 58-unit non-profit residence for the elderly which does not comply with zoning regulations for FAR, OSR, number of dwelling units, aggregate width of walls, height and parking, and is contrary to ZR §§ 23-144, 23-221, 23-463, 23-631, and 25-25, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 27, 2010"-(9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 60,183 sq. ft.; a maximum FAR of 2.34; an open space ratio of approximately 23 percent; a total height of 50 feet; a side yard with a width of 8'-2 1/2" along the western lot line; a side yard with a width of 21'-6" along the northern lot line; a front yard with a depth of 10'-0" along the eastern lot line; a front yard with a depth of 15'-0" along the southern lot line; two rear yards with depths of 67'-3" and 75'-6", respectively; 58 dwelling units; and 16 parking spaces, as reflected on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 9, 2010.

239-09-BZ

CEQR #10-BSA-014M

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.

SUBJECT – Application August 5, 2009 – Variance (§72-21) to allow for the development of a six-story community facility building (*NYU Center for Academic and Spiritual Life*), contrary to lot coverage (§24-11) and height and setback regulations (§§24-522, 33-431). R7-2/C1-5 and R7-2 Districts.

PREMISES AFFECTED – 238 Thompson Street, aka 56 Washington Square South, block bounded by Thompson and West 3rd Streets, Laguardia Place, Washington Square South Block 538, Lot 27, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Elise Wagner.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 5, 2009, acting on Department of Buildings Application No. 120107678, reads, in pertinent part:

- “1. Proposed building does not comply with lot coverage regulations of Zoning Resolution Section 24-11 in the R7-2 district;
2. Proposed building does not comply with height and setback regulations of Zoning Resolution sections 24-522 and 33-431 in the R7-2 and C1-5/R7-2 districts.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a portion of a site within R7-2 and C1-5(R7-2) zoning districts, the proposed construction of a six-story Use Groups 3 and 4 building, to serve as New York University’s Center for Academic and Spiritual Life, which does not comply with applicable zoning requirements for lot coverage and height and setback, contrary to ZR §§ 24-11, 24-522, and 33-431; and

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in the *City Record*, and then to decision on February 9, 2010; and

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

WHEREAS, Community Board 2, Manhattan, states that it recognizes that the as of right building envelope will not accommodate the applicant’s programmatic need, but indicates that it is not satisfied with the aesthetics of the proposed building (the “Building”) and, therefore, recommends that the Board disapprove of the application; and

WHEREAS, the Greenwich Village Society for Historic Preservation (GVSHP) submitted testimony in opposition to the proposal, citing concerns about (1) the absence of setbacks on Thompson Street and West Third Street; (2) the effects of shadows on Judson Memorial Church; (3) the overall scale; and (4) NYU’s purported failure to establish its programmatic needs; and

WHEREAS, a representative of Judson Memorial Church provided testimony citing concerns about the impact of shadows on the church; and

WHEREAS, the Greenwich Village Block Associations provided written testimony in opposition to the Building, citing concerns about the Building’s massing, potential shadows, and incompatibility with neighborhood character; and

WHEREAS, certain community members provided testimony in opposition to the Building, echoing the concerns of the GVSHP and Greenwich Village Block Associations

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(collectively, the “Opposition”); and

WHEREAS, the concerns of the Opposition are discussed below; and

WHEREAS, this application was brought on behalf of New York University (NYU), a not for profit educational institution; and

WHEREAS, the subject zoning lot comprises two tax lots – Lot 40 on the eastern portion of the block and Lot 17 on the western portion of the block; and

WHEREAS, the zoning lot occupies the entire block bounded by Washington Square South, Thompson Street, West Third Street, and Laguardia Place; and

WHEREAS, the zoning lot has a lot area of 36,205 sq. ft. and is partially within an R7-2 zoning district and partially within a C1-5(R7-2) overlay; and

WHEREAS, the eastern portion of the zoning lot (Lot 40) is occupied by NYU’s 11-story Kimmel Center for University Life and the western portion of the zoning lot is vacant (the “Development Site”), and will be occupied by the Building; and

WHEREAS, the Development Site has 209.48 feet of frontage on Thompson Street, 50.02 feet of frontage on Washington Square South, and 75.06 feet of frontage on West Third Street, for a total lot area of 12,650 sq. ft.; and

WHEREAS, the Development Site is located in an R7-2 zoning district and the southern portion of the lot, located within 100 feet of West 3rd Street, is located within a C1-5 commercial overlay; and

WHEREAS, the Kimmel Center, which is as of right, and the Building are viewed together for zoning purposes; however, all requested waivers are associated with the Development Site and only the zoning parameters of the Building are reviewed within the context of the subject variance request; and

WHEREAS, specifically, the Development Site is considered both a corner lot and an interior lot; and

WHEREAS, the corner lot portion of the Development Site, located within the C1-5 (R7-2) overlay is not subject to lot coverage regulations, but the maximum lot coverage for a community facility use is 70 percent on the corner lot portion within the R7-2 zoning district and 65 percent on an interior or through lot; the applicant notes that any portion of the Building up to a height of 23 feet may be excluded in calculating lot coverage compliance; and

WHEREAS, the height and setback regulations applicable to community facilities in R7-2 and C1-5(R7-2) zoning districts provide that the maximum height of a building’s front wall is 60 feet or six stories, whichever is less; on Washington Square South, Thompson Street, and West Third Street, which are narrow streets, an initial setback of 20 feet is required above such height and the building thereafter may be regulated by the sky exposure plane; and

WHEREAS, however, the applicant proposes full lot coverage and a streetwall height of approximately 88 feet, without a setback; the proposal complies with all other bulk parameters, including total height, and FAR, which is 4.9 on the Development Site or 5.83 across the entire zoning lot (6.5 FAR is the maximum permitted) comply with zoning district

regulations; and

WHEREAS, the applicant states that the requested waivers are necessary because the physical constraints of the Development Site, including its shallow irregular shape, and three street frontages, which require lot coverage and height and setback waivers, limit the floorplates and the program spaces above the first floor; and

WHEREAS, the applicant sets forth the following programmatic needs: (1) three large rooms with floor area of approximately 2,800 sq. ft., with flexible layouts to serve different school functions; (2) approximately 20 mid-size and large classrooms and meeting spaces, ranging from 500 to 1,500 sq. ft. and accommodating 25-120 persons each, to be located on the lower floors to facilitate traffic flow; (3) a separate floor dedicated to spiritual life needs, containing three of the mid-size to large meeting rooms; and (4) music rooms that are acoustically isolated; and

WHEREAS, additionally, the applicant identifies adjacency to Kimmel Center as an asset, to promote operational efficiencies in the form of centralized building services and the elimination of duplication of space such as food service and a catering kitchen, while also allowing students access between the buildings at each level; and

WHEREAS, the program of the Building is as follows: cellar and sub-cellar – mechanicals, classrooms, and auditorium space; first floor – house of worship (to be occupied by NYU’s Catholic Center/the Archdiocese of New York) and accessory uses; second and third floors – classrooms and offices; fourth floor – classrooms, offices, and meeting rooms; fifth floor colloquium and multi-purpose room; and sixth floor – mechanicals; and

WHEREAS, the applicant represents that the complying alternative would be a 72,566-sq. ft. 11-story building with an FAR of 6.12 across the zoning lot or 5.83 on just the Development Site; the complying building would have nine occupied stories and two mechanical floors above grade, with two cellar levels below grade, with a total height of approximately 163 feet; and

WHEREAS, the applicant represents that, in order to comply with lot coverage regulations, while maintaining the Washington Square South streetwall, the second and third floors would be set back 20 feet from Thompson Street; at the fourth through seventh floors, the building would be set back along all three frontages, in order to comply with height and setback regulations; and at each of the eighth, ninth, and tenth floors, the building would be further set back along these frontages to remain within the sky exposure plane; and

WHEREAS, the applicant asserts that the setbacks would result in increasingly smaller floorplates: 10,201 programmable sq. ft. on the first floor; 8,860 programmable sq. ft. on each of the second and third floors; 4,917 programmable sq. ft. on each of the fourth through seventh floors; 4,589 sq. ft. programmable sq. ft. on the eighth floor; and 3,353 programmable sq. ft. on the ninth floor; the sub-cellar through first floor levels would have the same layouts but the remainder of the building, affected by the setbacks, would be constrained; and

WHEREAS, specifically, the applicant represents that the

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complying building could only accommodate one colloquium and one multi-purpose room, thirty small classrooms, ten medium to large classrooms and meeting rooms, and 38 offices; the applicant represents that NYU has the greatest need for classrooms which accommodate more than the 10 to 12 people, which can occupy a small classroom; and

WHEREAS, additionally, the applicant states that the complying building without a uniform floorplate size and with a greater number of floors, would be inefficient in all aspects of circulation, including infrastructure and the movement of people through the space; and

WHEREAS, the proposed building, with floor-to-floor heights that match those of the Kimmel Center to allow for the required programmatic adjacencies between the two buildings, with a first floor height of 20'-4", second through fourth floor height of 14'-2", and a fifth floor height of 22'-6" to accommodate the large multi-purpose room and colloquium room, for a total height of 100'-2" at the top of the mechanical floor; and

WHEREAS, the applicant notes that, without setbacks, the Building, as proposed, is able to achieve a uniform floorplate of 10,600 programmable sq. ft.; and

WHEREAS, the applicant represents that with larger floorplates, NYU is able to accommodate its programmatic needs with (1) the required number of medium and large classrooms and meeting rooms on lower floors; (2) spiritual life uses, including clergy offices, meeting rooms, ablution rooms, and icon and ritual object storage, can be co-located on the fourth floor, thus fostering collaboration and allowing shared programming opportunities among different faiths; (3) the colloquium room with state of the art video conference equipment and of a sufficient size to hold classes, presentations, and meetings in conjunction with NYU's remote campus locations; and (4) the large multi-purpose room for religious worship, orchestra practice, an auditorium-like events space, and dining; and

WHEREAS, further, the applicant notes that the Building will benefit by its integration into the Kimmel Center on the second through fifth floors, including access to its double-height auditorium space on the fourth floor; and

WHEREAS, additionally, the applicant states that the Building will be significantly more efficient to construct and maintain due to the larger uniform floor plates and less area which must be devoted to the building's core and circulation areas in order to achieve the same amount of programmatic area; and

WHEREAS, the Board credits the applicant's statements as to NYU's programmatic needs and the limitations of a complying building; and

WHEREAS, the Board also acknowledges that NYU, as an educational institution, is entitled to significant deference under the case law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, in addition to these programmatic needs, the applicant notes that the Development Site is compromised by its narrow width and large amount of street frontage, which effectively constrains the area available for the Building's floor

plates, when lot coverage and setback regulations are applied; and

WHEREAS, based upon the above, the Board finds that NYU's programmatic cannot be accommodated on the subject site, thus creating unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since NYU is a not-for-profit organization and the proposed development will be in furtherance of its educational mission; and

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

WHEREAS, the applicant notes that the waivers will allow a taller street wall (approximately 88 feet as opposed to 60 feet), but that this allows for the programmatic need to be accommodated within a building with a lower overall height (100'-2" as opposed to approximately 163 feet) as would be permitted within the as of right building envelope subject to sky exposure plane restrictions; and

WHEREAS, the applicant represents that the proposed height is more compatible with the height of Judson Memorial Church, which is to the west across Thompson Street and rises to a height of 50 feet with a tower height of 105 feet; Vanderbilt Hall, with a height of 70 feet; and the King Juan Carlos I Center and other neighborhood buildings to the south of the site which have heights ranging from 40 to 70 feet; and

WHEREAS, the applicant notes that the Building is proposed to be shorter than NYU's Bobst Library across Laguardia Place at 151 feet and the adjacent Kimmel Center at approximately 160 feet and would thus serve as a transition between the taller institutional buildings to the east and the lower scale buildings to the west along Washington Square South; and

WHEREAS, the applicant proposes to clad the building's northern façade and a portion of the western façade with a cutout material around a glass curtain wall, suggesting a tree's branches, in a filigree motif in an effort to reduce visual impact and harmonize with surrounding conditions; and

WHEREAS, as to the southern façade along West Third Street, the applicant has designed a modified façade with varied texture, scale, and color, which is intended to reflect the lower scale non-institutional context along West Third Street; and

WHEREAS, the Board observes that the Building as proposed is more contextual with the surrounding built conditions than an as of right building with setbacks and an increased height; and

WHEREAS, as to the GVSHP's concern that a setback alternative may be more compatible with the surrounding area, the applicant performed massing studies and represents that the building's rectangular form and simple massing without setbacks is more in keeping with the form of many or the nearby buildings than would be a building with setbacks; and

WHEREAS, the applicant represents that setbacks do not

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relieve the concerns about the Building's massing or shadows and rather serve as a distraction from the uniform streetwall, which is the common building form found in the area; and

WHEREAS, in addition to exploring an alternative with a setback, the applicant considered an alternative in which the fifth floor would be clad completely in glass, the applicant determined that the glass level would actually draw more attention to the top of the building, particularly at night; and

WHEREAS, as to the Opposition's concerns about potential shadows, the applicant represents that it has determined that the shadows cast by the Building on the windows of Judson Memorial Church would be limited in extent and duration and would not cause significant adverse impact; and

WHEREAS, the applicant also notes that the submitted Environmental Assessment Statement ("EAS") concludes that the Building would cast less shadow on Washington Square Park and the church throughout the year than the complying building and that the Building will be compatible with the neighborhood and is not expected to create any adverse impacts; and

WHEREAS, the Board understands that the Opposition remains concerned, and notes that the applicant indicated it would continue to engage in a dialogue with the community about architectural design details; and

WHEREAS, however, the Board finds that such concerns do not relate to the requested waivers or application; and

WHEREAS, the applicant also notes that the Landmarks Preservation Commission reviewed the EAS and determined that there is no effect to historic resources; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the existing buildings on the zoning lot and the programmatic needs of NYU; and

WHEREAS, as to the Opposition's concerns about whether the applicant has made all of the findings and whether the proposal represents the minimum variance, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the Building is designed to address NYU's present programmatic needs, which have been clearly established in the record; and

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 10BSA134M, dated February 5, 2010; 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 reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP approved the Remedial Action Plan and the Construction Health and Safety Plan on October 27, 2009; 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, based on the results of noise monitoring, the applicant proposes window-wall noise attenuation of 25 dBA on the north, west, and south facades of the proposed building; the proposed building design will include central air-conditioning (as an alternate means of ventilation) to ensure that an interior noise level of 45 dBA is achieved; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration, 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 portion of a site within R7-2 and C1-5 (R7-2) zoning districts, the proposed construction of a six-story Use Groups 3 and 4 building, to serve as New York University's Center for Academic and Spiritual Life, which does not comply with applicable zoning requirements for lot coverage, height, and setback, contrary to ZR §§ 24-11, 24-522, and 33-431; *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 21, 2009"- fifteen (15) sheets; and *on further condition*:

THAT the Building parameters shall not exceed those reflected on the BSA-approved plans for the Development Site or the zoning lot, including a maximum floor area of 61,373 sq. ft. for the Building, a maximum streetwall as shown, and a maximum total height for the Building of 100'-2";

THAT any change in the use, occupancy, or operator of

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the Building requires review and approval by the Board;

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 25 dBA of window-wall noise attenuation shall be provided on the north, west, and south facades of the proposed building and central air-conditioning shall be maintained as an alternate means of ventilation;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 9, 2010.

214-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 3210 Riverdale Associates, LLC, owner.

SUBJECT – Application September 18, 2007 – Variance (§72-21) to allow a public parking garage and increase the maximum permitted floor area in a mixed residential and community facility building, contrary to §22-10 and §24-162. R6 zoning district.

PREMISES AFFECTED – 3217 Irwin Avenue, aka 3210 Riverdale Avenue, north side of West 232nd Street, Block 5759, Lots 356, 358, 362, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for continued hearing.

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation and Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to permit the construction of a six-story community facility building (*Congregation & Yeshiva Machzikei Hadas*), contrary to ZR §42-00. M2-1 zoning district.

PREMISES AFFECTED – 1247 38th Street, east side of 38th Street, between 13th and 12th Avenue, Block 5295, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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

ACTION OF THE BOARD – Laid over to March 2, 2010, at 1:30 P.M., for continued hearing.

220-08-BZ

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

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for adjourned hearing.

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzchok, owner.

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize and enlarge a Yeshiva (*Yeshiva Ohr Yitzchok*) contrary to §42-11 (use regulations), §43-122 (floor area), §43-43 (wall height, number of stories, and sky exposure plane). §43-301 (required open area). M1-1D zoning district. PREMISES AFFECTED – 1214 East 15th Street, Western side of East 15th Street between Avenue L and Locust Avenue. Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for decision, hearing closed.

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 –

MINUTES

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for continued hearing.

161-09-BZ

APPLICANT – Rizzo Group, for 25 Garfield Sparta, LLC, owner.

SUBJECT – Application April 23, 2009 – Variance (§72-21) for the development of two residential buildings (20 dwelling units) contrary to rear yard equivalent, floor area, lot coverage, minimum distance between buildings and minimum distance between legally required window regulations (§§23-532, 23-145, 23-711, 23-861). R6B zoning district

PREMISES AFFECTED – 580 Carroll Street (25 Garfield Place) Carroll Street/Garfield Place, between Fourth and Fifth Avenue, Block 951, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Ashwin Verma.

For Opposition: Craig Hammerman, CB #6, Jim Vogel, Michael Curtin and Abigail Banker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for decision, hearing closed.

214-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for LAL Astor Avenue Management Co., LLC, owner.

SUBJECT – Application June 29, 2009 – Special Permit (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR §22-14. R4-1 zoning district.

PREMISES AFFECTED – 1464 Astor Avenue, south side of Astor Avenue, 100' east of intersection with Fenton Avenue, Block 4389, Lot 26, 45, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Adam Rothkrug and Hiram Rothkrug.

For Opposition: John A. Fratta, Anjali Kochar, Frank Tirabasso, Joseph A. McManus, Sal Castorine and Joey Thompson.

ACTION OF THE BOARD – Laid over to March 16, 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 12th Street and Homecrest Avenue, eastside of Avenue S, Block 7291, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for continued hearing.

271-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 132-40 Metropolitan Realty, LLC, owner; Jamaica Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 21, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Planet Fitness*) on the first, second, and third floors of an existing three-story building. C2-3 zoning district.

PREMISES AFFECTED – 132-40 Metropolitan Avenue, between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street. Block 9284, Lot 19, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for adjourned hearing.

273-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application September 24, 2010 – Variance (§72-21) for the construction of a two-story, one-family home, contrary to side yards (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 117-40 125th Street, west side of 125th Street, 360' north of intersection with Sutter Avenue, Block 11746, Lot 64, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Joyce Walton, kamala Balkarav and Irene B. Dimole.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for continued hearing.

307-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Zahava Hurwitz and Steven Hurwitz, owner.

SUBJECT – Application November 9, 2009 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to open space and floor area (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

MINUTES

PREMISES AFFECTED – 1358-1360 East 28th Street, West side of East 28th Street between Avenue M and Avenue N. Block 7663, Lot 73 & 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 1:30 P.M., for continued hearing.

329-09-BZ

APPLICANT – Eric Palatnik, P.C., for Yevgenya Loffe, owner.

SUBJECT – Application December 18, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 26 Falmouth Street, Block 8744, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 1:30 P.M., for continued hearing.

2-10-BZ

APPLICANT – Akerman Senterfitt LLP, for The New York Eye & Ear Infirmary, owner.

SUBJECT – Application January 6, 2010 – Special Permit (§73-641) to allow enlargement of a community facility (*New York Eye and Ear Infirmary*) within the required rear yard equivalent, contrary to §33-283. C1-6A/C1-7A zoning districts.

PREMISES AFFECTED – 310 East 14th Street, block front on east side of Second Avenue between 13th and 14th Streets, Block 455, Lot 1, 5, 7, 60, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Calvin Wong.

For Opposition: Kevin D. Ramsey.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 2, 2010, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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March 4, 2010

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21-10-BZ

2801 Roelbling Avenue, Southeast corner of Roelbling Avenue and Hutchinson River Parkway., Block 53861, Lot(s), Borough of **Bronx, Community Board: 10**. Special Permit (73-243) to legalize an eating and drinking establishment with drive-through. C1-2/R4A district.

22-10-BZ

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23-10-A

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24-10-A

223-09 Mia Drive, Mia Drive between 223rd Street and Cross Island Parkway., Block 6343, Lot(s) 154-157, Borough of **Queens, Community Board: 11**. Appeal for common law vested rights to continue development unnder the prior zoning district. R1-2 district.

25-10-A

223-15 Mia Drive, Mia Drive between 223rd Street and Cross Island Parkway., Block 6343, Lot(s) 154-157, Borough of **Queens, Community Board: 11**. Appeal for common law vested rights to continue development unnder the prior zoning district. R1-2 district.

26-10-A

223-19 Mia Drive, Mia Drive between 223rd Street and Cross Island Parkway., Block 6343, Lot(s) 154-157, Borough of **Queens, Community Board: 11**. Appeal for common law vested rights to continue development unnder the prior zoning district. R1-2 district.

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

CALENDAR

MARCH 9, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 9, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

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

121-02-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, 9215 4th Avenue, LLC, owner.

SUBJECT – Application November 11, 2010 – Amendment (§73-11) to reopen and amend previous resolution to permit enlargement of an existing Physical Culture Establishment. C8-2 zoning district.

PREMISES AFFECTED – 9215 4th Avenue, east side of 4th Avenue, 105' south of intersection with 92nd Street, Block 6108, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEALS CALENDAR

185-09-A & 186-09-A

APPLICANT – Diffendale & Kubec, AIA, for G.L.M. Development Corp., owner.

SUBJECT – Application June 6, 2009 – Construction not fronting on a mapped street, contrary to section 36 of the General City Law. R3x Zoning district.

PREMISES AFFECTED – 61 and 67 Elder Avenue, Elder Avenue prolongation 102.4' north of Kenneth Place, Block 6789, Lot 142, 144, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 district regulations. R4-1 zoning district.

PREMISES AFFECTED – 90-18 176th Street, between Jamaica and 90th Avenues, Block 9811, Lot 60 (tent), Borough of Queens.

COMMUNITY BOARD #12Q

MARCH 9, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 9, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

254-09-BZ thru 256-09-BZ

APPLICANT – Ivan F. Khoury, for Kearney Realty Corporation, owner.

SUBJECT – Application September 4, 2009 – Variance (ZR §72-21) to legalize three existing homes contrary to front yard (ZR §23-45) and rear yard (ZR §23-47) regulations. R3-2 district.

PREMISES AFFECTED – 101-03/05/07 Astoria Boulevard aka 27-31 Kearney Street, north side of Astoria Boulevard & northeasterly side of Kearney Street, Block 1659, Lot 51, 53, 56, Borough of Queens.

COMMUNITY BOARD #3Q

325-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Yetev Lev 11th Avenue, owner.

SUBJECT – Application December 7, 2009 – Variance (§72-21) to permit the proposed four-story and mezzanine synagogue. The proposal is contrary to lot coverage (§24-11), rear yard (§24-36) and initial setback of front wall (§24-52). R6 zoning district.

PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

CALENDAR

15-10-BZ

APPLICANT – Dennis D. Dell’Angelo, for Avraham Rosenshein, owner.

SUBJECT – Application February 1, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 3114 Bedford Avenue, west side of Bedford Avenue, 100’ north of Avenue J, Block 7588, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 23, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

818-59-BZ

APPLICANT – Akerman Senterfitt for 139 East 33rd Street Corporation, owner; Central Parking System of NY, Incorporated, lessee.

SUBJECT – Application July 24, 2009 – Extension of Term (§11-411) to permit the use of surplus parking spaces of an accessory garage to a multiple dwelling for transient parking which expired on July 6, 2001. C1-9 & C6-1 zoning district. PREMISES AFFECTED – 139 East 33rd Street, north side of 33rd Street and north west corner of 220/226 Lexington Avenue, Block 889, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Jessica Loeser.

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a transient parking garage, which expired on July 6, 2001; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in *The City Record*, and then to decision on February 23, 2010; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application, with the condition that 13 bicycle spaces be provided in the garage; and

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

WHEREAS, the subject site is located on the northwest corner of East 33rd Street and Lexington Avenue; and

WHEREAS, the site is located partially within a C1-9 zoning district and partially within a C6-1 zoning district, and is occupied by a 14-story and penthouse residential/commercial building; and

WHEREAS, the basement, cellar and sub-cellar are occupied by a 125-space accessory garage, with 35 spaces in the basement, 30 spaces in the cellar and 60 spaces in the sub-cellar; and

WHEREAS, on July 6, 1960, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to permit a maximum of 80 surplus parking spaces to be used for transient parking for a term of 21 years; and

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

WHEREAS, on July 14, 1992, the Board granted a ten-year extension of term, which expired on July 6, 2001; a condition of the grant was that a certificate of occupancy be obtained by July 14, 1993; and

WHEREAS, most recently, on January 12, 1999, the Board granted an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant now requests an extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, in response to concerns raised by the Community Board, the applicant submitted plans reflecting the inclusion of 13 bicycle spaces in the garage; and

WHEREAS, at hearing, the Board requested that the applicant relocate the accessory sign closer to the building so as to minimize its extension over the sidewalk; and

WHEREAS, in response, the applicant submitted a revised signage plan and photographs reflecting that the sign has been relocated 0’-6” closer to the building to comply with the underlying zoning regulations; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution having been adopted on July 6, 1960, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional 15 years from July 6, 2001, to expire on July 6, 2016; *on condition* that all work shall substantially conform to drawings filed with this application and marked ‘Received November 20, 2009’ –(5) sheets and ‘February 9, 2010’-(1) sheet; and *on further condition*:

THAT this term shall expire on July 6, 2016;

THAT signage shall comply with the underlying zoning district regulations;

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

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

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

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

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jurisdiction objection(s) only;

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

(Alt. 1451/59)

Adopted by the Board of Standards and Appeals, February 23, 2010.

111-71-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Erol Bayraktar, lessee.

SUBJECT – Application December 15, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (*Shell*) which expired on October 28, 2009; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 185-25 North Conduit Avenue, north west corner of Springfield Boulevard, Block 13094, Lot p/o 63, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a gasoline service station, which expired on October 16, 1997; and

WHEREAS, a public hearing was held on this application on January 26, 2010 after due notice by publication in *The City Record*, and then to decision on February 23, 2010; and

WHEREAS, the subject premises is located on a through-block site fronting on 144th Avenue to the north, Springfield Boulevard to the east and North Conduit Avenue to the south, within a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 22, 1971 when, under the subject calendar number, the Board granted a special permit for the reconstruction of an automobile service station with accessory uses on the site; and

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

WHEREAS, on February 7, 1984, in conjunction with a change to a self-service gasoline station under BSA Cal. No. 699-83-A, the Board permitted the construction of a steel canopy over three new gasoline pump islands with new self-serve pumps, the installation of an 8’-0” by 20’-0”

kiosk, and a reduction in the size of the existing accessory building; and

WHEREAS, on June 25, 1985, the Board extended the time to complete construction; and

WHEREAS, on October 16, 1996, the Board amended the resolution to permit the demolition of the existing kiosk and the construction of a new accessory building to be occupied by a convenience store; a condition of the grant was that a new certificate of occupancy be obtained by October 16, 1997; and

WHEREAS, most recently, on April 28, 2009, the Board granted an extension of time to obtain a certificate of occupancy, which expired on October 28, 2009; and

WHEREAS, the Board notes that previous resolutions under the subject calendar number refer to the subject site as “Lot 68,” but the premises is instead located on a portion of Lot 63; and

WHEREAS, the applicant states that the previous resolutions referred to “Lot 68” because the applicant intended to subdivide Lot 63 to create a new tax lot denominated as Lot 68 which would be occupied by the subject gasoline service station; and

WHEREAS, the applicant states that the effort to secure a separate zoning lot was discontinued; and

WHEREAS, thus, the premises has been and continues to be located on a part of Lot 63; and

WHEREAS, the applicant now seeks a one-year extension of time to obtain a certificate of occupancy; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 22, 1971, so that as amended this portion of the resolution shall read: “to grant a one-year extension of time to obtain a certificate of occupancy, to expire on February 23, 2011; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by February 23, 2011;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 400612413)

Adopted by the Board of Standards and Appeals February 23, 2010.

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62-96-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 200 Madison LLC, owner; TSI East 36 LLC d/b/a The New York Sports Club, lessee.

SUBJECT – Application November 23, 2009 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on February 4, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on January 10, 2007 and Waiver of the Rules. C5-2 zoning district.

PREMISES AFFECTED – 200 Madison Avenue, west side of Madison Avenue between East 35th Street and East 36th Street, Block 865, Lot 14, 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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on April 21, 2008, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in *The City Record*, and then to decision on February 23, 2010; and

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

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

WHEREAS, the PCE is located on the west side of Madison Avenue, between East 35th Street and East 36th Street, within a C5-2 zoning district; and

WHEREAS, the site is occupied by a 25-story commercial building; and

WHEREAS, the PCE occupies a total floor area of 10,289 sq. ft. on the first floor and mezzanine, with an additional 16,175 sq. ft. of floor space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 4, 1997 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on February 4, 2007; and

WHEREAS, most recently, on January 10, 2006, the Board approved an expansion on the first floor of the facility, as well as a change in ownership and operator of the PCE; and

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

obtain a certificate of occupancy; and

WHEREAS, the applicant represents that it was unable to obtain a certificate of occupancy within the stipulated time because there are open Department of Buildings (“DOB”) applications within the building, unrelated to the special permit use, which prevented the applicant from obtaining a certificate of occupancy; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on February 4, 1997, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from February 4, 2007, to expire on February 4, 2017, and to extend the time to obtain a certificate of occupancy to February 23, 2011, *on condition* that all work shall substantially conform to drawings filed with this application and marked ‘Received November 23, 2009’-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 4, 2017;

THAT a certificate of occupancy shall be obtained by February 23, 2011;

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

THAT all 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. 101225620)

Adopted by the Board of Standards and Appeals, February 23, 2010.

375-02-BZ

APPLICANT – Moshe M. Friedman, for Congregation Tzolsa D’Shlomo, owner.

SUBJECT – Application June 4, 2009 – Amendment to a variance to modify plans for a house of worship and rectory; Extension of time to complete construction and obtain a Certificate of Occupancy. R5 zoning district.

PREMISES AFFECTED – 1559 59th Street, north side of 59th Street, 400’ west from the intersection of 59th Street and 16th Avenue, Block 5502, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to complete construction and obtain a certificate of occupancy, and an amendment to the previously-approved plans; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in *The City Record*, and then to decision on February 23, 2010; and

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

WHEREAS, Community Board 12, Brooklyn, states that it has no objection to this application; and

WHEREAS, the subject site is located on the north side of 59th Street, between 15th Avenue and 16th Avenue, within an R5 zoning district; and

WHEREAS, on July 22, 2003, the Board granted an application under ZR § 72-21, to permit, in an R5 zoning district, the enlargement of a four-story with cellar synagogue and rabbi's apartment (rectory); and

WHEREAS, substantial construction was to be completed by July 22, 2007 in accordance with ZR § 72-23; and

WHEREAS, the applicant now seeks to reflect changes to the interior layout of the building; and

WHEREAS, the applicant represents that the requested changes to the interior layout are necessary to accommodate the Rabbi's apartment on the third floor and the Sexton's apartment on the fourth floor; and

WHEREAS, the applicant also requests an extension of time to complete construction and obtain a certificate of occupancy; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 22, 2003, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the BSA-approved plans and to permit an extension of time to complete construction and obtain a certificate of occupancy, to expire on February 23, 2012; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 26, 2010"- Two (2) sheets "Received October 13, 2009"- Ten (10) sheets and *on further condition*:

THAT substantial construction shall be completed and a new certificate of occupancy shall be obtained by February 23, 2012;

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. 301480733)

Adopted by the Board of Standards and Appeals, February 23, 2010.

35-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 103rd Street Realty LLC c/o Glenwood Management Corporation, owner.

SUBJECT – Application December 9, 2009 – Extension of Time to obtain a Certificate of Occupancy for a (UG16) contractors' establishment on the ground floor of a two-story building which expired on December 9, 2009. R7A zoning district.

PREMISES AFFECTED – 345-347 East 103rd Street, north side of East 103rd Street, between First and York Avenues, Block 1675, Lots 21 and 22, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: James Power.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a contractor's establishment (UG 16), which expired on December 9, 2009; and

WHEREAS, a public hearing was held on this application on February 2, 2010, after due notice by publication in the *City Record*, and then to decision on February 23, 2010; and

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

WHEREAS, the premises is located on the north side of East 103rd Street, between First Avenue and York Avenue, within an R7A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 20, 1938 when, under BSA Cal. No. 958-38-BZ, the Board granted a variance to permit the conversion of part of the first floor of the building, then located in a business use district, to a garage for more than five cars; and

WHEREAS, on June 20, 1950, under BSA Cal. No. 958-38-BZ Vol. II, the Board permitted a change in occupancy from a garage for more than five motor vehicles to a motor

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vehicle repair shop, for a term of five years; and

WHEREAS, subsequently, the grant was amended to include the entire first floor, and the term of the grant was extended; and

WHEREAS, on May 24, 1966, under BSA Cal. No. 958-38-BZ Vol. III, the Board amended the resolution to permit the use of the premises as a contractor's establishment (UG 16) and extended the term; and

WHEREAS, on March 1, 1977, the grant was amended and the term extended for five years, to expire on March 1, 1982; and

WHEREAS, most recently, on June 9, 2009, under the subject calendar number, the Board reinstated the expired variance for a contractor's establishment (UG 16) pursuant to ZR § 11-411, and legalized the extension of the contractor's establishment to the second floor of the building pursuant to ZR § 11-412; a condition of the grant was that a certificate of occupancy be obtained by December 9, 2009; and

WHEREAS, the applicant now seeks an 18-month extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that it was unable to obtain a certificate of occupancy by the stipulated date due to construction delays; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 9, 2009, so that as amended this portion of the resolution shall read: "to grant an 18-month extension of time to obtain a certificate of occupancy, to expire on August 23, 2011; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by August 23, 2011;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 110008688)

Adopted by the Board of Standards and Appeals, February 23, 2010.

16-36-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner
SUBJECT – Application October 27, 2009 – Extension of Time to obtain a Certificate of Occupancy of an existing Gasoline Service Station (*Gulf*) which expired on March 18,

2009; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue, southeast corner of the intersection between Westchester Avenue and White Plains Road, Block 3880, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 10 A.M., for continued hearing.

389-37-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Rosemarie Fiore, Georgette Fiore and George Fiore, owner.
SUBJECT – Application June 10, 2009 – Extension of Term (§11-411) of a previously granted Variance for the operation of a UG8 parking lot which expired on June 13, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on December 12, 2004 and Waiver of the Rules. R5/C1-2 zoning district.

PREMISES AFFECTED – 31-08 – 31-12 45th Street, southwest corner of 45th Street and 31st Avenue, Block 710, Lot 5, 6, 17, 18, 19, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M., for continued hearing.

834-60-BZ

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

SUBJECT – Application October 20, 2009 – Extension of Term for the continued use of a Gasoline Service Station (*Gulf*) with minor auto repairs which expired on March 7, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on March 2, 2000; Amendment to legalize an accessory convenience store and Waiver of the Rules. C2-4/R-7A, R-5B zoning district.

PREMISES AFFECTED – 140 Vanderbilt Avenue, northwest corner of Myrtle Avenue and Vanderbilt Avenue, Block 2046, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M., for continued hearing.

21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hadarth Latchininarain, owner.

SUBJECT – Application September 21, 2009 – Extension of Term (§72-01 & §72-22) of a previous variance that permits the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which

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expired on July 24, 2009; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, located on the northern corner of Linden Boulevard and Montauk Avenue, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Josh Rhinesmith.

For Opposition: Ronald J. Dillon.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for decision, hearing closed.

280-01-BZ

APPLICANT – Cozen O’Connor, Esqs., for Perlbinde Holdings, LLC, owners.

SUBJECT – Application February 3, 2010 – Extension of Time to Complete Construction and Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the construction of a mixed-use building which expires on May 7, 2010. C1-9 zoning district.

PREMISES AFFECTED – 663-673 Second Avenue, west side of Second Avenue from 36th Street to 37th Street, Block 917, Lot 21, 24, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Peter Geis.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for decision, hearing closed.

208-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Shell Road, LLC, owner; Orion Caterers, Incorporated, lessee.

SUBJECT – Application November 9, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG9 catering hall which expired on October 19, 2009. R4/C1-2/M1-1 OP zoning district.

PREMISES AFFECTED – 255 Shell Road, east side of Shell Road, between Avenue X and Bouck Court, Block 7192, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Stuart A. Klein.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for adjourned hearing.

DISMISSAL CALENDAR

238-08-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER: Chim Yidel Lafkowitz

SUBJECT – Application for dismissal for lack of prosecution of a variance (§72-21) for a residential building, contrary to use regulations (§42-00). M1-1/R2 district.

PREMISES AFFECTED – 876 Kent Avenue, west side of Kent Avenue, approximately 91' north of the intersection of Myrtle Avenue, Block 1897, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated August 20, 2008, acting on Department of Buildings Application No. 310072818, reads in pertinent part:

“ZR 22-00. Residential use is not permitted in manufacturing district;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the construction of a four and one-half story residential building, contrary to ZR § 22-00; and

WHEREAS, the variance application was filed on September 19, 2008; and

WHEREAS, on November 5, 2008, Board staff issued a Notice of Objections to the applicant; and

WHEREAS, the Notice of Objections requested that the applicant submit the following: (1) copies of and proof of mailing for the letters sent to the affected Community Board, District Council member, Borough President, City Planning Commission and the Department of Buildings; (2) a revised Statement of Facts and Findings; (3) a revised economic analysis; (4) revised plans; and (5) a revised Environmental Assessment Statement; and

WHEREAS, on October 30, 2009, Board staff issued a letter notifying the applicant that if no response to the Notice of Objections was received within 45 days of the letter, the Board would schedule a dismissal hearing; and

WHEREAS, on December 10, 2009, the applicant submitted a letter requesting an additional six weeks to provide a complete submission in response to the Notice of Objections; an extension of time to respond was granted until January 21, 2010; and

WHEREAS, the Board did not receive any subsequent response from the applicant; and

WHEREAS, accordingly, the Board placed the matter on

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the calendar for dismissal; and

WHEREAS, on January 29, 2010, the Board sent the applicant a notice stating that the case had been put on the February 23, 2010 dismissal calendar; and

WHEREAS, the applicant appeared at the hearing on February 23, 2010, but failed to provide any response; and

WHEREAS, accordingly, due to the applicant's lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 238-08-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, February 23, 2010.

APPEALS CALENDAR

199-09-A thru 213-09-A

APPLICANT – Eric Palatnik, P.C., for Gino Savo, owner.
SUBJECT – Application June 29, 2009 – Proposed construction of 15, two-story, one family homes not fronting on a mapped street, contrary to General City Law Section 36. R3A /R3-2 Zoning District.

PREMISES AFFECTED – 165, 161, 159, 155, 153, 151, 149, 145, 143, 141, 137, 135, 131, 129, 127, Roswell Avenue, Block 2641, Lot 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 3, 2009, acting on Department of Buildings Application Nos. 510066544, 510066483, 510066456, 510066465, 510066447, 510066562, 510066535, 510066553, 510066438, 510066429, 510066517, 510066526, 510066492, 510066508, 510066474, reads in pertinent part:

“The development site does not front a final mapped street. Filing is contrary to GCL 36.” and

WHEREAS, these applications request permission to build 15 two-story, single-family homes not fronting on a mapped street; and

WHEREAS, a public hearing was held on these applications on December 8, 2009, after due notice by publication in the *City Record*, with continued hearings on January 12, 2010 and February 9, 2010, and then to decision on February 23, 2010; and

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

WHEREAS, by letter dated November 13, 2009, the Fire Department states that it has no objections to the proposed construction provided that the entire buildings be fully sprinklered and that interconnected smoke alarms be installed; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that all of the homes will be sprinklered; and

WHEREAS, by letter dated November 25, 2009, the Fire Department states that it has no objections to the proposed construction; and

WHEREAS, by letter dated June 3, 2009, the Department of Environmental Protection (“DEP”) states that it has certified the site connection proposal for this project; and

WHEREAS, by letter dated October 29, 2009, DEP approved a Franchise of Revocable Consent from the Department of Transportation for the construction, maintenance and use of a sanitary force main together with a manhole under and along Melvin Avenue between Wild Avenue and Westerly Dead End; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated June 3, 2009, acting on New Building Permit Nos. 510066544, 510066483, 510066456, 510066465, 510066447, 510066562, 510066535, 510066553, 510066438, 510066429, 510066517, 510066526, 510066492, 510066508, 510066474, is hereby modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawings filed with the application marked “Received February 5, 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 this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT a Homeowners Association shall be established to maintain the private internal sanitary easement; and

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

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

Adopted by the Board of Standards and Appeals, February 23, 2010.

312-09-A thru 323-09A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 340 CS Holdings, LLC, owner.

SUBJECT – Application November 24, 2009 – Appeal

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seeking a common law vested right to complete construction commenced under the prior R6/C1-3 zoning district. R6A /C2-4 & R6B zoning district.

PREMISES AFFECTED – 340 Court Street, 283-291 Union Street, 292-298 Sackett Street, Block 339, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: James Power.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction on a development consisting of a seven-story mixed-use residential/commercial/community building and 11 four-story townhouses under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on February 2, 2010, after due notice by publication in *The City Record*, and then to decision on February 23, 2010; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of the application; and

WHEREAS, the site is located on a through lot bounded by Sackett Street to the north, Court Street to the east, and Union Street to the south, and has a lot area of 43,753 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a seven-story mixed-use residential / commercial / community facility building and 11 four-story townhouses (the “Development”), a total of 119,271 sq. ft. of floor area (2.73 FAR), a base height ranging between 38’-0” and approximately 48’-8”, and a maximum building height of 70’-0”; and

WHEREAS, the portion of the subject site within 100 feet of Court Street is currently located within a C2-4 (R6A) zoning district and the remaining portion of the site is located within an R6B district; prior to the rezoning, the portion of the site within 150 feet of Court Street was located within a C1-3 (R6) district and the remaining portion was located within an R6 district; and

WHEREAS, the Development complies with the former C1-3 (R6) and R6 zoning district parameters; specifically with respect to floor area and height; and

WHEREAS, however, on October 28, 2009 (the “Enactment Date”), the City Council voted to adopt the Carroll Gardens/Columbia Street Rezoning, which rezoned the site to C2-4 (R6A) and R6B, as noted above; and

WHEREAS, the Development does not comply with the new zoning district parameters as to floor area and height; and

WHEREAS, because the Development is not in

compliance with these provisions of the C2-4 (R6A) and R6B zoning district and work on the foundation was not completed as of the Enactment Date, the permits lapsed by operation of law; and

WHEREAS, the applicant now requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed construction; and

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

WHEREAS, the Board notes that Permit Nos. 30132200-01-EW-OT, 310153213-01-NB, 320023620-01-NB, 320023639-01-NB, 320023611-01-NB, 320029768-01-NB, 320029777-01-NB, 320037900-01-NB, 320031185-01-NB, 320022104-01-NB, 320020357-01-NB, 320020366-01-NB, 320020375-01-NB, (the “Permits”), which authorized construction of the Development pursuant to C1-3 (R6) and R6 zoning district regulations were issued on May 30, 2008, June 24, 2008, October 16, 2009, October 20, 2009, and October 21, 2009; and

WHEREAS, by letter dated December 23, 2009, DOB stated that the Permits were lawfully issued, authorizing construction of the proposed Development prior to the Enactment Date; and

WHEREAS, the Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new C2-4 (R6A) and R6B zoning district regulations and DOB determined that the Development’s foundation was not complete; and

WHEREAS, the Board has reviewed the record and agrees that the Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the applicant represents that if DOB had classified the Development as a major development pursuant to ZR § 11-31(c)(2)(i), it would have satisfied the vesting criteria of ZR § 11-331; and

WHEREAS, ZR § 11-331 reads: “If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date;” and

WHEREAS, the Board notes that ZR § 11-31(c)(1)(i) defines a “minor development” as the construction of any single building which will be non-conforming or non-complying under the provisions of any applicable amendment to the Zoning Resolution; and

WHEREAS, the Board further notes that ZR § 11-31(c)(2)(i) defines a “major development” as the construction of two or more buildings on a single zoning lot,

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which will be non-complying under the provisions of any applicable amendment to the Zoning Resolution; and

WHEREAS, the applicant states that because all of the proposed buildings on the subject site touch, DOB determined that the proposed development constitutes a single building for purposes of the Zoning Resolution, and therefore is defined as a “minor development;” and

WHEREAS, as a result, DOB concluded that the Development did not meet the vesting criteria for a minor development under ZR § 11-331, which requires that all foundation work for the development must be complete prior to the effective date of the rezoning; and

WHEREAS, the applicant represents that the foundation for the seven-story mixed-use portion of the Development was completed prior to the effective date of the rezoning; therefore if DOB had classified the Development as a major development, it would have satisfied the vesting criteria of ZR § 11-331 because the foundations for at least one building in the development were completed prior to the effective date of the rezoning; and

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

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

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

WHEREAS, as to substantial construction, the applicant states that prior to the Enactment Date, the owner had completed the following: 100 percent of site preparation for the entire site, 100 percent of excavation and foundation work for the seven-story mixed-use portion of the Development, including the pouring of 2,003 cubic yards of concrete, or 73 percent of the concrete required for all of the foundations; and

WHEREAS, the applicant represents that the construction completed thus far constitutes the most difficult and complex portions of the Development; and

WHEREAS, the applicant states that the remaining

work required to complete the structural foundation consists of the completion of form work for the townhouses, the placing of rebar, and the pouring of concrete, which will not present any particular complications or delays; and

WHEREAS, the applicant states that work pursuant to the Permits was performed for 200 working days prior to the Enactment Date, and that approximately 320 more working days are required to complete the Development, including approximately 40 days of work to fully complete the excavation and foundations for the townhouses; and

WHEREAS, in support of these assertions, the applicant submitted the following evidence: photographs of the site showing the amount of work completed prior to the Enactment Date; concrete pour tickets; a construction contract; a construction log; affidavits from the owner, contractor, and engineer; a letter of completion from DOB regarding Job No. 310132200; and copies of cancelled checks; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

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

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$11,271,781, including hard and soft costs and irrevocable commitments, out of \$61,664,800 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted a construction contract, cancelled checks, accounting tables, and concrete pour tickets; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$5,781,132 in costs related to site preparation, excavation, installation of foundations, architectural and engineering fees; and

WHEREAS, the applicant further states that the owner also irrevocably owes an additional \$5,490,049 in connection with costs committed to the development under irrevocable contracts prior to the Enactment Date; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 18 percent of the projected total cost; and

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

WHEREAS, again, the Board’s consideration is guided by the percentages of expenditure cited by New York courts

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considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to the serious loss, the applicant represents that the rezoning would result in a serious loss for the owner, as it would decrease the maximum floor area of the project by 14,677 sq. ft., from 119,270 sq. ft. to 104,593 sq. ft.; and

WHEREAS, the applicant states that the decrease in floor area would result in the loss of one entire townhouse (2,234 sq. ft.) in the R6B portion of the site and 12,344 sq. ft. of residential floor area in the seven-story mixed-use residential/commercial/ community facility building proposed for the C2-4 (R6A) portion of the site; and

WHEREAS, the applicant represents that, based on anticipated sales prices, the total diminution of revenue would equal approximately \$12,900,000 for the seven-story mixed-use building and \$2,200,000 for the townhouses; and

WHEREAS, further, the applicant states that the remaining townhouses would have to be redesigned to comply with the new maximum base height of 40 feet, which would be achieved by lowering the floor-to-ceiling heights, resulting in decreased sales prices for the townhouses and an economic loss of approximately \$2,000,000; and

WHEREAS, the applicant further states that a full redesign of the seven-story mixed-use building would be required because the elimination of floor area on the upper floors would alter the unit mix of the project, thereby affecting the apartments on the lower floors; and

WHEREAS, the applicant represents that the redesign would result in \$1,000,000 in additional architectural and engineering costs, and \$1,878,000 in additional soft costs and carrying costs; and

WHEREAS, the Board agrees that the loss of one of the townhouses and the reduction in floor area of the seven-story mixed-use building, and the diminution in value because of the need to redesign, constitutes a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Development had accrued to the owner of the premises as of the Enactment Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of the New Building Permits associated with DOB Application Nos. 310153213-01-NB, 320023620-01-NB, 320023639-01-NB, 320023611-01-NB, 320029768-01-NB, 320029777-01-NB, 320037900-01-NB, 320031185-01-NB, 320022104-01-NB, 320020357-01-NB, 320020366-01-NB and 320020375-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals,

February 23, 2010.

64-07-A

APPLICANT – Stuart A. Klein, for Sidney Frankel, owner.
SUBJECT – Application September 14, 2009 – Appeal for a common law vested right to continue construction commenced under the prior R6 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 1704 Avenue N, southeast corner lot at the intersection of East 17th Street and Avenue N, Block 6755, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Stuart A. Klein.

For Opposition: Ellen Messing.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 23, 2010, at 10 A.M., for decision, hearing closed.

57-09-A thru 158-09-A

APPLICANT – Eric Palatnik, P.C. for Maguire Avenue Realty Corporation, owner.

SUBJECT – Application April 15, 2009 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations. R3-2 (SSRD) zoning district.

PREMISES AFFECTED – Maguire Woods, Santa Monica Lane, Moreno Court, El Camino Loop, Malibu Court, Foothill Court and Moreno Court, Maguire Woods in the Woodrow section of Staten Island. Block 6979, Lots 64 thru 362, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for continued hearing.

167-09-A

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.

SUBJECT – Application May 5, 2009 – Appeal challenging Department of Building's determination that the reconstruction of non-complying building must be done in accordance with §54-41 and be required to provide a 30 foot rear yard. M1-2 zoning district.

PREMISES AFFECTED – 820 39th Street, south side, 150' east of 8th Avenue, Block 916, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

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For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M., for continued hearing.

12-10-A

APPLICANT – Slater & Beckerman, LLP for Lex Rex, LLC, owner; Atlantic Commons Cornstone L.P., lessee.

SUBJECT – Application January 27, 2010 – Proposed construction of a five-story, 18-unit residential building located within the 30 foot required setback of Eastern Parkway Extension, contrary to Administrative Code §18-112. R6 zoning district.

PREMISES AFFECTED – 1734 Saint John’s Place, West side of Howard Avenue, south side of St. John’s Place and north side of Eastern Parkway Extension. Block 1473, Lots 34, 35, 36, 37, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Stuart Beckerman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 9, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, FEBRUARY 23, 2010

1:30 P.M.

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

ZONING CALENDAR

247-09-BZ

CEQR #10-BSA-017M

APPLICANT – Michael T. Sillerman, Esq., c/o Kramer Levin et al, for Central Synagogue, owner.

SUBJECT – Application August 26, 2009 – Variance (§72-21) to allow for expansion of the community house for the Central Synagogue (UG 4), contrary to floor area and height and setback regulations. (§§33-12, 81-211, 33-432). C5-2, C5-2.5 MiD zoning districts.

PREMISES AFFECTED – 123 East 55th Street, north side of East 55th Street between Park Avenue and Lexington Avenue, 127.5’, Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Michael T. Sillerman and Samuel H. Lindenabum.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 19, 2009, acting on Department of Buildings Application No. 120097849, reads, in pertinent part:

- “1. Proposed lot 10 building enlargement increases existing non-complying floor area by 7,129.62 sq. ft. and exceeds the maximum floor area ratios set forth in ZR 33-12 and ZR 81-211.
2. Proposed lot 10 building enlargement creates a non-compliance with height and setback regulations of ZR 33-432 of initial setback distance . . .”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C5-2 zoning district and a C5-2.5 zoning district within the Special Midtown District (MiD), the proposed two-story enlargement of an existing nine-story Use Group 4 community facility building, which does not comply with applicable zoning requirements for floor area and initial setback, contrary to ZR §§ 33-12, 33-432, and 81-211; and

WHEREAS, a public hearing was held on this application on October 27, 2009, after due notice by publication in the *City Record*, with continued hearings on

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November 24, 2009 and January 12, 2010, and then to decision on February 23, 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, recommends approval of the application; and

WHEREAS, the owners of the building adjacent to the west (the "Townhouse" or "Townhouse Opposition"), provided testimony in opposition to the application, citing concerns about the potential and continued impact of the enlargement, construction associated with it, and the operations of the breakfast for the homeless program; and

WHEREAS, the owners of the building adjacent to the east (the "Hotel" or "Hotel Opposition"), provided testimony in opposition to the application, citing concerns about the potential and continued impact of the enlargement, construction associated with it, and the operations of the breakfast for the homeless program, as well as (1) opposition to the applicant's request for a waiver of the Board's Rules of Practice and Procedure § 1-03(g), (2) a request that the Board enforce the provisions of the Declaration of Restrictions and Zoning Lot Merger (the "Declaration"), and (3) a request that the Board compel the applicant to implement the Hotel's design revisions; and

WHEREAS, the opposition's concerns are discussed in more detail below; and

WHEREAS, this application was brought on behalf of Congregation Ahawath Chesed Shaar Hashomayim, also known as Central Synagogue (the "Synagogue") a not for profit religious institution; and

WHEREAS, the Synagogue's community house (the "Community House") occupies a tax lot (Tax Lot 10) (the "Community House Site"), which is part of a combined zoning lot that was created in 1981, pursuant to the Declaration, and includes Tax Lots 9, 12, and 63; and

WHEREAS, Tax Lot 9 is immediately to the west of the Community House and is occupied by the Townhouse; Tax Lot 12 is immediately to the east of the Community House and is occupied by the Hotel; and Tax Lot 63 is located to the north of the Community House, with frontage on East 56th Street, and is occupied by a commercial tower (the "Commercial Tower"); and

WHEREAS, the combined zoning lot is a through lot with frontage on East 55th Street and East 56th Street between Park Avenue and Lexington Avenue; the majority of the lot is within a C5-2 zoning district, with the easternmost ten feet (a portion of Tax Lot 12) within a C5-2.5 zoning district within the Special Midtown District (MiD); and

WHEREAS, the combined zoning lot has a lot area of 17,321.88 sq. ft. and the Community House Site has a lot area of 5,648.44 sq. ft.; and

WHEREAS, the Board recognizes that the tax lots have been merged into a single zoning lot, pursuant to the Declaration, and thus there is one owner representing each of the four included parcels; and

WHEREAS, accordingly, pursuant to the Board's Rules

of Practice and Procedure § 1-03(g), the applicant must submit owner's authorization from all owners on the zoning lot; and

WHEREAS, the Synagogue provided owner's authorizations from the Townhouse and the Commercial Tower, but was unable to secure an authorization from the Hotel; and

WHEREAS, the Synagogue provided evidence that it (1) sought authorization to the application from all three owners, and (2) provided notification of the public hearing to all owners; and

WHEREAS, the applicant provided evidence of communication between the Synagogue and the Hotel regarding the application and the Hotel appeared at the public hearing, in opposition to the proposal; and

WHEREAS, in the absence of authorization from the Hotel, the Synagogue has requested a waiver of the Board's rule; and

WHEREAS, the Hotel Opposition argues that the waiver should not be granted in the absence of the Hotel's authorization because (1) prior Board actions on owner's authorization do not support the granting of a waiver, (2) the Board's Rules of Practice and Procedure do not contemplate it, and (3) the Board should not rely on the court's order in Said Rahmanpour v. the Board of Standards and Appeals, Index No. 028648/97 (Unreported Schmidt, J. Sup. Ct. Queens Co. 7 April 1998); and

WHEREAS, specifically, as to the prior Board actions, the Hotel Opposition cites to (1) the dismissal in BSA Cal. No. 826-86-BZ through 828-86-BZ (Grand Central Parkway) as evidence that the Board does not have jurisdiction over a case for which it does not have an owner's authorization and (2) the Board's decision in 240-06-BZ through 251-06-BZ (St. John's University) for the circumstances it should require when granting a waiver; and

WHEREAS, the Board distinguishes the facts in Grand Central Parkway and disagrees with the Hotel Opposition's analysis of St. John's University; and

WHEREAS, the Board notes that, as required by the Rules, initially the Grand Central Parkway site's owner provided authorization for an application brought by a lessee; the owner later withdrew its consent and the Board dismissed the case because the record no longer contained a valid owner's authorization for the site on which the discretionary relief was sought; and

WHEREAS, as to the St. John's University case, the Board acknowledges that it reviewed evidence of the location of the building on the zoning lot seeking the variance and its distance from the owners on the zoning lot who denied to provide authorization, but disagrees that such a factual finding is necessary for the Board to find that a waiver of the Rules is appropriate; the Board analyzed the variance request with the authorization from the owner of the site on which the discretionary relief was sought; and

WHEREAS, the Hotel Opposition asserts that the Board may only waive certain of its Rules, such as those related to an extension of time, but not of the requirement for owner's authorization; and

WHEREAS, the Board disagrees and notes that Rule § 1-

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14(b) does not set forth any such limitation; it states, in pertinent part: “Waiver - Any section or subdivision of these Rules of Practice and Procedure may be waived in an individual matter at any public hearing by vote of the Board in conformance with §1-01(e) . . .”; and

WHEREAS, the Hotel Opposition further extrapolates that the intent of ZR § 12-10 – definition of “zoning lot,” subsection (f) and Rule § 1-03(g) are the same and therefore consent from all “parties of interest” is required; and

WHEREAS, the Board finds that the ZR is not applicable to the Board’s authorization requirement and that the Hotel Opposition’s argument is unavailing; and

WHEREAS, the Hotel Opposition states that the Board should not rely on Rahmanpour a mandamus, which originated from Board’s initial rejection of a case (BSA Cal. No. 50-99-BZ) involving two adjacent lots, which had formerly been in common ownership, as the basis for its decision to grant the requested waiver; the application, in that case included consent from only the owner of the lot (or portion of the lot) on which the construction was proposed, but which the court ordered the Board to hear the variance application, in the absence of the second owner’s authorization; and

WHEREAS, the Board notes that the Hotel Opposition introduced Rahmanpour into the record and that the court’s mandamus, although it may actually support the granting of a waiver, is not the basis for the Board’s decision; and

WHEREAS, the Board has determined that the spirit of the Rule, to provide notification to owners on the zoning lot and to require authorization from an owner whose site is the subject of discretionary relief, is maintained, even in the absence of the Hotel’s authorization, because (1) the applicant sought authorization from all of the owners, in good faith; (2) all owners were notified of the application and kept abreast of the hearing schedule, in which two of them participated; (3) only the Community House Site was the subject of the requested discretionary relief as no construction was proposed for any of the other tax lots; and (4) pursuant to its Rule § 1-14(b), the Board may waive its own rules in appropriate circumstances; and

WHEREAS, the Synagogue’s proposal is limited to the enlargement of its Community House, which it owns and operates; and

WHEREAS, accordingly, the request for a variance focuses on the Community House Site, but certain aspects of the combined zoning lot are discussed, when relevant; and

WHEREAS, the C5-2 portion of the zoning lot allows for a maximum FAR of 10 and the C5-2.5 (MiD) portion of the zoning lot allows for a maximum FAR of 12; the applicant notes that the zoning lot was formed prior to the creation of the Special Midtown District and the entire lot was zoned C6-6 (maximum FAR of 15) at the time of the zoning lot merger; and

WHEREAS, the combined zoning lot is developed with 260,361.25 sq. ft. of floor area (15 FAR), a legal pre-existing non-complying condition; the Community House Site is overbuilt, under the current zoning, by 6,346.3 sq. ft. (6.3 FAR); and

WHEREAS, the applicant represents that, the Synagogue

anticipated future growth and preserved its right to transfer up to 10,000 sq. ft. of floor area from its historic synagogue sanctuary across East 55th Street, which would allow for two additional stories for the Community House; and

WHEREAS, the Synagogue now proposes to construct a two-story vertical enlargement to its existing nine-story Community House, which will result in an increase in floor area of 7,129.62 sq. ft. from 34,420.87 sq. ft. to 41,550 sq. ft.; and

WHEREAS, the Synagogue proposes to extrude the existing walls of the Community House to maintain a uniform footprint, which will extend the non-complying setback that begins at the seventh floor (an initial setback of 20 feet is required above the sixth floor); the existing and proposed Community House provides an initial setback of 15 feet; and

WHEREAS, the applicant initially also sought a waiver to the sky exposure plane regulations, but revised the design to eliminate the need for the waiver; and

WHEREAS, the applicant notes that the Community House is a nine-story building with two levels below grade, which was built in 1968; and

WHEREAS, the Synagogue represents that the existing configuration is inefficient and inadequate to meet the Synagogue’s existing and future programmatic needs; and

WHEREAS, specifically, the Synagogue notes the following inefficiencies: (1) the auditorium in the sub-cellar and the low-ceilinged mechanical space above it are not well-designed and are not well-connected to the building’s entrance; (2) the location of the existing building’s core constrains circulation and results in small offices and classrooms; (3) the t-shaped hallways and the location of the elevators and other equipment result in classrooms that are spread out and not conducive to fostering interaction, even within a single floor; (4) the existing windows are small and inefficient; and (5) two stairwells occupy space that could be better used as windowed classrooms; and

WHEREAS, the applicant represents that the Synagogue’s membership has increased from approximately 1,000 to approximately 6,000 members in the 40 years since the Community House was built; and

WHEREAS, accordingly, the Synagogue’s staff has grown as have the offerings for community activities at every age level; and

WHEREAS, the Synagogue has begun to renovate portions of the existing building to address these concerns, but requires additional floor area to accommodate its programmatic needs and continued growth; and

WHEREAS, the applicant sets forth the following programmatic needs of the Synagogue: (1) an indoor recreation room for nursery school children; (2) a common floor to accommodate teachers’ offices; (3) a space for parents to wait while retrieving children; (4) a space for teenage congregants; (5) a full floor for clergy members, located between the religious school classrooms on floors 6-8 and the adult education floors 10-11; and (6) permanent space dedicated to adult education; and

WHEREAS, the applicant states that the Community House’s footprint is small and inefficient, which requires

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vertical stacking of a program that would benefit from the horizontal integration of space; and

WHEREAS, the applicant represents that the noted programmatic needs cannot be accommodated in the existing amount of floor area and that two additional floors are required; and

WHEREAS, additionally, the applicant notes that the Synagogue's sanctuary is across the street and that adjacency to it is essential, thus enlargement of the existing building furthers that goal; and

WHEREAS, the program of the proposed Community House is as follows: cellar and sub-cellar – banquet/lecture room, community hall, kitchen, storage, and mechanical space; first floor – chapel, study, and lobby; second and third floors – nursery school classrooms and play roof; fourth floor – library and music room; fifth school offices; and sixth through eighth floors – religious school classrooms; ninth floor – clergy offices; tenth and eleventh floors – adult school and lounge; and rooftop – play area and mechanical space; and

WHEREAS, the applicant represents that the complying alternative, which would involve the renovation of the existing building without increasing the floor area would not allow for enough space to accommodate its programming; and

WHEREAS, the Board credits the applicant's statements as to the Synagogue's programmatic needs and the limitations of a complying building; and

WHEREAS, the Board also acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the case law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, based upon the above, the Board finds that the Synagogue's programmatic needs cannot be accommodated on the Community House Site, thus creating unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed building enlargement will be in furtherance of its educational mission; and

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

WHEREAS, the applicant states that the neighborhood is composed of a mix of uses including commercial office, retail, hotel, residential, and institutions; and

WHEREAS, the applicant notes that the proposal maintains the existing use, which has existed at the site for more than 40 years; and

WHEREAS, the applicant represents that the proposal complies with all zoning regulations except floor area and initial setback and that the two new floors will fit within the footprint of the floors below, maintaining the streetwall; and

WHEREAS, as to bulk, the applicant notes that the site is located in a high density Midtown area with high-rise buildings found along both sides of Park Avenue and Lexington Avenue,

many with commercial office use and ground-floor retail; the mid-blocks are occupied by a variety of building forms and uses, including high-rise buildings and older low-rise buildings; and

WHEREAS, the applicant notes that the subject block has a mix of uses, building forms, and architectural styles; and

WHEREAS, the Community House is located adjacent to the 36-story Hotel building and the 33-story Commercial Tower; and

WHEREAS, the applicant notes that the enlargement will result in an increase in the height of the Community House by 22.67 feet for a total height of 130 feet to the top of the roof; and

WHEREAS, the Townhouse Opposition cited the following primary concerns about the Community House's potential impact on the adjacent site to the west: (1) the lack of compatibility of the breakfast for the homeless program and, thus, the request that the entrance to the breakfast program not be located to the west, adjacent to the Townhouse; (2) the diminution of privacy on the adjacent to a residential unit in the Townhouse due to adjacent windows; and (3) the potential impact of construction on the Townhouse; and

WHEREAS, in addition to the concern related to the enforcement of the Declaration, which will be discussed below, the Hotel Opposition also raised the following primary concerns about the compatibility of the Community House with the Hotel: (1) the proposed play roof enclosure blocks existing hotel windows on the western wall of the 16th and 17th floors of the Hotel, and affects the view on the 18th floor; (2) the proposed play roof enclosure blocks the right to install windows that would open on the western wall of the 16th, 17th, and 18th floors of the Hotel; (3) the height of the play roof enclosure should be limited to ten feet; (4) the proposed bulkhead would block the right to install windows along a portion of the western facing wall of the 16th floor of the Hotel, and thus should be moved to the eastern side of the roof; and (5) the entrance for the breakfast program should be located to the west of the Synagogue's entrance, away from the Hotel entrance; (6) the hours of the use of the play roof should be limited; and (7) the potential impact of construction on the Hotel; and

WHEREAS, as to the Townhouse, the Synagogue has agreed to add a window with obscured glass to the wall adjacent to the Townhouse's fourth and fifth floor residential unit; and

WHEREAS, the Board notes that the Townhouse Opposition provided an owner's authorization form authorizing the Synagogue's pursuit of the subject application; and

WHEREAS, in response to the common concerns about the location of the entrance to the breakfast program, the applicant notes that the Synagogue's programmatic need requires a separate entrance from the main entrance to the Community House and the proposed entrance conforms with the overall building plan; and

WHEREAS, the Board notes that the Community House is located in a dense commercial district in Midtown with a mix of uses and that the Synagogue and its breakfast program are longstanding as-of-right uses in the zoning district;

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accordingly, the Board finds the opposition's arguments to limit the use to be unavailing; and

WHEREAS, in response to the common concerns about construction, the applicant notes, and the Board agrees, that construction of this nature is performed routinely throughout New York City and the construction of the enlargement will be completed in compliance with all Building Code and other relevant regulations; and

WHEREAS, as to the Hotel's concerns, the Synagogue (1) has set the proposed play area back three feet from the eastern lot line to allow for the Hotel's windows on its western wall to be operable; (2) asserts that the play roof enclosure is a permitted obstruction and its dimensions will be reviewed and approved by DOB; (3) asserts that the location of the bulkhead cannot be relocated due to the Synagogue's programmatic needs and layout of the building; and

WHEREAS, finally, the Hotel Opposition asserts that the Board should follow its decision in BSA Cal. No. 240-03-BZ and require the Synagogue to establish an agreement with its neighbors regarding site conditions; and

WHEREAS, the Board disagrees, in part, because the cited case is distinguishable in that the proposed synagogue in that case was located within a low density residential zoning district occupied by residential uses; the Board notes that a variety of uses could occupy the Community House Site as-of-right, without any requirement for mitigating conditions; and

WHEREAS, the Board has determined that the proposal, with the noted revisions, is driven by the Synagogue's programmatic needs and that, the use remains the same except for the enlargement of two floors, which will be compatible with the adjacent uses; and

WHEREAS, specifically, as to the Hotel, the Board notes that the non-complying floor area and height and setback does not block any windows and that a side setback of the play area retains sufficient space for window openings and does not prohibit the installation of new windows in the future; additionally, the proposed use of the roof top as a play area is as-of-right in the zoning district; and

WHEREAS, the Synagogue represents that the proposed roof top enclosure is a permitted obstruction and no waivers are sought for it, which is proposed to reach a peak of 24'-11" as reflected on the plans; and

WHEREAS, the Board notes that DOB will review and approve the parameters of the roof top enclosure for compliance with zoning and all other relevant regulation; and

WHEREAS, the Board notes that the majority of the opposition's concerns do not relate to the requested floor area and setback waivers, but rather to general conditions of the site; 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 Hotel Opposition additionally asserts that the Board cannot disregard the terms of the Declaration and should not approve a variance request, which the Hotel Opposition believes conflicts with the Declaration; and

WHEREAS, the Hotel Opposition asserts that the proposal fails to comply with limitations set forth in the Declaration regarding the Hotel's rights to install windows and maintain the operation of existing ones on its western wall; the Hotel Opposition also noted a prohibition on encroachment into the sky exposure plane, which the applicant no longer seeks; and

WHEREAS, as to the Declaration, the Synagogue cites to New York State case law in support of the position that an agency need not consider an applicant's private agreements in granting or denying a zoning approval; and

WHEREAS, the Synagogue cites to Friends of Shawangunks v. Knowlton, in which the court states that an agency is not required to consider a private agreement in the context of a government approval because a zoning ordinance "is a legislative enactment and the easement or covenant a matter of private agreements" 64 N.Y. 2d 387, 392 (1985) See also Isenbarth v. Barnett, 206 A.D. 546 (N.Y. App. Div. 2d Dep't 1923); and

WHEREAS, the rule cited in Shawangunks, which distinguishes a governmental ordinance from a private real property agreement, has been applied in cases involving the Board See Lacitra v. Foley, 20 Misc.2d 922 (N.Y. Sup. Ct. Bronx Co. 1959), Gersten v. Cullen, 203 A.D.2d 744 (N.Y. App. Div. 3d Dep't 1994), Nemet v. Edgemere Garage & Sales Co., 73 N.Y.S.2d 921 (N.Y. Sup. Ct. Queens Co. 1947); and

WHEREAS, the Board agrees that New York State courts support the conclusion that a government agency is not required to enforce a private agreement, which may conflict with its own ordinance; and

WHEREAS, the Board finds that the case law does not prohibit an agency from considering a private agreement, but it does not require the agency to enforce it; and

WHEREAS, the Board notes that certain of the Declaration's provisions appear to conflict, resulting in ambiguity in the text, and it does not agree with the Hotel Opposition that this is the appropriate forum for resolving such conflicts; and

WHEREAS, accordingly, the Board recognizes that the Declaration was the vehicle to establish the subject merged zoning lot but it has determined that the analysis for the variance is independent of the Declaration's bulk-related provisions and has reviewed the proposal pursuant to the findings set forth in the ZR, rather than the private agreement; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the existing building on the zoning lot and the programmatic needs of the Synagogue; and

WHEREAS, as to the minimum variance, the Board notes that the applicant eliminated the request to waive the sky exposure plane regulations and that the current request is limited to the initial setback waiver, which allows for the extrusion of the existing front wall (an encroachment of five feet on the tenth and eleventh floors) and two additional floors of floor area; and

WHEREAS, accordingly, the Board finds that this proposal reflects the minimum variance required to afford the

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owner relief, since the Community House is designed to address the Synagogue's present programmatic needs, which have been clearly established in the record; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 10BSA137M, dated August 25, 2009; 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 reviewed the project for potential hazardous materials impacts; 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, 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 a C5-2 zoning district and a C5-2.5 zoning district within the Special Midtown District, the proposed two-story enlargement of an existing nine-story Use Group 4 community facility building, which does not comply with applicable zoning requirements for floor area and initial setback, contrary to ZR §§ 33-12, 33-432, and 81-211; *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 "February 18, 2010"- twenty eight (28) sheets; and *on further condition*:

THAT the Community House parameters shall not exceed those reflected on the BSA-approved plans for the

Community House Site, including a maximum floor area of 41,550 sq. ft. and a maximum height of 130 feet;

THAT DOB will review and approve the parameters of the roof top enclosure for compliance with zoning and all other relevant regulation;

THAT any change in the use, occupancy, or operator of the Building requires review and approval by the Board;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 23, 2010.

248-09-BZ

CEQR #10-BSA-018X

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Incorporated, owner.

SUBJECT – Application August 26, 2009 – Special Permit (§11-411 & §11-412) for re-instatement of an automotive service station (UG16) which expired on July 24, 1991; Amendment to modify layout of the site; and Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 3031 Bailey Avenue, northwest corner of Bailey Avenue and Albany Court, Block 3266, Lot 85, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rhinesmith.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 21, 2009, acting on Department of Buildings Application No. 220016578, reads in pertinent part:

“ZR 22-00. Proposed automotive service station in R6 zoning dist. is not permitted as per the stated section of the code.

Existing certificate of occupancy and application expired by limitation, renewal of BSA 871-60-BZ from Board of Standards and Appeals;” and

WHEREAS, this is an application for a waiver of the

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Rules of Practice and Procedure, a reinstatement of a prior Board approval to permit the operation of an automobile service station with accessory uses (Use Group 16) in an R6 zoning district pursuant to ZR §§ 11-411, and minor modifications to the previously-approved plans pursuant to ZR § 11-412; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in the *City Record*, and then to decision on February 23, 2010; and

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

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

WHEREAS, the premises is located on the northwest corner of Bailey Avenue and Albany Crescent, within an R6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 25, 1961 when, under BSA Cal. No. 871-60-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station, car wash, lubricatorium, sales room, office, minor repairs with hand tools only, storage of more than five motor vehicles, and New York State Inspection station, for a term of 20 years; and

WHEREAS, most recently, on May 18, 1982, under BSA Cal. No. 871-60-BZ, the grant was amended to extend the term for ten years; and

WHEREAS, the term of the variance has not been extended since its expiration on July 25, 1991, and

WHEREAS, the applicant represents, however, that the use of the site as a gasoline service station with accessory uses has been continuous since the initial grant; and

WHEREAS, additionally, the applicant notes that a temporary order of closure associated with the sale of un-taxed merchandise was being resolved quickly and did not implicate the continuous use status; and

WHEREAS, the applicant now proposes to reinstate the prior grant; and

WHEREAS, the applicant has requested a ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, the applicant also seeks to amend the grant to approve site conditions that do not conform with previously approved plans, to reflect: (i) the removal and relocation of oil and underground storage tanks for motor fuel; and (ii) the replacement of the single fuel dispenser island with two smaller islands; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted photographs, revised plans and a revised signage analysis reflecting the removal of the shed structure located in the northwest corner of the premises and any excess signage related to the tire repair

business from the site; and

WHEREAS, the applicant states that tire repair services will now take place within the existing enclosed building; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-412.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 11-411 and 11-412 for a reinstatement of a prior Board approval of an automobile service station with accessory uses (UG 16) and for a legalization to permit modifications to the site, within an R6 zoning district, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received December 15, 2009"- (5) sheets; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on February 23, 2020;

THAT the lot shall be kept free of graffiti, dirt and debris;

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

THAT a new certificate of occupancy be obtained by August 23, 2010;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 23, 2010.

253-09-BZ

CEQR #10-BSA-020Q

APPLICANT – MetroPCS New York, LLC, for Jangla Realty Corp., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application September 4, 2009 – Special Permit (§73-30) to install public utility wireless telecommunications facility on roof of existing building. R4 zoning district.

PREMISES AFFECTED – 53-00 65th Place, southwest corner of 53rd Avenue and 65th Place, Block 2374, Lot 160, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: John Coughlin.

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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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated August 4, 2009, acting on Department of Buildings Application No. 420024869, reads in pertinent part:

“Proposed telecommunications facility exceeds 400 square feet allowed under TPPN # 5/98 and therefore will require a special permit from the Board of Standards and Appeals pursuant to Section 73-30 of NYC Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility, which consists of six panel antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on December 15, 2009, after due notice by publication in *The City Record*, with a continued hearing on February 2, 2010, and then to decision on February 23, 2010; and

WHEREAS, Community Board 5, Queens, recommends disapproval of this application, citing concerns with the number of existing and proposed antennas on the roof of the subject building, and with the potential impacts of the proposal on neighborhood character and health; and

WHEREAS, Queens Borough President Helen Marshall recommends disapproval of this application; and

WHEREAS, several neighborhood residents provided testimony in opposition to this application (hereinafter, the “Opposition”), citing the following primary concerns: (i) the potential health risks associated with radio frequency emissions from the facility; (ii) the roof is in poor condition and cannot support additional antennas; (iii) the site is already overloaded with antennas and alternate sites have not been considered; and (iv) the wires and equipment from the existing telecommunications facilities hampered Fire Department access during a recent fire, and the wires and equipment from the proposed facility will further interfere with future Fire Department access on the roof; and

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

WHEREAS, the subject site is currently occupied by a six-story residential building; and

WHEREAS, the proposed telecommunications facility will be located on the roof of the six-story residential building, upon which existing antennas are already situated; and

WHEREAS, the applicant states that the proposed telecommunications facility consists of: (i) six panel antennas mounted to the building’s parapet walls and to

existing roof and ceiling structures, and extending to a maximum height of six feet above the parapet; (ii) two new equipment cabinets, which will be located in an existing equipment room in the cellar of the proposed building; and (iii) coaxial cables routed from the equipment room to the roof via an enclosed cable tray; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications facility, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood;” and

WHEREAS, the applicant represents that the facility has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant further represents that the size and profile of the facility is the minimum necessary to provide the required wireless coverage, and that the facility will not interfere with radio, television, telephone or other uses; and

WHEREAS, as to the safety and health concerns raised by the Opposition, the Board appreciates the concerns expressed by these neighbors, but notes that it may not consider arguments about health risks related to such installations, as such consideration is pre-empted by federal law, pursuant to Section 332(c) of the Federal Telecommunications Act of 1996; and

WHEREAS, however, the applicant states that the transmissions from the facility are well below the limits set by the Federal Communications Commission, in accordance with federal law; and

WHEREAS, as to the Opposition’s concerns about the condition of the roof, the applicant submitted an architectural report stating that the proposal will comply with the Building Code and that the building is structurally adequate to support the proposed telecommunications facility; and

WHEREAS, as to the Opposition’s assertion that the applicant must identify alternate locations, the Board notes that there is no such requirement for this special permit; and

WHEREAS, as to the Opposition’s concerns about the facility’s equipment and wires hampering Fire Department access, the applicant states that the facility is designed to comply with both the Building Code and the Fire Code, and the wires running between the equipment room and the antennas will be within a cable tray running up the side of the building, and therefore will not be exposed; and

WHEREAS, a representative of the Fire Department testified at hearing that the site has been inspected and while some of the existing telecommunications equipment on the

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roof is being relocated to prevent future interference with Fire Department access, the Fire Department has no objection to the current application; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed facility and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10-BSA-140Q, dated September 4, 2009; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received November 23,

2009"- (9) sheets; and *on further condition*;

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

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

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

Adopted by the Board of Standards and Appeals, February 23, 2010.

264-09-BZ

CEQR #10-BSA-021K

APPLICANT – Moshe M. Friedman, P.E., for Joseph Ashkenaki, owner; LRHC Flatbush NY, LLC, lessee.

SUBJECT – Application September 15, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Lucille Roberts*) on the second and third floors of a three-story commercial building, C4-4A zoning district.

PREMISES AFFECTED – 927 Flatbush Avenue, aka 927-933 Flatbush Avenue, aka 21-33 Snyder Avenue, Block 5103, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Tzvi Friedman.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated November 4, 2009, acting on Department of Buildings Application No. 300333878, reads in pertinent part:

“Physical culture establishment in a C4-4A zoning district is contrary to Zoning Resolution § 32-10 and therefore must be referred to the Board of Standards and Appeals and requires a special permit from the BSA as per § 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4A zoning district, the legalization of a physical culture establishment (PCE) on the second and third floors of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 8, 2009 after due notice by publication in *The City Record*, with a continued hearing on January 26, 2010, and then to decision on February 23,

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2010; and

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

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

WHEREAS, the subject site is located on the north side of Flatbush Avenue, between Snyder Avenue and Church Avenue, in a C4-4A zoning district; and

WHEREAS, the site is occupied by a three-story commercial building; and

WHEREAS, the PCE has a total floor area of 12,052 sq. ft. on the second and third floors; and

WHEREAS, the PCE is operated as Lucille Roberts Women's Fitness Club; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 9:00 a.m. to 9:00 p.m.; Friday, from 9:00 a.m. to 8:00 p.m.; Saturday, from 9:00 a.m. to 2:00 p.m.; and Sunday, from 10:00 a.m. to 2:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

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

WHEREAS, the PCE will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since 1998, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be limited to two years from the date of this grant; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA018K, dated May 5, 2009; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows;

Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4A zoning district, the legalization of a physical culture establishment on the second and third floors of an existing three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 19, 2009"-Nine (9) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 23, 2012;

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

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

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

THAT DOB shall review and approve the site, including the access lift, for compliance with Local Law 58/87 and any other related regulations;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, February 23, 2010.

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281-09-BZ

CEQR #10-BSA-023M

APPLICANT – Marcie Kesner, Kramer Levin Naftalis & Frankel LLP, for Bayrock/Sapir Organization LLC, owner; WTS International, Incorporated, lessee.

SUBJECT – Application October 7, 2009 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*WTS International*) on the fifth and sixth floors in a recently constructed building. M1-6 zoning district.

PREMISES AFFECTED – 246 Spring Street, Spring Street, Sixth Avenue, Dominick Street, Varick Street. Block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Marcie Kesner.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated December 10, 2009, acting on Department of Buildings Application No. 104403334, reads in pertinent part:

“ZR 42-31. Proposed physical culture establishment at 5th and 6th floor is not permitted as of right and requires BSA special permit pursuant to ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-6 zoning district, a physical culture establishment (PCE) on the fifth and sixth floors of a 43-story mixed-use hotel/commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on January 26, 2010 after due notice by publication in *The City Record*, and then to decision on February 23, 2010; and

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

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

WHEREAS, the subject site is located on a through lot bounded by Spring Street to the north, Varick Street to the west, and Dominick Street to the south, within an M1-6 zoning district; and

WHEREAS, the site is occupied by a 43-story mixed-use hotel/commercial building; and

WHEREAS, the PCE will have a total floor area of 9,155.5 sq. ft. on the fifth and sixth floors; and

WHEREAS, the PCE will be operated as WTS International; and

WHEREAS, the proposed hours of operation are 7:00 a.m. to 8:00 p.m., daily; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for the practice of massage; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

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

WHEREAS, the PCE will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10BSA023M, dated January 5, 2010; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-6 zoning district, a physical culture establishment on the fifth and sixth floors of 43-story hotel/commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially

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conform to drawings filed with this application marked "January 8, 2010"- Five (5) sheets; and *on further condition:*

THAT the term of this grant shall expire on February 23, 2020;

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

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

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

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

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 23, 2010.

293-09-BZ

APPLICANT – Eric Palatnik, Esq., for Rami Esses, owner.
SUBJECT – Application October 15, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to open space and floor area (§23-141(a)). R-2 zoning district.
PREMISES AFFECTED – 2501 Avenue M, northeast corner of Avenue M and Bedford Avenue, Block 7643, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 25, 2009, acting on Department of Buildings Application No. 3209337, 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%;" 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") and open space ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on December 8, 2009 after due notice by publication in *The City Record*, with a continued hearing on January 26, 2010, and then to decision on February 23, 2010; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application, with conditions related to the location of the garage and the proximity of open porches to the property line; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Avenue M and Bedford Avenue, in an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 3,321 sq. ft. (0.55 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 3,321 sq. ft. (0.55 FAR) to 6,000 sq. ft. (1.0 FAR); the maximum permitted floor area is 3,000 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, at hearing the Board requested that the applicant identify which portions of the original home are being retained, and which portions of the attic are being included in floor area calculations; and

WHEREAS, in response, the applicant submitted revised plans showing the portions of the home that are being retained and reflecting the portions of the attic which are included in floor area calculations; and

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

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

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

WHEREAS, therefore, the Board has determined that

MINUTES

the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR and open space ratio, contrary to ZR § 23-141; on condition that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 12, 2010"-(12) sheets; and on further condition:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 6,000 sq. ft. (1.0 FAR); an open space ratio of 60 percent; a front yard with a depth of 15'-0" along the southern lot line; a front yard with a depth of 15'-0" along the western lot line; a side yard with a width of 5'-0" along the eastern lot line; a side yard with a width of 21'-7" along the northern lot line; and a total height of 22'-7", as illustrated on the BSA-approved plans;

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

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

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

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, February 23, 2010.

29-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to legalize and enlarge a synagogue (*Chabad Israeli Center*), contrary to lot coverage, front yards, side yards, and parking regulations. R3X zoning district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to April 13,

2010, at 1:30 P.M., for continued hearing.

162-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Steinway 30-33, LLC, owner; Steinway Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application April 27, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Planet Fitness*) in the cellar, first, and second floors in an existing two-story building; Special Permit (§73-52) to extend the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district. C4-2A/R5 zoning districts.

PREMISES AFFECTED – 30-33 Steinway Street, east side of Steinway Street, south of 30th Avenue, Block 680, Lot 32, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safain.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for continued hearing.

292-09-BZ

APPLICANT – Martyn & Don Weston, for Barbara Aal-Albar LLC, owner; Third Avenue Auto Corporation, lessee.

SUBJECT – Application October 15, 2009 – Special Permit (§11-411, §11-413 & §73-03) to reinstate previously granted variance which expired on December 7, 1999; amendment to change use from a gasoline service station (UG16B) to automotive repair establishment (UG16B); Waiver of the Boards Rules. C1-3/R6A & R5B (Special Bay Ridge District).

PREMISES AFFECTED – 9310-9333 Third Avenue, North east corner of 94th Street, Block 6107, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Don Weston.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for decision, hearing closed.

294-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Shree Ram FLP, owner.

SUBJECT – Application October 16, 2009 – Special Permit (§73-125) to legalize a one-story ambulatory diagnostic and treatment health care facility. R3A zoning district.

PREMISES AFFECTED – 3768 Richmond Avenue, west side of Richmond Avenue, 200' south of the intersection with Petrus Avenue, Block 5595, Lot 11, Borough of Staten

MINUTES

Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for continued hearing.

297-09-BZ

APPLICANT – Marvin Mitzner, Esq., for 180 Ludlow Development LLC, owner.

SUBJECT – Application October 20, 2009 – Variance (§72-21) to allow for the conversion of a recently constructed commercial building for residential use, contrary to rear yard regulations (§23-47). C4-4A zoning district.

PREMISES AFFECTED – 180 Ludlow Street, east side of Ludlow Street approximately 125’ south of East Houston Street, Block 412, Lot 48, 49, 50, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner, Jack Freeman, David Suapz, D Josh tupper, Ken Rockwood, Joseph Dvir, Debra Weiner and Benjamin Giardull.

For Opposition: Isabel Rodriguez, David Rosenberc and Linda Brelik.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for continued hearing.

328-09-BZ

APPLICANT – Bryan Cave LLP, for The Abraham Joshua Heschel School, owner.

SUBJECT – Application December 14, 2009 – Variance (§72-21) to allow for the construction of a community facility (*The Abraham Joshua Heschel School*), contrary to height and setback, and rear yard requirements. (§§33-432, 23-634, 33-432). C6-2/C4-7 zoning districts.

PREMISES AFFECTED – 28-34 West End Avenue, 246-252 West 61st Street, West End Avenue and West 61st Street, Block 1152, Lot 58, 61, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Margery Perlmutter, Alisa Doctoroff, Scott Keller.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for decision, hearing closed.

330-09-BZ

APPLICANT – Eric Palatnik, P.C., for Zhenia Levinsky, owner.

SUBJECT – Application December 18, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space, lot coverage and floor

area (§23-141) and rear yard (§23-47). R3-1 zoning district. PREMISES AFFECTED – 230 Amherst Street, between Oriental Boulevard and Esplanade, Block 8738, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for continued hearing.

332-09-BZ

APPLICANT – Moshe M. Friedman, for Mordechai Treff, owner.

SUBJECT – Application December 22, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141(a)); less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1462 East 27th Street, west side 320’ north of intersection of East 27th Street and Avenue O, Block 7680, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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Tuesday, March 2, 2010**

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DOCKET

New Case Filed Up to March 2, 2010

27-10-BZ

117 Norfolk Street, Between Shore Parkway and Oriental Boulevard, Block 8757, Lot(s) 47, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement to cellar and single family home. R 3-1 district.

28-10-BZ

920 Teller Avenue, North east corner of East 162nd Street running though to Park Avenue, Block 2422, Lot(s) 59, Borough of **Bronx, Community Board: 4**. Variance (§72-21) to permit the construction and of a Automotive Service Station (UG 16B), contrary to ZR §32-10. C2-4/R7-1 zoning district. C2-4 W/IN R7-1 district.

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

CALENDAR

MARCH 16, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 16, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1045-67-BZ

APPLICANT – Michael A. Cosentino, for Thomas Abruzzi, owner.

SUBJECT – Application October 30, 2009 – Application filed pursuant to §§72-01 & 72-22 of the zoning resolution to allow the re-instatement of a variance application granted pursuant to §72-21 which permitted in a R2 zoning district, the construction and maintenance of an accessory parking lot to be used for adjoining commercial uses. The approval expired on June 27, 1998. The application seeks waiver of the Rules of Practice for the late filing of the application and an Amendment of the resolution to eliminate the term.

PREMISES AFFECTED – 160-10 Crossbay Boulevard, Crossbay Boulevard between 160th Avenue and 161st Avenue, Block 14030, Lot 6, 20, Borough of Queens.

COMMUNITY BOARD #10Q

31-09-BZ

APPLICANT – NYC Board of Standards and Appeals
OWNER: R & R Auto Repair & Collision

SUBJECT – Dismissal for lack of prosecution of an application for a Special Permit (§11-411, §11-412 & §11-413) for a change of use from a gasoline service station (UG16b) to automotive repair establishment and automotive sales (UG16b) and the enlargement of the existing one story structure; Re-instatement of the variance which expired on November 12, 1990; Waiver of the Rules of Practice and Procedure. 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

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

MARCH 16, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 16, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

192-09-BZ

APPLICANT – Richard Lobel, for Leon Mann, owner.

SUBJECT – Application June 16, 2009 – Variance (§72-21) to allow for the construction of a department store (UG 10) contrary to use regulations (ZR §22-00, §32-00). R6 and R6/C2-3 zones.

PREMISES AFFECTED – 912 Broadway, northeast corner of the intersection of Broadway and Stockton Street, Block 1584, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #3BK

11-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 562 Court Street, LLC, owner; Brooklyn Kick Boxing Inc., lessee.

SUBJECT – Application January 26, 2010 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment on the first floor in a five-story mixed-use building and to permit the extension of that use to include use of a portion of the vacant cellar. C2-3 (R6) zoning district.

PREMISES AFFECTED – 562 Court Street (aka 21 Garnet Street) southwest corner Court Street and Garnet Street, Block 382, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD # 6BK

13-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yakov Platnikov, owner.

SUBJECT – Application January 27, 2010 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family home, contrary to lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 79 Amherst Street, east side of Amherst Street, north Hampton Avenue, Block 8727, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 2, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

297-99-BZ

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Company, LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application January 15, 2010 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (*Mobil*) which expires on February 12, 2010. C2-2/R6-B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a gasoline service station (Use Group 16) with accessory uses, which expired February 12, 2010; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in *The City Record*, and then to decision on March 2, 2010; and

WHEREAS, the site is located on the east side of Bell Boulevard between 45th Road and Northern Boulevard, in a C2-2 (R6B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1960 when, under BSA Cal. No. 477-31-BZ, the Board granted a variance to permit the construction of a gasoline service station located partially within a business district and partially within a residential district; and

WHEREAS, on September 19, 2000, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-211, to permit the replacement of the existing non-conforming gasoline service station with a larger gasoline service station and an accessory convenience store, to expire on September 19, 2010; and

WHEREAS, on February 12, 2008, under the subject

calendar number, the Board permitted an amendment to the plans and an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, on December 9, 2008, under the subject calendar number, the Board granted a further extension of time to obtain a certificate of occupancy, to expire on February 12, 2010, based on the applicant's representation that the owner would be unable to obtain the certificate of occupancy by the stipulated date due to a boundary dispute with the adjacent property owner; and

WHEREAS, most recently, on October 6, 2009, the Board granted an extension of term, to expire September 19, 2020; and

WHEREAS, the applicant now requests a further extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that the boundary dispute remains ongoing and concerns an approximately 70 sq. ft. portion located at the southeast corner of the site, which was designated for landscaping in the Board's previous grants; and

WHEREAS, the applicant represents that the owner has diligently pursued a new certificate of occupancy but has been unable to obtain it because the Department of Buildings cannot issue a sign-off due to the fact that the southeast corner of the site cannot be developed in accordance with the latest BSA-approved drawing because of the boundary dispute; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 19, 2000, so that as amended this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy for 18 months, to expire on September 2, 2011; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a new certificate of occupancy be obtained by September 2, 2011;

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

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

THAT the Department of Buildings must ensure compliance 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. 402586554)

Adopted by the Board of Standards and Appeals, March 2, 2010.

78-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Young Israel of New York Hyde Park, owner.

SUBJECT – Application January 25, 2010 – Extension of Time to Complete Construction of a previously granted

MINUTES

Variance (§72-21) for proposed expansion of an existing synagogue which expired on September 20, 2009; Waiver of the Rules. R-2 zoning district.

PREMISES AFFECTED – 264-15 77th Avenue, southwest corner of 265th Street and 77th Avenue, Block 8538, Lot 29 and 31, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction of an enlargement to an existing one-story synagogue; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in *The City Record*, and then to decision on March 2, 2010; and

WHEREAS, the site is located on the southwest corner of the intersection of 265th Street and 77th Avenue, within an R2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 20, 2005 when, under the subject calendar number, the Board granted a variance to permit the enlargement of an existing one-story synagogue; and

WHEREAS, substantial construction was to be completed by September 20, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed due to financing issues; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated September 20, 2005, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction for a term of four years, to expire on March 2, 2014; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction shall be completed by March 2, 2014;

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. 402086372)

Adopted by the Board of Standards and Appeals March 2, 2010.

224-07-BZ thru 226-07-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER: Marvin Welz

SUBJECT – Dismissal for lack of prosecution of an application for a residential development, contrary to rear yard (§23-52) and density (§23-146) regulations. R5 zoning district.

PREMISES AFFECTED – 1940/1942/1946 54th Street, south side of 54th Street, between 19th and 20th Avenue, Block 5495, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, March 23, 2010.

603-86-BZ

APPLICANT – H. Irving Sigman, P.E., for 8826 Parsons LLC, owner.

SUBJECT – Application September 3, 2009 – Extension of Term for a Variance (§72-21) allowing the construction of retail stores (UG 6), which expired on September 8, 2007; Amendment to the accessory open parking area and refuse area and request to eliminate the term; Waiver of the Rules. R7A (Downtown Jamaica Special District) zoning district. PREMISES AFFECTED - 88-34 Parsons Boulevard, a/k/a 88-26/34 Parsons Boulevard. North west corner of Parsons Boulevard and 89th Avenue, Block 9762, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: H. Irving Sigman.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M., for continued hearing.

813-87-BZ

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

MINUTES

Gwynne Five LLC, owner; TSI Cobble Hill LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on April 12, 2008 for the operation of a Physical Culture Establishment (*New York Sports Club*); Waiver of the Rules. C2-3 (R6) zoning district.

PREMISES AFFECTED – 110 Boerum Place, Westerly side of Boerum Place 0 feet northerly of Dean Street, Block 279, Lot 1, Borough of Brooklyn

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: Amanda Cantrell.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 23, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

334-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Gregory Pfeifer, lessee.

SUBJECT – Application December 30, 2009 – Reconstruction and enlargement of a single family home not fronting on a mapped street, contrary to General City Law Section 36, and upgrade of private disposal system in the bed of a service road, contrary to Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 132 Ocean Avenue, west side Ocean Avenue, 110’ south mapped 8th Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary D. Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 24, 2009, acting on Department of Buildings Application No. 420107315, reads in pertinent part:

“A1 – The street giving access to the existing building to be reconstructed and enlarged is not duly placed on the Official Map of the City of New York, therefore:

A) A Certificate of Occupancy may not be

issued as per Article 3, Section 36 of the General City Law.

B) The existing dwelling to be reconstructed and enlarged does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space contrary to Section 27-291 of the Administrative Code.

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

WHEREAS, a public hearing was held on this application on March 2, 2010, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated January 20, 2010, the Fire Department states that it has reviewed the subject proposal and has no objections provided that the entire building be fully sprinklered and interconnected smoke alarms be provided; and

WHEREAS, in response, the applicant submitted a site plan indicating that the building will be fully sprinklered; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated December 24, 2009, acting on Department of Buildings Application No. 420107315, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received December 30, 2009 ”– one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, March 2, 2010.

303-09-BZY

APPLICANT – Ray Chen, for 517 53rd Street Inc, owner.

SUBJECT – Application October 30, 2009 – Extension of time (§11-332) to complete construction of an enlargement commenced under the prior C4-3 zoning district. R6B

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zoning district.

PREMISES AFFECTED – 517 53rd Street, between 5th and 6th Avenue, Block 608, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Ray Chen.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, MARCH 2, 2010 1:30 P.M.

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

ZONING CALENDAR

309-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 147th Avenue Building Corporation, owner.

SUBJECT – Application December 19, 2008 – Variance (§72-21) for the construction of a three story, two-family home, contrary to front yards (§23-45) and floor area (§23-141). R4-1 zoning district.

PREMISES AFFECTED – 1717 Pitman Avenue, northwest corner of intersection of Digney Avenue and Pitman Avenue, Block 5049, Lot 21, Borough of The Bronx.

COMMUNITY BOARD #12BX

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated November 18, 2008, acting on Department of Buildings Application No. 210011832, reads in pertinent part:

- “1. Proposed development is contrary to ZR 23-141(b); maximum floor area requirement.
2. Proposed development is contrary to ZR 23-45; front yard requirement;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4-1 zoning district, the proposed

construction of a three-story two-family home that does not comply with the zoning requirements for floor area and front yards, contrary to ZR §§ 23-141 and 23-45; and

WHEREAS, a public hearing was held on this application on December 15, 2009 after due notice by publication in *The City Record*, with a continued hearing on February 2, 2010, and then to decision on March 2, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and WHEREAS, Community Board 12, Bronx, recommends disapproval of this application; and

WHEREAS, the site is located on the northwest corner of Pitman Avenue and Digney Avenue, within an R4-1 zoning district; and

WHEREAS, the site has a width of 20 feet, a depth of 100 feet, and a total lot area of 2,001 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a three-story two-family home; and

WHEREAS, the proposed home will have the following complying parameters: a lot coverage of approximately 46 percent; a side yard with a width of 33’-9” along the western lot line; a front yard with a depth of 20’-0” along the eastern lot line; a wall height of 25’-0”; a total height of 30’-5”; and parking for two cars; and

WHEREAS, however, the applicant proposes to have a floor area of 2,575 sq. ft. (the maximum permitted floor area is 1,801 sq. ft.); an FAR of 1.29 (.90 FAR is the maximum permitted), and no front yard along the southern lot line (a front yard with a minimum depth of 10’-0” is required); and

WHEREAS, the applicant originally proposed to construct a three-story two-family home with a floor area of 3,028 sq. ft. (1.51 FAR); and

WHEREAS, during the course of the hearing process the applicant revised its proposal to provide a floor area of 2,575 sq. ft. (1.29 FAR), thereby reducing the floor area waiver; and

WHEREAS, the applicant notes that the subject lot is undersized as defined by ZR § 23-32; and

WHEREAS, the applicant represents that it satisfies the requirements of ZR § 23-33, which permits the construction of a two-family home on an undersized lot provided that the lot was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit; and

WHEREAS, in support of this, the applicant submitted a title report and deeds reflecting that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the two adjoining lots; and

WHEREAS, the applicant states that floor area and front yard relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the subject corner lot is narrow and there is a significant slope and rock

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presence at the site; and

WHEREAS, the applicant represents that the pre-existing lot width of 20'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site is a corner lot, which requires front yards with widths of 20'-0" and 10'-0", respectively; and

WHEREAS, the applicant states that the building would have a maximum exterior width of 10'-0" and constrained floor plates if front yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the front yard waiver is necessary to create a building with a sufficient width; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 200-ft. radius diagram reflecting that there is only one other lot in the surrounding neighborhood with a width as narrow as the subject site, and that lot is occupied by a garage; and

WHEREAS, as to the site's rock presence and change in grade, the applicant states that there is a 15-ft. difference in grade between the southeast corner of the site and the northwest corner of the site and submitted a survey indicating the presence of rocks throughout portions of the site; and

WHEREAS, the applicant states that the significant change in grade and rock presence at the site preclude the construction of a cellar; and

WHEREAS, specifically, the applicant states that, due to the rock condition, providing a cellar would be cost prohibitive, as it would require significant sub-surface excavation and rock removal; and

WHEREAS, the applicant further states that providing a cellar would result in an undesirable structure where the basement, first floor and a portion of the second floor would all be below the grade of the retaining wall to the north; and

WHEREAS, accordingly, floor space which could otherwise be located underground and would not contribute to the floor area, must be accommodated in the basement, thereby increasing the degree of non-compliance with floor area requirements; and

WHEREAS, the applicant states that the floor area waiver is also necessary in order to provide a two-family home that satisfies the requirement for minimum size of dwelling units; and

WHEREAS, pursuant to ZR § 23-23, each dwelling unit in a two-family home within an R4-1 zoning district must have a minimum floor area of 925 sq. ft.; therefore, a minimum of 1,850 sq. ft. of floor area is required to provide a two-family home; and

WHEREAS, the applicant represents that, due to the small size of the subject lot, a maximum of 1,801 sq. ft. of floor area is permitted as-of-right; thus, the subject site could not accommodate a two-family home without the requested floor area waiver; and

WHEREAS, the applicant states that all of the lots on the subject block are occupied by two-family homes; and

WHEREAS, therefore, the applicant states that the requested floor area waiver is necessary to provide a two-family home that complies with the minimum size of dwelling

units and provides a basement to accommodate floor space that could otherwise be located in a cellar; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development; and

WHEREAS, specifically, the applicant submitted a floor area survey reflecting that eight of the 19 lots within a 200-ft. radius of the site have more floor area than the proposed home; and

WHEREAS, the applicant states that there are only two other lots within a 200-ft. radius of the site with frontage on the north side of Pitman Avenue; the building on one of the lots fronts on Barnes Avenue, rather than Pitman, and the other similarly does not provide a front yard on Pitman Avenue; thus, the requested front yard waiver will not alter the front yard context along the north side of Pitman Avenue; and

WHEREAS, the applicant further states that, although a three-story home is proposed, due to the significant slope on the site, the first floor of the proposed home would be at the equivalent elevation of the cellars of the two adjacent homes, and the peak elevation of the proposed home would be the lowest on the subject block; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

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

WHEREAS, as noted above, the applicant originally proposed to construct a three-story two-family home with a floor area of 3,028 sq. ft. (1.51 FAR); and

WHEREAS, at the Board's direction, the applicant revised the proposal to reflect a three-story two-family home with a floor area of 2,575 sq. ft. (1.29 FAR), thereby reducing the requested floor area waiver; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R4-1 zoning district, a three-story two-family home that

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does not comply with the zoning requirements for floor area and front yards, contrary to ZR §§ 23-141 and 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received January 26, 2010”– (6) sheets and “March 1, 2010”-(1) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 2,575 sq. ft. (1.29 FAR); a lot coverage of approximately 46 percent; a side yard with a width of 33’-9” along the western lot line; a front yard with a depth of 20’-0” along the eastern lot line; a wall height of 25’-0”; a total height of 30’-5”; and parking for two cars, as per the BSA-approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, March 2, 2010.

182-09-BZ

CEQR #10-BSA-115M

APPLICANT – Eric Palatnik, P.C., for Congregation Mita, Inc., owner.

SUBJECT – Application June 4, 2009 – Variance (§72-21) to legalize the existing UG 3 novitiate and UG 4 house of worship (*Congregation Mita*), contrary to §24-35 (side yard) and §24-36 (rear yard). R7-2 zoning district.

PREMISES AFFECTED – 612 West 180th Street, 180th Street between Wadsworth and St. Nicholas Avenues, Block 2162, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #12M

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 13, 2009, acting on Department of Buildings Application No. 110160753, reads:

“Proposed side yard of 4’-6” is contrary to ZR 23-462, which requires min. 8’-0” width if side yard is

provided.

Proposed back yard of 3’-8” at 2nd floor is contrary to ZR 23-47 which requires min. 30’-0”;

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R7-2 zoning district, the legalization of an existing novitiate (Use Group 3) and church (Use Group 4), which does not comply with side yard and rear yard regulations, contrary to ZR §§ 23-462 and 23-47; and

WHEREAS, a public hearing was held on this application on December 15, 2009, after due notice by publication in *The City Record*, with a continued hearing on February 2, 2010, and then to decision on March 2, 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 12, Manhattan, states that it has no objection to the application; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal, citing concerns about traffic and the maintenance of the site; and

WHEREAS, this application is brought on behalf of Congregation Mita, a non-profit religious entity (the “Congregation”); and

WHEREAS, the subject site is located on the west side of West 180th Street, between Wadsworth Avenue and St. Nicholas Avenue, within an R7-2 zoning district; and

WHEREAS, the site has 75 feet of frontage on West 180th Street, a depth of 100 feet, and a total lot area of approximately 7,500 sq. ft.; and

WHEREAS, the site is currently occupied by a three-story community facility building with a novitiate (the “Church”), which provides accommodations to religious students (Use Group 3) and a house of worship (Use Group 4), for a total floor area of 18,329.67 sq. ft. (2.44 FAR); and

WHEREAS, the applicant currently seeks to legalize an enlargement to the Church which increased the degree of non-compliance of the side and rear yards; and

WHEREAS, the pre-existing building provided a rear yard with a depth of 2’-8” and side yards with widths of 4’-6” behind the full-width facade, which were pre-existing legal non-complying conditions (a rear yard with a depth of 30 feet and two side yards, if any side yards are provided, with minimum widths of 8’-0” each are required for a community facility); although, the first floor, with a height of less than 23 feet, was permitted within the required rear yard, pursuant to community facility regulations; and

WHEREAS, the enlarged second floor, which extended the pre-existing partial second floor was built on the footprint of the pre-existing first floor and maintains the existing non-complying side yards and rear yard; and

WHEREAS, the proposal provides for the following uses: (1) the cellar, which is occupied by a small cafeteria and kitchen, and mechanicals; (2) the main sanctuary on the first floor; (3) the novitiate’s lounge, kitchen, office, and sleeping quarters on the second floor; and (4) novitiate sleeping quarters

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on the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Congregation which necessitate the requested variance: (1) a house of worship to provide space for religious services and educational programming and (2) a novitiate to accommodate participants in the formal process of advancing through the sect's spiritual ranks, which involves retreats with prayer and religious education; and

WHEREAS, the applicant represents that the religious training, which draws participants from around the world, requires the separation of the novitiates, ministers, pastors, and deacons from the rest of the Congregation during intense spiritual retreats six to nine times per year; and

WHEREAS, the applicant represents that the physical space requirements include (1) separate men's and women's sleeping quarters to accommodate approximately 51 participants; (2) a dining room which is separate from the remainder of the Congregation; (3) a study lounge which can accommodate all persons participating in the spiritual retreats to allow for education and prayer study; (4) a kitchen which is separate from the Congregation's general kitchen; and (5) space for laundry and other accessory uses; and

WHEREAS, further, the applicant represents that the novitiate facilities must be placed in close proximity to each other and nearby to but separate from the other portions of the building, which are generally accessible; and

WHEREAS, the applicant represents that, prior to the enlargement, the site was occupied by a house of worship constructed in the 1920s, which has historically been used by religious institutions; and

WHEREAS, the applicant states that in 2004, the Congregation enlarged the rear portion of the pre-existing second story of the building and added a partial third story at the front of the building such that the current building is a full two stories with a partial third story; and

WHEREAS, the applicant states that the Congregation enlarged the building, which provided only the sanctuary and a partial second floor in order to accommodate its programmatic needs; and

WHEREAS, the applicant represents that in an as-of-right enlargement, the novitiate's gathering space, which is now on the second floor, would have to be located on a smaller third or fourth floor; and

WHEREAS, the applicant represents that dividing the space up vertically on multiple smaller floors, rather than on one larger floor and one smaller floor, does not support the programmatic need of horizontal space to foster interaction and the exchange of ideas; and

WHEREAS, the applicant represents that the first floor house of worship accommodates the Congregation's needs for church services, which have been established since 1982, and thus maintaining the location was essential to its congregants; and

WHEREAS, the applicant represents that the size, layout and design of the pre-existing building was inadequate to serve the current needs of the congregation and would be inadequate for its future needs; and

WHEREAS, specifically, the applicant states that the pre-existing building at the site only accommodated the house of worship and not the novitiate; and

WHEREAS, the applicant states that the requested waivers enable the Congregation to legalize the existing building, maintain the use it accommodated and meet the interconnected programmatic needs of the novitiate; and

WHEREAS, the Board acknowledges that the Congregation, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board notes that the applicant provided evidence of the Congregation's status as a non-profit religious institution and of the novitiate's status and established religious program; and

WHEREAS, in addition to its programmatic needs, the applicant represents that the existing building on the site constrains the ability to provide complying yards; and

WHEREAS, specifically, the applicant states that the existing side yards and rear yard do not comply with community facility regulations, and therefore the Congregation would be forced to set back the new portion of the second floor and the third floor to provide the complying side yards; and

WHEREAS, the applicant represents that, from a structural and design standpoint, it is more efficient to extrude the existing exterior walls such that the new walls do not create new non-compliance as to the yards, but rather increase the degree of the existing non-compliance, which is legal due to the pre-1961 construction of the pre-existing building; and

WHEREAS, the applicant notes that the third floor includes skylights to provide adequate light and air to the sleeping accommodations, since the windows at the front of the third floor are insufficient; the applicant represents that the addition of a fourth floor would eliminate the skylights and result in the need for a costly retrofitting of the front windows, which are old and arched-shaped; and

WHEREAS, the applicant represents that the existing third-floor windows can not be made operable and new custom-built windows would be required, at a significant expense to the Congregation; and

WHEREAS, thus, the applicant represents the programmatic need for larger floorplates with horizontal space to promote connectivity, the efficiency of extending the existing exterior walls, and the cost of retrofitting the existing building associated with adding a fourth floor, necessitated that the second floor be built out; and

WHEREAS, the applicant represents that, without the

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yard waivers, the floorplates would be constrained and there would not be sufficient space to accommodate all participants in the novitiate program; only a maximum of 44 people could be accommodated for sleeping and there would be a 54 percent loss in the common space on the second floor; the dining room and kitchen would similarly be reduced; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Congregation and the constraints of the historic building create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Congregation is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant states that that the proposed/existing use and floor area are permitted as-of-right in the subject zoning district and only the extension of the pre-existing non-complying yards is contrary to zoning district regulations; and

WHEREAS, specifically, the applicant notes that the height of 41'-8" is less than the heights of buildings on adjacent lots, including multiple dwelling buildings on either side of the site; and

WHEREAS, the radius diagram submitted by the applicant also establishes that the bulk and height of the Congregation's building are consistent with the bulk and height of the homes in the surrounding neighborhood, which have heights ranging between three and 32 stories; and

WHEREAS, as reflected on the radius diagram, the four sites at the rear of the site, occupied by a multiple dwelling, two stores, and an office building in three-story buildings, provide rear yards, which allows for open space adjacent to the Congregation's pre-existing absence of a rear yard; and

WHEREAS, the Board notes that the site could be developed as-of-right with a building with greater height and floor area, if all yards were provided; and

WHEREAS, the Board further notes that the enlargement does not create any new non-compliance but rather increases the degree of existing non-compliance; and

WHEREAS, the applicant notes that the subject enlargement is only minimally visible from the West 180th Street frontage; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the enlarged building complies with all Building Code, Fire Code, and any other relevant requirements specifically with regard to light and air and egress; and

WHEREAS, in response, the applicant stated that all requirements are met, including the location of the air-conditioning condensers; and

WHEREAS, the applicant agreed to review the plans with the Department of Buildings to confirm compliance; and

WHEREAS, in response to community concerns about traffic, the applicant states that the Congregation has installed a parking guard to direct traffic; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Congregation could occur on the existing lot; and

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

WHEREAS, the Board notes that the building complies with all bulk and use regulations, with the exception of the non-complying yards; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Congregation the relief needed both to meet its programmatic needs and to occupy a building that is compatible with the character of the neighborhood; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.12 (a) and 617.5; 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) 09BSA115M, dated May 22, 2009; 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 determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R7-2 zoning district, the legalization of an existing novitiate (Use Group 3) and church (Use Group 4), which does not comply

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with side yard and rear yard regulations, contrary to ZR §§ 23-462 and 23-47, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received December 1, 2009” – Seven (7) sheets; and *on further condition*:

THAT the building parameters shall be as reflected on the approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4) and novitiate (Use Group 3);

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

THAT DOB shall review the building for compliance with light and air and egress requirements;

THAT DOB shall review the building’s mechanicals, including the air-conditioning condenser for compliance with all relevant regulations;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 2, 2010.

2-10-BZ

CEQR #10-BSA-038M

APPLICANT – Akerman Senterfitt LLP, for The New York Eye & Ear Infirmary, owner.

SUBJECT – Application January 6, 2010 – Special Permit (§73-641) to allow enlargement of a community facility (*New York Eye and Ear Infirmary*) within the required rear yard equivalent, contrary to §33-283. C1-6A/C1-7A zoning districts.

PREMISES AFFECTED – 310 East 14th Street, block front on east side of Second Avenue between 13th and 14th Streets, Block 455, Lot 1, 5, 7, 60, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 5, 2010, acting on Department of Buildings Application No. 120235717, reads in pertinent part:

“ZR § 33-283. Proposed enlargement encroaches into the required rear yard equivalent of the through lot, and requires a special permit from the BSA pursuant to ZR § 73-641;” and

WHEREAS, this is an application under ZR §§ 73-641 and 73-03, to permit, on a site located within a C6-2 zoning district, the proposed enlargement of a nine-story community facility building, which does not comply with the zoning requirements for rear yards, contrary to ZR § 33-283; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in *The City Record*, and then to decision on March 2, 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 3, Manhattan, recommends approval of this application; and

WHEREAS, a neighbor who sought additional information on the application cited concerns about the potential impact of construction at the site, but did not raise any specific objection to the proposal or submit any subsequent testimony; and

WHEREAS, this application is brought on behalf of the New York Eye and Ear Infirmary (“NYEE”); and

WHEREAS, the subject site is located on a through lot bounded by East 14th Street to the north, Second Avenue to the west, and East 13th Street to the south, partially within a C1-7A zoning district and partially within a C1-6A zoning district; and

WHEREAS, the applicant states that NYEE occupies the entire eastern frontage of Second Avenue, between East 13th and East 14th Streets, and consists of four tax lots: Lot 1 is occupied by a six-story building on the southern portion of the site (the “South Building”); Lot 5 is occupied by a nine-story building on the northern portion of the site (the “North Building”); and Lots 7 and 60 are occupied by a one-story optical store and parking lot, respectively; and

WHEREAS, the applicant proposes to construct a 3,938 sq. ft., enlargement of the second floor at the rear of the North Building, 2,370 sq. ft. of which will encroach into the required rear yard equivalent of the through lot; and

WHEREAS, the applicant states that because the site is a through lot, pursuant to ZR § 33-283, an open area with a minimum depth of 40 feet midway between the two street lines upon which the through lot fronts must be provided as a rear yard equivalent; and

WHEREAS, the applicant further states that an existing portion of the South Building, constructed in 1893, also encroaches into the required rear yard equivalent and is a legal pre-existing non-compliance; and

WHEREAS, the applicant states that the proposed enlargement of the North Building will increase the total floor

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area occupied by NYEE from 169,077 sq. ft. (3.77 FAR) to 173,015 sq. ft. (3.85 FAR); the maximum floor area permitted is 282,730 sq. ft. (6.3 FAR); and

WHEREAS, as a result of the enlargement to the North Building, the applicant requests the following modification: a rear yard equivalent of 10'-9½" (40'-0" is the minimum required); and

WHEREAS, the applicant submitted a correspondence from the Landmarks Preservation Commission ("LPC") stating that the proposed addition does not appear to have an impact on 218 Second Avenue (South Building) which may be LPC and State/National Registers of Historic Places eligible, and that there are no further concerns; and

WHEREAS, as a threshold requirement under ZR § 73-641, the applicant must establish that it has owned a portion of the zoning lot and continuously occupied and used one or more buildings located thereon for a specified community facility use from December 15, 1961 until the time of the application and to the present; and

WHEREAS, the applicant represents that it has owned Lot 1 since before December 15, 1961; and

WHEREAS, in support of the above representation, the applicant has submitted a deed dated April 8, 1915, which reflects that NYEE acquired title to the property that currently constitutes Lot 1 in Block 455; and

WHEREAS, the applicant states that NYEE has utilized the South Building, located on Lot 1, for a community facility use since 1856; and

WHEREAS, accordingly, the Board finds that the applicant has satisfied the threshold requirement of ZR § 73-641; and

WHEREAS, the applicant represents that the proposed modification is required in order to provide an essential service to the community, as per ZR § 73-641(a); and

WHEREAS, the applicant states that the proposed enlargement is necessary to meet the current demand for services at NYEE and to satisfy modern health and safety standards; and

WHEREAS, the applicant states that between 2005 and 2007, NYEE has experienced a 35 percent increase in inpatients and an 11 percent increase in ambulatory surgeries, and there has been a six percent growth in services provided by the Retina Center in the last two years; and

WHEREAS, the applicant further states that the New York State Commission for Health Care Facilities in the 21st Century Final Report mandated the closure of all 150 inpatient beds of the Manhattan Eye, Ear and Throat Hospital and the closure of the Cabrini Medical Center; and

WHEREAS, the applicant represents that as a result of these closures, NYEE is the only such medical facility in the area and is experiencing an increased demand for its services as patients formerly served by these nearby hospitals now look to NYEE for care; and

WHEREAS, the applicant states that the existing NYEE facility has ten operating rooms and 15 bays in the Post Anesthesia Care Unit ("PACU") which were built in 1969 and do not meet the current standards for health and

safety; and

WHEREAS, the applicant represents that two additional operating rooms are required in order to meet the increased demand at the facility; and

WHEREAS, the applicant further represents that, in order to provide the additional operating rooms, NYEE must update and expand the PACU and many of the support areas on the second floor to satisfy modern health and safety standards; and

WHEREAS, accordingly, the Board finds that the requested modification is required in order to enable NYEE to provide an essential service to the community; and

WHEREAS, the applicant states that, as per ZR § 73-641(b), without the requested rear yard equivalent modification there is no way to design and construct the proposed enlargement in satisfactory physical relationship with the existing buildings on the site, so as to produce an integrated development; and

WHEREAS, the applicant represents that the subject enlargement is required to be located at its proposed location on the second floor contiguous with the existing operating rooms and PACU; and

WHEREAS, the applicant states that locating the enlargement anywhere else on the site would reduce efficiency, increase staff requirements, duplicate support services, and create economic hardships for NYEE; and

WHEREAS, the applicant further states that the location of the proposed enlargement contiguous to the In-Patient Surgical Platform is required pursuant to §§ 5.4.1.2 and 5.3.3.2 of the 2006 AIA Guidelines for Design and Construction of Hospitals and Healthcare Facilities; and

WHEREAS, the applicant concludes that the requested modification of the rear yard requirements is therefore necessary to provide the proposed enlargement in a satisfactory physical relationship to the existing structure, so as to produce an integrated development; and

WHEREAS, the applicant states that, as per ZR § 73-641(c), such modification is the minimum necessary to permit the proposed development, and thereby creates the least detriment to the character of the neighborhood and the use of nearby zoning lots; and

WHEREAS, the applicant represents that the proposed enlargement is essential to meet the increased demand for NYEE's medical services and to bring the existing 1969 building in line with modern health and safety standards, and that due to the physical constraints of the existing structures, the enlargement cannot be located anywhere else on the site; and

WHEREAS, the applicant states that the impact of the proposed enlargement on surrounding developments will be minimal because it will only be located on the second floor; and

WHEREAS, the applicant further states that the property that will be directly affected by any impact of the proposed enlargement is the building to the southeast of the subject site on Lot 52, which is a dormitory building owned by NYEE that houses NYEE residents; and

WHEREAS, the Board notes that only the rear 20 feet

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of the proposed enlargement will encroach into the required rear yard equivalent; and

WHEREAS, the Board further notes that the proposed enlargement will reach a height of approximately 28 feet, and that a height of 23 feet would be allowed as-of-right as a permitted encroachment if it were limited to one-story; and

WHEREAS, the Board further notes that the legally non-complying South Building encroaches approximately 9'-2 1/2" into the rear yard equivalent; thus, if not for the pre-existing non-compliance of the South Building, a rear yard equivalent of 20'-0" could be provided; and

WHEREAS, accordingly, the Board finds the requested modification is the minimum necessary to permit the development of an integrated community facility that will thereby create the least detriment to the character of the neighborhood and the use of nearby zoning lots; and

WHEREAS, at hearing, the Board inquired about the relocation of the existing mechanical equipment currently located on the roof of the first floor, above which the subject enlargement is proposed; and

WHEREAS, in response, the applicant states that the existing mechanical equipment will be relocated from the roof of the first floor to the roof of the second floor; and

WHEREAS, the applicant notes that the third floor windows facing in the direction of the mechanical equipment will be occupied by a staff locker room; and

WHEREAS, 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 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 §§ 73-641 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA038M dated January 6, 2010; 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the

environment that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under ZR §§ 73-641 and 73-03, to permit, on a site located partially within a C1-7A zoning district and partially within an C1-6A zoning district, the proposed construction of an enlargement to a nine-story community facility building, which does not comply with the zoning requirement for rear yard yards, contrary to ZR § 33-283; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received February 2, 2010"-(18) sheets; and *on further condition:*

THAT the bulk parameters of the building shall be as reflected on the BSA-approved plans;

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

THAT substantial construction shall be completed pursuant to ZR § 73-70;

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; and

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

Adopted by the Board of Standards and Appeals, March 2, 2010.

239-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for YHA New York Inc., owner.

SUBJECT – Application October 24, 2007 – Variance (§72-21) to permit a community youth center (UG 4) in the cellar and first floor in a proposed three-story and penthouse mixed-use building, contrary to side yard (§24-35). R5 zoning district.

PREMISES AFFECTED – 57-38 Waldron Street, south side of Waldron Street, 43.71' west of 108th Street, east of Otis Avenue, Block 1959, Lot 27, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to April 20,

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2010, at 1:30 P.M., for continued hearing.

256-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Hayden Rester, owner.

SUBJECT – Application November 5, 2007 – Variance (§72-21) to permit a three-story, five-unit residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph. Block 1339, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD # 8BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for deferred decision.

97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the legalization of an existing school (*Central UTA*) (UG 3). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for decision, hearing closed.

160-08-BZ

APPLICANT – Dominick Salvati and Son Architects, for HJC Holding Corporation, owner.

SUBJECT – Application June 11, 2008 – Variance (§72-21) to permit the legalization of commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B), which is contrary to §22-00. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Bounded by Fountain, Stanley, Euclid and Wortman Avenues, Block 4527, Lot 61, 64, 67, 74-78, 80, 82, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Peter Hirschman, Frank Angelino, Jack Freeman and Michael Fostaia.

For Opposition: Ronald J. Dillon.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for continued hearing.

186-08-BZ

APPLICANT – Petrus Fortune, P.E., for Kevin Mast. Chairman, Followers of Jesus Mennonite Church, owner.

SUBJECT – Application July 10, 2008 – Special Permit (§73-19) to allow the legalization and enlargement of a school (*Followers of Jesus Mennonite Church & School*) in a former manufacturing building, contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 3065 Atlantic Avenue, northwest corner of Atlantic Avenue and Shepherd Avenue, Block 3957, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to April 27, 2010, at 1:30 P.M., for deferred decision.

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation and Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to permit the construction of a six-story community facility building (*Congregation & Yeshiva Machzikei Hadas*), contrary to ZR §42-00. M2-1 zoning district.

PREMISES AFFECTED – 1247 38th Street, east side of 38th Street, between 13th and 12th Avenue, Block 5295, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for decision, hearing closed.

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: Chris Wright, Howard Goldman and Ken Olson.

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ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

282-09-BZ

APPLICANT – Steven Williams, P.E., for KC&V Realty, LLC, owner; Richard Ortiz, lessee.

SUBJECT – Application October 7, 2009 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Ritchie's Gym*) on the third floor of a four-story commercial building. C4-3 zoning district.

PREMISES AFFECTED – 54-19 Myrtle Avenue, northeast corner of Myrtle Avenue, intersection of Palmetto Street and Myrtle Avenue, Block 3445, Lot 9, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Ritchie Ortic.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for continued hearing.

311-09-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Matalon, owner.

SUBJECT – Application November 24, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)), side yard (§23-461(a)) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1092 East 22nd Street, between Avenue J and K, Block 7603, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for adjourned hearing.

329-09-BZ

APPLICANT – Eric Palatnik, P.C., for Yevgenya Loffe, owner.

SUBJECT – Application December 18, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 26 Falmouth Street, Block 8744, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for decision, hearing closed.

BULLETIN

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March 17, 2010

DIRECTORY

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29-10-BZ

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30-10-BZ

1384 East 22nd Street, West side of East 22nd Street between Avenue M. and Avenue N., Block 7657, Lot(s) 56, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home. R2 district.

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

CALENDAR

MARCH 23, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 23, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Joykiss Management, LLC, owner.
SUBJECT – Application March 26, 2009 – Extension of Term (§11-411 & §11-413) to allow the continued operation of an Eating and Drinking establishment (UG 6) (East Manor Restaurant) which expired on March 15, 2004; Amendment to legalize alterations that were made to the structure; Waiver of the Rules of Practice and Procedure. C2-2 and R3-2 zoning districts.
PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, Northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.
COMMUNITY BOARD # 7Q

201-01-BZ

APPLICANT – Sheldon Lobel, P.C., for J.H.N. Corporation, owner.
SUBJECT – Application January 27, 2010 – Extension of Term (§72-01 & §72-22) of a previously approved variance permitting the operation of a automobile laundry, lubrication and accessory automobile supply store (UG16b); Amendment seeking to legalize changes to the previously approved plans and increase in floor area from 8,300sf to 9,125sf. Waiver of the Rules of Practice and Procedure for filing more than one year prior to the expiration of the term (April 16, 2012). C4-1 zoning district.
PREMISES AFFECTED – 2591 Atlantic Avenue, northwest corner of Atlantic Avenue and Sheffield Avenue, Block 3668, Lot 36, Borough of Brooklyn.
COMMUNITY BOARD #5BK

APPEALS CALENDAR

157-07-BZY

APPLICANT – Howard Zipser, Akerman Senterfitt, LLP, for 55 Eckford Street Brooklyn LLC, owner.
SUBJECT – Application November 23, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6/M1-1 zoning district. M1-2 /R6A, M1-2 R6B, MX8 zoning district.
PREMISES AFFECTED – 55 Eckford Street, west side of Eckford Street, between Driggs Avenue and Engert Avenue,

Block 2698, Lot 32, Borough of Brooklyn.
COMMUNITY BOARD #1BK

287-09-BZY & 288-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Hooshang Vaghari and Farhad Nobari, owners.
SUBJECT – Application October 9, 2009 – Extension of time (§11-332) to complete construction of a major development commenced under the prior R6 zoning. R5 zoning district.
PREMISES AFFECTED – 87-85 & 87-87 144th Street, east side of 144th Street between Hillside Avenue and 85th Avenue, Block 9689, Lot 6 & 7, Borough of Queens.
COMMUNITY BOARD #12Q

7-10-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Jacklyn & Gerard Rodman, lessees.
SUBJECT – Application January 21, 2010 – Reconstruction and enlargement of an existing single family dwelling within the bed of a mapped street and the upgrade of existing non conforming private disposal system located in the bed of a mapped street contrary to General City Law Section 35 and Department of Buildings Policy. R4 Zoning District.
PREMISES AFFECTED – 93 Hillside Avenue, north side of Hillside Avenue 130' east of the mapped Beach 180th Street, Block 16340, Lot p/o 50, Borough of Queens.
COMMUNITY BOARD #14Q

MARCH 23, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 23, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

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 with first floor retail use in an existing Use Group 16 warehouse. The proposal is contrary to ZR Section 42-10, M1-2 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

CALENDAR

9-10-BZ

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

SUBJECT – Application January 22, 2010 – Variance (§72-21) to allow an existing building to continue a restaurant use, contrary to ZR 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

14-10-BZ

APPLICANT – Friedman & Gotbaum, LLP, for Cooper Square Associates (LP), owners.

SUBJECT – Application January 29, 2010 – Special Permit (§73-19) to allow a Use Group 3 school (*Grace Church High School*). M1-5B zoning district.

PREMISES AFFECTED – 38-50 Cooper Square, west side of Cooper Square, 326'-9" south of Astor Place, Block 544, p/o 38, Borough of Manhattan.

COMMUNITY BOARD #2M

18-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Fifty East Forty-Second Company, LLC, owner; East 42nd Street Fitness, LLC d/b/a Lucille Roberts, lessee.

SUBJECT – Application February 2, 2010 – Special Permit (§73-36) to allow a physical culture establishment (Lucille Roberts) in the cellar and a portion of the first floor in an existing twenty-six-story building. C5-3 zoning district.

PREMISES AFFECTED – 50 East 42nd Street, Southeast corner of Madison Avenue, Block 1276, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 9, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

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 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M., for continued hearing.

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: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M. for continued hearing.

121-02-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, 9215 4th Avenue, LLC, owner.

SUBJECT – Application November 11, 2010 – Amendment (§73-11) to a special permit (§73-11) for an enlargement of a Physical Culture Establishment. C8-2 zoning district.

PREMISES AFFECTED – 9215 4th Avenue, east side of 4th Avenue, 105' south of intersection with 92nd Street, Block

6108, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M. for continued hearing.

369-03-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 99-01 Queens Boulevard LLC, owner; TSI Rego Park LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application December 3, 2009 – Amendment to a variance (§72-21) for a physical culture establishment (*New York Sports Club*) to change in the owner/operator, decrease floor area, modify days and hours of operation, and eliminate parking condition. C1-2/R7-1 zoning district.

PREMISES AFFECTED – 99-01 Queens Boulevard, Northwest corner of Queens Boulevard and 67th Street, Block 2118, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M., for adjourned hearing.

111-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application to reopen pursuant to court remand (Appellate Division) to revisit the findings of a Special Permit (§73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and perimeter wall height (§23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M., for adjourned hearing.

58-07-BZ

APPLICANT – Eric Palatnik, P.C., for Vito Savino, owner.

SUBJECT – Application October 27, 2009 – Amendment to previously granted variance for a residential building to include two additional objections: dwelling unit size (§23-23) and side yard regulations (§23-461(a)). R3A zoning district.

PREMISES AFFECTED – 18-02 Clintonville, Block 4731, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

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For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

313-08-A

APPLICANT – Howard Goldman , LLC & Berger & Kramer , LLP for Chuck Close, for Proprietary Lessee of Studio and Basement Cooperative at 20 Bond Street , lessee.
SUBJECT – Application December 22, 2008 – Appeal to Department of Building’s refusal to revoke permits and approvals for a six-story commercial building. M1-5B zoning district.

PREMISES AFFECTED – 363-371 Lafayette Street, east side of Lafayette Street between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, March 9, 2010.

252-09-A

APPLICANT – Marc A. Chiffert, P.E., for Gani Realty Corporation, owner.

SUBJECT – Application September 9, 2009 – Appeal challenging the NYC Fire Department determination that construction of a proposed building on a private street does not provide proper fire access for emergency vehicles. R8 zoning district.

PREMISES AFFECTED – 2788 Grand Concourse Boulevard, between Miriam Street and East 197th Street, Block 3304, Lot 103 & 171, Borough of Bronx.

COMMUNITY BOARD #15BX

APPEARANCES – None.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, this appeal arises in response to a final determination from the Chief of Department, dated August 4, 2009 (the “Final Determination”), issued in response to a request that the Fire Department reconsider a determination that the subject site does not provide a fire apparatus access road with an unobstructed width of not less than 38 feet, as required by Fire Code (FC) § 503.2.1; and

WHEREAS, the Final Determination reads in pertinent part:

“The Fire Code (FC), at Section 503.2.1, requires a fire apparatus access road with an unobstructed width of thirty-eight feet (38’) to the frontage space of a building that does not directly front on a public street... The proposed development does not directly front on the Grand Concourse, and is not accessible for firefighting operations from the public street. Accordingly a fire apparatus road must be provided to a frontage space in the interior of the block;” and

WHEREAS, this appeal seeks to reverse a determination by the Fire Department that a proposed residential building does not provide the required fire access road for Fire Department emergency vehicles; and

WHEREAS, a public hearing was held on this appeal on February 2, 2010, after due notice by publication in *The City Record*, and then to decision on March 9, 2010; and

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

WHEREAS, the Fire Department provided testimony in opposition to the application; and

WHEREAS, the subject site is located on the block bound by East 197th Street, Miriam Street, the Grand Concourse, and Valentine Avenue, within an R8 zoning district; and

WHEREAS, the subject site is L-shaped and consists of two tax lots, Lot 103 and Lot 171, to be merged into a single zoning lot meeting at the interior of the block; and

WHEREAS, Lot 103 has frontage on the Grand Concourse and Lot 171 has 30 feet of frontage on East 197th Street; a five-story, 62-unit residential building occupies the portion of Lot 103, which abuts the Grand Concourse to a depth of approximately 140 feet (the “Existing Building”); and

WHEREAS, the applicant proposes to construct a 14-story 51-unit residential building (the “Proposed Building”) on the interior of the site, 30 feet behind the Existing Building (and approximately 170 feet from the Grand Concourse), with pedestrian access through the lobby of the Existing Building and vehicle access by a 30-ft. wide by 90-ft. deep private road accessed from the East 197th Street frontage; and

WHEREAS, the Fire Department has two primary concerns: (1) the Proposed Building does not have frontage on the Grand Concourse, such that it may be accessed for fire protection; and (2) accordingly, a fire apparatus access road with a minimum width of 38 feet is required to access the frontage space adjacent to the Proposed Building’s entrance at East 197th Street; and

WHEREAS, as to the frontage question, the applicant asserts that the Proposed Building will front on both the Grand Concourse and East 197th Street because it can be accessed both through the Existing Building on the Grand Concourse and through a private road at East 197th Street; and

WHEREAS, the Fire Department contends that the Proposed Building would not front on the Grand Concourse

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because it would be separated from the Grand Concourse by the Existing Building and a distance of approximately 170 feet; and

WHEREAS, the Fire Department notes that, although the applicant proposes access through the Existing Building, it and the Proposed Building will remain separate buildings, by definition and a distance of approximately 30 feet; and

WHEREAS, the Fire Department states that although the Proposed Building can be accessed on foot by entering and walking through the Existing Building, that route only provides access to the second floor lobby and firefighters would not be able to enter the upper floors of the Proposed Building by means of the elevators or stairwells of the Existing Building, and accessing the roof of the five-story Existing Building by means of fire apparatus access ladders would not enable firefighters to access the 14-story Proposed Building 30 feet away; and

WHEREAS, accordingly, the Fire Department contends that the general pedestrian access through the Existing Building is not sufficient for fire apparatus access, thus the fire apparatus would be required to access the Proposed Building and its main entrance from the private road at the East 197th Street frontage at the interior of the site; and

WHEREAS, the Board agrees that the Proposed Building is a separate building that does not have frontage along the Grand Concourse, for Fire Department access purposes; and

WHEREAS, the Fire Department argues that the site also does not front on East 197th Street because the building is located approximately 120 feet beyond the street line, and once a building is beyond 30 feet from the street line it ceases to be considered fronting upon a public street and must be accessed by a fire apparatus access road; and

WHEREAS, the Fire Department contends that since the Proposed Building, which is proposed to be set back approximately 140 feet from the Grand Concourse and approximately 120 feet from East 197th Street, does not directly front on a public street, the following two requirements must be met: (1) a fire apparatus access road with an unobstructed width of 38 feet, as set forth in FC § 503.2.1, be provided from the street to the building's frontage space and (2) a frontage space with a width and depth of 30 feet be provided within 30 feet of the main front entrance to the building; and

WHEREAS, as to the requirement for a fire apparatus access road, the applicant agrees that one is required, but asserts that the one it proposes from East 197th Street, with a width of 30 feet (limited by the maximum width of Lot 171), satisfies the requirement; and

WHEREAS, the applicant makes two primary arguments: (1) that the Board should waive the requirement that the fire apparatus access road have a minimum width of 30 feet, because the 30-ft. width of the private road provides sufficient access for fire apparatus and the Proposed Building design provides additional fire safety measures that will enhance the building's fire safety to compensate for any deficiency in the access road's width; and (2) that the proposed road with a width of 30 feet fits within an exception, which permits the reduction in the width of the access road from 38 feet to 30 feet; and

WHEREAS, the applicant states that the road will be maintained as an unobstructed access way for fire apparatus because it will be marked as a fire lane, there will be no sidewalks installed, and a center curb cut which is low enough for fire trucks to straddle will be installed with "in" and "out" lanes that would prevent parking along the length of the private road; and

WHEREAS, the applicant asserts that, since the width of 30 feet will be maintained as an unobstructed access way it will meet the intent of the fire apparatus access road requirement; and

WHEREAS, the applicant claims that it will implement enhancements to the Proposed Building's fire safety, including sprinklering the entire building, providing a corridor with a width of three feet and a passageway with a width of six feet from the existing building on the Grand Concourse as a special access for firefighting purposes, installing a fire hydrant on the site, equipping the proposed building with a fire standpipe, and installing a Siamese connection from the Grand Concourse; and

WHEREAS, the Fire Department states that the road with a width of 30 feet and a depth of 90 feet from East 197th Street, is in the appropriate location for a fire apparatus access road required by FC § 503.2.1, however its width is deficient by eight feet and, thus, it is non-compliant; and

WHEREAS, the Fire Department states that certain of the applicant's proposed fire safety measures are required regardless of whether a fire apparatus access road is provided and the proposed measures are not viable alternative fire safety measures to providing access for emergency vehicles; and

WHEREAS, specifically, the Fire Department states that the building is required to be sprinklered pursuant to the Fire Code, the proposed passageway from the existing building would only be suitable for pedestrian access rather than emergency services, and the proposed fire hydrant would be located in the required frontage space and would prevent other fire apparatus from accessing the site; and

WHEREAS, the Fire Department notes that the proposal is for a 14-story 51-unit building, and proper fire apparatus access is required to position equipment to reach the upper floors of the building, which would be set back approximately 120 feet from its access point on East 197th Street; and

WHEREAS, as to the exceptions, the applicant cites to FC § 503.2.1, which sets forth three exceptions to the requirement that a fire apparatus access road have a minimum width of 38 feet; and

WHEREAS, the applicant contends that the proposal falls within an exception under FC § 503.2.1 that permits a fire apparatus access road with a minimum width of 30 feet, if it provides access to not more than five dwelling units, and all buildings to which the private road provides access are protected throughout by a sprinkler system; and

WHEREAS, the Board notes that although the proposed fire apparatus access road would have a width of 30 feet and the proposed building would be protected throughout by a sprinkler system, the applicant does not satisfy the noted exception because the Proposed Building, with 51 units, far exceeds the density limit of five units; and

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WHEREAS, the Fire Department notes that the Proposed Building does not fit within any of the other exceptions to the fire apparatus access road requirements; and

WHEREAS, the Board finds that the applicant failed to provide any compelling argument or evidence that it falls within any of the exceptions; and

WHEREAS, in addition to its primary concerns regarding the fire apparatus access road, the Fire Department raised concerns that the frontage space was constrained and a portion of the required turnaround located underneath the Proposed Building is occupied by columns and parking spaces such that it would impede the ability for fire apparatus, with lengths of 30 feet to 55 feet, to utilize the turnaround, and is thus not a viable access route; and

WHEREAS, the Fire Department notes that under FC § 104.8, it has authority to modify provisions of the Fire Code for reasons of impracticability, but that due to the fire safety concerns triggered by the inaccessibility of the Proposed Building, granting a modification to approve a substandard roadway as the only means for fire apparatus to access the building would not be consistent with the interests of public safety; and

WHEREAS, the applicant requested that the Board grant its appeal on the condition that the Fire Department approves a site plan; and

WHEREAS, the Board notes that there is no legal basis to overturn the Fire Department's determination and the applicant has failed to provide a basis for waiving the Fire Code pursuant to Section 666(6) of the New York City Charter; and

WHEREAS, the Board further notes that action by the Board is not necessary in order for the applicant to continue working with the Fire Department to pursue Fire Code waivers based on alternative plans; and

WHEREAS, based on the evidence in the record, the Board concurs with the Fire Department that the proposal does not satisfy the requirements for a fire apparatus access road with a width of 38 feet, as set forth in FC § 503.2.1.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Fire Department decision dated August 4, 2009, is hereby denied.

Adopted by the Board of Standards and Appeals, March 9, 2010.

12-10-A

APPLICANT – Slater & Beckerman, LLP for Lex Rex, LLC, owner; Atlantic Commons Cornstone L.P., lessee.

SUBJECT – Application January 27, 2010 – Proposed construction of a five-story, 18-unit residential building located within the 30 foot required setback of Eastern Parkway Extension, contrary to Administrative Code § 18-112. R6 zoning district.

PREMISES AFFECTED – 1734 Saint John's Place, West side of Howard Avenue, south side of St. John's Place and north side of Eastern Parkway Extension. Block 1473, Lots 34, 35, 36, 37, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Neil Weisbard.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 29, 2010, acting on Department of Buildings Application No. 320095231 reads, in pertinent part:

- “1. – Sec. 532-10 Dept. of Parks – Restrictions on Eastern Parkway: Provide 30 feet set back from the lot line fronting Eastern Parkway.
2. – NYC Administrative Code Section 18-112 – Restrictions on Eastern Parkway.
3. – 2008 NYC Building Code Section 3201.3.1- Restrictions on construction and projections on certain streets, parkways, boardwalks, and beaches;” and

WHEREAS, this is an application pursuant to New York City Charter §§ 666.6 and 666.7, to vary the prohibition against construction within 30 feet of the street line of Eastern Parkway as set forth in Administrative Code § 18-112 and cited at New York City Building Code § 3201.3.1, to allow for the construction of a five-story residential building, within an R6 zoning district, contrary to the Administrative Code and Building Code; and

WHEREAS, after due notice by publication in *The City Record*, a public hearing was held on this application on February 23, 2010 and then to decision on March 9, 2010; and

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

WHEREAS, Community Board 16, Brooklyn, recommends approval of this application; and

WHEREAS, the site has an irregular L-shape with three frontages; it has approximately 90 feet of frontage to the north on St. John's Place, 93 feet of frontage to the east on Howard Avenue, and 40 feet of frontage to the south on the Eastern Parkway Extension, within an R6 zoning district; and

WHEREAS, the site comprises four tax lots, which are proposed to be merged into a single zoning lot, with a total lot area of 5,615 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a five-story building with a floor area of 16,583 sq. ft., a height of 54'-5", and 18 dwelling units of affordable housing; and

WHEREAS, the applicant states that the City has approved an Urban Development Action Area Project (UDAAP) for the site and the applicant has secured funding from the New York City Housing Development Corporation, the Department of Housing Preservation and Development (HPD), and the New York State Division of Housing and

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Community Renewal's Homes for Working Families Program; and

WHEREAS, the City Planning Commission and the New York City Council approved (1) the UDAAP for the site and a companion parcel (that is not part of the subject application) and (2) the disposition of the lots the City owned, pursuant to the Uniform Land Use Review Procedure (ULURP) Application C08013 HAK; and

WHEREAS, the Administrative Code § 18-112 – Restrictions on Eastern parkway - (the "Eastern Parkway Restriction") prohibits construction within 30 feet of the street line of Eastern Parkway and Building Code § 3201.3.1 – Restrictions on Construction and Projections on Certain Streets, Parkways, Boardwalks, and Beaches – references and requires the enforcement of the Eastern Parkway Restriction; Administrative Code § 532-10 has been re-codified as § 18-112; and

WHEREAS, the applicant states that because the proposal reflects construction within 30 feet of the street line on the Eastern Parkway Extension, which is specifically included in the Eastern Parkway Restriction, the subject variance is required; and

HEREAS, the applicant represents that the proposed building complies with all zoning and Building Code regulations, except for the Eastern Parkway Restriction; and

WHEREAS, the Board notes that it has authority to hear appeals to final determinations of the Department of Buildings, as set forth in Charter § 666.6 and that the basis for the subject appeal is a final determination from the Department of Buildings, with objections that cite to the Administrative Code and the Building Code; and

WHEREAS, the applicant does not contest the Department of Buildings' interpretation of the cited Administrative Code and Building Code provisions, or assert that the objections are unwarranted or contrary to law; and

WHEREAS, instead, the applicant brings the subject appeal to seek a modification of the Administrative Code's Eastern Parkway Restriction and the related Building Code provision, pursuant to the Board's authority under Charter § 666.7; and

WHEREAS, if all other requirements of Charter § 666 are met, including the subject matter and source of the final determination, the Board may grant a variance pursuant to Charter § 666.7, if it finds that (1) there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law; (2) the spirit of the law shall be observed; (3) public safety shall be secured; (4) substantial justice is done; and (5) if the Housing Maintenance Code is varied it shall be limited to the extent permitted by the code and only in the manner provided for in it; and

WHEREAS, as to the practical difficulties and hardship, the applicant represents that (1) the site is L-shaped and shallow in depth, which constrains development; and (2) the affordable housing development's programmatic needs require greater lot coverage, and construction within 30 feet of Eastern Parkway; and

WHEREAS, as to the site's irregular shape and shallow depth, the applicant represents that the proposed zoning lot is

L-shaped with three street frontages, varying widths and depths, and lot lines that are not parallel to each other; and

WHEREAS, as to the configuration of the tax lots, the applicant represents that Lots 36 and 37, with frontage on the Eastern Parkway Extension are between 40 and 62 feet in depth; accordingly, viewed separately, no feasible development could occur on those lots give the Eastern Parkway Restriction, which would leave the lots with buildable footprints of between ten and 32 feet deep; and

WHEREAS, thus, these two lots, independently are shallow and irregular and when viewed as part of the merged lot, contribute to the combined irregular zoning lot; and

WHEREAS, accordingly, the proposed non-complying building has a constrained footprint due to the site's irregularity, and a building that complies with the Eastern Parkway Restriction would not be feasible because it would require a reduction of 33 percent of the number of affordable housing units; and

WHEREAS, specifically, the applicant notes that the footprint of the building cannot be reconfigured to extend to the street line of St. John's Place because zoning restricts the construction of buildings within the Quality Housing Program on wide streets in R6 zoning districts from having a street wall closer to the street line than the closest street wall of an existing building to such street line, pursuant to ZR § 23-633(a)(1); and

WHEREAS, the applicant notes that the street wall of the building on the adjacent tax lot 25, is set back 15 feet along St. John's Place and 20 feet along Howard Street; and

WHEREAS, the applicant provided building plans which reflect that a building that complies with the street wall requirements and the Eastern Parkway Restriction, built to a maximum permitted height of 70 feet, could only accommodate 12 residential units; and

WHEREAS, the applicant represents that the funding for affordable housing units, from the sources noted above, requires a minimum of 18 units at the site, and thus, a building with 12 units would be ineligible for the designated programs; and

WHEREAS, the Board agrees that due to the irregular shape of the lot and the applicant's programmatic need to provide a minimum of 18 residential units, the applicant has established that there are practical difficulties in constructing a building that complies with the Eastern Parkway Restriction and the Building Code; and

WHEREAS, as to the spirit of the law, the applicant represents that the purpose of the Eastern Parkway Restriction, which the City adopted in 1888, and the Building Code, which reinforces it, was to create a park-like setting over the several miles of the western portion of Eastern Parkway; and

WHEREAS, the applicant notes that the portions of Eastern Parkway, west of Ralph Avenue, were built in compliance with the Eastern Parkway Restriction; and

WHEREAS, in contrast, the applicant represents that the area surrounding the site along the Eastern Parkway Extension does not have an established context of Eastern Parkway Restriction compliance; and

WHEREAS, specifically, the applicant notes that the entire Eastern Parkway Extension, beginning at Ralph Avenue

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and spanning west to Bushwick Avenue, reflects more than 155 tax lots that are occupied by buildings constructed within 30 feet of the Eastern Parkway Extension, contrary to the Eastern Parkway Restriction; and

WHEREAS, the applicant provided aerial photographs, which support this assertion; and

WHEREAS, the applicant represents that the preservation of the 30-ft. setback on Eastern Parkway was absent from the discussion at the City Planning Commission's environmental review and report and the public hearings held by the Brooklyn Borough President, the City Planning Commission, and the City Council during the ULURP process associated with the City's disposition of portions of the subject site; and

WHEREAS, the Department of Parks and Recreation provided a letter, dated March 5, 2009, stating that it did not have any objection to the proposed project; and

WHEREAS, specifically, the Department of Parks and Recreation states that the two adjacent buildings similarly do not comply with the Eastern Parkway Restriction and that the proposal provides for a sidewalk with a depth of 20 feet along the Eastern Parkway Extension and aligns with the adjacent buildings, so it finds it to be appropriate; and

WHEREAS, the Board agrees with the applicant that although the Eastern Parkway Restriction includes the Eastern Parkway Extension, that the Extension, with a number of lots with shallow depths in the 40-ft. range, and a distance from the western park blocks, was not the focus for the Eastern Parkway Restriction; and

WHEREAS, additionally, the Board notes the existing condition along the Eastern Parkway Extension, which is occupied by a stock of buildings that date back 100 years and more lacks any context for a 30-ft. setback; and

WHEREAS, accordingly, the Board finds that the proposed construction within the 30-ft. setback does not conflict with the spirit of the law; and

WHEREAS, as to public safety, the applicant states that, as part of the City approval associated with the ULURP application, an environmental review was conducted pursuant to New York State Environmental Quality Review Act, 6 NYCRR § 617 (SEQRA) and the Environmental Quality Review Rules of Procedure of 1991 and Executive Order No. 91 or 1977 (CEQR) by HPD and HPD issued a negative declaration, dated November 20, 2007; and

WHEREAS, the applicant states that the Negative Declaration reflects that the project will not have any significant effect on the quality of the environment and will not result in any significant adverse impacts; and

WHEREAS, additionally, the applicant states that in order to ensure that public safety will be secured, the applicant must submit a Phase II Sampling and Analysis Work Plan to the Department of Environmental Protection identifying the nature and extent of potential soil and groundwater contamination at the site; the applicant must submit a report of its findings, and, if remediation is required, is responsible for all necessary remediation prior to occupancy of the site; and

WHEREAS, accordingly, the Board has determined that the proposed project will not interfere with public safety; and

WHEREAS, as to substantial justice, the applicant notes

that the majority of the sites along the Eastern Parkway Extension have been developed without 30-ft. setbacks and, thus, the requirement of compliance with the Eastern Parkway Restriction would result in the loss of six required units of affordable housing, the abandonment of the proposal, and ultimately the separation of the two lots fronting on Eastern Parkway, which cannot be feasibly developed without the merger of the lots; and

WHEREAS, the Board concurs that substantial justice is maintained; and

WHEREAS, the Board notes that the applicant does not seek a variance of the Housing Maintenance Code and, thus, that finding is not relevant to the subject application; and

WHEREAS, additionally, the Board notes that, according to the applicant, the proposal will be in full compliance with all other provisions of the Administrative Code and the Building Code, as well as the Multiple Dwelling Law, and the Zoning Resolution; and

WHEREAS, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under Charter § 666.7 and varies Administrative Code § 18-112; the Board notes that the variance of the Eastern Parkway Restriction addresses the non-compliance with Building Code § 3201.3.1, by reference; and

WHEREAS, in reaching this determination, the Board notes that its finding is based on the unique facts related to the physical conditions of the site as presented in the instant application, and that this decision does not have general applicability to any pending or future Board application.

Therefore it is Resolved, that the decision of the Brooklyn Borough Commissioner, dated January 29, 2010, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received February 8, 2010" (5) sheets; and on further condition:

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

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

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

Adopted by the Board of Standards and Appeals, March 9, 2010.

185-09-A & 186-09-A

APPLICANT – Diffendale & Kubec, AIA, for G.L.M. Development Corp., owner.

SUBJECT – Application June 6, 2009 – Construction not fronting on a mapped street, contrary to Section 36 of the General City Law. R3 Zoning district.

PREMISES AFFECTED – 61 and 67 Elder Avenue, Elder Avenue prolongation 102.4' north of Kenneth Place, Block

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6789, Lot 142, 144, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Les Newhalphen.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to April 13, 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. R4-1 zoning district.

PREMISES AFFECTED – 90-18 176th Street, between Jamaica and 90th Avenues, Block 9811, Lot 60 (tent), Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Mark Issac.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M. for continued hearing.

280-09-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 330 West 86th Street, LLC, owner.

SUBJECT – Application January 26, 2010 – Appeal challenging Department of Building's authority under the City Charter to interpret or enforce provisions of Article 16 of the General Municipal Law as it applies to the construction of a proposed 16 story+ penthouse. R10A Zoning district.

PREMISES AFFECTED – 330 West 86th Street, south side of West 86th street, 280' west of the intersection of Riverside Drive and West 86th Street, Block 1247, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 10 A.M., for adjourned hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, MARCH 9, 2010

1:30 P.M.

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

ZONING CALENDAR

161-09-BZ

CEQR #09-BSA-106K

APPLICANT – Rizzo Group, for 25 Garfield Sparta, LLC, owner.

SUBJECT – Application April 23, 2009 – Variance (§72-21) for the development of two residential buildings (20 dwelling units) contrary to rear yard equivalent, floor area, lot coverage, minimum distance between buildings and minimum distance between legally required window regulations (§§23-532, 23-145, 23-711, 23-861). R6B zoning district.

PREMISES AFFECTED – 580 Carroll Street (25 Garfield Place) Carroll Street/Garfield Place, between Fourth and Fifth Avenue, Block 951, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION:

WHEREAS, the decision of the Department of Buildings, dated April 21, 2009, acting on Department of Buildings Application No. 302370404, reads:

“23-145 Subject application is proposing a floor area ratio that exceeds that permitted.

23-145 Subject application is proposing lot coverage that exceeds that permitted.

23-532 Subject property is a through lot that is 110 feet or more in maximum depth from street to street, required rear yard equivalent is not being provided.

23-532 Rear yard equivalent provided is non-complying in that: the open area provided does not have a minimum depth of 60 feet, midway between the two street lines.

23-71 Subject building is not exempt from minimum distance between buildings on a single zoning lot and must be provided for.

23-711 Provide required standard minimum distance between buildings on the same zoning lot in accordance with the height of such buildings and the presence of legally required windows in facing

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building walls.

23-861 The minimum distance provided between a legally required window and any wall/a rear lot line/a side lot line is less than 30 feet, measured in a horizontal plane at the sill level of, and perpendicular to, such window for the full width of the rough window opening;" and

WHEREAS, a public hearing was held on this application on July 28, 2009, with continued hearings on November 17, 2009, and February 9, 2010, and then to decision on March 9, 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, this is an application under ZR § 72-21, to permit, on a lot within an R6B zoning district, the construction of three four-story residential buildings, contrary to ZR §§ 23-145, 23-532, 23-711, and 23-861; and

WHEREAS, Community Board 6, Brooklyn, recommends disapproval of this application, citing the following concerns: (1) the subsurface conditions encountered at the site are not a unique physical condition; (2) the applicant's inability to realize a reasonable return is due to mismanagement rather than actual costs; (3) the proposed construction is out of context with the surrounding neighborhood; (4) any hardship claimed by the applicant is self-created because the applicant should have determined the extent of the subsurface conditions prior to construction; and (5) the subject proposal does not represent the minimum variance that can afford relief to the applicant; and

WHEREAS, City Council Member Brad Lander provided written and oral testimony in opposition to this application; and

WHEREAS, New York State Senator Velmanette Montgomery provided written testimony in opposition to this application; and

WHEREAS, New York State Assembly Member Joan L. Millman provided written testimony in opposition to this application; and

WHEREAS, certain neighborhood residents provided written and oral testimony in opposition to this application, citing the following primary concerns: (1) the applicant's need to use a pile foundation system is not unique, as every large building that has been recently constructed in the area has had to use a pile foundation system; (2) the project's lack of profitability is due to mismanagement and a failure to perform due diligence on the site; (3) the proposed construction is out of context with the surrounding neighborhood; (4) any claimed hardship is self-created because the applicant would have uncovered the subsurface conditions if it had performed due diligence, and could have mitigated the hardship during excavation and construction; and (5) the subject proposal does not represent the minimum variance that can afford relief to the applicant; and

WHEREAS, the subject site is a through lot located between Fourth Avenue and Fifth Avenue, with 100 feet of frontage on Garfield Place, 60 feet of frontage on Carroll

Street, and a total lot area of 10,174 sq. ft.; and

WHEREAS, the site is occupied by the partially constructed five-story condominium building with frontage on Garfield Place; and

WHEREAS, specifically, on October 18, 2007, the Department of Buildings ("DOB") approved a five-story 17-unit condominium building with a floor area of 20,348 sq. ft. on the subject site fronting Garfield Place (the "Approved Building"); and

WHEREAS, the plans associated with the Approved Building reflect that the remainder of the lot, including the frontage on Carroll Street, be maintained as open space for tenant use; and

WHEREAS, the nine required parking spaces for the Approved Building were to be located in a portion of the cellar extending to Carroll Street; and

WHEREAS, the applicant represents that in January 2008, during demolition and excavation of the site associated with the construction of the Approved Building, concrete bunkers were discovered below grade, which the applicant removed; and

WHEREAS, the applicant further represents that additional construction is necessary to compensate for the costs associated with the discovery and removal of the bunkers; and

WHEREAS, thus, the applicant now proposes to construct three four-story townhouses in addition to the five-story condominium building previously approved on the site; and

WHEREAS, the proposed development would have the following non-compliances: an FAR of 2.67 (2.0 FAR is the maximum permitted); a lot coverage of 71 percent (60 percent is the maximum permitted); a rear yard with a depth of 28'-8" (a minimum depth of 60'-0" is required); and insufficient distance between buildings and between legal required windows and lot lines; and

WHEREAS, the applicant asserts that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying district regulations: (1) the presence of underground concrete bunkers at the site; (2) subsurface soil conditions consisting of fill and clay strata; and (3) the inadequate foundation systems of the surrounding buildings; and

WHEREAS, the applicant states that, in the early stages of excavation for the Approved Building, the contractor uncovered concrete bunkers related to the site's former use by Brooklyn Edison as a subsidiary station in the first half of the 20th Century; and

WHEREAS, the applicant further states that while the perimeter walls of the underground substation extended to the Garfield Place side of the site, the majority of it, including interior concrete chambers, was located on the Carroll Street portion of the site; and

WHEREAS, the applicant represents that the discovery of the bunkers increased the costs of excavation, underpinning, demolition and foundations by \$2,868,000 above what was anticipated when they commenced

MINUTES

construction on the Approved Building; and

WHEREAS, specifically, the applicant states that special equipment and additional time was required to demolish and remove the bunker walls and that portions of the bunkers had to be preserved to protect the structural integrity of the foundations of surrounding buildings along Carroll Street; and

WHEREAS, the applicant represents that the foundation walls for the substation extended into the portion of the site on Garfield Place, which resulted in the need to perform additional underpinning to the surrounding buildings along Garfield Place; and

WHEREAS, as to the bunkers, the Board recognizes that this may be a unique condition, but it disagrees that it leads to a hardship in developing the site; and

WHEREAS, the Board finds that the time and costs associated with the discovery of the subsurface conditions cannot be the basis of the hardship; and

WHEREAS, the Board acknowledges that if it found that the existence of the claimed subsurface conditions were unique and led to a hardship, then the failure to discover these conditions at the commencement of construction would not preclude the applicant from seeking relief from the Board; and

WHEREAS, however, the Board cannot grant such relief in the instant case, where early discovery of the subsurface conditions based on due diligence by the owner would have afforded it the opportunity to construct a conforming development that could have avoided the hardship related to these conditions; and

WHEREAS, the Board notes that the subject site was used as a Brooklyn Edison substation for approximately 15 years until it was de-commissioned in 1934, and that nothing in the site history indicates excavation below grade subsequent to the de-commissioning; and

WHEREAS, the Board further notes that the presence of the substation was clearly noted on readily accessible maps from that era, such as Sanborn maps; and

WHEREAS, the Board further notes that boring samples taken on the site prior to the commencement of construction indicated the existence of obstructive concrete at seven feet below grade at one sample location near Carroll Street; and

WHEREAS, although subsequent boring samples did not uncover any obstructions, the Board notes that these later boring samples were not taken from the portion of the site near Carroll Street, where the bulk of the concrete bunkers are located; and

WHEREAS, based on the site's history of use as an electrical substation and the applicant's geotechnical borings, the Board finds that if the applicant had conducted proper due diligence on the site it would have been aware of the existence of the concrete bunkers prior to construction; and

WHEREAS, as to the extent and presence of the bunkers as a claimed hardship, the applicant represents that the removal of the bunker was required because the Approved Building included a cellar over the entire site, and

the applicant proposed to locate its required parking in the portion of the cellar on the Carroll Street side of the site; and

WHEREAS, the Board notes the bunkers are located primarily along the Carroll Street portion of the site and that the applicant's lack of due diligence is relevant insofar that early discovery of the bunkers may have resulted in a revised site plan and design that could avoid the additional costs for removing the bunker; and

WHEREAS, specifically, the applicant could have altered its proposal to provide a scheme where the cellar does not extend to Carroll Street and parking is provided at grade along Carroll Street, thus eliminating the need for significant excavation or removal of the bunker; and

WHEREAS, finally, regardless of when the bunkers were discovered, the Board notes that the elective cost to remove them has only been represented to be \$253,940, and that the bulk (approximately 92 percent) of the \$2,868,000 in additional costs claimed by the applicant are associated with the drilled pile foundations as well as the underpinning of the adjacent buildings; and

WHEREAS, accordingly, the Board rejects the assertion that the concrete bunkers, which were (1) explicitly noted on maps of the site; (2) detected during boring tests; (3) located on only a portion of the site and one which did not require their removal; and (4) only approximately eight percent of the identified hardship costs, create an unnecessary hardship in developing the site; and

WHEREAS, as to the soil and other subsurface conditions, the applicant represents that the foundation system for the Approved Building was initially designed to include driven piles, but that after commencing construction and removing the concrete bunkers, they were required to change the foundation system to drilled piles due to the presence of fill and silty clay strata and because the foundations of the neighboring homes abut the concrete bunkers on the subject site; and

WHEREAS, however, the Board notes that the engineering reports associated with the Approved Building actually advised the use of drilled piles rather than driven piles, and that the subsurface conditions were basic urban fill found throughout the city; and

WHEREAS, in order to substantiate whether the subsurface conditions that required drilled piles were indeed unique, the Board asked the applicant to provide information on the foundation system of other developments in the area; and

WHEREAS, while the applicant provided a list of buildings which it claimed were constructed on spread footings, the applicant failed to provide any evidence to support such claims; and

WHEREAS, the Board was therefore not persuaded that the subsurface conditions and the need for drilled piles instead of driven piles were unique to this site; and

WHEREAS, as to the underpinning costs, the Board notes that the applicant was required to underpin the two adjacent buildings along Garfield Place where the Approved Building is located, but that the applicant also underpinned the adjacent buildings along Carroll Street as a result of the

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excavation and cellar construction; and

WHEREAS, the Board rejects that such conditions and associated costs are unique in the area, and observes that the surrounding neighborhood comprises old row-house and brownstone development that extend from side lot line to side lot line, and were built during generally the same era as the buildings adjacent to the subject site; and

WHEREAS, further, the Board notes that in similar contextual districts, underpinning adjacent older buildings is typically a part of construction and such costs are not unique to this site; and

WHEREAS, the Board further notes that the age and condition of the building stock also largely determined the need to have drilled piles instead of driven piles, which again are not unique to the site; and

WHEREAS, therefore the Board rejects the applicant's claim that there were \$2,868,000 in premium costs associated with the unique conditions on the site; and

WHEREAS, additionally, the Board does not consider the costs for delays, new contracts and overruns associated with the subsurface work to be hardship costs because they were created by the owner; and

WHEREAS, the Board rejects the applicant's assertion that the discovery of the bunkers, the subsurface soil conditions, and the foundation systems of the surrounding buildings are unique physical conditions which result in a hardship, and further that the costs to remove the bunker were necessary to the development of the site; and

WHEREAS, accordingly, the Board finds that the applicant has failed to provide substantial evidence in support of the finding set forth at ZR § 72-21(a); and

WHEREAS, because the applicant has failed to provide substantial evidence in support of the finding set forth at ZR §72-21(a), the application also fails to meet the finding set forth at ZR §72-21(b); and

WHEREAS, even assuming *arguendo* that the noted conditions should be considered unique such that the finding set forth at ZR § 72-21(a) is met, the applicant has failed to submit credible financial data in support of its claim that conforming residential development on the site will not realize a reasonable return; and

WHEREAS, specifically, the Board notes that the applicant submitted a financial analysis which included the \$2,868,000 overrun in the contract price as part of the estimated project costs; and

WHEREAS, the Board directed the applicant to provide a breakdown of the project costs that was not based on the applicant's contract management and delays, but the applicant failed to provide such a cost breakdown; and

WHEREAS, the Board also questioned the conforming scenarios presented by the applicant, including the proposal to build out a full cellar as the only alternative for the site; and

WHEREAS, specifically, the Board requested an analysis of a conforming development that provided only a partial cellar, thus avoiding the costs associated with the removal of the bunker and the excavation and underpinning along Carroll Street; and

WHEREAS, the applicant failed to provide an analysis of such a scenario but instead claimed that surface parking reduced revenues; and

WHEREAS, the applicant did not provide credible supportive evidence regarding a loss of revenue associated with surface parking; and

WHEREAS, in the absence of credible financial data in support of its claim that conforming residential development on the site will not realize a reasonable return, the applicant failed to make the (b) finding; and

WHEREAS, even if the Board considered the noted site conditions to be unique and that the proposed development was the only way for the applicant to realize a reasonable return, such that the findings set forth at ZR § 72-21(a) and (b) are met, the Board finds that the applicant would still fail to satisfy the finding set forth at ZR § 72-21(d), which requires that the hardship claimed as a ground for a variance has not been created by the owner or by a predecessor in title; and

WHEREAS, the Board further notes that, as stated above, if the applicant had performed due diligence on the site it would have been aware of the existence of the underground substation prior to construction and that there were alternatives to removing the bunkers once discovered, thus, the applicant chose to incur the additional costs and has not demonstrated that they were unavoidable; and

WHEREAS, accordingly, the Board considers the claimed hardship to be self-created in that the cost overruns cited by the applicant were due to the owner's decision to remove the concrete bunkers and proceed with the construction of subsurface parking on the portion of the site fronting Carroll Street, rather than revising its plans to mitigate the costs associated with the discovery of the bunkers; and

WHEREAS, thus, the application also fails to meet the finding set forth at ZR §72-21(d); and

WHEREAS, since the application fails to meet the findings set forth at ZR § 72-21 (a), (b) and (d), it must be denied.

Therefore it is Resolved that the decision of the Department of Buildings, dated April 21, 2009, acting on Department of Buildings Application No. 302370404, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, March 9, 2010.

14-09-BZ

APPLICANT – Eric Palatnik, P.C., for Orenstein Brothers, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application January 26, 2009 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store and automotive laundry (UG 16B). C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2294 Forest Avenue, Southeast intersection of Forest Avenue and South Avenue, Block 1685, Lot 15, 20, Borough of Staten Island.

COMMUNITY BOARD #ISI

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APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 1:30 P.M., for continued hearing.

44-09-BZ

APPLICANT – Philip L. Rampulla, for Tony Chrampanis, owner.

SUBJECT – Application March 11, 2009 – Variance (§72-21) to allow for a two-story commercial building (UG 6) with accessory parking, contrary to use regulations (22-00). R3-1 district.

PREMISES AFFECTED – 2175 Richmond Avenue, Eastside of Richmond Avenue 39.80' south of Saxon Avenue, Block 2361, Lot 12(tent), 14, 17, 22, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phillip Rampulla and Henry Arlin Schmon.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 1:30 P.M., for continued hearing.

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radoncic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for continued hearing.

254-09-BZ thru 256-09-BZ

APPLICANT – Ivan F. Khoury, for Kearney Realty Corporation, owner.

SUBJECT – Application September 4, 2009 – Variance (§72-21) to legalize three existing homes, contrary to front yard (§23-45) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 101-03/05/07 Astoria Boulevard aka 27-31 Kearney Street, north side of Astoria Boulevard & northeasterly side of Kearney Street, Block 1659, Lot 51, 53, 56, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Ivan F. Khoury.

For Opposition: Yvonne Bravo.

ACTION OF THE BOARD – Laid over to April 20, 2010 at 1:30 P.M., for continued hearing.

272-09-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Bob Roberts, owner; The Fitness Place Astoria N.Y. Inc., lessee.

SUBJECT – Application September 24, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Lucille Roberts*) on the second and third floors in an existing three-story building. C5-2.5 (M.D) zoning district.

PREMISES AFFECTED – 32-62 Steinway Street, north side, 281' east of 34th Avenue, Block 656, Lot 61, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for adjourned hearing.

307-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Zahava Hurwitz and Steven Hurwitz, owner.

SUBJECT – Application November 9, 2009 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to open space and floor area (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1358-1360 East 28th Street, West side of East 28th Street between Avenue M and Avenue N. Block 7663, Lot 73 & 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for continued hearing.

325-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Yetev Lev 11th Avenue, owner.

SUBJECT – Application December 7, 2009 – Variance (§72-21) to permit the proposed four-story and mezzanine synagogue, contrary to lot coverage (§24-11), rear yard (§24-36) and initial setback of front wall (§24-522). R6 zoning district.

PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel, Howard Weiss, Rabbi Cohen and Henry Herbst.

For Opposition: Stuart A. Klein, Chaim Frenkel and Edith Frankel.

ACTION OF THE BOARD – Laid over to April 13, 2010 at 1:30 P.M., for continued hearing.

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15-10-BZ

APPLICANT – Dennis D. Dell’Angelo, for Avraham Rosenshein, owner.

SUBJECT – Application February 1, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141); side yards (§23-461), and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 3114 Bedford Avenue, west side of Bedford Avenue, 100’ north of Avenue J, Block 7588, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis D. Dell’Angelo.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on September 15, 2009, under Calendar No. 327-04-BZ, and printed in Volume 94, Bulletin Nos. 35-37, is hereby modified to read as follows:

327-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Beth Gavriel Bukharian Congregation, owner.

SUBJECT – Application June 5, 2009 – Extension of Time to complete construction and Extension of Time to obtain a certificate of occupancy of a previously granted Variance (§72-21) for the enlargement of an existing Synagogue and School (*Beth Gavriel*) which expired on June 7, 2009. R1-2 zoning district.

PREMISES AFFECTED – 66-35 108th Street, east side of 108th Street, east side of 108th Street, between 66th Road and 67th Avenue, Block 2175, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of time to complete the enlargement of an existing building occupied by both a synagogue and a religious school, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 21, 2009 after due notice by publication in *The City Record*, with a continued hearing on August 19, 2009, and then to decision on September 15, 2009; and

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

WHEREAS, the subject site is located on the east side of 108th Street, between 66th Road and 67th Avenue, within an R1-2 zoning district; and

WHEREAS, this application is submitted on behalf of the Beth Gavriel Bukharian Congregation (the “Synagogue”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 2005 when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the enlargement of an existing building occupied by both a synagogue and a religious school; and

WHEREAS, substantial construction was to be completed by June 7, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that due to financing issues and other unforeseen construction delays, the

construction has not been completed and the filing of an application for a certificate of occupancy has been delayed; and

WHEREAS, the applicant states that the Synagogue has obtained funding commitments and construction is now ongoing; and

WHEREAS, thus, the applicant now requests a three-year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board raised concerns about a Stop Work Order issued by DOB on September 15, 2008 in connection with the revocation of a permit issued to the subject premises; and

WHEREAS, in response, the applicant submitted a letter from DOB that rescinded the notice of revocation of the permit, and the applicant states that no work was done at the site while the Stop Work Order was in effect; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 7, 2005, so that as amended this portion of the resolution shall read: “to grant a three-year extension of time to complete construction and obtain a certificate of occupancy, to expire on September 15, 2012; *on condition:*

THAT construction shall be substantially complete by March 15, 2012;

THAT a certificate of occupancy shall be obtained by September 15, 2012;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 401995828)

Adopted by the Board of Standards and Appeals, September 15, 2009.

****The resolution has been corrected in the Therefore clause. Corrected in Bulletin No. 11, Vol. 95, dated March 17, 2010.**

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March 24, 2010

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DOCKET

New Case Filed Up to March 16, 2010

31-10-BZ

85-15 Queens Boulevard, North side of Queens Boulevard between Broadway and Reeder Street., Block 1549, Lot(s) 28,41, Borough of **Queens, Community Board: 4**. Variance to allow a commerical building, contrary to use regulations. C1-2/R6,C2-3/R6 district.

32-10-BZ

30-30 Northern Boulevard, Northern Boulevard; Sunnyside Yards; 41 Avenue;Honeywell Street., Block 239, Lot(s) 60, Borough of **Queens, Community Board: 1**. Variance to permit a 19 story mixed use buildings. M1-5 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

APRIL 13, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 13, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

16-92-BZ

APPLICANT – NYC Board of Standards and Appeals.
OWNER: High Tech Park, Inc.
SUBJECT – Application April 25, 2008 – Dismissal for lack of prosecution for an extension of time to obtain a Certificate of Occupancy and a clarification of the BSA Resolution. R5/C1-3 zoning district.
PREMISES AFFECTED – 72/84 Sullivan Street, north side of Sullivan Street, east of Van Brunt Street, Block 556, Lot Tent.43, Borough of Brooklyn.
COMMUNITY BOARD #6BK

280-98-BZ

APPLICANT – Rampulla Associates Architects, for MARS Holding, LLC, owner.
SUBJECT – Application February 13, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG4 Dental Office which expired on February 8, 2010; an Amendment to convert the basement garage into UG4 dental office floor area. R-2 zoning district.
PREMISES AFFECTED – 2936 Hylan Boulevard, east side of Hylan Boulevard, 100' north of Isabella Avenue, Block 4015, Lot 14, Borough of Staten Island.
COMMUNITY BOARD #3SI

72-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for PGREF I 1633 Broadway Tower, L.P., owner; Equinox 50th Street, Incorporated, lessee.
SUBJECT – Application January 12, 2010 – Extension of Term to permit the continued operation of a Physical Cultural Establishment (Equinox Fitness) which expired on January 11, 2010. C6-7 (MID) zoning district.
PREMISES AFFECTED – 1633 Broadway, 215 West 50th Street; 210 West 51st Street, west side of Broadway between West 50th and West 51st Streets, Block 1022, Lot 43, Borough of Manhattan.
COMMUNITY BOARD #5M

51-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.
SUBJECT – Application February 4, 2010 – Amendment of variance (§72-21) which permitted, in a C1-2/R2 zoning district, the operation of a Physical Culture Establishment (PCE) contrary to ZR §32-00, and the legalization of an existing dance studio (Use Group 9), contrary to ZR §32-18.
The amendment seeks to enlarge the PCE to occupy 1,072 sf of the first floor and amend the resolution to reflect a change in ownership of the PCE.
PREMISES AFFECTED – 188-02/22 Union Turnpike, Located on the south side of Union Turnpike between 188th and 189th Streets, Block 7266, Lot 1, Borough of Queens.
COMMUNITY BOARD #1Q

92-08-BZ

APPLICANT – Riker Danzig, for Boquen Realty, LLC, owner.
OWNER: Boquen Realty, LLC.
SUBJECT – Application April 14, 2008 – Dismissal for lack of prosecution for a Variance to allow the residential conversion and enlargement, contrary to bulk regulations. M1-5B zoning district.
PREMISES AFFECTED – 13 Crosby Street, east side of Crosby Street between Grand and Howard Street, Block 233, Lot 4, Borough of Brooklyn.
COMMUNITY BOARD #4BK

APPEALS CALENDAR

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 filed by the Fire Department seeking to modify Certificate of Occupancy No. 71956 to require additional fire protection for a commercial use in the form of automatic wet sprinkler system throughout the entire building.
PREMISES AFFECTED – 3920 Merritt Avenue, aka 3927 Mulvey Avenue, 153' north of Merritt and East 233rd Street, Block 4972, Lot 12, Borough of Bronx.
COMMUNITY BOARD #12BX

1-10-A

APPLICANT – Elizabeth Safian, for Ciro Faiella & Joseph Faiella, owner.
SUBJECT – Application January 4, 2010 – Appeal contesting an Order of Closure issued by the Department of Buildings that the storage of commercial vehicles, use as public parking lot, trucking terminal and a salvage yard constitutes an illegal use in a residential district pursuant to Administrative Code Section 28-212.2. R5 zoning district.
PREMISES AFFECTED – 527 East 86th Street, 116' east of Foster Avenue, fronting East 86th Street, Block 7965, Lot

CALENDAR

33, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APRIL 13, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 23, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

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 station (UG16b) to automotive repair establishment and automotive sales (UG16b) and the enlargement of the 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

20-10-BZ

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner; Soul Cycle East 83rd Street, LLC, lessee.

SUBJECT – Application February 8, 2010 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment (*Soul Cycle*) on the ground floor of an existing six-story building. C1-9 zoning district.

PREMISES AFFECTED – 1470 Third Avenue, a/k/a 171-173 East 83rd Street, northwest corner of East 83rd Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #8M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 16, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hadarth Latchininarain, owner.

SUBJECT – Application September 21, 2009 – Extension of Term (§72-01 & §72-22) of a previous variance that permits the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on July 24, 2009; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, located on the northern corner of Linden Boulevard and Montauk Avenue, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Ronald J. Dillon.

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver, a reopening, and an extension of term for an automotive glass and mirror repair establishment (Use Group 7) and used car sales (Use Group 16), which expired on July 24, 2009; and

WHEREAS, a public hearing was held on this application on December 8, 2009, after due notice by publication in *The City Record*, with continued hearings on January 26, 2010 and February 23, 2010, and then to decision on March 16, 2010; and

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

WHEREAS, Community Board 5, Brooklyn, recommends disapproval of this application; and

WHEREAS, a representative of the Concerned Homeowners Association provided testimony in opposition to the application, citing the following concerns: (1) the site can be developed with an as of right use and thus a extension of term for the variance is not required; (2) the conditions will not be maintained after the renewal of the grant; (3) there is not an

active use at the site; and (4) there is a trailer onsite that is not permitted; and

WHEREAS, the site is located on the northeast corner of Linden Boulevard and Montauk Avenue, within an R5 zoning district; and

WHEREAS, the site is occupied by an automotive glass and minor repair establishment with used car sales; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 29, 1958 when, under BSA Cal. No. 963-57-BZ, the Board granted a variance to permit the construction and operation of a gasoline service station, with accessory uses for a term of 15 years; and

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

WHEREAS, on June 29, 1995, under the subject calendar number, the Board granted a new variance to permit the legalization of a change in use from automobile service station (Use Group 16) to an automobile glass and mirror establishment (Use Group 7) with sales of used cars (Use Group 16) for a term of ten years, to expire on June 20, 2005; the term of the grant was extended to July 24, 2009; and

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

WHEREAS, at hearing, the Board directed the applicant to address the following concerns: (1) the existence of a trailer not reflected on the approved plans; (2) the requirement for a shed at the rear of the building; (3) the compliance with the approved hours of operation; (4) the absence of required landscaping and fencing; (5) sign compliance including sign brackets on the sidewalk; (6) inconsistency in the curbcut widths per the approved plans; and (7) parking that is not in compliance with the approved site plan; and

WHEREAS, in response, the applicant (1) stated that the trailer has been removed; (2) stated that the shed is required for the storage of automotive glass; (3) stated that the hours of operation are 8:00 a.m. to 5:00 p.m., Monday through Saturday and closed on Sunday; (4) stated that the fencing and landscaping would be as reflected on the approved plans; (5) provided a sign analysis which reflects that the signage complies with C1 zoning district regulations; (6) submitted architectural plans, which reflect that the eastern curb cut, including splays, shall have a total width of 28'-6" and the western curb cut, including splays, shall have a total width of 33'-6" ; and (7) submitted photographs which reflect that the trailer and the sign brackets along the fence have been removed and the parking layout onsite is consistent with the layout on the site plan; and

WHEREAS, in response to the Concerned Homeowners Association's concerns, the applicant notes that this is an application for an extension of term and, thus, there is not a requirement to make the variance findings and that there has been continuous use of the site for the designated purposes; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*,

MINUTES

and *amends* the resolution, dated June 20, 1995, so that as amended this portion of the resolution shall read: “to extend the term for a period of five years from the date of this grant, to expire on March 16, 2015; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received February 9, 2010’-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on March 16, 2015;

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

THAT opaque fencing and a landscape buffer shall be provided along the northwest property line;

THAT the site conditions shall conform to the BSA-approved plans;

THAT the number of cars for sale at the site shall be limited to 13 and the parking layout shall be as reflected on the approved plans;

THAT there shall be no parking of vehicles on the sidewalk;

THAT all signage shall comply with C1 zoning district regulations;

THAT the hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Saturday and closed on Sunday;

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

THAT the site shall be brought into compliance with all conditions of this grant and a certificate of occupancy shall be obtained by March 16, 2011;

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

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

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

(DOB Application No. 302033396)

Adopted by the Board of Standards and Appeals, March 16, 2010.

280-01-BZ

APPLICANT – Cozen O’Connor, Esqs., for Perlbindler Holdings, LLC, owners.

SUBJECT – Application February 3, 2010 – Extension of Time to Complete Construction and Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the construction of a mixed-use building which expires on May 7, 2010. C1-9 zoning district.

PREMISES AFFECTED – 663-673 Second Avenue, west side of Second Avenue from 36th Street to 37th Street, Block 917, Lot 21, 24, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver, a reopening, and an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on February 23, 2010, after due notice by publication in *The City Record*, and then to decision on March 16, 2010; and

WHEREAS, the subject site is located on the west side of Second Avenue, between East 36th Street, and East 37th Street, within a C1-9 zoning district; and

WHEREAS, on May 7, 2002, the Board granted a variance under the subject calendar number pursuant to ZR § 72-21, to permit the development of a mixed use building; and

WHEREAS, on September 24, 2002, the Board granted an amendment to the resolution, under the subject calendar number; and

WHEREAS, most recently, on April 11, 2006, the Board granted an extension of time of four years to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant represents that due to unforeseen construction delays related to its adjacency to the Queens-Midtown Tunnel and the associated complex engineering methods, the construction has not begun since the grant date, however, the applicant stated that the project is proceeding and construction is expected to begin this year; and

WHEREAS, the applicant notes that the majority of the site is improved with a recessed roadway exit for the Queens-Midtown Tunnel; and

WHEREAS, the applicant represents that the conditions in the area have remained the same since the initial Board approval and thus the proposal, which provides a residential density that is within the as-of-right limits for C1-9 development, remains appropriate; and

WHEREAS, the applicant submitted photographs which reflect that the surrounding area today is consistent with the conditions at the time of the original grant; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on May 7, 2002, so that as amended this portion of the resolution shall read: “to permit an extension of time to complete construction and obtain a certificate of occupancy, for an additional period of four years from the date of the prior grant’s expiration, to expire on May 7, 2014; *on condition*:

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THAT construction shall be completed and a new certificate of occupancy shall be obtained by May 7, 2014;

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. 102973926)

Adopted by the Board of Standards and Appeals March 16, 2010.

1045-67-BZ

APPLICANT – Michael A. Cosentino, for Thomas Abruzzi, owner.

SUBJECT – Application October 30, 2009 – Extension of term of a variance (§72-21) for an accessory parking lot to be used for adjoining commercial uses, which expired on June 27, 1998; waiver of the Rules; and an Amendment to eliminate the term. R2 zoning district

PREMISES AFFECTED – 160-10 Crossbay Boulevard, Crossbay Boulevard between 160th Avenue and 161st Avenue, Block 14030, Lot 6, 20, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Michael A. Cosentino.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M., for continued hearing.

223-98-BZ

APPLICANT – Andrea Claire/Peter Hirshman for Jilda Realty Corporation, owner.

SUBJECT – Application October 29, 2009 – Extension of Term of a previous variance that permits the operation of an automotive service station (UG 16B) which will expire on February 1, 2010; Amendment to allow used car sales (UG 16B); Extension of Time to obtain a Certificate of Occupancy which expired on June 10, 2003; Waiver of the Rules. R6B zoning district.

PREMISES AFFECTED – 51-59 Maujer Street, aka 451-459 Lorimer Street, northeast corner of the intersection of Maujer Street and Lorimer Street, Block 2785, Lot 31 & 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Peter Hirshman and Mario Avollone.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M., for continued hearing.

208-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Shell Road, LLC, owner; Orion Caterers, Incorporated, lessee.

SUBJECT – Application November 9, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG9 catering hall which expired on October 19, 2009. R4/C1-2/M1-1 OP zoning district.

PREMISES AFFECTED – 255 Shell Road, east side of Shell Road, between Avenue X and Bouck Court, Block 7192, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Jay Goldstein.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

291-03-BZ

APPLICANT – Stuart A. Klein, Esq., for 6202-6217 Realty LLC, owner.

SUBJECT – Application June 5, 2009 – Extension of term of a variance (§72-21) for construction of a new residential building; amendment to add increase the number of dwelling units, FAR, height and parking spaces. M1-1/R5B zoning districts.

PREMISES AFFECTED – 1380 62nd Street, corner of 62nd Street and 14th Avenue, Block 5733, Lots 35, 36, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Laid over to April 27, 2010, at 10 A.M., for adjourned hearing.

196-08-BZ

APPLICANT – Gage Parking Consultants, for 53-10 Associates, owner.

SUBJECT – Application October 13, 2009 – Amendment of a previous grant for public parking garage; amendment would enclose rooftop parking. C6-2 (Special Clinton District) zoning district.

PREMISES AFFECTED – 792 Tenth Avenue / 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Jeremiah Candeanu.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M., for continued hearing.

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APPEALS CALENDAR

62-08-A

APPLICANT – Eric Palatnik, P.C. for Benny Ulloa, owner.
SUBJECT – Application March 27, 2009 – Proposed construction not fronting on a legally mapped street, contrary to General City Law, Section 36. R1-2 zoning district.

PREMISES AFFECTED – 398 Nugent Street, Nugent Street, North of Saint George Road, Block 2284, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M., for adjourned hearing.

300-08-A

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

SUBJECT – Application December 9, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior M1-3 zoning district regulations. M1-2 /R5B zoning district.

PREMISES AFFECTED – 39-35 27th Street, east side of 27th Street, 125' northeast of the intersection of 27th Street and 40th Avenue, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Marvin Mitzner.

For Opposition: Steven Harrison, Barbara Lorine, Vienna Ferreri, Gerald Walsh, George L. Stamatiades, Noni Pratt, Melinda Parino.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M., for continued hearing.

315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC., owner.

SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for a condominium hotel on the basis that the approved plans allow for exceeding of maximum permitted floor area. M1-6 zoning.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Laid over to April 27, 2010, at 10 A.M., for adjourned hearing.

57-09-A thru 158-09-A

APPLICANT – Eric Palatnik, P.C. for Maguire Avenue Realty Corporation, owner.

SUBJECT – Application April 15, 2009 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations. R3-2 (SSRD) zoning district.

PREMISES AFFECTED – Maguire Woods, Santa Monica Lane, Moreno Court, El Camino Loop, Malibu Court, Foothill Court and Moreno Court, Maguire Woods in the Woodrow section of Staten Island. Block 6979, Lots 64 thru 362, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik and Otto Savo.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M., for continued hearing.

306-09-A

APPLICANT – New York City Department of Buildings

OWNER – Luis Cuji

SUBJECT – Application November 9, 2009 – Appeal seeking to revoke the Certificate of Occupancy for failure to comply with provisions of the Zoning Resolution, Building Code and Multiple Dwelling Law. R5 Zoning district.

PREMISES AFFECTED – 37-48 60th Street, West side of 60th Street 38th and 37th Avenues. Block 1214, Lot 84, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Egnatios-Beene.

For Opposition: Richard Soleymanzadeh.

THE VOTE TO CLOSE HEARING –

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

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 16, 2010
1:30 P.M.**

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

ZONING CALENDAR

97-08-BZ

CEQR #08-BSA-073K

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the legalization of an existing school (*Central UTA*) (UG 3). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated April 10, 2008, acting on Department of Buildings Application No. 302356689 reads in pertinent part:

“Proposed Use Group 3 use is not permitted as of right within manufacturing zoning district, and is contrary to ZR Section 42-00 and therefore requires a special permit from the NYC BSA pursuant to ZR Section 73-19;” and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site within an M1-1 zoning district, the legalization of a six-story yeshiva (Use Group 3), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on March 24, 2009, after due notice by publication in the *City Record*, with continued hearings on April 21, 2009, June 9, 2009, July 14, 2009, August 25, 2009, September 22, 2009, November 10, 2009, and January 26, 2010, and then to decision on March 16, 2010; and

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

WHEREAS, Community Board 3, Brooklyn, recommends disapproval of this application, citing concerns with potential environmental hazards, the safety of the interior of the building, the lack of a proper means of egress, and the traffic in the surrounding area; and

WHEREAS, the application is brought on behalf of the Central United Talmudical Association (the “Yeshiva”); and

WHEREAS, the site is located on the west side of Sanford Street, between Park Avenue and Myrtle Avenue, within an M1-1 zoning district; and

WHEREAS, the site has 100 feet of frontage on Sanford Street, a depth of 100 feet, and a lot area of 10,000 sq. ft.; and

WHEREAS, the subject building is six stories with a floor area of approximately 40,742 sq. ft. (4.07 FAR), and was formerly occupied by a factory; and

WHEREAS, the applicant represents that the Yeshiva meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M1 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that the school will serve an estimated 850 students from fifth grade through 12th grade; and

WHEREAS, the Yeshiva’s program includes 37 classrooms, including art rooms and computer labs, and administrative offices; and

WHEREAS, the applicant states that the Yeshiva’s program requires a minimum lot area of 5,000 sq. ft. and a building with a floor area of approximately 40,000 sq. ft.; and

WHEREAS, the applicant represents that it specifically evaluated the feasibility of nine Brooklyn buildings: 452 Berry Street, 50 South 11th Street, 137 North 10th Street, 72 Berry Street, 224 Grand Street, 315 Berry Street, 390 Wythe Avenue, 334 Berry Street, and 100 South 4th Street; and

WHEREAS, the applicant states that, of the nine sites it evaluated, four of the properties are occupied by buildings that are smaller than the approximately 40,000 sq. ft. building required by the applicant, while four others greatly exceed that amount; and

WHEREAS, the applicant submitted a letter from a real estate broker stating that the Yeshiva was also competing with a very active residential market that

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rendered the occupancy of such buildings for school use cost-prohibitive; and

WHEREAS, the applicant also provided a survey of vacant land or under-developed properties within the catchment area of the school, and found approximately 11 sites that were either vacant or under-developed which could potentially be redeveloped for a school that could accommodate the projected enrollment of 850 students; and

WHEREAS, however, the applicant represents that in almost all cases, an adequately sized site with a width of at least 50 feet and a lot area of 5,000 sq. ft. could only be realized with the merger of several lots or an assemblage where the lots are in separate ownership; and

WHEREAS, the applicant further represents that the sites that were in single ownership were either being developed or planned for residential development; and

WHEREAS, the applicant maintains that the results of the site search reflects that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

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

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

WHEREAS, the applicant submitted a radius diagram which reflects that an R6 zoning district is located two blocks east of the subject lot, and therefore the site is within 400 feet of a zoning district where the proposed use would be permitted as-of-right; and

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

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

WHEREAS, the applicant states that adequate separation from noise, traffic and other adverse effects of the surrounding M1-1 zoning district will be provided through the building's 12-inch thick masonry walls and double-paned glass windows; and

WHEREAS, the noise analysis submitted by the applicant indicates that the existing windows comply with the required noise attenuation and no additional mitigation measures are recommended; and

WHEREAS, the applicant represents that adequate separation from the surrounding M1-1 zoning district is further provided because the building wall is setback from the property line by approximately ten feet at the rear and approximately 24 feet along the side lot line where windows are located along the building; and

WHEREAS, the Board finds that the exterior wall and window construction of the building and the open areas along the lot lines of the site will adequately separate the Yeshiva from noise, traffic and other adverse effects of any of the uses within the surrounding M1-1 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c)

are met; and

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

WHEREAS, the applicant states that approximately 674 of the 850 total students arrive by bus, and that the school operates approximately 13 buses; and

WHEREAS, the applicant further states that the buses arrive between 8:15 a.m. and 8:45 a.m., and that their arrival is spread out so that the buses arrive at the school in groups of three, staggered five to seven minutes apart; and

WHEREAS, the applicant further states that designated staff members at the Yeshiva supervise the students when they arrive and depart on the buses; and

WHEREAS, specifically, the applicant states that one staff member is assigned to each bus to assist the students as they get on or off the bus, and approximately four staff members are assigned to oversee the arrivals and departures; and

WHEREAS, the Board directed the applicant to have the Department of Transportation ("DOT") perform a site inspection to address any traffic-related issues with the Yeshiva's operation; and

WHEREAS, the Board notes that it received a letter from DOT dated October 1, 2009, stating that it performed a site inspection and found no issues with the way the school operates the arrivals and dismissals of children attending the facility; and

WHEREAS, the applicant represents that there is limited local traffic activity on the subject blockfront because Sandford Street is a narrow, dead end street which does not attract anything other than local traffic; and

WHEREAS, the Board notes that the applicant provided a lot-by-lot traffic study of the surrounding area, which indicated that most of the surrounding sites are under-developed or have open uses, and therefore the traffic along Sandford Street is not significant; and

WHEREAS, the applicant submitted a letter from the owner of the premises across the street from the site, a book publishing company, stating that it will not accept deliveries or send out orders during the hours when children are scheduled to arrive and depart the school; and

WHEREAS, the Board finds that the above-mentioned measures maintain safe conditions for children going to and from the School; and

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

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

WHEREAS, as to the egress concern raised by the Community Board, the Board notes that the applicant proposes to construct an interior stairwell at all levels to provide a secondary means of egress without impacting the bulk of the structure; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 08BSA084K, dated March 12, 2010; 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, air quality and noise impacts; and

WHEREAS, the applicant installed a sub-slab depression ("SSD") system in January 2010 beneath the slab of the subject building to address the indoor contamination due to elevated volatile organic carbon ("VOC") levels; and

WHEREAS, DEP determined on January 27, 2010 that the January 2010 Site Investigation Report (indoor air sample results) is acceptable based on the air monitoring results that occurred simultaneously with the operation of the SSD system, which showed that the VOC levels were either non-detectable or below the New York State Department of Health Guidance levels; therefore, DEP determined that there are no hazardous materials issues; and

WHEREAS, DEP reviewed the applicant's air permit searches and field survey of surrounding industrial and auto-related uses within a 400-ft. radius of the subject site and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, the proposed project would not generate sufficient traffic to have the potential to result in a significant air quality impact from mobile sources; and

WHEREAS, based on the results of noise monitoring and the existing windows' specifications, a window-wall noise attenuation of 35 dBA is achieved on the front façade of the subject building and a window-wall noise attenuation of 30 dBA is achieved on all other facades of the subject building; and

WHEREAS, the following two alternate means of ventilation are provided in the school: central air conditioning in the basement, and a unit air-conditioner with a HUD-

approved sleeve in each classroom; and

WHEREAS, the window-wall attenuation and alternate means of ventilation achieve an interior noise level of 45 dBA; 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 §§ 73-19 and 73-03 and grants a special permit, to allow the legalization of a six-story yeshiva (Use Group 3), on a site within an M1-1 zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 3, 2009" - Nine (9) sheets; and *on further condition*:

THAT 35 dBA of window-wall noise attenuation shall be provided on the front façade of the building and 30 dBA of window-wall noise attenuation shall be provided on all other facades of the building, and that alternate means of ventilation (central air conditioning in the basement and a unit air-conditioner with a HUD-approved sleeve in each classroom) shall be provided in the subject building;

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

THAT a certificate of occupancy shall be obtained by March 16, 2012;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 16, 2010.

187-08-BZ

CEQR #09-BSA-006K

APPLICANT – Sheldon Lobel, P.C., for Congregation and Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to permit the construction of a six-story community facility building (*Congregation & Yeshiva Machzikei Hadas*),

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contrary to ZR §42-00. M2-1 zoning district.
PREMISES AFFECTED – 1247 38th Street, east side of 38th Street, between 13th and 12th Avenue, Block 5295, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated June 12, 2008, acting on Department of Buildings Application No. 302269925 reads, in pertinent part:

“Proposed school, community facility, is not permitted in an M2-1 manufacturing zoning district, as per ZR 42-00;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an M2-1 zoning district, a proposed five-story yeshiva which does not conform to district use regulations, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on September 15, 2009, after due notice by publication in *The City Record*, with continued hearings on November 24, 2009, January 12, 2010 and March 2, 2010, and then to decision on March 16, 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 12, Brooklyn, recommends approval of this application, on condition that there be no commercial catering allowed on the site; and

WHEREAS, this application is being brought on behalf of Congregation and Yeshiva Machzikei Hadas (the “Yeshiva”), a not-for-profit religious and educational entity; and

WHEREAS, the subject premises is located on the east side of 38th Street, between 12th Avenue and 13th Avenue, within an M2-1 zoning district; and

WHEREAS, the site is currently vacant; and

WHEREAS, the Yeshiva is proposed to have a total floor area of 99,200 sq. ft. (4.1 FAR), lot coverage of 80 percent, a total height of 60 feet, and a rear yard with a depth of 15 feet; and

WHEREAS, community facility use is not permitted in the subject M2-1 zoning district, thus the applicant seeks a use variance to permit the proposed Yeshiva; and

WHEREAS, the applicant notes that the site is immediately adjacent to the “Culver El” at the rear, which is city-owned land formerly occupied by the Culver elevated line on 37th Street; and

WHEREAS, the applicant states that the Department of City Planning (“DCP”) is planning to rezone the Culver El

land, which will include a rezoning of the premises from an M2-1 zoning district to an M1-2/R6B zoning district; and

WHEREAS, the Board’s review of the application is based on the programmatic needs of the Yeshiva, which cannot be accommodated within the use regulations of the current zoning district or the bulk regulations of the proposed zoning district; and

WHEREAS, the applicant originally proposed to construct a six-story yeshiva with a floor area of 135,390 sq. ft. (5.6 FAR), a total height of 80’-6”, and no rear yard; and

WHEREAS, at the direction of the Board, the applicant revised its proposal and provided an interim plan for a six-story yeshiva with a floor area of 106,835 sq. ft. (4.4 FAR), and a total height of 71’-4”; and

WHEREAS, in light of the proposed rezoning of the site, the Board directed the applicant to further revise its proposal to more closely comply with the R6B zoning district that is contemplated for the site; and

WHEREAS, in response, the applicant provided revised plans reflecting the proposed building; and

WHEREAS, the Board notes that in an R6B zoning district, the relevant bulk requirements for the building would be as follows: a maximum floor area of 48,112 sq. ft. (2.0 FAR); a maximum lot coverage of 60 percent; a maximum base height of 40 feet; a maximum building height of 50 feet; and a rear yard with a minimum depth of 30 feet; and

WHEREAS, the proposal provides for the following uses: (1) a multi-purpose room, two kitchens, an office, bathrooms and mechanical space in the cellar; (2) a multi-purpose room, offices, kindergarten classrooms, a conference area, an administrative office and bathrooms on the first floor; (3) classrooms, a conference area, computer labs, an administrative office, teacher’s lounge, bathrooms and janitorial rooms on the second floor; (4) classrooms, general offices, computer labs, bathrooms and janitorial rooms on the third and fourth floors; (5) classrooms, resource rooms, computer labs, a high school study area, bathrooms and janitorial rooms on the fifth floor; and (6) a play area on the roof; and

WHEREAS, the applicant states that the Yeshiva currently operates in two separate buildings: the elementary school is located at 4107 16th Avenue and the high school is located at 695 Sixth Avenue; and

WHEREAS, the applicant represents that the existing buildings operated by the Yeshiva have approximately 983 enrolled students in elementary through high school and that both buildings have substandard classroom sizes that are filled to capacity and are no longer adequate to accommodate the Yeshiva’s current and projected enrollment; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Yeshiva: (1) accommodating the current enrollment while allowing for future growth; (2) relieving overcrowded classroom conditions; and (3) accommodating all grades in one centralized location within walking distance of most students’ homes; and

WHEREAS, the applicant represents that the Yeshiva has outgrown the existing buildings, which are located several blocks from the subject site and do not adequately

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serve an existing enrollment of 983 students nor does it allow for any increase in enrollment; and

WHEREAS, the proposed building will allow the Yeshiva to consolidate the enrollment of the two separate buildings and permits a projected enrollment of approximately 1,500 students; and

WHEREAS, the applicant represents that the proposed floor area and building design are required to accommodate the space needs associated with the projected student body; and

WHEREAS, the applicant states that the classrooms in the Yeshiva's existing buildings have an average size of approximately 300 sq. ft. and are filled to capacity; and

WHEREAS, the applicant represents that the proposed school building will allow for larger floor plates that can provide classrooms with an average size of over 600 sq. ft., which will relieve the overcrowded classroom conditions; and

WHEREAS, the applicant represents that the proposed building is necessary to accommodate the required number of classrooms as well as auxiliary uses such as dining and recreation space, stairwells, restrooms, and office space; and

WHEREAS, the Board acknowledges that the Yeshiva, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the limitations of the existing zoning, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Yeshiva is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant notes that the proposed use is permitted as-of-right in the nearby R6 zoning district and by special permit within the adjacent M1-2 zoning district; and

WHEREAS, as noted above, DCP is contemplating a rezoning of the area that would change the site from an M2-1 zoning district to an M1-2/R6B zoning district, where the proposed use would be permitted as-of right; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a mix of residential, community facility, and warehouse uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there is a four-story school located immediately adjacent to the east of the subject site; and

WHEREAS, at hearing, the Board raised concerns regarding potential traffic impacts at the site; and

WHEREAS, in response, the applicant submitted a chart reflecting the maximum bus use and capacity for the proposed school at the site, which reflects that at the maximum capacity of 1,500 students, no more than four buses would arrive or leave the site during any given hour, thus minimizing any traffic conflicts; and

WHEREAS, the applicant states that the proposed school's proximity to the homes of many of its students minimizes the use of buses, as many students arrive on foot; and

WHEREAS, the applicant states that the school will be able to park its four buses directly in front of the school building, in the spaces indicated on the proposed site plan; and

WHEREAS, the applicant represents that the adjacent school will not significantly impact bus traffic on 38th Street because that school maintains only one bus; and

WHEREAS, the Board notes that it received a letter from the Department of Transportation's School Safety Engineering Office dated August 27, 2008, indicating that it has no objection to the proposed building and will prepare a school map with additional signage and markings upon approval of the application and construction of the building; and

WHEREAS, the applicant further states that approximately 85 percent of the staff at the proposed school will not drive, and will arrive at the site by a combination of public transportation and walking; and

WHEREAS, the applicant represents that approximately 12 staff members are anticipated to drive to the site, and the school currently maintains a lot at 1612 41st Street with sufficient capacity to accommodate staff vehicles; and

WHEREAS, the applicant further represents that the school is currently working with DCP on the disposition of the Culver El property adjacent to the site with the intent of using the property as an accessory parking lot for a total of 15 parking spaces for existing staff cars and a small number of visitors, as well as for bus parking; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development in full compliance with zoning would meet the programmatic needs of the Yeshiva at the site; and

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

WHEREAS, as noted above, the applicant originally proposed a six-story yeshiva with a floor area of 135,390 sq. ft. (5.6 FAR), a total height of 80'-6", and no rear yard, which was reduced to a six-story yeshiva with a floor area of 106,835

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sq. ft. (4.4 FAR), and a total height of 71'-4"; and

WHEREAS, at hearing, the Board directed the applicant to further revise its proposal to more closely comply with the R6B zoning district that is contemplated for the site, which resulted in the subject five-story yeshiva with a floor area of 99,200 sq. ft. (4.1 FAR), a total height of 60'-0", and a rear yard with a minimum depth of 15'-0"; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to meet the programmatic needs of the Yeshiva and to construct a building that is compatible with the character of the neighborhood; and

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

WHEREAS, the 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") 09BSA006K, dated March 10, 2010; 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 air quality impacts; and

WHEREAS, DEP approved the Remedial Action Plan and Construction Health and Safety Plan on October 16, 2009; and

WHEREAS, DEP has 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

WHEREAS, DEP reviewed the applicant's stationary source screening analysis for the subject building's proposed HVAC equipment and the pollutant concentrations associated with active industrial/manufacturing facilities within a 400-ft. radius of the subject site, and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts relative to HVAC emissions and significant impacts from surrounding industrial/manufacturing uses on the proposed project are not anticipated; and

WHEREAS, the applicant proposes 30 dBA of window-wall noise attenuation in the proposed building which would achieve an interior noise level of 45 dBA; 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 M2-1 zoning district, a proposed five-story yeshiva, which does not conform with applicable zoning use regulations, contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 16, 2010" – (10) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: five stories, a floor area of 99,200 sq. ft. (4.1 FAR); a lot coverage of 80 percent; a total height of 60'-0"; and a rear yard with a minimum depth of 15'-0"; as reflected on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT no commercial catering use shall take place onsite;

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

THAT 30 dBA of window-wall noise attenuation shall be provided in the proposed building; and

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

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

THAT substantial construction be completed in accordance with ZR § 72-23;

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

Adopted by the Board of Standards and Appeals, March 16, 2010.

**197-08-BZ
CEQR #09-BSA-011K**

APPLICANT – Stuart A. Klein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application July 23, 2008 – Variance (§72-21) to permit a four-story and penthouse residential building, contrary to §23-141 (FAR, open space ratio), §23-22 (number of dwelling units), §23-45 (front yard), §23-462 (side yard), and §23-631 (wall height). R4 district.

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street,

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Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Jay Goldstein.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, decision of the Brooklyn Borough Commissioner, dated June 23, 2008, acting on Department of Buildings Application No. 301575472, reads in pertinent part:

- “1. Proposed residential Floor Area Ratio, lot coverage, and open space are contrary to ZR Section 23-141(b).
2. Proposed residential density requirement is contrary to ZR Section 23-22.
3. Proposed residential front yard requirement is contrary to ZR Section 23-45.
4. Proposed residential side yard requirement is contrary to ZR Section 23-462(a).
5. Proposed residential perimeter wall height, total building height and sky exposure plane are contrary to ZR 23-631(b);” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R4 zoning district, a proposed five-story (including penthouse) residential building with 34 dwelling units and 35 accessory parking spaces, which exceeds the maximum permitted FAR, lot coverage, wall height, total height, and number of dwelling units and, does not provide the minimum required front or side yards, contrary to ZR §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in the *City Record*, with continued hearings on November 10, 2009, December 15, 2009 and January 26, 2010, and then to decision on March 16, 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 9, Brooklyn, recommends disapproval of this application; and

WHEREAS, City Council Member Letitia James recommends approval of this application; and

WHEREAS, certain community members provided testimony in opposition to the application, citing concerns about neighborhood character and traffic; and

WHEREAS, certain community members provided testimony in support of the application, stating that a building on the lot would be an improvement to the existing vacant lot; and

WHEREAS, the subject site is located on the northeast corner of Troy Avenue and Carroll Street, within an R4 zoning district; and

WHEREAS, the site has 116 feet of frontage on Troy Avenue and 138'-11" of frontage on Carroll Street, and a total lot area of approximately 16,114 sq. ft.; and

WHEREAS, the site, which was formerly occupied by a one-story industrial building, is currently vacant; and

WHEREAS, the site is the subject of two prior variance applications; first, under BSA Cal. No. 173-00-BZ, the applicant sought to construct 72 dwelling units on the site, but later withdrew the application; under BSA Cal. No. 290-04-BZ, the applicant proposed to construct a six-story (including penthouse) residential/commercial building with 62,634 sq. ft. of floor area (3.89 FAR) and the application was also withdrawn; and

WHEREAS, under the subject application, the applicant initially proposed a five-story (including penthouse) residential building with a streetwall height of 47'-0", a height of 57'-6", a total floor area of 48,342 sq. ft. (3.0 FAR), a lot coverage of 72 percent, 34 dwelling units, one front yard with a depth of 6'-0", and one side yard with a width of 6'-0", and with 31 parking spaces; and

WHEREAS, the applicant now proposes a five-story (including penthouse) residential building with a streetwall height of 44'-6", a total height of 54'-6" (the maximum permitted street wall and total height are 25'-0" and 35'-0", respectively); a floor area of 48,342 sq. ft. (3.0 FAR) (the maximum permitted floor area is 21,754 sq. ft. (1.35 FAR)) one front yard with a depth of 6'-0", and one side yard with a width of 6'-0" (a front yard with a depth of 18'-0" and side yards with widths of 8'-0" and 10'-0" are required); a lot coverage of 72 percent (the maximum permitted lot coverage is 55 percent); 34 dwelling units (the maximum permitted number of dwelling units is 24); and 35 parking spaces; and

WHEREAS, the applicant proposes to provide (1) 35 parking spaces and storage in the cellar, (2) a recreation area, a lobby, and dwelling units on the first floor, and (3) dwelling units on the four upper floors; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable zoning district regulations: due to a history of industrial uses at the site, the soil is contaminated and requires extensive remediation; and

WHEREAS, as to the soil condition, the applicant represents that soil tests reflect that there is contamination from several chemical pollutants as a result of its prior use; and

WHEREAS, specifically, the soil boring analysis reflects that there are approximately ten volatile organic compounds (VOCs), five semi-volatile organic compounds (SVOCs), and five metals found in the soil, which exceed each compound's respective Recommended Soil Cleanup Objective from the New York State Department of Environmental Conservation's Technical Guidance Memorandum No. 4046; and

WHEREAS, the applicant represents that there are costs of approximately \$1.3 million, not including expected overage, associated with the remediation of the subject site; and

WHEREAS, the applicant represents that these conditions are unique to the subject site and are not customarily found in the subject residential zoning district; and

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WHEREAS, the analysis states that the remediation process is likely to include: (1) pumping out all liquids present in the drain using a vacuum truck, (2) removing all contaminated soil, (3) removing all fill material present in the subsurface soil in accordance with all relevant regulations, and (4) installing a vapor barrier under the new foundation; and

WHEREAS, the Board notes that the prior use of the site pre-dates the enactment of modern environmental standards and regulations; and

WHEREAS, the applicant has documented more than \$1.3 million in premium construction costs associated with the remediation of the site; and

WHEREAS, the applicant represents that the waivers are required to accommodate sufficient floor area and dwelling units to overcome the premium construction costs while maintaining a building with a bulk that is compatible with neighborhood character; and

WHEREAS, the Board finds that the aforementioned unique physical condition, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, initially, the applicant submitted a financial analysis for (1) an as-of-right (1.31 FAR) residential building, without special costs; (2) an as-of-right (1.31 FAR) residential building, with special costs; and (3) the proposed (3.0 FAR) residential building; and

WHEREAS, the analysis relied on \$1.6 million in remediation costs and reflected that only the proposal realized a reasonable rate of return; and

WHEREAS, the applicant concluded that neither of the as of right scenarios would result in a reasonable return, due to prohibitively high construction costs; and

WHEREAS, the Board directed the applicant to (1) analyze a lesser variance alternative and (2) reduce the estimated remediation costs so that only the portion of the site presumed to be contaminated, and not the entire site, was used as the basis for the premium costs; and

WHEREAS, in response, the applicant provided a lesser variance alternative for a residential building with 2.6 FAR and reduced the remediation estimate to approximately \$1.3 million; and

WHEREAS, the applicant's analysis reflects that, due to the contamination of the site, only the proposal, and not the lesser variance alternative, would realize a reasonable rate of return; and

WHEREAS, as noted, the Board directed the applicant to reduce the degree of waivers requested and to reflect the minimum variance; thus, the applicant modified the presumed remediation costs and modified the building envelope to respond to the Board's concerns; and

WHEREAS, thus, the applicant asserts that the additional FAR and other waivers are required to overcome the premium construction costs; and

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

return; and

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

WHEREAS, the applicant states that the surrounding area is mixed use with residential buildings of varying heights; and

WHEREAS, specifically, the applicant notes that there are at least 12 four-story and taller buildings within a 400-ft. radius of the site; and

WHEREAS, the applicant notes that buildings with heights between four and six stories are common in the surrounding area; and

WHEREAS, the applicant provided a land use map and a chart, which reflects the lot size, height, and FAR of a number of buildings in the area that are comparable to the proposed bulk; and

WHEREAS, additionally, the applicant notes that there is a telephone exchange building directly across Troy Avenue, which has a height of 62'-7" and an FAR of 3.0; the two corner lots, directly to the north are both occupied by buildings with heights of approximately 50 feet and FAR of approximately 3.0; and

WHEREAS, the applicant notes that there is a new residential development on Crown Street, between Albany Avenue and Troy Avenue, which reflects two nine-story buildings and 300 residential units; and

WHEREAS, further, the applicant represents that since the fifth floor/penthouse level of the proposed building will be set back 18 feet, it will be barely visible from grade and the eastern portion of the building is three stories, which will provide a transition between the bulk of the proposed building at the corner to the one and two-family homes on Carroll Street; and

WHEREAS, at the Board's direction, the applicant reduced the height of the building from 57'-6" to 54'-6" and the streetwall height from 47'-0" to 44'-6"; and

WHEREAS, the Board notes that the proposed FAR, streetwall height, and total height are compatible with the neighborhood character; and

WHEREAS, the applicant also increased the number of parking spaces from 31 to 35 to provide one space for each dwelling unit; and

WHEREAS, the Board agrees that the proposed residential use is as of right and more compatible with the residential use in the area than the historic pre-existing non-conforming use or the earlier mixed-use proposal; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted, the Board does not regard the contaminated soil conditions to be a self-created hardship since it can be attributed to a legal non-conforming use at the site

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which pre-dates modern environmental regulations; and

WHEREAS, the Board notes that the applicant initially claimed that the originally proposed height was required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site, which require additional floor area and the other noted waivers, but disagrees that the initially proposed envelope was required to make the building feasible; and

WHEREAS, as noted, the applicant revised the application to reduce the degree of streetwall height and total height non-compliance; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 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) 09BSA011K, dated March 15, 2010; 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 approved the Remedial Action Plan and the Construction Health and Safety Plan on March 3, 2010; 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; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City

Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R4 zoning district, a proposed five-story (including penthouse) residential building with 34 dwelling units and 35 accessory parking spaces, which exceeds the maximum permitted FAR, lot coverage, wall height, total height, and number of dwelling units and does not provide the minimum required front or side yards, contrary to ZR §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 27, 2009"- thirteen (13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of five stories including penthouse, a maximum of 34 dwelling units, a total height of 54'-6", a streetwall height of 44'-6", a floor area of 48,342 sq. ft. (3.0 FAR), one front yard with a depth of 6'-0", one side yard with a width of 6'-0", a lot coverage of 72 percent, and a minimum of 35 parking spaces, all as illustrated on the BSA-approved plans;

THAT the parking layout shall be as approved by DOB;

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

THAT substantial construction be completed 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, March 16, 2010.

328-09-BZ

CEQR #10-BSA-035M

APPLICANT – Bryan Cave LLP, for The Abraham Joshua Heschel School, owner.

SUBJECT – Application December 14, 2009 – Variance (§72-21) to allow for the construction of a community facility (*The Abraham Joshua Heschel School*), contrary to height and setback, and rear yard requirements. (§§33-432, 23-634, 33-432). C6-2/C4-7 zoning districts.

PREMISES AFFECTED – 28-34 West End Avenue, 246-252 West 61st Street, West End Avenue and West 61st Street, Block 1152, Lot 58, 61, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Margery Perlmutter.

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ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated December 2, 2009, acting on Department of Buildings Application No. 120178994, reads in pertinent part:

- “1. 33-432. Proposed community facility does not comply with the maximum height of the front wall and required front set backs as required under ZR 33-432.
2. 33-23. Proposed two story structure in the rear yard set back exceeds the required height and is not a permitted obstruction as defined by ZR 33-23.
3. 33-433. Proposed street wall does not comply with special height and set back requirements as set forth in ZR 23-634, front wall recesses are not permitted below 23’ above curb level or the second story ceiling whichever is less;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C6-2 zoning district and partially within a C4-7 zoning district, the construction of a nine-story school building (Use Group 3), which is contrary to ZR §§ 33-23, 33-432, 33-433, and 23-634; and

WHEREAS, a public hearing was held on this application on February 23, 2010, after due notice by publication in the *City Record*, and then to decision on March 16, 2010; and

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

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

WHEREAS, this application is brought on behalf of The Abraham Joshua Heschel School (the “School”), a not-for-profit educational entity; and

WHEREAS, the School currently serves 364 students from pre-kindergarten through fifth grade in its building at 270 West 89th Street (the “Lower School”), including an Early Childhood Center for the pre-kindergarten and kindergarten students, and 132 students from sixth grade through eighth grade in its building at 314 West 91st Street (the “Middle School”); and

WHEREAS, the applicant now proposes to move the Lower School and Middle School into a single building at the subject site, which is located adjacent to its high school; and

WHEREAS, the site is located on the southeast corner of West End Avenue and West 61st Street, partially within a C6-2 zoning district and partially within a C4-7 zoning district; and

WHEREAS, the site has 100’-5” of frontage on West End Avenue, 175 feet of frontage on West 61st Street, and a total lot area of 17,573 sq. ft.; and

WHEREAS, the site consists of two tax lots; Lot 58 is currently occupied by a one-story brick automobile paint and body shop, and Lot 61 is currently occupied by a four-story parking and storage facility; and

WHEREAS, the School proposes to construct a nine-story, 118,600 sq. ft. lower and middle school building on the site with the following non-compliances: a street wall height of 122 feet with no setback along West 61st Street (a minimum front wall setback of 20 feet on a narrow street is required at a height of 85 feet); a front wall entry recess on West End Avenue with a depth of approximately 24 feet, a height of 29 feet, and a width of 34 feet (front wall recesses are permitted above the level of the second story ceiling to a maximum depth of ten feet and front wall openings are permitted below that point for entrances only); and a two-story portion of the building to a height of approximately 21’-7” in the rear yard, with a skylight to a height of 35 feet and a parapet wall to a height of 35 feet (permitted obstructions are limited to one story and a maximum height of 23 feet); and

WHEREAS, the proposal provides for the following uses: (1) a chapel / multi-purpose room, auditorium / gymnasium, and administrative offices on the first floor; (2) dining space on the second floor; (3) classrooms on the third through seventh floors; (4) a gymnasium, music room, and storage space on the eighth floor; (5) mechanical space on the ninth floor; and (6) a kitchen, mechanicals, and storage space in the cellar; and

WHEREAS, the applicant states that the following are the programmatic needs of the School: (1) to accommodate the growing enrollment of the Lower School and Middle School; (2) to provide a regulation basketball court suitable for inter-scholastic competition; (3) to provide a gymnasium/auditorium space; (4) to provide classrooms with proper layouts; (5) to provide outdoor play areas; and (6) to consolidate the Lower School and Middle School on the same site as the existing high school while maintaining a physical separation between the Lower School and the Middle School; and

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

WHEREAS, the applicant represents that the requested waivers are necessary to provide the program space necessary to adequately serve its growing student body; and

WHEREAS, the applicant states that the Lower School and Middle School have current enrollments of 364 students and 132 students, respectively, and they have outgrown their current facilities as they are forced to turn away new applicants due to lack of space; and

WHEREAS, the applicant represents that the proposed waivers will allow the School to accommodate its anticipated enrollment of 520 students in the Lower School and 225 students in the Middle School; and

WHEREAS, the applicant further represents that the waivers will enable the School to provide floor plates large enough to configure classrooms to their ideal proportions, locate necessary support areas for each grade level within or adjacent to them, and cluster the classrooms around open circulation areas that are best suited to student interaction and teacher observation; and

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WHEREAS, the applicant states that larger floor plates will also make it possible to construct a regulation basketball court that meets the New York State Association of Independent Schools High School Sports Standards, which will be suitable for inter-scholastic competition and will have sufficient space for both home and visiting team spectators; and

WHEREAS, the applicant represents that the requested height and setback waiver is necessary to provide uniform floor plates that are large enough to accommodate the above noted programmatic needs; and

WHEREAS, the applicant further states that the playground located in the rear yard above the double-height auditorium/gymnasium on the southeastern portion of the lot will provide a separate outdoor play area for the Early Childhood Center (the "Early Childhood Center Playground"); and

WHEREAS, the applicant represents that a portion of the second floor and a walkway located at the second floor level along the rear wall of the auditorium/gymnasium are located within the rear yard area, and a 750 sq. ft. skylight will rise 12 feet above the level of the Early Childhood Center Playground, to a height of 35 feet; and

WHEREAS, the applicant states that the proposed skylight will allow natural light into the lobby area and second floor of the building, lending light to the auditorium/gymnasium through interior glass partitions, thereby enhancing the ambience of these spaces and helping to satisfy LEED energy conservation requirements; and

WHEREAS, the applicant further states that a parapet wall around the Early Childhood Center Playground is proposed to rise 14 feet above the level of the play area to a height of 35 feet and is necessary as a privacy, security, and noise buffering measure because the play area abuts the wall of, and is seven feet lower than, the roof terrace level of the building immediately to the south of it; and

WHEREAS, the applicant represents that the requested rear yard waiver is necessary in order to provide a double height auditorium/gymnasium with a skylight to provide natural light into the building and to provide a secure play area on the rooftop of the auditorium/gymnasium space; and

WHEREAS, the applicant states that sufficient space is required to accommodate both the Lower School and Middle School into a single building while still providing a separation between the small children in the Lower School that are in need of constant supervision and the older more independent children in the Middle School; and

WHEREAS, the applicant states that the proposed building will have two points of entry, one on West End Avenue and one on West 61st Street, and each school will occupy its own floors in the building; and

WHEREAS, the applicant further states that the Middle School children will enter primarily through their own entrance on West 61st Street, while the Lower School children will use the entrance on West End Avenue, which is set back from the street under a covered portico to permit the children to gather there and to allow pedestrian circulation along West End Avenue to be unimpeded by children congregating on the sidewalk; and

WHEREAS, the applicant represents that without the waiver for the front wall entry recess, it would be unable to provide a separate entryway for the Lower School students that allows the children to gather in front of the building without interfering with pedestrian circulation along West End Avenue; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the School create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, however, the applicant also represents that the subsurface conditions of the site create an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the applicant states that soil borings indicate that there is a substantial amount of bedrock close to the surface along the perimeters of the site and between 15 and 20 feet below the surface towards the center of the site; and

WHEREAS, the applicant represents that the removal of this bedrock will require expensive blasting or cutting; and

WHEREAS, the applicant states that there is also a high water table that will require dewatering of sub-grade floors from 12 to 16 feet below the surface; and

WHEREAS, the applicant further states that the existing buildings to the south and east of the site were constructed without foundations or with very shallow ones, and the excavation to the perimeter of the subject site to construct a full cellar extending to the lot lines of the site would require expensive shoring and underpinning, which could still put the structural integrity of the adjacent buildings at risk; and

WHEREAS, the applicant represents that, as a result of these subsurface conditions, the proposed cellar must be located approximately 11 feet from the eastern property line and approximately 15 feet from the southern property line, thereby reducing the useable area on the cellar level; and

WHEREAS, the applicant states that in order to provide a complying building with floor plates that are deep enough to provide the ideal classroom clustering around a central corridor, the top four floors would need to shift south and cantilever over the Early Childhood Center Playground and reduce the amount of natural light available to the play area, the lobby skylight and the south-facing windows below the cantilever; and

WHEREAS, the applicant represents that a complying development would also result in unusual and impracticable building configuration, the shifting of the Middle School to the

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sixth and seventh floors where access to those floors via stairs from street level would no longer be practicable, and the isolation and lack of contiguity with other classroom spaces of the special music and computer rooms as a result of their location on the partial tenth floor; and

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

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

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

WHEREAS, the applicant states that the surrounding neighborhood is a mixed-use area containing residential, commercial, and institutional uses and is characterized by a mix of medium to high-rise buildings; and

WHEREAS, the applicant represents that there is no context for setbacks among the surrounding buildings along West 61st Street; and

WHEREAS, the applicant states that West 61st Street is on a downward slope heading east to west such that the subject building, with its street wall height of 122 feet, will visually be the same height as the adjacent building to the east, with an approximate street wall height of 106 feet; and

WHEREAS, the applicant submitted a graphic rendering of the street wall heights along West 61st Street, which reflects that there is also a six-story building with a street wall height of 108 feet directly across West 61st Street from the subject site, a 27-story building with a street wall height of approximately 350 feet to the east of the site, and a six-story building with a street wall height of approximately 133 feet to the east of the site; and

WHEREAS, the slope along West 61st Street also results in an approximately 11'-6" change in grade on the subject site from the eastern lot line to the western lot line; and

WHEREAS, the applicant states that, because of the site's slope, the Early Childhood Center Playground is significantly lower than a terrace at the rear lot line of the adjacent building, and that the proposed skylight and privacy wall are nearly level with height of the rear lot line of the adjacent property; and

WHEREAS, the applicant represents that it is consulting with the adjacent building owner and has plans to make the proposed privacy wall a planted green wall around the play area; and

WHEREAS, the applicant states that, above the Early Childhood Center Playground, the building is set back approximately 36 feet from the rear lot line, which far exceeds the 20-ft. rear yard requirement; and

WHEREAS, the applicant states that it will install a decorative entrance screen at the entrance on West End Avenue to close off the entry recess when the school is closed; and

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

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers for height and setback, front wall entry recess, and rear yard obstruction, are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the applicant notes that the requested height and setback waiver is requested for only 105 feet of the West 61st Street frontage, which is only 38 percent of the proposed building's total frontage of 275'-5" on West 61st Street and West End Avenue; the remaining 170 feet of frontage will comply with the applicable height and setback requirements; and

WHEREAS, the applicant further notes that the requested waiver for the front wall entry recess is requested for only 34 feet of the total 100-ft. wide West End Avenue frontage, and is part of an entrance as is permitted by ZR § 23-634; and

WHEREAS, the applicant further notes that the requested rear yard obstruction waiver is the minimum necessary to afford relief because the two-story portion of the building in the rear yard is below the maximum 23-ft. height limit, the skylight only occupies 310 sq. ft., or approximately 21 percent, of the required rear yard, and the parapet wall will be largely surrounded by taller obstructions in the rear yards to the south and east; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 10BSA035M, dated December 11, 2009, with a supplementary Hazardous Materials Chapter dated March 16, 2010; 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

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Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Assessment has reviewed the project for potential air quality and noise impacts; and

WHEREAS, DEP reviewed the applicant's air permit searches and field survey of surrounding industrial uses within a 400-ft. radius of the subject site and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, the proposed project would not generate sufficient traffic to have the potential to result in a significant air quality impact from mobile sources; and

WHEREAS, to achieve an interior noise level of 45 dBA, the applicant proposes 30 dBA of window-wall noise attenuation in the proposed building with central air-conditioning as an alternate means of ventilation; and

WHEREAS, an "E" designation for Hazardous Materials (E-172) was placed on the subject parcels by the Department of City Planning as part of the West 61st Street Rezoning action (CEQR# 05 DCP 063Y); and

WHEREAS, the applicant has submitted a March 2010 Final/Revised Remedial Action Plan ("RAP") and a site-specific Construction Health and Safety Plan ("CHASP") to the NYC Office of Environmental Remediation ("OER") under the E-Designation Program; and

WHEREAS, OER has determined in a letter dated March 12, 2010 that the RAP and CHASP are acceptable; 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 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 a C6-2 zoning district and partially within a C4-7 zoning district, the construction of a nine-story and cellar school building (Use Group 3), which is contrary to ZR §§ 33-23, 33-432, 33-433 and 23-634, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 12, 2010" – (25) sheets and "Received February 17, 2010" – (1) sheet; and *on further condition*:

THAT the building parameters shall be limited to nine stories and a wall height of 122 feet, as reflected on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of

the school requires review and approval by the Board;

THAT prior to the issuance of any building permits by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or any other permit which permits soil disturbance, the applicant or successor shall obtain from OER a Notice to Proceed, and shall comply with all OER requirements to obtain such notices;

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

THAT 30 dBA of window-wall noise attenuation shall be provided with central air-conditioning as an alternate means of ventilation;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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

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

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

Adopted by the Board of Standards and Appeals, March 16, 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: Adam W. Rothkrug and Todd Dale.

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

13-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 5621 21st Avenue LLC, for Congregation Tehilos Yitzchok, owner.

SUBJECT – Application January 26, 2009 – Special Permit (§73-622) for the enlargement of an existing two -family home to be converted to a single family home, contrary to lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 5611 21st Avenue, east side 95'-8" north of intersection of 21st Avenue and 57th Street, Block

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5495, Lot 430, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Todd Dale.

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

28-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 133 Equity Corp., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 133 Taaffe Place, east side of Taaffe Place, 142'-2.5" north of intersection of Taaffe Place and Myrtle Avenue, Block 1897, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

For Opposition: Suellen Levy.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 1:30 P.M., for continued hearing.

192-09-BZ

APPLICANT – Richard Lobel, for Leon Mann, owner.

SUBJECT – Application June 16, 2009 – Variance (§72-21) to allow for the construction of a department store (UG10), contrary to use regulations (§§22-00, 32-00). R6 and R6/C2-3 zoning districts.

PREMISES AFFECTED – 912 Broadway, northeast corner of the intersection of Broadway and Stockton Street, Block 1584, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 1:30 P.M., for continued hearing.

214-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for LAL Astor Avenue Management Co., LLC, owner.

SUBJECT – Application June 29, 2009 – Special Permit (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR §22-14. R4-1 zoning district.

PREMISES AFFECTED – 1464 Astor Avenue, south side of Astor Avenue, 100' east of intersection with Fenton Avenue, Block 4389, Lot 26, 45, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to April 20,

2010, at 1:30 P.M., for adjourned 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 12th Street and Homecrest Avenue, eastside of Avenue S, Block 7291, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

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

271-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 132-40 Metropolitan Realty, LLC, owner; Jamaica Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 21, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Planet Fitness*) on the first, second, and third floors of an existing three-story building. C2-3 zoning district.

PREMISES AFFECTED – 132-40 Metropolitan Avenue, between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street. Block 9284, Lot 19, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 1:30 P.M., for continued hearing.

273-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application September 24, 2010 – Variance (§72-21) for the construction of a two-story, one-family home, contrary to side yards (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 117-40 125th Street, west side of 125th Street, 360' north of intersection with Sutter Avenue, Block 11746, Lot 64, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 1:30 P.M., for adjourned hearing.

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11-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 562 Court Street, LLC, owner; Brooklyn Kick Boxing Inc., lessee.

SUBJECT – Application January 26, 2010 – Special Permit (§73-36) to legalize and enlarge a physical culture establishment (*CKO Kickboxing*). C2-3/R6 zoning district.

PREMISES AFFECTED – 562 Court Street (aka 21 Garnet Street) southwest corner Court Street and Garnet Street, Block 382, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD # 6BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

13-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yakov Platnikov, owner.

SUBJECT – Application January 27, 2010 – Special Permit (§73-622) for the enlargement of an existing two -family home to be converted to a single family home, contrary to lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 79 Amherst Street, east side of Amherst Street, north Hampton Avenue, Block 8727, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Todd Dale.

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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March 31, 2010

DIRECTORY

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33-10-BZ

692 Broadway, Southeast corner of the intersection of Broadway and East 4th Street., Block 531, Lot(s) 7501, Borough of **Manhattan, Community Board: 2**. Special Permit (73-36) to allow the operation of a physical culture establishment. M1-5B district.

34-10-BZ

429 Broome Street, On the south side of Broome Street 0 ft. from the corner formed by Broome & Crosby Street., Block 473, Lot(s) 18, Borough of **Manhattan, Community Board: 2**. Special Permit (73-36) to allow the operation of a physical culture establishment. M1-5B district.

35-10-BZ

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37-10-BZ

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38-10-A

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39-10-BZ

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40-10-BZ

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

CALENDAR

APRIL 20, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 20, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

199-00-BZ

APPLICANT – John C. Chen, for En Ping Limited, owner; Valentine E. Partner Atlantis, lessee.

SUBJECT – Application March 3, 2010 – Extension of Term of a previously granted Special Permit (73-244) for an Eating and Drinking Establishment (*Club Atlantis*) without restrictions on Entertainment (UG12A) which expired on March 13, 2010. Waiver of the Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 76-19 Roosevelt Avenue, north west corner partly fronting Roosevelt Avenue and 77th Street, Block 1287, Lot 37, Borough of Queens.

COMMUNITY BOARD #3Q

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owner.

SUBJECT – Application February 5, 2010 – Extension of Term (§72-01 & §72-22) of a previously approved variance which permitted the operation of a Physical culture establishment (Squash Fitness Center) to operate in a C1-4 zoning district, which is set to expired on July 17, 2011; Extension of Time to obtain a certificate of occupancy, which expired on January 28, 2010; Waiver for filing more than 1 year prior to the expiration of the term.

PREMISES AFFECTED – 107-24 37th Avenue aka 37-16 108th Street, Southwest corner of 37th Avenue and 108th Street, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

363-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for 6002 Fort Hamilton Parkway Partners, owners; Michael Mendelovic, lessee.

SUBJECT – Application March 25, 2010 – Extension of Time to Complete Construction of a previously approved Variance (72-21) to convert an existing industrial building to commercial/residential use which expired on July 19, 2009; Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 6002 Fort Hamilton Parkway, south of 61st, east of Hamilton Parkway, north of 60th Street, Block 5715, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APRIL 20, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 20, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

308-09-BZ

APPLICANT – Jorge F. Canepa, for Joseph Ursini, owner.
SUBJECT – Application November 20, 2009 – Variance (§ZR 72-21) to legalize a pool located partially within a front yard and allow two parking spaces to be located between the street line and the street wall of the building, contrary to ZR 23-44 and 25-622. R3X zoning district.

PREMISES AFFECTED – 366 Husson Street, corner between Husson Street & Bedford Avenue, Block 3575, Lot 24, Borough of Staten Island

COMMUNITY BOARD #2SI

331-09-BZ

APPLICANT – Slater & Beckerman, LLP, for 141 East 45th Street, LLC, owner; R. H. Massage Services, P.C., lessee.
SUBJECT – Application December 22, 2009 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*River View Spa*) located on the second and third floors in an existing three-story building. C5-2.5 zoning district.

PREMISES AFFECTED – 141 East 45th Street, north side of East 4th Street, between Lexington Avenue and Third Avenue, Block 1300, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #6M

19-10-BZ

APPLICANT – Akerman Senterfitt LLP, for Oak Point Property LLC, owner.

SUBJECT – Application February 3, 2010 – Special Permit (ZR§ 73-482) to allow for an accessory parking facility in excess of 150 spaces. M3-1 zoning district.

PREMISES AFFECTED – 100 Oak Point Avenue, south of the Bruckner Expressway, west of Barry Street and Oak Point Avenue, Block 2604, Lot 174, Borough of Bronx.

COMMUNITY BOARD #2BZX

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 23, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

813-87-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Gwynne Five LLC, owner; TSI Cobble Hill LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on April 12, 2008 for the operation of a Physical Culture Establishment (*New York Sports Club*); Waiver of the Rules. C2-3 (R6) zoning district.

PREMISES AFFECTED – 110 Boerum Place, Westerly side of Boerum Place 0 feet northerly of Dean Street, Block 279, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on April 12, 2008; and

WHEREAS, a public hearing was held on this application on December 8, 2009, after due notice by publication in *The City Record*, with continued hearings on January 26, 2010 and March 2, 2010, and then to decision on March 23, 2010; and

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

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

WHEREAS, the subject site is located on the northwest corner of Boerum Place and Dean Street, within a C2-3(R6) zoning district; and

WHEREAS, the site is occupied by a partial two-story and partial one-story building, with a rooftop tennis bubble;

and

WHEREAS, the subject PCE is operated as New York Sports Club, in conjunction with the adjacent two-story building at 96 Boerum Place, which is the subject of a separate special permit under BSA Cal. No. 266-04-BZ; and

WHEREAS, the PCE occupies a total of 15,350 sq. ft. on the first floor, mezzanine level, and roof of the subject mixed-use building; the second floor is occupied by residential use; and

WHEREAS, on April 12, 1988, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE for a term of ten years to expire on April 12, 1998; and

WHEREAS, the Board granted another ten-year extension of term, to expire on April 12, 2008; and

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

WHEREAS, at hearing, the Board requested information about (1) whether an advertising sign for the PCE on a building across Boerum Place complied with zoning district regulations, (2) the history of the building and the tennis bubble, and (3) whether there were any complaints from residents of the building regarding the use of the PCE and directed the applicant to notify the tenants of the application and the hearing; and

WHEREAS, in response to the signage question, the applicant removed the sign and provided photographs reflecting its removal; and

WHEREAS, as to the history of the building and the tennis bubble, the applicant states that the PCE, which originally occupied the site as a squash club in the early 1980s, has occupied the building for more than 20 years, including the tennis bubble; and

WHEREAS, accordingly, the applicant represents that the use pre-dates the occupancy of all of the current residential tenants; and

WHEREAS, additionally, the applicant provided evidence that it notified the residential tenants of the building and submitted a copy of the standard lease, which requires the tenant to acknowledge the existence of the PCE and provides an exchange of complimentary membership; and

WHEREAS, one residential tenant provided testimony in opposition to the application, noting concerns with sound and vibrations; and

WHEREAS, the Board notes that the subject tenant's residency began less than one year ago, long after the establishment of the PCE, and that she appears to have signed a lease acknowledging the existence of the PCE; and

WHEREAS, the applicant represents that residential tenants have the ability to vacate their leases, without penalty; and

WHEREAS, the Board directed the applicant to identify the rooftop tennis bubble, and have it reflected, when it returns to DOB to renew its Certificate of Occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate

MINUTES

with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated April 12, 1988, so that as amended this portion of the resolution shall read: "to permit an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received October 8, 2009"- (2) sheets and "January 14, 2010"- (2) 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 expire on April 12, 2018;

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

THAT the applicant shall obtain a new Certificate of Occupancy, which reflects the rooftop tennis bubble use, by March 23, 2011;

THAT DOB shall review the use of the rooftop and the tennis bubble for compliance with relevant regulations, prior to the issuance of a certificate of occupancy;

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

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

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

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

(DOB Application No. 320069778)

Adopted by the Board of Standards and Appeals, March 23, 2010.

16-36-BZ

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

SUBJECT – Application October 27, 2009 – Extension of Time to obtain a Certificate of Occupancy of an existing Gasoline Service Station (*Gulf*) which expired on March 18, 2009; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue, southeast corner of the intersection between Westchester Avenue and White Plains Road, Block 3880, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for continued hearing.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Joykiss Management, LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Term (§§11-411 & §11-412) to allow the continued operation of an Eating and Drinking establishment (UG 6) which expired on March 15, 2004; Amendment to legalize alterations to the structure; Waiver of the Rules. C2-2 and R3-2 zoning districts.

PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, Northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Elizabeth Safian.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for continued hearing.

201-01-BZ

APPLICANT – Sheldon Lobel, P.C., for J.H.N. Corporation, owner.

SUBJECT – Application January 27, 2010 – Extension of Term (§72-01 & §72-22) of a previously approved variance permitting the operation of a automobile laundry, lubrication and accessory automobile supply store (UG16b); Amendment seeking to legalize changes and increase in floor area; and Waiver of the Rules. C4-1 zoning district.

PREMISES AFFECTED – 2591 Atlantic Avenue, northwest corner of Atlantic Avenue and Sheffield Avenue, Block 3668, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for continued hearing.

APPEALS CALENDAR

64-07-A

APPLICANT – Stuart A. Klein, for Sidney Frankel, owner.

SUBJECT – Application September 14, 2009 – Appeal for a common law vested right to continue construction commenced under the prior R6 zoning district. R4-1 zoning district

PREMISES AFFECTED – 1704 Avenue N, southeast corner lot at the intersection of East 17th Street and Avenue N, Block 6755, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

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For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete the enlargement of a single-family dwelling under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on March 23, 2010, after due notice by publication in *The City Record*, and then to decision on March 23, 2010; and

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

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

WHEREAS, the adjacent neighbor submitted written and oral testimony in opposition to the appeal (“the Opposition”), citing concerns that the applicant has performed some of the proposed construction from the adjacent property which has incurred damage as a result and that the applicant has not allowed the Department of Buildings (“DOB”) to inspect the construction; and

WHEREAS, the applicant states that the subject site consists of a 4,000 sq. ft. lot on the southeast corner of the intersection of Avenue N and East 17th Street in Brooklyn; and

WHEREAS, the owner proposes to add 856 sq. ft. of floor area to the side of an existing two-story single-family home with 2,946 sq. ft. of residential floor area; and

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

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

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

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

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

WHEREAS, on February 12, 2008, the Board determined that, as of the Rezoning Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights (the “Initial Vesting Date”); and

WHEREAS, the Board granted the applicant 18 months

to complete construction and obtain a certificate of occupancy, which expired on August 12, 2009; and

WHEREAS, as noted in the previous resolution, Alteration Permit No. 302067867 (hereinafter, the “Alteration Permit”) was lawfully issued by DOB on January 24, 2006, permitting the construction of the subject enlargement, prior to the Rezoning Date; and

WHEREAS, by letter dated January 22, 2010, DOB confirms that the Alteration Permit was lawfully issued; and

WHEREAS, as noted in the previous resolution, a Notice of Violation issued by DOB on July 7, 2006 found that the attic level of the subject building had increased by ten feet over the height approved by the Alteration Permit, contrary to ZR § 11-31; and

WHEREAS, as a result, the Board conditioned its prior approval on the applicant obtaining confirmation from DOB that the as-built conditions comply with the requirements of ZR § 11-31; and

WHEREAS, the Board notes that the applicant provided a Reconsideration Application approved by DOB, confirming that the revised plans comply with the requirements of ZR § 11-31; and

WHEREAS, the applicant states that at the time the Board granted the application, a Stop Work Order was in effect on the property and the status of the job was listed as “on hold” until a Post Approval Amendment related to the site’s compliance with ZR § 11-31 was approved by DOB on May 15, 2009, after which work was permitted to continue on the site; and

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

WHEREAS, the Board observes that it can only consider representations of work performed and expenditures or irrevocable commitments made before the Rezoning Date or after the Initial Vesting Date in a determination as to whether the owner has a common law vested right to complete construction under the prior zoning; and

WHEREAS, thus, work performed or expenditures made after the Rezoning Date, including the work performed until DOB issued a Stop Work Order on September 20, 2006, and before the Initial Vesting Date have not been considered; 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

MINUTES

zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;” and

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

WHEREAS, as to substantial construction, the applicant states that before the Rezoning Date and after the Initial Vesting Date, the owner had completed site preparation, excavation, and foundation work; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: concrete pour tickets, cancelled checks, and accounting summaries; and

WHEREAS, the applicant represents that the only work remaining on the subject site is minor finishing work; and

WHEREAS, the Board recognizes that significant work may have been performed after the Rezoning Date or before the Initial Vesting Date; and

WHEREAS, the Board notes that it may only consider work performed and expenditures made pursuant to valid permits; and

WHEREAS, accordingly, the Board has not considered any work performed, or associated expenditures made, after the Rezoning Date and before the Initial Vesting Date for this or the prior application; and

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

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

WHEREAS, the applicant states that prior to the Rezoning Date and after the Initial Vesting Date, the owner expended \$84,001, or approximately 20 percent, out of approximately \$424,500 budgeted for the entire enlargement; and

WHEREAS, again, the Board acknowledges that the applicant has incurred additional expenses for work performed when the permits were not in effect; and

WHEREAS, accordingly, the Board has not considered any expenses that are not associated with permitted work; and

WHEREAS, as proof of the expenditures, the applicant has submitted cancelled checks, and accounting reports; 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, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant contends that the loss of the \$84,001 incurred prior to the Rezoning Date or after the Initial Vesting Date that would result if this appeal were denied is significant; and

WHEREAS, the applicant states that the inability to construct the proposed enlargement would require the owner to re-design the home; and

WHEREAS, the applicant represents that a complying home would have a maximum floor area of 3,000 sq. ft., due to the R4-1 zoning district’s floor area limitation; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any complying construction, and the \$84,001 of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, the serious loss projected, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction had accrued to the owner of the premises as of the Rezoning Date; and

WHEREAS, as to the Opposition’s concerns regarding work which took place on its property, the applicant submitted a copy of a court order authorizing the applicant’s workers and contractors to access the Opposition’s property in order to perform work on the subject enlargement; and

WHEREAS, the applicant states that all work which took place on the Opposition’s property was performed pursuant to the court order; and

WHEREAS, as to the Opposition’s concerns that the applicant has prevented DOB inspectors from accessing the site, the applicant represents that a DOB inspector inspected the site on June 3, 2009, and notes that no temporary or final Certificate of Occupancy will be issued for the site until a site inspection takes place; thus, the applicant will not be able to complete the project without allowing DOB to inspect the site.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 302067867, as well as all related permits for

MINUTES

various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, March 23, 2010.

157-07-BZY

APPLICANT – Howard Zipser, Akerman Senterfitt, LLP, for 55 Eckford Street Brooklyn LLC, owner.

SUBJECT – Application November 23, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6/M1-1 zoning district. M1-2 /R6A, M1-2 R6B, MX8 zoning district.

PREMISES AFFECTED – 55 Eckford Street, west side of Eckford Street, between Driggs Avenue and Engert Avenue, Block 2698, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Calvin Wong.

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

280-09-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 330 West 86th Street, LLC, owner.

SUBJECT – Application January 26, 2010 – Appeal challenging Department of Building's authority under the City Charter to interpret or enforce provisions of Article 16 of the General Municipal Law as it applies to the construction of a proposed 16 story+ penthouse . R10A Zoning district.

PREMISES AFFECTED – 330 West 86th Street, south side of West 86th street, 280' west of the intersection of Riverside Drive and West 86th Street, Block 1247, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Al Fredericks.

For Administration: Mark Davis, Department of Buildings.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M., for decision, hearing closed.

287-09-BZY & 288-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Hooshang Vaghari and Farhad Nobari, owners.

SUBJECT – Application October 9, 2009 – Extension of time (§11-332) to complete construction of a major development commenced under the prior R6 zoning. R5

zoning district.

PREMISES AFFECTED – 87-85 & 87-87 144th Street, east side of 144th Street between Hillside Avenue and 85th Avenue, Block 9689, Lot 6 & 7, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

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

303-09-BZY

APPLICANT – Ray Chen, for 517 53rd Street Inc, owner.

SUBJECT – Application October 30, 2009 – Extension of time (§11-332) to complete construction of an enlargement commenced under the prior C4-3 zoning district. R6B zoning district

PREMISES AFFECTED – 517 53rd Street, between 5th and 6th Avenue, Block 608, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES – None.

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

7-10-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Jacklyn & Gerard Rodman, lessees.

SUBJECT – Application January 21, 2010 – Reconstruction and enlargement of an existing single family dwelling located within the bed of a mapped street and the upgrade of existing non conforming private disposal system, contrary to General City Law Section 35 and Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 93 Hillside Avenue, north side of Hillside Avenue 130' east of the mapped Beach 180th Street, Block 16340, Lot p/o 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 23, 2010
1:30 P.M.**

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

ZONING CALENDAR

256-07-BZ

CEQR #08-BSA-032K

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Hayden Rester, owner.

SUBJECT – Application November 5, 2007 – Variance (§72-21) to permit a three-story, five-unit residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph. Block 1339, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD # 8BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 4, 2007, acting on Department of Buildings Application No. 302342775, reads in pertinent part:

“Proposed residential use (Use Group 2) is not permitted in M1-1 district as per ZR 42-00;” and

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

WHEREAS, a public hearing was held on this application on June 23, 2009 after due notice by publication in the *City Record*, with continued hearings on August 11, 2009, September 15, 2009, and December 8, 2009, and then to decision on March 23, 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 8, Brooklyn, recommends disapproval of the application, citing concerns about the high rental price associated with the proposed

dwelling units; and

WHEREAS, the site is located on the south side of Atlantic Avenue, between Ralph Avenue and Buffalo Avenue, within an M1-1 zoning district; and

WHEREAS, the site has a width of 20 feet, a depth of 100 feet, and a lot area of 2,000 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed building will provide for one dwelling unit on the first floor and two dwelling units on each of the second and third floors; and

WHEREAS, the proposed building will have a total floor area of 4,200 sq. ft. (2.1 FAR); a wall height of 31’-0””; a rear yard of 30’-0””; and five dwelling units (the “Proposed Building”); and

WHEREAS, because the Proposed Building will contain Use Group 2 dwelling units, a variance is required since the M1-1 zoning district permits commercial and manufacturing use but restricts residential use; 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 narrow width of the vacant lot; and (2) the presence of an elevated railway along Atlantic Avenue; and

WHEREAS, the applicant represents that the subject zoning lot is a vacant pre-existing lot with a width of 20’-0””, which cannot feasibly accommodate a modern conforming use; and

WHEREAS, the applicant states that the narrow lot width would result in inefficient, narrow floor plates that would severely limit potential manufacturing or commercial uses on the site; and

WHEREAS, the applicant further states that the subject site is adjacent to an elevated railway along Atlantic Avenue, which constrains the area available for loading and unloading from Atlantic Avenue, thereby further inhibiting the potential of a conforming manufacturing or commercial use at the site; and

WHEREAS, in furtherance of its argument, the applicant provided a land use map reflecting that of the 103 lots fronting on the south side of Atlantic Avenue within the M1-1 zoning district, there are only two lots with 20 feet of frontage that contain commercial uses; one site is an out-of-business used clothing store five blocks north of the subject site, and the other site is a mixed-use building on the subject block with retail use on the first floor and four apartments on the upper floors; and

WHEREAS, the applicant represents that any new construction for commercial and manufacturing uses in the surrounding area have been on lots significantly larger than the subject 2,000 sq. ft. lot; and

WHEREAS, as to the uniqueness of the site, the applicant also submitted a map identifying several vacant lots with widths of 22 feet or less, along with ownership information reflecting that the vast majority of vacant lots with similar widths as the subject site are either part of larger zoning lots or owned in conjunction with adjacent lots that would provide an opportunity to develop the lots with larger buildings

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more conducive to conforming manufacturing or commercial uses; and

WHEREAS, the Board notes that while the subject lot is also adjacent to a lot in common ownership, unlike the other lots identified, the adjacent lot is occupied by a three-story residential building, which would be infeasible to demolish in order to accommodate larger floor plates; and

WHEREAS, the applicant submitted a 1929 Belcher Hyde Atlas excerpt, along with other evidence indicating that the subject site was previously developed with a residential structure and that there is no record of a prior commercial or manufacturing use on the site during the last 100 years; and

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

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

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) an as-of-right commercial/manufacturing building; (2) a three-unit residential building; and (3) the proposed residential building; and

WHEREAS, the study concluded that neither the conforming manufacturing building nor the three-unit residential building would realize a reasonable return, but that the proposed residential building would realize a reasonable return; and

WHEREAS, at the Board's direction, the applicant also analyzed an as-of-right commercial/retail scenario; and

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

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

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

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

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

WHEREAS, as to the character of the neighborhood, the applicant provided a land use map reflecting that of the 70 lots on the subject block occupied by buildings, 38 are occupied by residential uses; and

WHEREAS, the two adjacent lots to the east of the subject site are occupied by residential uses; and

WHEREAS, as noted above, the applicant submitted evidence indicating that the subject site was previously developed with a residential structure and that there is no record of a prior commercial or manufacturing use on the site during the last 100 years; and

WHEREAS, the applicant represents that the southern portion of the subject block is within an R6 zoning district, and on September 5, 2007 the City Council approved the Bedford-Stuyvesant South rezoning, which changed the M1-1 district on the opposite side of Atlantic Avenue from the subject site to an M1-1/R7D zoning district; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board has determined that the introduction of five dwelling units will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, the Board further notes that the proposed building complies with the parameters for a Quality Housing building and would be permitted as-of-right within the M1-1/R7D zoning district mapped directly across Atlantic Avenue from the site; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's historic lot dimensions; and

WHEREAS, the Board finds that this proposal, which fits within a permitted building envelope, 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) 08BSA032K, dated February 24, 2010; 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

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hazardous materials, air quality and noise impacts; and

WHEREAS, DEP determined on January 9, 2008 that based on the findings of the Phase I report there are no hazardous materials issues and a Phase II report was not necessary; and

WHEREAS, DEP reviewed the applicant's air permit searches and field survey of surrounding industrial and auto-related uses within a 400-ft. radius of the subject site and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, based on the results of noise monitoring, a window-wall noise attenuation of 40 dBA with an alternate means of ventilation are proposed in order to achieve an interior noise level of 45 dBA; 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 three-story five-unit residential building, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 14, 2010" – Nine (9) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a maximum floor area of 4,200 sq. ft. (2.1 FAR); an open space ratio of 30 percent; a wall height of 31'-0"; a rear yard of 30'-0"; and five dwelling units, as indicated 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 shall have issued a Notice of Satisfaction;

THAT 40 dBA of window-wall noise attenuation with an alternate means of ventilation shall be provided in the proposed building;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 23, 2010.

254-08-BZ

CEQR #09-BSA-034K

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzchok, owner.

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize and enlarge a Yeshiva (*Yeshiva Ohr Yitzchok*) contrary to §42-11 (use regulations), §43-122 (floor area), §43-43 (wall height, number of stories, and sky exposure plane). §43-301 (required open area). M1-1D zoning district. PREMISES AFFECTED – 1214 East 15th Street, Western side of East 15th Street between Avenue L and Locust Avenue. Block 6734, Lot 12, 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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated March 23, 2010, acting on Department of Buildings Application No. 301345809 reads, in pertinent part:

- “1. Proposed plans are contrary to ZR 42-11 in that the proposed use does not comply.
2. Proposed plans are contrary to ZR 43-122 in that the proposed floor area exceeds the maximum permitted.
3. Proposed plans are contrary to ZR 43-43 in that the proposed wall height exceeds the maximum.
4. Proposed plans are contrary to ZR 43-43 in that the proposed stories exceeds the maximum permitted.
5. Proposed plans are contrary to ZR 43-43 in that the proposed sky exposure plane is not in compliance.
6. Proposed plans are contrary to ZR 43-43 in that the required open area is less than the required.
7. Proposed plans are contrary to ZR 43-301 in that the required open area is less than the required.
8. Proposed plans are contrary to ZR 43-26 in that the proposed rear yard is less than the required;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an M1-1 zoning

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district, the legalization and enlargement of an existing yeshiva which does not conform to district use regulations or comply with relevant bulk regulations, contrary to ZR §§ 42-00, 43-122, 43-43, 43-301, and 43-26; and

WHEREAS, a public hearing was held on this application on June 23, 2009, after due notice by publication in *The City Record*, with continued hearings on August 25, 2009, December 15, 2009, and February 9, 2010 and then to decision on March 23, 2010; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application, with the condition that sufficient on-site garbage storage is provided to accommodate all garbage between pick-up days and that the applicant put a collection receptacle on the street to be emptied by the applicant; and

WHEREAS, this application is being brought on behalf of Yeshiva Ohr Yitzchok (the "Yeshiva"), a not-for-profit religious and educational entity; and

WHEREAS, the subject site is located on the west side of East 15th Street, between Locust Avenue and Avenue L, within an M1-1 zoning district; and

WHEREAS, the site is currently occupied by a one-story yeshiva building; and

WHEREAS, the applicant proposes to legalize the existing building and construct a three-story enlargement; and

WHEREAS, the proposed use is not permitted in the subject M1-1 zoning district and the proposed bulk exceeds the complying building envelope, thus the applicant seeks a variance for the enlargement; and

WHEREAS, the applicant originally proposed to construct a four-story building with a floor area of 42,721 sq. ft. (3.6 FAR) and no yards or setbacks; and

WHEREAS, at the direction of the Board, the applicant revised its proposal and provided an interim plan for a four-story yeshiva with a floor area of 41,600 sq. ft. (3.5 FAR), and a side setback along the northern lot line with a width of 4'-0" above the first floor, before further revising the proposal to reflect the current proposal; and

WHEREAS, the current proposal reflects the following non-compliances: a floor area of 38,670 sq. ft. (28,800 sq. ft. is the maximum permitted); an FAR of 3.2 (2.4 FAR is the maximum permitted); a wall height of 54'-1" (35'-0" is the maximum permitted wall height); four stories (three stories is the maximum permitted); encroachment into the sky exposure plane; no open area along the northern side of the site which coincides with an R5 zoning district boundary (an open area with a width of 15'-0" is required along a portion of an M1-1 zoning district that coincides with an R5 zoning district); and no rear yard (a rear yard with a minimum depth of 20'-0" is required); and

WHEREAS, the proposal also provides for a rear setback with a depth of 14'-0" above the second floor and a side

setback along the northern lot line with a width of 8'-0" above the first floor; and

WHEREAS, the proposal provides for the following uses: (1) a *beis medrash*/synagogue, cafeteria, lecture rooms, offices, garbage room, bathrooms, and lobby space on the first floor; (2) an upper synagogue, gymnasium, exercise room, locker room, classrooms, bathrooms, and offices on the second floor; (3) classrooms, bathrooms, and offices on the third floor; and (4) a library, computer lab, science lab, offices, teachers' lounge, classrooms, bathrooms, and storage space on the fourth floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Yeshiva: (1) accommodating the current enrollment while allowing for future growth; (2) relieving overcrowded classroom conditions; and (3) providing a recreational area for students; and

WHEREAS, the applicant represents that the existing one-story yeshiva has approximately 250 enrolled day students and approximately 200 enrolled evening students and that the building is no longer adequate to accommodate the Yeshiva's current and projected enrollment; and

WHEREAS, the applicant states that the existing building contains only two classrooms and the Yeshiva is forced to conduct much of its religious based educational classes in its two larger synagogue spaces in order to accommodate the current enrollment; and

WHEREAS, the applicant represents that, due to the current spatial constraints, there is a waiting list of approximately 99 students for the Yeshiva; and

WHEREAS, the proposed building will allow the Yeshiva to accommodate its current enrollment as well as its projected enrollment of approximately 500 day students and 350 evening students; and

WHEREAS, the applicant represents that there are five separate divisions associated with the Yeshiva: (1) the Morning Division; (2) the Post High School Division; (3) the Fifth through Eighth Grade Division; (4) the Ninth through 12th Grade Division; and (5) the Evening Division; and

WHEREAS, the applicant submitted the anticipated schedules of each division and the hours of the day in which there will be simultaneous occupancy of the building by the different divisions; and

WHEREAS, the applicant concludes that from 7:30 a.m. through 7:30 p.m., a minimum of 352 students and a maximum of 526 students are anticipated to occupy the proposed building; and

WHEREAS, thus, the applicant represents that throughout the majority of the day, the proposed building will be occupied at or near capacity, with every classroom in use; and

WHEREAS, the applicant represents that the requested floor area, height, open space, and rear yard waivers are necessary to accommodate the space needs associated with the projected student body; and

WHEREAS, the applicant states that the lack of classrooms in the Yeshiva's existing building result in

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overcrowded conditions; and

WHEREAS, the applicant represents that the proposed enlargement is necessary in order to provide a sufficient number of classrooms that will accommodate at least 22 students per classroom, which is the ideal number of students per classroom to meet the programmatic needs of the Fifth through Eighth Grade Division and the Ninth through 12th Grade Division, which require more individualized supervision; and

WHEREAS, the applicant states that the existing building does not provide for a gymnasium or any other recreational space for the students; and

WHEREAS, the applicant represents that the proposed enlargement will provide the space necessary to include a gymnasium and exercise room on the second floor; and

WHEREAS, the applicant concludes that the requested floor area, height, open space and rear yard waivers are necessary to accommodate the required number of classrooms as well as auxiliary uses such as dining and recreation space, a library, a *beis medrash*, stairwells, restrooms, and office space; and

WHEREAS, the applicant represents that the proposed open space waivers are also necessary to provide a large enough footprint to accommodate the *beis medrash* and the cafeteria, along with required classroom and office space on the first floor of the proposed building; and

WHEREAS, the Board notes that the applicant could have applied for a special permit for the subject site pursuant to ZR § 73-19 which would authorize the proposed use in the subject M1-1 zoning district, but the requested bulk waivers prevent it from coming under the special permit; and

WHEREAS, the applicant represents that the special permit would allow an FAR of 2.4 for the proposed community facility use, and because the applicant is enlarging the existing building which does not provide a cellar, additional square footage is required above what would be permitted by the special permit because certain program space that could otherwise be accommodated in the cellar must be placed above grade; and

WHEREAS, the Board acknowledges that the Yeshiva, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the limitations of the existing zoning, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning

regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Yeshiva is a not-for-profit organization and the proposal is in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant notes that the proposed use is permitted as-of-right in the R5 zoning district which borders the northern lot line of the site, and in the nearby R5B and R7A zoning districts located to the east and south of the site, respectively; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a mix of residential and community facility uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there are four-story schools located both one block south and one block east of the subject site; and

WHEREAS, the applicant states that the proposed building will be similar in height to the adjacent four-story residential building to the north of the site; and

WHEREAS, the applicant notes that it is providing a rear setback with a depth of 14'-0" above the second floor and a side setback along the northern lot line with a width of 8'-0" above the first floor, thereby providing access to natural light in each of the proposed classrooms and minimizing any impact of the proposed enlargement on surrounding uses; and

WHEREAS, the Board notes that in the subject M1-1 zoning district, if any side yard is provided, it must have a minimum width of 8'-0"; thus, the 8'-0" side setback relates to that condition; and

WHEREAS, the Board further notes that in the surrounding residential districts, the proposed community facility use would be allowed as a permitted obstruction in the rear yard up to a height of one-story or 23 feet; thus, only a small portion of the rear of the building would be prohibited in one of the surrounding residential districts; and

WHEREAS, the applicant represents that no adverse traffic impacts will result from the proposed legalization and enlargement; and

WHEREAS, the applicant notes that the Yeshiva has been operating at the site for approximately seven years with no harmful effects on traffic; and

WHEREAS, the applicant states that the Yeshiva does not utilize any school buses because all of the students are at least ten years old and many are significantly older and are able to commute independently; and

WHEREAS, the applicant further states that approximately 70 percent of the students arrive by public transportation, approximately 25 percent of the students reside in the immediate surrounding community and travel on foot, and approximately five percent arrive by bicycle; and

WHEREAS, the applicant represents that, depending on weather conditions, some parents may drop students off by car,

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but that this number does not exceed approximately 15 vehicle drop-offs even on the busiest days; and

WHEREAS, the applicant notes that a student drop-off area is reflected on the plans and that staff from the Yeshiva will be outside during times when students arrive and depart to assist them and ensure that pickup and drop-off from the school are performed in a safe and orderly manner; and

WHEREAS, the Board notes that it received a letter from the Department of Transportation's School Safety Engineering Office dated January 28, 2009, indicating that it has no objection to the proposed legalization and enlargement and will prepare a school map with additional signage and markings upon approval of the application; and

WHEREAS, as to the concerns raised by the Community Board regarding garbage storage, the applicant states that garbage will be stored indoors and will be collected by a private collection company three days per week; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development in conformance with zoning would meet the programmatic needs of the Yeshiva at the site; and

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

WHEREAS, as noted above, the applicant originally proposed to construct a four-story building with a floor area of 42,721 sq. ft. (3.6 FAR) before revising its proposal to provide for an interim plan for a four-story building with a floor area of 41,600 sq. ft. (3.5 FAR), and a side yard along the northern lot line with a width of 4'-0" above the first floor; and

WHEREAS, at the Board's direction, the applicant further revised its proposal, which resulted in the subject four-story yeshiva with a floor area of 38,670 sq. ft. (3.2 FAR), a rear setback with a depth of 14'-0" above the second floor, and a side setback along the northern lot line with a width of 8'-0" above the first floor; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to meet the programmatic needs of the Yeshiva and to construct a building that is compatible with the character of the neighborhood; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 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") 09BSA034K, dated March 19, 2010; 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 sampling results of the Phase II Investigation Report; and

WHEREAS, DEP has concluded that the proposed project will not result in a significant adverse hazardous materials impact provided that a Construction Health and Safety Plan ("CHASP") is submitted to DEP prior to the issuance of any building permit by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or other permit which permits soil disturbance; 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, the legalization and enlargement of an existing yeshiva, which does not conform with applicable zoning use regulations or comply with relevant bulk regulations, contrary to ZR §§ 42-00, 43-122, 43-43, 43-301 and 43-26, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 22, 2010" – Thirteen (13) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: four stories, a floor area of 38,670 sq. ft. (3.2 FAR); and a wall height of 54'-1"; as reflected on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT prior to the issuance of any building permit by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or other permit which permits soil disturbance, the applicant or successor

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shall submit to DEP a CHASP and shall obtain a letter of approval from DEP for the CHASP;

THAT no commercial catering use shall take place onsite;

THAT this approval 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 substantial construction be completed in accordance with ZR § 72-23;

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

Adopted by the Board of Standards and Appeals, March 23, 2010.

292-09-BZ

APPLICANT – Martyn & Don Weston, for Barbara Aal-Albar LLC, owner; Third Avenue Auto Corporation, lessee. SUBJECT – Application October 15, 2009 – Special Permit (§11-411, §11-413 & §73-03) to reinstate previously granted variance which expired on December 7, 1999; amendment to change use from a gasoline service station (UG16B) to automotive repair establishment (UG16B); Waiver of the Boards Rules. C1-3/R6A & R5B (Special Bay Ridge District).

PREMISES AFFECTED – 9310-9333 Third Avenue, North east corner of 94th Street, Block 6107, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Don Weston.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 2, 2009. acting on Department of Buildings Application No. 320003296, reads in pertinent part:

“An auto repair facility (UG 16) is not permitted in C1-3/R6A zoning district and is contrary to Section ZR 32-00.

The prior variance (Board of Standards and Appeals calendar #700-41-BZ Vol. II) has expired”; and

WHEREAS, this is an application for a reinstatement of a prior Board approval and an amendment to legalize the change in use from a gasoline service station to an automotive repair station, pursuant to ZR §§ 11-411 and 11-413; and

WHEREAS, a public hearing was held on this application on December 8, 2009 after due notice by publication in *The City Record*, with continued hearings on January 26, 2010 and February 23, 2010, and then to decision on March 23, 2010; and

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

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

WHEREAS, the site is located at the northeast corner of Third Avenue and 94th Street; and

WHEREAS, the site is located partially within a C1-3 (R6A) zoning district and partially within an R5B zoning district, within the Special Bay Ridge District and is occupied by an automotive repair station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1941 when, under BSA Cal. No. 700-41-BZ, the Board granted a variance permitting a parking lot for more than five vehicles; and

WHEREAS, on December 7, 1954, the Board permitted a change in use from parking lot to gasoline service station with parking and storage of motor vehicles for a term of 15 years; and

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

WHEREAS, most recently, on February 13, 1990, the grant was amended to extend the term for ten years from the expiration of the prior grant, to expire on December 7, 1999; and

WHEREAS, the applicant now seeks to reinstate the variance, granted under BSA Cal. No. 700-41-BZ and to amend the grant to reflect a change in use from a gasoline service station to an automotive repair station; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, the applicant represents that there has not been an enlargement to the zoning lot; and

WHEREAS, the applicant represents that the automotive-related (Use Group 16) use has been continuous since 1941 and that the failure to renew the variance was an administrative oversight, due, in part, to a change in ownership; and

WHEREAS, pursuant to ZR § 11-413, the Board may approve a change from one non-conforming use to another non-conforming use, under certain conditions; and

WHEREAS, as to the change in use, the applicant represents that in 2004, Exxon-Mobil discontinued operation of the gasoline service station at the site; and

WHEREAS, accordingly, it removed the gasoline tanks and remediated the site, but no other changes were made to the site or the garage building; and

WHEREAS, the current applicant operates an automotive repair station at the site; and

WHEREAS, the applicant notes that the entire use is located within the C1-3(R6A) portion of the site and that the small portion at the rear of the site located within the R5B

MINUTES

zoning district is vacant; and

WHEREAS, at hearing, the Board requested that the applicant: (1) provide a vehicle circulation plan; (2) reduce the width of the curb cuts; and (3) provide a signage analysis; and

WHEREAS, in response, the applicant provided: (1) a revised parking layout, which reflects a reduction in the number of parking spaces from 28 to 21; (2) a revised site plan, which reflects the reduction in the widths of the two curb cuts on Third Avenue from 30 feet to 16 feet, each and the elimination of the curb cut on 94th Street; and (3) a signage analysis which reflects that there is an overage of nine sq. ft. for the signage with frontage on Third Avenue; the applicant notes that the sign is non-illuminated, is set back 70 feet from the street, and that the portions of the sign occupied by text comply with zoning district sign limitations; and

WHEREAS, the Board determined that the applicant's modifications and analysis were responsive to its requests; and

WHEREAS, based upon its review of the record, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413, and a reinstatement and change in use are appropriate with certain conditions as set forth below; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, as amended, and makes each and every one of the required findings under ZR §§ 11-411 and 11-413, for a reinstatement of a prior Board approval of an gasoline service station and the legalization of a change in use from gasoline service station to automotive repair station; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received December 22, 2009"-(2) sheets and "February 2, 2010"-(1) sheet; and *on further condition*:

THAT this grant shall be for a term of ten years to expire on March 23, 2020;

THAT signage be limited to that which is reflected on the approved plans and the signage analysis;

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

THAT a certificate of occupancy shall be obtained by March 23, 2011;

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

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

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

Adopted by the Board of Standards and Appeals, March 23, 2010.

329-09-BZ

APPLICANT – Eric Palatnik, P.C., for Yevgenya Loffe, owner.

SUBJECT – Application December 18, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 26 Falmouth Street, Block 8744, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 24, 2009, acting on Department of Buildings Application No. 320049602, reads:

“Proposed plans are contrary to ZR 23-141(a) floor area ratio (FAR) exceeds the permitted 50%,” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (FAR), contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in *The City Record*, with a continued hearing on March 2, 2010, and then to decision on March 23, 2010; and

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

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

WHEREAS, the subject site is located on the west side of Falmouth Street, between Shore Boulevard and Hampton Avenue, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 1,921 sq. ft. (0.32 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,921 sq. ft. (0.32 FAR) to 5,462 sq. ft. (0.91 FAR); the maximum floor area permitted is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the Board notes that the proposed enlargement is located only at the front and a portion of the rear of the site, and that no waivers are required for the

MINUTES

enlargement besides the subject FAR waiver; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 9, 2010"-(18) sheets; and *on further condition*:

THAT the bulk parameters of the building shall include: a maximum floor area of 5,462 sq. ft. (0.91 FAR); lot coverage of 31 percent; a wall height of 21'-0"; and a total height of 35'-0", as illustrated on the BSA-approved plans;

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

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

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

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, March 23, 2010.

214-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 3210 Riverdale Associates, LLC, owner.

SUBJECT – Application September 18, 2007 – Variance (§72-21) to allow a public parking garage and increase the maximum permitted floor area in a mixed residential and community facility building, contrary to §22-10 and §24-162. R6 zoning district.

PREMISES AFFECTED – 3217 Irwin Avenue, aka 3210 Riverdale Avenue, north side of West 232nd Street, Block 5759, Lots 356, 358, 362, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 20, 2010, at 1:30 P.M., for decision, hearing closed.

220-08-BZ

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

APPEARANCES –

For Applicant: Moshe Friedman.

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

162-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Steinway 30-33, LLC, owner; Steinway Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application April 27, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Planet Fitness*) in the cellar, first, and second floors in an existing two-story building; Special Permit (§73-52) to extend the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district. C4-2A/R5 zoning districts.

PREMISES AFFECTED – 30-33 Steinway Street, east side of Steinway Street, south of 30th Avenue, Block 680, Lot 32, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safain.

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ACTION OF THE BOARD – Laid over to April 20, 2010, at 1:30 P.M., for continued hearing.

294-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Shree Ram FLP, owner.

SUBJECT – Application October 16, 2009 – Special Permit (§73-125) to legalize a one-story ambulatory diagnostic and treatment health care facility. R3A zoning district.

PREMISES AFFECTED – 3768 Richmond Avenue, west side of Richmond Avenue, 200’ south of the intersection with Petrus Avenue, Block 5595, Lot 11, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 20, 2010, at 1:30 P.M., for decision, hearing closed.

311-09-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Matalon, owner.

SUBJECT – Application November 24, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)), side yard (§23-461(a)) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1092 East 22nd Street, between Avenue J and K, Block 7603, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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 and Robert Klein.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 1:30 P.M., for continued hearing.

332-09-BZ

APPLICANT – Moshe M. Friedman, for Mordechai Treff, owner.

SUBJECT – Application December 22, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home, contrary to floor area and open space (§23-141(a)); less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1462 East 27th Street, west side 320’ north of intersection of East 27th Street and Avenue O, Block 7680, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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.

For Opposition: David Brody and Henry Euler.

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

14-10-BZ

APPLICANT – Friedman & Gotbaum, LLP, for Cooper Square Associates (LP), owners.

SUBJECT – Application January 29, 2010 – Special Permit (§73-19) to allow a Use Group 3 school (*Grace Church High School*). M1-5B zoning district.

PREMISES AFFECTED – 38-50 Cooper Square, west side

MINUTES

of Cooper Square, 326'-9" south of Astor Place, Block 544,
p/o 38, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Douglas Evans, Shelly Friedman, Joyce Kuh
and Sarah Hynes.

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

18-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Fifty East Forty-
Second Company, LLC, owner; East 42nd Street Fitness,
LLC d/b/a Lucille Roberts, lessee.

SUBJECT – Application February 2, 2010 – Special Permit
(\$73-36) to allow a physical culture establishment (*Lucille
Roberts*) in the cellar and a portion of the first floor in an
existing 26-story building. C5-3 zoning district.

PREMISES AFFECTED – 50 East 42nd Street, Southeast
corner of Madison Avenue, Block 1276, Lot 51, Borough of
Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to April 13,
2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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April 22, 2010

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DOCKET

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41-10-BZ

522-566/596-600 First Avenue, East 34th Street; Franklin D. Roosevelt; East 30th Street;& First Avenue, Block 962, Lot(s) 80,108 & 1001-1107, Borough of **Manhattan, Community Board: 6**. Variance to permit enlargement of a medical center. R8 district.

41-10-BZ

522-566/596-600 First Avenue, East 34th Street; Franklin D. Roosevelt; East 30th Street;& First Avenue, Block 962, Lot(s) 80,108 & 1001-1107, Borough of **Manhattan, Community Board: 6**. Variance to permit enlargement of a medical center. R8 district.

42-10-BZ

2170 Mill Avenue, South side of Mill Avenue, approximately 116' west of intersection with Strickland Avenue., Block 8470, Lot(s) 1150, Borough of **Brooklyn, Community Board: 18**. Variance to allow a Multiple dwelling, contrary to use regulations. R3-1; C2-2/R3-1 district.

43-10-BZ

23-70 Steinway Street, West side of Steinway Street 17.65' north of Astoria Boulevard North., Block 803, Lot(s) 75, Borough of **Queens, Community Board: 1**. Special Permit (73-244) to allow an eating and drinking establishment. C2-2 IN R5 district.

45-10-BZ

1413-1429 Edward L. Grant Highway, Southwest corner of Plimpton Avenue and Edward L. Grant Highway., Block 2521, Lot(s) 15, Borough of **Bronx, Community Board: 4**. Special Permit (11-411) to reinstate prior variance. C1-4/R7-1 district.

46-10-BZ

1401 Sheepshead Bay Road, Avenue Z and Sheepshead Bay Road, Block 7459, Lot(s) 1, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-44) to permit reduction in required parking for ambulatory and diagnostic treatment center. C4-2 district.

47-10-BZ

895 Zerega Avenue, Zerega Avenue and Story Avenue., Block 3698, Lot(s) 36, Borough of **Bronx, Community Board: 9**. Variance to permit the usage of warehouse, contrary to regulations. M1-1/R3-2 district.

48-10-BZ

2965 Vetrans Road West, 0'0" SS Vetrans Road West & Tyrellan Avenue., Block 7511, Lot(s) 1,75 & 150, Borough of **Staten Island, Community Board: 3**. Special Permit (73-36) to legalize the operation of a physical culture establishment. M1-1SRD district.

49-10-A

28 Winchester Avenue, South side of Winchester Avenue 0' east of Tennyson Drive., Block 5320, Lot(s) 42, Borough of **Staten Island, Community Board: 3**. Construction not fronting a mapped street, contrary to GCL 36. R3-1 district.

50-10-A

26 Winchester Avenue, South side of Winchester Avenue 0' east of Tennyson Drive., Block 5320, Lot(s) 43, Borough of **Staten Island, Community Board: 3**. Construction not fronting a mapped street, contrary to GCL 36. R3-1 district.

51-10-A

22 Winchester Avenue, South side of Winchester Avenue 0' east of Tennyson Drive., Block 5320, Lot(s) 44, Borough of **Staten Island, Community Board: 3**. Construction not fronting a mapped street, contrary to GCL 36. R3-1 district.

52-10-A

20 Winchester Avenue, South side of Winchester Avenue 0' east of Tennyson Drive., Block 5320, Lot(s) 45, Borough of **Staten Island, Community Board: 3**. Construction not fronting a mapped street, contrary to GCL 36. R3-1 district.

53-10-A

2031 Burr Avenue, Approximately 157 feet northwest of the corner of Burr Avenue and Westchester Avenue., Block 4249, Lot(s) 39, Borough of **Bronx, Community Board: 10**. Appeal for common law vested rights to continue development under the prior zoning district. R5A 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

APRIL 27, 2010, 10:00 A.M.

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

SPECIAL ORDER CALENDAR

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 district.

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

APPEALS CALENDAR

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.

SUBJECT – Application January 25, 2010 – Appeal seeking a common law vested right to complete construction commenced under the prior R4-1 Zoning district. R6 zoning district.

PREMISES AFFECTED – 1882 East 12th Street, west side, of East 12th Street, 75' north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

23-10-A thru 26-10-A

APPLICANT – Richard Bowers of Akerman Senterfitt, LLP, for Mia & 223rd Street Management Corp., owner.

SUBJECT – Application February 23, 2010 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations. R1-2 zoning district. Series cases 23-10-A thru 26-10-A.

PREMISES AFFECTED – 39-39 223rd Street and 223-01/15/19 Mia Drive, between 223rd Street and Cross Island Parkway, Block 6343, Lots 154-157, Borough of Queens.

COMMUNITY BOARD #11Q

57-10-A

APPLICANT – Eric Palatnik, P.C., for 517 53rd Street, Inc., owner.

SUBJECT – Application April 19, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior C4-3 zoning district. R6B zoning district.

PREMISES AFFECTED – 517 53rd Street, between Fifth Avenue and Sixth Avenue, Block 808, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APRIL 27, 2010, 1:30 P.M.

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

ZONING CALENDAR

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 the following bulk regulations; floor area (ZR §23-141), open space (ZR §23-141), lot coverage (ZR 23-141), front yard (ZR §23-45), height (ZR §23-631), open space used for parking (ZR §25-64) and parking requirements (ZR §25-23); and to allow for the enlargement of an existing commercial use contrary to ZR 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

304-09-BZ

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – (§72-21) Variance to allow the erection of a ten-story, mixed-use residential, community facility and commercial building in an M1-4 zoning district. The application seeks to vary sections: 42-00, 43-12 and 43-122 (Community facility floor area), 43-43 (Height and sky exposure plane, and 44-21 (parking) of the zoning resolution.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

CALENDAR

34-10-BZ

APPLICANT – James Chin & Associates, LLC, for Harry Tran, owner; Shu Ying Zhao, lessee.

SUBJECT – Application March 18, 2010 – Special Permit (§73-36) to allow the operation of a physical culture establishment (York Spa Beauty Care) in the cellar and first floor of an existing five-story building. M1-5B zoning district.

PREMISES AFFECTED – 429 Broome Street, south side of Broome Street, from the corner formed by Broome and Crosby Street, Block 473, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, APRIL 13, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

208-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Shell Road, LLC, owner; Orion Caterers, Incorporated, lessee.

SUBJECT – Application November 9, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG9 catering hall which expired on October 19, 2009. R4/C1-2/M1-1 OP zoning district.

PREMISES AFFECTED – 255 Shell Road, east side of Shell Road, between Avenue X and Bouck Court, Block 7192, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for a previously granted variance for a catering hall (Use Group 9), which expired on October 19, 2009; and

WHEREAS, a public hearing was held on this application on December 15, 2009, after due notice by publication in *The City Record*, with continued hearings on January 26, 2010, and March 16, 2010, and then to decision on April 13, 2010; and

WHEREAS, the building 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Shell Road, between Avenue X and Bouck Court, partially within a C1-2 (R4) zoning district and partially within an M1-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 19, 2004 when, under the subject calendar number, the Board granted a variance to permit the legalization of an enlargement of a one-story commercial building to a two-story commercial building

occupied as a catering hall, to expire October 19, 2009; and WHEREAS, the applicant now requests a ten-year extension of term; and

WHEREAS, at hearing, the Board requested that the applicant: (1) clarify whether it complies with the condition of the previous grant requiring that parking be provided for patrons of the catering establishment; (2) submit any public assembly permits related to the catering use; and (3) provide the hours of operation for the catering establishment; and

WHEREAS, in response, the applicant submitted a letter from the owner of 2569 Shell Road, stating that the applicant has leased the property for use as an attended parking lot with 80 spaces for the past five years and intends to enter into a permanent lease with the applicant pending the subject application; and

WHEREAS, the applicant also provided a statement from the owner of 2569 Shell Road, which reflects that the site is not for sale and remains available to provide the required parking; and

WHEREAS, the applicant submitted two Place of Assembly permits issued by the Department of Buildings for the first floor and second floor of the building, respectively; and

WHEREAS, the applicant states that the hours of operation for the catering establishment are 11:00 a.m. to 10:00 p.m., daily, and that it remains open until 1:00 a.m. on nights when there is an event at the site; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on October 19, 2004, so that as amended this portion of the resolution shall read: “to extend the term for ten years from October 19, 2009, to expire on October 19, 2019, *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of this grant shall expire on October 19, 2019;

THAT a minimum of 80 off-site parking spaces shall be provided for patrons of the catering establishment for the duration of the variance, and such parking shall be located no further than 600-ft. from the site, as required by ZR § 36-43;

THAT all fire safety measures as shown on the BSA-approved plans shall be installed and maintained;

THAT all sound attenuation measures as shown on the BSA-approved plans shall be installed and maintained;

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 be listed on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by April 13, 2011;

THAT all conditions from prior resolutions not

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specifically waived by the Board remain in effect;

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

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

(DOB App. No. 301263816)

Adopted by the Board of Standards and Appeals, April 13, 2010.

389-37-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Rosemarie Fiore, Georgette Fiore and George Fiore, owner.
SUBJECT – Application June 10, 2009 – Extension of Term (§11-411) of a previously granted Variance for the operation of a UG8 parking lot which expired on June 13, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on December 12, 2004 and Waiver of the Rules. R5/C1-2 zoning district.

PREMISES AFFECTED – 31-08 – 31-12 45th Street, southwest corner of 45th Street and 31st Avenue, Block 710, Lot 5, 6, 17, 18, 19, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for decision, hearing closed.

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 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M., for continued hearing.

834-60-BZ

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

SUBJECT – Application October 20, 2009 – Extension of Term for the continued use of a Gasoline Service Station (*Gulf*) with minor auto repairs which expired on March 7, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on March 2, 2000; Amendment to legalize an accessory convenience store and Waiver of the Rules. C2-4/R-7A, R-5B zoning district.

PREMISES AFFECTED – 140 Vanderbilt Avenue, northwest corner of Myrtle Avenue and Vanderbilt Avenue, Block 2046, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for continued hearing.

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: Eric Palatnik and Joseph Fekete.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M. for continued hearing.

603-86-BZ

APPLICANT – H. Irving Sigman, P.E., for 8826 Parsons LLC, owner.

SUBJECT – Application September 3, 2009 – Extension of Term for a Variance (§72-21) allowing the construction of retail stores (UG 6), which expired on September 8, 2007; Amendment to the accessory open parking area and refuse area and request to eliminate the term; Waiver of the Rules. R7A (Downtown Jamaica Special District) zoning district.
PREMISES AFFECTED - 88-34 Parsons Boulevard, a/k/a 88-26/34 Parsons Boulevard. North west corner of Parsons Boulevard and 89th Avenue, Block 9762, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: H. Irving Sigman and Barney Sigman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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

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

16-92-BZ

APPLICANT – NYC Board of Standards and Appeals.
OWNER: High Tech Park, Inc.
SUBJECT – Application April 25, 2008 – Dismissal for lack of prosecution for an extension of time to obtain a Certificate of Occupancy, and an Amendment to allow an additional non-conforming use on the zoning lot. R5/C1-3 zoning district.

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

COMMUNITY BOARD #6BK

APPEARANCES –

In Favor: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M., for continued hearing.

223-98-BZ

APPLICANT – Andrea Claire/Peter Hirshman for Jilda Realty Corporation, owner.
SUBJECT – Application October 29, 2009 – Extension of Term of a previous variance that permits the operation of an automotive service station (UG 16B) which will expire on February 1, 2010; Amendment to allow used car sales (UG 16B); Extension of Time to obtain a Certificate of Occupancy which expired on June 10, 2003; Waiver of the Rules. R6B zoning district.

PREMISES AFFECTED – 51-59 Maujer Street, aka 451-459 Lorimer Street, northeast corner of the intersection of Maujer Street and Lorimer Street, Block 2785, Lot 31 & 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Peter Hirshman.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for decision, hearing closed.

280-98-BZ

APPLICANT – Rampulla Associates Architects, for MARS Holding, LLC, owner.
SUBJECT – Application February 13, 2010 – Extension of Term of a variance (§72-21) for the continued operation of a UG4 Dental Office which expired on February 8, 2010; Amendment to convert the basement garage into dental

office floor area. R-2 zoning district.

PREMISES AFFECTED – 2936 Hylan Boulevard, east side of Hylan Boulevard, 100’ north of Isabella Avenue, Block 4015, Lot 14, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phillip L. Rampulla.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M., for continued hearing.

72-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for PGREF I 1633 Broadway Tower, L.P., owner; Equinox 50th Street, Incorporated, lessee.

SUBJECT – Application January 12, 2010 – Extension of Term to permit the continued operation of a Physical Cultural Establishment (*Equinox Fitness*) which expired on January 11, 2010. C6-7 (MID) zoning district.

PREMISES AFFECTED – 1633 Broadway, 215 West 50th Street; 210 West 51st Street, west side of Broadway between West 50th and West 51st Streets, Block 1022, Lot 43, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

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

111-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application to reopen pursuant to court remand (Appellate Division) to revisit the findings of a Special Permit (§73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and perimeter wall height (§23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD# 15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Susan Klapper and Judith Baron.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

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92-08-BZ

APPLICANT – NYC Board of Standards and Appeals.
OWNER: Boquen Realty, LLC.
SUBJECT – Application April 14, 2008 – Dismissal for lack of prosecution for a variance (§72-21) to allow residential conversion and enlargement of an existing building, contrary to bulk regulations. M1-5B zoning district.
PREMISES AFFECTED – 13 Crosby Street, east side of Crosby Street between Grand and Howard Street, Block 233, Lot 4, Borough of Brooklyn.
COMMUNITY BOARD #4BK
APPEARANCES –
In Favor: Juan D. Reyes, III.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M., for continued hearing.

196-08-BZ

APPLICANT – Gage Parking Consultants, for 53-10 Associates, owner.
SUBJECT – Application October 13, 2009 – Amendment of a previous grant for public parking garage; amendment would enclose rooftop parking. C6-2 (Special Clinton District) zoning district.
PREMISES AFFECTED – 792 Tenth Avenue / 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #4M
APPEARANCES –
For Applicant: Jeremiah Candreva.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

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

51-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.
SUBJECT – Application February 4, 2010 – Amendment of a variance (§72-21) which permitted a Physical Culture Establishment, contrary to §32-00, and a dance studio (Use Group 9), contrary to §32-18. The amendment seeks to enlarge the floor area occupied by the PCE. C1-2/R2 zoning district
PREMISES AFFECTED – 188-02/22 Union Turnpike, Located on the south side of Union Turnpike between 188th and 189th Streets, Block 7266, Lot 1, Borough of Queens.
COMMUNITY BOARD #1Q
APPEARANCES –
For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for continued hearing.

APPEALS CALENDAR

57-09-A thru 158-09-A

APPLICANT – Eric Palatnik, P.C. for Maguire Avenue Realty Corporation, owner.
SUBJECT – Application April 15, 2009 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations. R3-2 (SSRD) zoning district.
PREMISES AFFECTED – Maguire Woods, Santa Monica Lane, Moreno Court, El Camino Loop, Malibu Court, Foothill Court and Moreno Court, Maguire Woods in the Woodrow section of Staten Island. Block 6979, Lots 64 thru 362, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a large-scale residential development under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on January 26, 2010, after due notice by publication in *The City Record*, with continued hearings on February 23, 2010 and March 16, 2010, and then to decision on April 13, 2010; and

WHEREAS, the site was inspected by Chair Srinivasan and Commissioner Montanez; and

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

WHEREAS, the applicant states that the subject premises consists of an approximately 24.3 acre development site on Block 6979; and

WHEREAS, the applicant proposes to develop the entire site with 176 semi-detached homes, including 350 dwelling units and a community facility building (the “Development”); and

WHEREAS, the applicant represents that of the 176 semi-detached homes and community facility building that comprise the Development, the subject appeal seeks a determination that the owner has obtained a vested right to complete 102 of the semi-detached homes for which permits have not been obtained and construction has not been completed; and

WHEREAS, the applicant commenced development by obtaining approvals from a number of government agencies, including the City Planning Commission (“CPC”), the Department of Buildings (“DOB”), the Department of

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Environmental Protection (“DEP”), the Department of Transportation, and the Fire Department to permit the proposed project in the R3-2 zoning district within the Special South Richmond Development District (“SSRDD”); and

WHEREAS, on December 22, 1999, the CPC issued the following approvals, in relation to development within the SSRDD: (1) special permits pursuant to ZR §§ 107-76 and 107-77, to allow adjustments in the boundaries of designated open space and the construction of a community facility building in designated open space; (2) authorizations pursuant to ZR §§ 107-64 and 107-65 for the removal of trees and the modification of existing topography; and (3) certifications pursuant to ZR §§ 107-22, 107-221, 107-222, 107-323, and 107-50 to permit development within a site containing designated open space, active recreational facilities in designated open space, public pedestrian ways, and the substitution of plant material; and

WHEREAS, on December 22, 1999, the applicant also secured (1) a zoning text change to provide an adjustment of the designated open space boundaries on map 33a and 33b in Appendix A of the SSRD regulations; (2) an amendment to the City Map to eliminate the mapped but unbuilt streets at the site to facilitate the proposed development and to map a turnaround; and (3) a special permit pursuant to ZR § 74-732 to allow a sewer pumping station that would convey sewage from the site to a new sewer in order to avoid the need to install a sewer line across the designated open space and associated freshwater wetlands on the adjacent site; and

WHEREAS, on March 6, 2000, the Department of City Planning (“DCP”) sent a letter to the DOB Staten Island Borough Commissioner, advising DOB of the approved CPC actions and providing copies of the approved site plan; and

WHEREAS, on January 9, 2002, under Job No. 500384238, DOB issued a permit for site work related to the Development; and

WHEREAS, on February 8, 2002, under Job No. 500520206, DOB approved a Builder’s Pavement Plan for the Development; and

WHEREAS, on August 22, 2002, the proposed site plan was approved by the Fire Department for access and hydrant requirements; and

WHEREAS, on December 23, 2002, the Department of Environmental Protection (“DEP”) approved the proposed water main for the Development; and

WHEREAS, on March 12, 2003, DCP sent a letter to the Staten Island Borough Commissioner, confirming the renewal of the CPC actions related to the Development; and

WHEREAS, on June 23, 2003, the Department of Transportation issued permits for the construction of new sidewalks for the Development; and

WHEREAS, on July 17, 2003, DEP approved the construction of a private sanitary drain for the Development; and

WHEREAS, on May 10, 2004, the New York State Office of the Attorney General approved a “No Action Application” in connection with the March 2004 creation of the Maguire Avenue Homeowners’ Association; and

WHEREAS, on August 12, 2004 (the “Enactment

Date”), CPC enacted the Lower Density Growth Management text amendment (the “LDGMA”), which rendered the Development non-complying in terms of minimum front yard depth (the requirement is now 18’-0”), minimum rear yard depth (the requirement is now 30’-0” with landscaped buffer with a minimum depth of 8’-0”), parking (three spaces are now required for a two-family home), and planting strips (a planting strip with a minimum depth of 8’-0” is now required between private roads and adjacent properties); and

WHEREAS, the development complied with the prior zoning requirements, which permitted a front yard with a minimum depth of 5’-0”, a rear yard with a minimum depth of 15’-0”, one parking space, and a 3’-0” planting strip between private roads and adjacent properties; and

WHEREAS, prior to the Enactment Date, the developer installed all of the sewer infrastructure, water mains, and hydrants for the entire development, and excavated the roadways, cleared the land, performed landscaping, and installed fencing for the development; and

WHEREAS, additionally, construction commenced and 72 of the homes were constructed as of the Enactment Date and have been issued certificates of occupancy by DOB; and

WHEREAS, accordingly, based upon the already completed work, the applicant seeks a Board determination that it has vested its right to complete the Development as originally proposed; and

WHEREAS, as a threshold matter in determining this appeal, the applicant must establish whether construction was conducted pursuant to valid permits; and

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

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

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

WHEREAS, the applicant represents that it obtained Permit No. 500384238 to perform site work related to all 176 semi-detached homes and the community facility comprising the Development on January 9, 2002, as well as permits for the

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construction of the 72 now completed homes, but did not obtain individual permits for the 102 semi-detached homes subject to this application; and

WHEREAS, because permits for 102 of the homes were not issued, the applicant requests that the Board contemplate the subject application in the context of a large-scale development planned as a single integrated project, such that it is subject to a separate line of cases that establish the Single Integrated Project Theory (or “SIPT”); and

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

WHEREAS, further, in SIPT cases, it is not necessary that building permits have been obtained for each and every building proposed to be vested; and

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

WHEREAS, the SIPT presumes that for large-scale multi-plat, multi-unit developments, it is not feasible or desirable to obtain permits for every building in every plat at the same time because such projects are developed in stages, and it is more logical for permits to be obtained on a plat by plat basis; and

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

WHEREAS, as established below, the applicant addressed both the SIPT factors as well as the traditional common law vesting criteria as to work, expenditure, and serious loss; and

WHEREAS, as to the SIPT factors, the applicant showed that: (1) DOB approved a site plan showing the entire 176-unit development and was made aware of a number of CPC actions related to the Development, and was therefore on notice that it was intended to be a single integrated residential project; (2) construction of the community facility building and 72 of the 176 residential buildings has been performed pursuant to valid permits; (3) expenditures were made and work was conducted on infrastructure that benefits the entire development, namely the sewer expenditures and construction, landscaping expenditures, expenditures related to roadways, and

expenditures for the recreation center and club house; (4) economic loss would result from the inability to proceed under the prior zoning, due to the need to redesign the development; and (5) no overriding public concern related to the new zoning exists; and

WHEREAS, as to this last factor, the Board observes that while the LDGMA reflects a serious legislative concern about overdevelopment on Staten Island, the proposed development was planned and acted upon well prior to the Enactment Date and therefore the pertinent LDGMA provisions should not override the vested rights claim; and

WHEREAS, the Board notes that under the SIPT, the developer was entitled to treat the entire development site as one, and that through construction of the 72 homes, the community facility building, and other global site preparation, including the installation of infrastructure benefiting the entire development, it was entitled to continue construction of all initially proposed homes; and

WHEREAS, the Board agrees that the applicant has established that the development qualifies as an integrated development under the SIPT, since all factors enumerated above have been satisfied; and

WHEREAS, as to substantial construction, the applicant states that before the Enactment Date, the developer constructed 72 out of the total of 176 proposed homes as well as the community facility building, and installed some sewer and other infrastructure for the development; and

WHEREAS, in support of the assertion that substantial construction was performed, the applicant submitted the following evidence: photographs of the site, a site plan showing the amount of work completed, a sewer contract, certificates of occupancy, and statements from the architect and engineer; and

WHEREAS, based upon the above evidence, the Board concludes that a significant amount of work was performed at the site prior to the Enactment Date; and

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

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended a total of approximately \$15,477,145 out of the anticipated total development cost of \$64,880,000 for the project; and

WHEREAS, said expenditures related to the construction of the 72 completed homes and the community facility building, as well as costs related to sewer infrastructure, land clearing, roadways, landscaping, and fencing for the entire site; and

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

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

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed development and the development permitted under the new zoning; and

WHEREAS, the applicant explains that compliance with the present LDGMA provisions would result in the loss of four of the proposed two-family homes and the conversion of 100 two-family homes to single-family homes; and

WHEREAS, the applicant contends that the reduced unit count and conversion to single-family homes would lead to a diminished profit over the entire development site, resulting in a loss of approximately \$22,200,000; and

WHEREAS, the applicant states that compliance with the LDGMA requirements would also result in the need for new surveys, lot subdivisions, street redesign, and new architectural plans; and

WHEREAS, the Board agrees that the non-recoupable expenditures related to the need to redesign the development, and the lost revenue arising from the reduced unit count and conversion of the homes, when viewed in the aggregate, constitute 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, the supporting documentation for such representations, as well as the discussion of the SIPT, and agrees that the applicant has satisfactorily established that a vested right to complete construction of all 102 of the proposed homes had accrued to the owner of the premises as of the Enactment Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting the issuance of DOB Permit Nos. 510067348, 510067357, 510067366, 510067375, 510067384, 510067437, 510067446, 510067455, 510067464, 510067473, 510067311, 510067482, 510067507, 510067516, 510067525, 510067543, 510067703, 510067712, 510067687, 510067785, 510067776, 510067641, 510067650, 510067767, 510065322, 510065340, 510065402, 510065411, 510065368, 510065395, 510065359, 510065331, 510065386, 510065377, 510065055, 510065064, 510065073, 510065082, 510064289, 510064270, 510064261, 510064298, 510064305, 510064314, 510062753, 510062799, 510062780, 510062575, 510062806, 510062815, 510062824, 510062833, 510062842, 510062851, 510062860, 510062879, 510064403, 510061665, 510062548, 510062557, 510061674, 510062539, 510063271, 510063280, 510063299, 510063306, 510063315, 510063217, 510064323, 510064332, 510064341,

510064350, 510067758, 510067696, 510067678, 510067669, 510067721, 510067730, 510065126, 510065135, 510065144, 510065091, 510065108, 510065117, 510064369, 510063226, 510063235, 510063244, 510063262, 510063342, 510063351, 510063360, 510063379, 510063388, 510063397, 510064378, 510064387, 510063404, 510063413, 510063431, 510063422, 510064396, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, April 13, 2010.

167-09-A

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.

SUBJECT – Application May 5, 2009 – Appeal challenging Department of Building's determination that the reconstruction of non-complying building must be done in accordance with §54-41 and be required to provide a 30 foot rear yard. M1-2 zoning district.

PREMISES AFFECTED – 820 39th Street, south side, 150' east of 8th Avenue, Block 916, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, April 13, 2010.

185-09-A & 186-09-A

APPLICANT – Diffendale & Kubec, AIA, for G.L.M. Development Corp., owner.

SUBJECT – Application June 6, 2009 – Construction not fronting on a mapped street, contrary to Section 36 of the General City Law. R3 Zoning district.

PREMISES AFFECTED – 61 and 67 Elder Avenue, Elder Avenue prolongation 102.4' north of Kenneth Place, Block 6789, Lot 142, 144, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Les Newhalfen.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

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WHEREAS, the decision of the Staten Island Borough Commissioner dated May 26, 2009, acting on Department of Buildings Application Nos. 510046549 and 510046530, reads in pertinent part:

“The street giving access to the proposed buildings is not duly placed on the official map and therefore:

- A No Certificate of Occupancy can be issued, as per Article 3, Section 36 of the General City Law; and
- B Proposed construction does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space contrary to Section 501.3.1 of the Building Code;” and

WHEREAS, this is an application to permit the proposed construction of two detached two-family homes not fronting on a legally mapped street, contrary to Section 36 of the General City Law; and

WHEREAS, a public hearing was held on this application on March 9, 2010, after due notice by publication in the *City Record*, with a continued hearing on April 13, 2010, and then to closure and decision on the same date; and

WHEREAS, by letters dated January 27, 2010 and March 25, 2010, the Fire Department states that it has reviewed the subject proposal and has no objections, with the following conditions: (1) the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code (the “Building Code”); and (2) the entire building be provided with interconnected smoke alarms, which shall be designed and installed in accordance with Building Code § 28-907.2.10; (3) the fire apparatus access road shall be construed in accordance with the requirements of Fire Code § 503.1.1; (4) “No Parking” signage shall be posted at the entrance to the fire apparatus access road in accordance with the requirements of Fire Code § 503.7; and (5) the height of the dwelling shall not exceed 35 feet above the grade plane; and

WHEREAS, in response, the applicant submitted revised plans which reflect the five above-mentioned conditions requested by the Fire Department, including fully sprinklering the building and providing interconnected smoke alarms; 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 May 26, 2009, acting on Department of Buildings Application Nos. 510046549 and 510046530 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received April 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 the entire building shall be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of

1999 and Reference Standard 17-2B of the Building Code;

THAT the entire building shall be provided with interconnected smoke alarms, which shall be designed and installed in accordance with Building Code § 28-907.2.10;

THAT the fire apparatus access road shall be construed in accordance with the requirements of Fire Code § 503.1.1;

THAT “No Parking” signage shall be posted at the entrance to the fire apparatus access road in accordance with the requirements of Fire Code § 503.7;

THAT the height of the dwelling shall not exceed 35 feet above the grade plane;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 13, 2010.

306-09-A

APPLICANT – New York City Department of Buildings

OWNER – Luis Cuji

SUBJECT – Application November 9, 2009 – Appeal seeking to revoke the Certificate of Occupancy for failure to comply with provisions of the Zoning Resolution, Building Code and Multiple Dwelling Law. R5 Zoning district.

PREMISES AFFECTED – 37-48 60th Street, West side of 60th Street 38th and 37th Avenues. Block 1214, Lot 84. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Amandus Derr.

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 from the Department of Buildings (“DOB”) seeking to revoke Certificate of Occupancy No. 401686314F (the “CO”) for a building at the subject site due to its non-compliance with the Multiple Dwelling Law, the Administrative Code, and the Zoning Resolution; and

WHEREAS, a public hearing was held on this application on February 2, 2010, after due notice by publication in *The City Record*, with continued hearing on

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March 16, 2010, and then to decision on April 13, 2010; and

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

WHEREAS, a representative of the owner of 37-48 60th Street testified at hearing; and

WHEREAS, the subject premises is located on the west side of 60th Street, between 38th Avenue and 37th Avenue; and

WHEREAS, the site is occupied by a four-story residential building, with three dwelling units, classified as Building Occupancy Group J-4, as reflected on the CO; and

WHEREAS, DOB states that the subject building, which was converted from a two-family home to a three-family multiple dwelling and enlarged, does not comply with provisions of the Multiple Dwelling Law, the Administrative Code, and the Zoning Resolution; and

WHEREAS, as discussed in more detail below, DOB states that (1) the building is an unlawful multiple dwelling in that it was converted from two to three residential units which is a different building class and requires fireproof construction; (2) the enlargement increased the degree of non-compliance with regard to side yards; (3) there is insufficient parking; (4) a legally required window is located too close to the side lot line; (5) the required side setback is not provided; (6) the building does not lawfully accommodate persons with physical disabilities; and (7) there is not adequate egress from the third-floor unit; and

WHEREAS, accordingly, in the absence of a plan to resolve the outstanding non-compliance, DOB requests that the Board revoke the CO; and

WHEREAS, on July 1, 2003, the prior owner's engineer submitted an application, under Application No. 401686314, through DOB's Professional Certification program for the enlargement of an existing two-family building and its enlargement to a three-family building; and

WHEREAS, on May 25, 2004, DOB issued work permits for the construction; and

WHEREAS, on August 21, 2006, DOB issued a CO for the three-family four-story building; and

WHEREAS, on February 22, 2008, DOB audited Application No. 401686314 and identified six objections; and

WHEREAS, on July 29, 2008, DOB notified the owner of the audit failure and of its intent to seek revocation of the CO; and

WHEREAS, on or about October 31, 2008, a representative of the owner met with DOB to discuss the audit at which time DOB advised that the plans must be modified to resolve non-complying conditions; and

WHEREAS, on June 24, 2009, DOB audited the application again and identified eight objections; and

WHEREAS, by letter dated July 31, 2009, DOB notified the applicant again of its intent to seek revocation of the CO; and

WHEREAS, on August 14, 2009, the applicant met with DOB and DOB again advised that the plans must be modified to resolve non-complying conditions

WHEREAS, the eight objections identified during the June 24, 2009 audit (a slightly modified version of the earlier audit) are the basis for DOB's request for the revocation of the CO; and

WHEREAS, to date, the property owner has not provided any plans that resolve the noted objections; and

WHEREAS, the property owner provided written and oral testimony in opposition to DOB's application requesting the revocation of the CO; and

WHEREAS, the outstanding non-compliance is as follows: as to the MDL, DOB states that Section 56 prohibits the conversion of a frame dwelling not used as a multiple dwelling on April 18, 1929 to a multiple dwelling; MDL § 4.28 defines a frame dwelling as "a dwelling of which the exterior walls or any structural parts of such walls are of wood"; and

WHEREAS, DOB asserts that the previous CO for the building, issued in 1952, describes the construction classification as "frame" and permitted the occupancy of two families; DOB notes that the plans associated with Application No. 401686314 reflect wooden walls and structural components of the existing and enlarged portion of the building; and

WHEREAS, accordingly, DOB asserts that the building, which was not occupied by a multiple dwelling on April 18, 1929 and is constructed of wood, was converted to a multiple dwelling in violation of MDL § 56; and

WHEREAS, as to the side yards, DOB states that R5 zoning district regulations require that the subject detached residential building have two side yards, each with a minimum width of eight feet, pursuant to ZR § 23-462(a); and

WHEREAS, prior to the subject enlargement, the building provided two pre-existing non-complying side yards with widths of 6'-6" and 3'-0"; and

WHEREAS, DOB states that the construction increased the degree of non-compliance of the side yards because it added a fourth floor, floor area, and a dwelling unit within the required side yard, contrary to ZR §§ 23-462(a) and 54-31; and

WHEREAS, as to required parking, DOB states that, pursuant to ZR § 25-21, an enlargement of a two-family building that includes the addition of one dwelling unit must be accompanied by the addition of one parking space; and

WHEREAS, DOB notes that the property owner has not provided a parking space for the additional dwelling unit and that, contrary to the property owner's assertions, there is no basis for a waiver of the requirement; and

WHEREAS, as to required windows, DOB states that R5 zoning district regulations require that there be a minimum distance of 15 feet between a legally required window and a side lot line, pursuant to ZR § 23-861; and

WHEREAS, the property owner proposes a distance of 6'-6" between a legally required window and the side lot line; and

WHEREAS, as to the side setback, DOB states that R5 zoning district regulations require that the portion of the building above a height of 33 feet shall be set back from the

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side lot line or rear lot line for a distance equal to one-half the height of that portion of the residential building which has a height greater than 33 feet, pursuant to ZR § 23-661; and

WHEREAS, DOB notes that a portion of the building exceeds 33 feet in height without providing the required side setback; and

WHEREAS, as to accessibility, DOB states that Local Law 58/1987 requires that either (1) one dwelling unit be adaptable to persons with physical disabilities; or (2) an entrance be provided that is accessible to persons with physical disabilities; and

WHEREAS, further, DOB states that, pursuant to Administrative Code § 27-123.1, a building classified in occupancy group J-3 that is being altered to contain three dwelling units must either provide an entrance that is accessible or provide one “adaptable dwelling unit” in compliance with Administrative Code §§ 27-123.19(b) and 27-292.8; and

WHEREAS, DOB notes that, the entrance to the building is by stairs, without a ramp, and that the plans fail to demonstrate that any of the dwelling units can easily be converted to be used by people with physical disabilities; and

WHEREAS, as to the egress from the third floor, DOB states that MDL § 144 requires that a building with three or more stories shall have at least two means of egress extending to the roof from an entrance story, street, court, or yard; and, pursuant to MDL § 146, there shall be at least two means of egress from each dwelling unit; and

WHEREAS, DOB notes that there is only one means of egress from the third-floor apartment; and

WHEREAS, the Board agrees with DOB that the building fails to comply with the noted regulations; and

WHEREAS, the Board finds that the addition of the fourth floor and third residential unit triggers all of the non-complying conditions and presents potential health and safety concerns; and

WHEREAS, the Board notes that the property owner does not claim that it complies with the noted requirements or that the requirements are not relevant for the existing building and have been applied erroneously; and

WHEREAS, instead, the property owner raises defenses about DOB’s process, professional accountability, and equity; and

WHEREAS, specifically, the property owner asserts that (1) DOB negligently issued the CO; (2) the current owner purchased the subject building in January 2007, five months after the CO was issued and did not have firsthand knowledge of the application or approvals; (3) the property owner paid \$1,100,000 for the building and the principles of equity require that the building continue to be used in its current state; and (4) if the Board were to revoke the CO, it would deprive the property owner of his property and render the property valueless and create an undue hardship; and

WHEREAS, the property owner alleges that DOB was negligent in not identifying the objections during inspections throughout the construction process; and

WHEREAS, the property owner claims that only the prior property owner had knowledge of the substance of the application to convert the property from a two-family to three-family building and the current property owner states that he relied on public records that the building could be occupied legally as a three-family building; and

WHEREAS, the property owner claims that because he did not have knowledge of the flaws in the application or erroneous issuance of the CO, he should not be held responsible for the actions of DOB or the prior owner’s deceased engineer; and

WHEREAS, the property owner notes that he cannot bring a malpractice claim against the engineer who filed the conversion application because the engineer is deceased and, therefore, he does not have recourse; and

WHEREAS, DOB states that the permit, which was issued pursuant to DOB’s Professional Certification program and was not the result of DOB plan review, was issued in error and that the non-compliance was identified during audits of the plans, as noted above; and

WHEREAS, the property owner does not refute that the permits were issued pursuant to the Professional Certification program; and

WHEREAS, the Board rejects the argument that DOB had any obligation to review the plan approvals and permit issuance prior to the commencement of construction or to perform an audit earlier in the process; and

WHEREAS, DOB has issued numerous Policy and Procedure Notices (PPNs) regarding the Professional Certification program, all of which state that random audits of a certain percentage of applications will be made within a specified time period, but also that DOB reserves its right to audit any application at any time; and

WHEREAS, none of the PPNs issued by DOB require a DOB audit of all Professionally Certified jobs; and

WHEREAS, as to the property owner’s assertions about not being held responsible for the prior property owner’s erroneous application, the Board notes that the prior property owner is a predecessor in interest and the subject property owner assumed responsibility for his and his agents’ actions; and

WHEREAS, the Board notes that the basis for the CO was erroneous building plans, approved through the Professional Certification process, which were not subject to DOB review; and

WHEREAS, the Board acknowledges the principle that government agencies, like DOB, maintain the ability to correct mistakes, such as the issuance of permits and issuance of the CO (see Charles Field Delivery v. Roberts, 66 N.Y.2d 516 (N.Y. 1985) in which the court states that agencies are permitted to correct mistakes as long as such changes are rational and are explained), and that DOB may not be estopped from correcting an erroneous approval of a building permit or issuance of a CO (see Parkview Assoc. v. City of New York, 71 N.Y.2d 274, 282, cert. den., 488 U.S. 801 (1988)); and; and

WHEREAS, the Board accepts that DOB’s discovery of non-compliance during an audit of plans, which had not

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been audited prior to permit issuance, is a rational basis for its request to revoke the CO; and

WHEREAS, the Board notes that DOB has given the property owner the opportunity to propose and discuss plan revisions, which would remedy the non-complying conditions and the property owner has failed to present an alternate plan, such as reducing the number of units back to two; and

WHEREAS, the Board notes that the property owner has had more than two years since DOB first issued its objections, to resolve the non-compliance and that, during that time, the building has been occupied contrary to the MDL, the Administrative Code, and the Zoning Resolution; and

WHEREAS, further, the Board granted a one-month adjournment during its hearing process to allow for the property owner to revise its plans and meet with DOB to resolve the outstanding non-compliance; and

WHEREAS, DOB stated, and the property owner did not disagree, that the property owner did not provide revised plans or offer any solutions to cure the non-complying, and in some cases potentially dangerous, conditions; and

WHEREAS, the property owner has maintained the untenable position that only a three-family building, as built, is viable; and

WHEREAS, DOB notes that the property owner suggested certain fire safety measures, but they were deemed to be inadequate; and

WHEREAS, as to the property owner's request that the Board consider the equities of the case, the Board responds, that it has considered the non-complying conditions and the public safety concerns associated with the conversion and enlargement of the frame building, and is not persuaded by the equity argument, even if it were within its purview to consider it; and

WHEREAS, a court could find it inequitable to allow the government to repudiate its prior conduct, the Board is an administrative body and is not empowered to provide an equitable remedy (see People ex rel. New York Tele. Co. v. Public Serv. Comm., 157 A.D. 156, 163 (3d Dep't 1913) (administrative body "ha[s] no authority to assume the powers of a court of equity"); see also Faymor Dev. Co. v Bd. of Sds. and Apps., 45 N.Y.2d 560, 565-567 (1978)); and

WHEREAS, further, the property owner claims that it is not economically or logistically possible for him to alter the building to resolve the outstanding objections; and

WHEREAS, specifically, the property owner states that: (1) the frame building cannot be converted to fireproof construction and would effectively require demolition; (2) the building had non-complying side yards before the conversion, thus, required side yards cannot be provided; and (3) side yard requirements conflict with parking requirements; and

WHEREAS, however, the property owner ultimately stated that (1) a ramp can be provided; and (2) a fire escape can be added at the third floor, in an effort to comply with the accessibility and egress objections; and

WHEREAS, the Board notes that certain regulations,

such as the side yard requirement, are only relevant with the addition of a third dwelling unit; ZR § 54-313 allows for the increase in non-complying side yard conditions in certain instances, but its applicability is limited to one and two-family homes; and

WHEREAS, the Board finds the assertion about the side yard requirement and parking to be unavailing; and

WHEREAS, the Board notes that the owner has stated that he is willing to install a ramp to provide access to the building and to install an additional means of egress from the fourth floor; and

WHEREAS, the Board notes that the proposal for access and egress could only potentially eliminate two of the outstanding objections and would not resolve all of the non-compliance that DOB has identified; and

WHEREAS, based on the evidence in the record, the Board thus finds that the construction of the subject building is non-compliant with the Multiple Dwelling Law, the Administrative Code, and the Zoning Resolution.

Therefore it is Resolved that the application of the Commissioner of the Department of Buildings seeking the revocation of Certificate of Occupancy No. 401686314F, is granted.

Adopted by the Board of Standards and Appeals, April 13, 2010.

217-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 514-516 East 6th Street, owner.

SUBJECT – Application July 7, 2009 – An appeal seeking to vary the applicable provisions under the Multiple Dwelling Law as it applies to the enlargement of non-fireproof tenement buildings. R7-2 zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of East 6th Street, between Avenue A and B, Block 401, Lots 17 and 18, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M., for an adjourned hearing.

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 233rd Street, Block 4972, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto.

For Administration: Marc Pogestin, Esq.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M., for continued hearing.

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1-10-A

APPLICANT – Elizabeth Safian, for Ciro Faiella & Joseph Faiella, owner.

SUBJECT – Application January 4, 2010 – Appeal to an Order of Closure issued by the Department of Buildings. Per the Order, the site’s commercial vehicle storage, public parking lot, trucking terminal and a salvage yard uses constitute an illegal use in a residential district contrary to Administrative Code Section 28-212.2. R5 zoning district. PREMISES AFFECTED – 527 East 86th Street, 116’ east of Foster Avenue, fronting East 86th Street, Block 7965, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Sheldon Lobel, Ciro Faiella, Frank R. Seddio, Anthony E. Mazza, Marie Mazella, Louis Collichio and Elizabeth Arciuolo.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, APRIL 13, 2010
1:30 P.M.**

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

ZONING CALENDAR

332-09-BZ

APPLICANT – Moshe M. Friedman, for Mordechai Treff, owner.

SUBJECT – Application December 22, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home, contrary to floor area and open space (§23-141(a)); less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1462 East 27th Street, west side 320’ north of intersection of East 27th Street and Avenue O, Block 7680, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated December 17, 2009, acting on Department of Buildings Application No. 320089872, reads:

“Proposed extension of an existing dwelling is contrary to:

- ZR Sec 23-141(a) floor area ratio
- ZR Sec 23-141(a) open space ratio
- ZR Sect 23-47 rear yards

and requires a special permit from the Board of Standards and Appeals as per Sec 73-622;” and

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

WHEREAS, a public hearing was held on this application on February 23, 2010 after due notice by publication in *The City Record*, with a continued hearing on March 23, 2010, and then to decision on April 13, 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, the subject site is located on the west side of East 27th Street, between Avenue N and Avenue O, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a two-family home with a floor area of 2,695 sq. ft. (0.45 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,695 sq. ft. (0.45 FAR) to 6,000 sq. ft. (1.0 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 59 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 23’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, at hearing, the Board directed the applicant to provide plans which reflect the required side and rear setbacks and which show what portions of the attic count towards floor area; and

WHEREAS, in response, the applicant submitted

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revised plans reflecting the side and rear setbacks and an attic plan indicating which portions of the attic are above 8'-0" in height and which portions are below 8'-0" in height; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a two-family home, which does not comply with the zoning requirements for FAR, open space ratio, and rear yards, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 9, 2010"-(13) sheets and "March 11, 2010"-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 6,000 sq. ft. (1.0 FAR); a minimum open space ratio of 59 percent; a side yard with a width of 7'-8" along the northern lot line; a side yard with a width of 26'-1" along the southern lot line; a rear yard with a minimum depth of 23'-0"; and a maximum total height of 38'-8½", as illustrated on the BSA-approved plans;

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

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

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

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, April 13, 2010.

11-10-BZ CEQR #10-BSA-042K

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 562 Court Street, LLC, owner; Brooklyn Kick Boxing Inc., lessee.

SUBJECT – Application January 26, 2010 – Special Permit (§73-36) to legalize and enlarge a physical culture establishment (*CKO Kickboxing*). C2-3/R6 zoning district. PREMISES AFFECTED – 562 Court Street (aka 21 Garnet Street) southwest corner Court Street and Garnet Street, Block 382, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD # 6BK

APPEARANCES –

For Applicant: Hiram Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 4, 2010, acting on Department of Buildings Application No. 320080210, reads in pertinent part:

“Proposed legalization and extension of use of an existing physical culture establishment in a C2-3 (R6) zoning district is contrary to ZR 32-10 and requires a special permit from the Board of Standards and Appeals pursuant to Section ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-3 (R6) zoning district, the legalization of a physical culture establishment (“PCE”) on the first floor of a five-story mixed-use commercial/residential building and to permit the extension of the use into a portion of the cellar, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 16, 2010 after due notice by publication in *The City Record*, and then to decision on April 13, 2010; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Court Street and Garnet Street, within a C2-3 (R6) zoning district; and

WHEREAS, the site is occupied by a five-story mixed-use commercial/residential building; and

MINUTES

WHEREAS, the PCE occupies a total floor area of 2,419 sq. ft. on the first floor, and proposes to occupy an additional 1,705 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE is operated as CKO Kickboxing; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 9:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 9:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, at hearing, the Board directed the applicant to remove a non-complying banner sign from the top of the subject building; and

WHEREAS, in response, the applicant provided photographs reflecting the removal of the sign; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

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

WHEREAS, the PCE will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since April 1, 2008, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between April 1, 2008 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA042K, dated March 5, 2010; and

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

WHEREAS, no other significant effects upon the

environment that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-3 (R6) zoning district, the legalization of a physical culture establishment on the first floor of an existing five-story mixed-use commercial/residential building and the extension of the PCE to a portion of the cellar, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 8, 2010" - Five (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 1, 2018;

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

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

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

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, April 13, 2010.

15-10-BZ

APPLICANT – Dennis D. Dell'Angelo, for Avraham Rosenshein, owner.

SUBJECT – Application February 1, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141); side yards (§23-461), and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 3114 Bedford Avenue, west side of Bedford Avenue, 100' north of Avenue J, Block 7588, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

MINUTES

APPEARANCES –

For Applicant: Marc Dell'Angelo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 14, 2010, acting on Department of Buildings Application No. 320093714, reads:

- “1. Proposed FAR and OSR constitutes an increase in the degree of existing non-compliance contrary to Sec. 23-141 of the NYC Zoning Resolution.
2. Proposed horizontal enlargement provides less than the required side yard contrary to Sec. 23-46 and less than the required rear yard contrary to Sec. 23-47 ZR;” 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 yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on March 9, 2010 after due notice by publication in *The City Record*, and then to decision on April 13, 2010; and

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

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

WHEREAS, the subject site is located on the west side of Bedford Avenue, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,486 sq. ft. (0.62 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,486 sq. ft. (0.62 FAR) to approximately 3,999 sq. ft. (0.99 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 58 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard with a width of 3’-10” along the southern lot line (a minimum width of 5’-0” is required for each side yard); and

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

of 30’-0” is required); and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, and side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received February 1, 2010”-(11) sheets and “February 24, 2010”-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 3,999 sq. ft. (0.99 FAR); an open space ratio of 58 percent; a side yard with a minimum width of 8’-8” along the northern lot line; a side yard with a minimum width of 3’-10” along the southern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

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

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, April 13, 2010.

MINUTES

160-08-BZ

APPLICANT – Dominick Salvati and Son Architects, for HJC Holding Corporation, owner.

SUBJECT – Application June 11, 2008 – Variance (§72-21) to permit the legalization of commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B), which is contrary to §22-00. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Bounded by Fountain, Stanley, Euclid and Wortman Avenues, Block 4527, Lot 61, 64, 67, 74-78, 80, 82, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Peter Hirschman, Frank Angelino and Jack Freeman.

For Opposition: Ronald J. Dillon.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 1:30 P.M., for continued hearing.

29-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to legalize and enlarge a synagogue (*Chabad Israeli Center*), contrary to lot coverage, front yards, side yards, and parking regulations. R3X zoning district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 1:30 P.M., for deferred decision.

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 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 May 25, 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: Chris Wright, Barbar Cohen and Kenneth Olson.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 1:30 P.M., for continued hearing.

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radoncic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safian.

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

272-09-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Bob Roberts, owner; The Fitness Place Astoria N.Y. Inc., lessee.

SUBJECT – Application September 24, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Lucille Roberts*) on the second and third floors in an existing three-story building. C5-2.5 (M.D) zoning district.

PREMISES AFFECTED – 32-62 Steinway Street, north side, 281' east of 34th Avenue, Block 656, Lot 61, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Jeffrey A. Chester.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 11, 2010, at 1:30 P.M., for decision, hearing closed.

MINUTES

282-09-BZ

APPLICANT – Steven Williams, P.E., for KC&V Realty, LLC, owner; Richard Ortiz, lessee.

SUBJECT – Application October 7, 2009 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Ritchie's Gym*) on the third floor of a four-story commercial building. C4-3 zoning district.

PREMISES AFFECTED – 54-19 Myrtle Avenue, northeast corner of Myrtle Avenue, intersection of Palmetto Street and Myrtle Avenue, Block 3445, Lot 9, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 1:30 P.M., for adjourned hearing.

297-09-BZ

APPLICANT – Marvin Mitzner, Esq., for 180 Ludlow Development LLC, owner.

SUBJECT – Application October 20, 2009 – Variance (§72-21) to allow for the conversion of a recently constructed commercial building for residential use, contrary to rear yard regulations (§23-47). C4-4A zoning district.

PREMISES AFFECTED – 180 Ludlow Street, east side of Ludlow Street approximately 125' south of East Houston Street, Block 412, Lot 48, 49, 50, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Ian Rasmussen.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 1:30 P.M., for adjourned hearing.

307-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Zahava Hurwitz and Steven Hurwitz, owner.

SUBJECT – Application November 9, 2009 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to open space and floor area (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1358-1360 East 28th Street, West side of East 28th Street between Avenue M and Avenue N. Block 7663, Lot 73 & 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

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

325-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Yetev Lev 11th Avenue, owner.

SUBJECT – Application December 7, 2009 – Variance (§72-21) to permit the proposed four-story and mezzanine synagogue, contrary to lot coverage (§24-11), rear yard

(§24-36) and initial setback of front wall (§24-522). R6 zoning district.

PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel, Abe Berkowitz.

For Opposition: Stuart A. Klein.

ACTION OF THE BOARD – Laid over to May 25, 2010 at 1:30 P.M., for continued hearing.

330-09-BZ

APPLICANT – Eric Palatnik, P.C., for Zhenia Levinsky, owner.

SUBJECT – Application December 18, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space, lot coverage and floor area (§23-141) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 230 Amherst Street, between Oriental Boulevard and Esplanade, Block 8738, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

18-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Fifty East Forty-Second Company, LLC, owner; East 42nd Street Fitness, LLC d/b/a Lucille Roberts, lessee.

SUBJECT – Application February 2, 2010 – Special Permit (§73-36) to allow a physical culture establishment (*Lucille Roberts*) in the cellar and a portion of the first floor in an existing 26-story building. C5-3 zoning district.

PREMISES AFFECTED – 50 East 42nd Street, Southeast corner of Madison Avenue, Block 1276, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

MINUTES

20-10-BZ

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner; Soul Cycle East 83rd Street, LLC, lessee.
SUBJECT – Application February 8, 2010 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment (*Soul Cycle*) on the ground floor of an existing six-story building. C1-9 zoning district.

PREMISES AFFECTED – 1470 Third Avenue, a/k/a 171-173 East 83rd Street, northwest corner of East 83rd Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino and Elizabeth Cutler.

ACTION OF THE BOARD – Laid over to May 11, 2010 at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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331-09-BZ	141 East 45 th Street, Manhattan
19-10-BZ	100 Oak Point Avenue, Bronx

DOCKET

New Case Filed Up to April 20, 2010

54-10-BZ

150(c) Sheepshead Bay Road, south side of Avenue Z between East 15th and East 16th Street., Block 7460, Lot(s) 3, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-44) to permit reduction in required parking spaces. C4-2 district.

55-10-BZ

40-22 Main Street, Northwest corner of Main Street and 40th Road., Block 5036, Lot(s) 42, Borough of **Queens, Community Board: 7**. Special Permit (73-44) to permit reduction in required parking for ambulatory and diagnostic treatment center. C4-2/C4-3 district.

56-10-BZ

3424 Quentin Road, Southeast corner of the intersection of Quentin Road and E. 35th Street, fronting Quentin Road. The parcel id further bound by E. 34th Street to the south., Block 7717, Lot(s) 56, Borough of **Brooklyn, Community Board: 18**. Variance (72-20) to construct a telecommunications facility on the rooftop of an existing building. C1-2/R3-2 district.

57-10-A

517 53rd Street, Between Fifth Avenue and Sixth Avenue., Block 808, Lot(s) 69, Borough of **Brooklyn, Community Board: 7**. Appeal for common law vested rights to continue development under the prior zoning district. R6-B 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

MAY 11, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 11, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

887-54-BZ

APPLICANT – Eric Palatnik, Esq., for 218 Bayside Operating LLC, owner.

SUBJECT – Application March 5, 2010 – Extension of Term (11-411) for the continued use of Gasoline Station (*British Petroleum*) with accessory convenience store (*7-Eleven*) which expires on September 23, 2010. C2-2/R6B zoning district.

PREMISES AFFECTED – 218-01 Northern Boulevard, between 218th and 219th Street, Block 6321, Lot 21, Borough of Queens.

COMMUNITY BOARD #11Q

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

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

COMMUNITY BOARD #5M

189-96-BZ

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

4-00-BZ

APPLICANT – Eric Palatnik, P.C., for 243 West 30th Realty, LLC, owner; West Garden Incorporated, lessee.

SUBJECT – Application March 22, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued use of a Physical Culture Establishment (West Garden) which expires on May 30, 2010. M1-5 zoning district.

PREMISES AFFECTED – 243 West 30th Street, north side of West 30th Street, east of 8th Street, Block 780, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #5M

103-05-A

APPLICANT – Rothkrug, Rothkrug, Spector, LLP, for Main Street Make Over 2, Incorporated, owner.

SUBJECT – Application April 20, 2010 – Remand from the Appellate Division for a determination on the issue of whether DOB issued the permit in error based on alleged misrepresentations made by the owner during the permit application process with respect to the plans to demolish the existing home and to construct a new home on a different portion of the lot.

PREMISES AFFECTED – 366 Nugent Street, southwest corner of the intersection of Nugent Street and Spruce Street, Block 2284, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEALS CALENDAR

89-07-A thru 95-07-A

APPLICANT – NYC Board of Standards and Appeals

OWNER: Pleasant Plains Holding LLC

SUBJECT – Application for dismissal for lack of prosecution – Proposal to build three-two family and one-one family homes located within the bed of a mapped street (Thornycroft Avenue) contrary to Section 35 of the General City Law. R3-2 zoning district. Series cases 89-07-A thru 95-07-A.

PREMISES AFFECTED – 460-480 Thornycroft Avenue and 281 Oakdale Street, Staten Island, Block 5238, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #3SI

43-08-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.

SUBJECT – Application February 28, 2008 – Proposed construction in the bed of mapped street contrary to General City Law Section 35. Series case - 43-0-A, 3-10-A, 4-10-A.

PREMISES AFFECTED – 144-25 Bayside Avenue, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 43, Borough of Queens.

COMMUNITY BOARD #7Q

CALENDAR

3-10-A - 4-10-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application January 5, 2010 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35 . R2A zoning district.
PREMISES AFFECTED – 144-25 Bayside Avenue and 29-46 145th Street, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 48, Borough of Queens.
COMMUNITY BOARD #7Q

193-09-A

APPLICANT – Slater & Beckerman, LLP, for Margaret Sausa, owner.
SUBJECT – Application June 11, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R5 Zoning district . R4-1 Zoning district.
PREMISES AFFECTED – 78-46 79th Place, west side of 79th Place, between Myrtle Avenue and 78th Avenue, Block 3828, Lot 73, Borough of Queens.
COMMUNITY BOARD #5Q

MAY 11, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 11, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

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

189-09-BZ

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.
SUBJECT – Application June 10, 2009 – Variance (§72-21) to permit the legalization of the existing mosque and Sunday

school. The proposal is contrary to use and maximum floor area ratio (42-00 and 43-12). M3-1 zoning district.
PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.
COMMUNITY BOARD #1SI

190-09-A

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.
SUBJECT – Application June 10, 2009 – Legalization of an existing mosque constructed within the bed of a mapped street contrary to General City Law Section 35. M3-1 Zoning district.
PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.
COMMUNITY BOARD #1SI

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

30-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Susan Shalitzky, owner.
SUBJECT – Application March 8, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (23-141) and less than the required rear yard (23-47). R-2 zoning district.
PREMISES AFFECTED – 1384 East 22nd Street, west side of East 22nd Street, between Avenues M and N, Block 7657, Lot 56, Borough of Brooklyn.
COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, APRIL 20, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

1045-67-BZ

APPLICANT – Michael A. Cosentino, for Thomas Abruzzi, owner.

SUBJECT – Application October 30, 2009 – Extension of term of a variance (§72-21) for an accessory parking lot to be used for adjoining commercial uses, which expired on June 27, 1998; waiver of the Rules; and an Amendment to eliminate the term. R2 zoning district

PREMISES AFFECTED – 160-10 Crossbay Boulevard, Crossbay Boulevard between 160th Avenue and 161st Avenue, Block 14030, Lot 6, 20, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Michael A. Cosentino and Tony Cosentino.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M., for decision, hearing closed.

199-00-BZ

APPLICANT – John C. Chen, for En Ping Limited, owner; Valentine E. Partner Atlantis, lessee.

SUBJECT – Application March 3, 2010 – Extension of Term of a Special Permit (§73-244) for an Eating and Drinking Establishment (*Club Atlantis*) without restrictions on entertainment (UG12A) which expired on March 13, 2010. Waiver of the Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 76-19 Roosevelt Avenue, north west corner partly fronting Roosevelt Avenue and 77th Street, Block 1287, Lot 37, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: John C. Cheng

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for decision, hearing closed.

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owner.

SUBJECT – Application February 5, 2010 – Extension of Term (§72-01 & §72-22) of a variance (§72-21) to allow a physical culture establishment (*Squash Fitness Center*) to operate in a C1-4 zoning district, which will expire on July 17, 2011; Extension of Time to obtain a certificate of occupancy, which expired on January 28, 2010; Waiver of the Rules.

PREMISES AFFECTED – 107-24 37th Avenue aka 37-16 108th Street, Southwest corner of 37th Avenue and 108th Street, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M., for continued hearing.

121-02-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, 9215 4th Avenue, LLC, owner.

SUBJECT – Application November 11, 2010 – Amendment (§73-11) to a special permit (§73-11) for an enlargement of a Physical Culture Establishment. C8-2 zoning district.

Amendment (§73-11) to a special permit (§73-11) for an enlargement of a Physical Culture Establishment. C8-2 zoning district.

PREMISES AFFECTED – 9215 4th Avenue, east side of 4th Avenue, 105' south of intersection with 92nd Street, Block 6108, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #10BK

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 May 11, 2010, at 10 A.M., for decision, hearing closed.

369-03-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 99-01 Queens Boulevard LLC, owner; TSI Rego Park LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application December 3, 2009 – Amendment to a variance (§72-21) for a physical culture establishment (*New York Sports Club*) to change in the owner/operator, decrease floor area, modify days and hours of operation, and eliminate parking condition. C1-2/R7-1 zoning district.

PREMISES AFFECTED – 99-01 Queens Boulevard, Northwest corner of Queens Boulevard and 67th Street, Block 2118, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

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For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M., for decision, hearing closed.

363-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for 6002 Fort Hamilton Parkway Partners, owners; Michael Mendelovic, lessee.

SUBJECT – Application March 25, 2010 – Extension of Time to Complete Construction of a previously approved variance (§72-21) to convert an industrial building to commercial/residential use, which expired on July 19, 2009; Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 6002 Fort Hamilton Parkway, south of 61st, east of Hamilton Parkway, north of 60th Street, Block 5715, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Tzvi Friedman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for decision, hearing closed.

58-07-BZ

APPLICANT – Eric Palatnik, P.C., for Vito Savino, owner.

SUBJECT – Application October 27, 2009 – Amendment to previously granted variance for a residential building to include two additional objections: dwelling unit size (§23-23) and side yard regulations (§23-461(a)). R3A zoning district.

PREMISES AFFECTED – 18-02 Clintonville, Clintonville and 18th Avenue, Block 4731, Lot 9, Borough of Queens.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

280-09-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 330 West 86th Street, LLC, owner.

SUBJECT – Application January 26, 2010 – Appeal challenging Department of Building's authority under the City Charter to interpret or enforce provisions of Article 16 of the General Municipal Law as it applies to the construction of a proposed 16 story+ penthouse. R10A Zoning district.

PREMISES AFFECTED – 330 West 86th Street, south side of West 86th street, 280' west of the intersection of Riverside Drive and West 86th Street, Block 1247, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Albert Fredericks.

For Opposition: Mark Davis, Department of Buildings.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the appeal comes before the Board in response to a Final Determination letter dated July 13, 2009 and affirmed on September 8, 2009, from the Manhattan Borough Commissioner of the Department of Buildings (“DOB”) (the “Final Determination”) addressed to a representative of the subject property owner, with respect to DOB Application No. 110193102; and

WHEREAS, the Final Determination states, in pertinent part:

Article 16 of the General Municipal Law (‘GML’) limits development of subject buildings to low rise structures with one to four dwelling units. As your client’s proposed development is more than 75 feet in height, it is a ‘high rise’ as defined in the New York City Building Code and thus not in compliance with the requirements of the GML, the applicability of which, to the subject property has been confirmed by the Court of Appeals decision in 328 Owners Corp. v. 330 West Oaks Corp. and the City of New York, reported at 8 N.Y. 3d 372 (2007); and

WHEREAS, a public hearing was held on this appeal on January 26, 2010, after due notice by publication in *The City Record*, with a continued hearing on March 23, 2010, and then to decision on April 20, 2010; and

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

WHEREAS, DOB and the building owner, 330 West 86th Street LLC, (the “Appellant”) have been represented by counsel throughout this appeal; and

WHEREAS, during the hearing process, Board staff

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reached out to HPD to inquire if it had a direct response to the matters of the appeal; and

WHEREAS, HPD ultimately submitted on the matters raised during the appeal, in support of DOB's position as expressed through its submissions and testimony; and

Procedural History

WHEREAS, the subject appeal concerns the proposed construction of a 17-story (including penthouse) four-unit building at 330 West 86th Street on a site that is currently occupied by a five-story eight-unit building, within an R10A zoning district; and

WHEREAS, the site is the subject of a 1999 Urban Development Action Area Project ("UDAAP"), which, at the Department of Housing Preservation and Development's ("HPD") request, the City, which had acquired the site through an *in rem* proceeding, conveyed to the then-tenants – organized as 330 West Oaks Corp. ("Oaks Corp.") – through the accelerated UDAAP process; and

WHEREAS, in approving the project, City Council waived the otherwise applicable requirements that a UDAAP initiative be part of a designated Urban Development Action Area ("UDAA") and undergo the more extensive Urban Land Use Review Procedure ("ULURP") review; and

WHEREAS, in 2001, Oaks Corp. sold the building to the Appellant; and

WHEREAS, in anticipation of that sale, the cooperative corporation that owns the adjacent building to the east at 328 West 86th Street ("328 Owners Corp."), commenced litigation against Oaks Corp. and the City asserting that (1) the site could only be used for rehabilitation or conservation of the existing building or the construction of a new one to four unit dwelling, (2) the new owner must adhere to the restrictions associated with the grant and the original owner, and, in the alternative, (3) the City's conveyance to Oaks Corp. should be declared null and void; 328 Owners Corp. added the Appellant as a party to the litigation after it acquired the site; and

WHEREAS, the City asserted cross claims that (1) the site could only be used for rehabilitation or conservation of the existing building and (2) the owner and all successors must be restricted to using the site as described in the associated deed (the "Deed"); and

WHEREAS, the Court of Appeals, by decision dated April 3, 2007, determined that (1) there is a restriction limiting the use of the property to the rehabilitation or conservation of the building or the construction of a new one to four unit building, and (2) such a restriction is binding on subsequent owners of the site, including the Appellant (although the Court states that a property owner may seek to have the restrictions extinguished, pursuant to Real Property Actions and Proceedings Law § 1951, so that they would not run in perpetuity); and

WHEREAS, the Court noted that Article 16 of the General Municipal Law ("GML"), which sets forth the UDAA Act, should be read into the Deed, but that neither the Deed nor the GML limits the construction on the site to conservation of the existing building; and

WHEREAS, the outstanding question about the effective period of the Deed restrictions is not the subject of this appeal,

which is limited to the height of the building; and

WHEREAS, after the Court of Appeals decision, the Appellant filed an application at DOB for a new building permit in June 2008; the Appellant states that a 17-story building has been under DOB review since at least 2000 at which time DOB determined that the proposed height was consistent with ZR § 23-692 and eliminated an objection to the building's height; and

WHEREAS, under subsequent application, the project failed zoning review and received a notice of objections, which includes the following:

street wall above the height of 100 feet (width of abutting street) does not contiguously abut and fully attached to existing street wall of highest adjacent building contrary to ZR 23-692. Portion of the building which does not comply with this provision, exceeds height limitation of ZR 23-692; and

WHEREAS, DOB subsequently provided a reconsideration on January 8, 2009 which reflects that it accepted the height of the proposed building, as before, because it matches the height of the adjacent building at 328 West 86th Street and thus complies with ZR § 23-692; and

WHEREAS, however, on May 7, 2009, DOB issued a notice of objections, which states that per the GML:

The proposed height fails to comply with and is in excess of the use restrictions of Article 16 of the General Municipal Law, which restrictions have been confirmed by and are reflected in the final judgment and permanent injunction affirmed by NY Court of Appeals in 328 Owners Corp. v. 330 West Oaks Corp., and the City of New York, reported at 8 N.Y.3d 372 (2007). The proposed building meets the definition of high rise per Building Code because it has occupied floors located more than 75 feet (22 860 mm) above the lowest level of fire department vehicle access; and

WHEREAS, the May 7, 2009 objection is the basis for the Final Determination on appeal; and

WHEREAS, the Appellant asserts that DOB's determination is erroneous because (1) enforcement of the UDAA Act falls outside of DOB's authority under the City Charter and (2) nothing in the UDAA Act or in any administrative determination, court decision or legal instrument concerning the site imposes such a height limit; and

Relevant Provisions of the Deed and the General Municipal Law

WHEREAS, the pertinent provision of the Deed between the City and Oaks Corp. is as follows:

WHEREAS, the project to be undertaken by Sponsor ('Project') consists solely of the rehabilitation or conservation of existing private or multiple dwellings or the construction of one to four unit dwellings without any change in land use permitted by existing zoning...; and

WHEREAS, the source of the Deed language is within the GML's provisions setting forth the criteria for the accelerated UDAAP process; GML §§ 693 and 694, which state, in pertinent part:

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. . . if a proposed urban development action area project is to be developed on an eligible area and consists solely of the rehabilitation or conservation of existing private or multiple dwellings or the construction of one to four unit dwellings without any change in land use permitted by local zoning, the governing body . . . may waive the area designation requirement. (GML § 693)

Any approval of an urban development action area project shall be in conformance with the standards and procedures required for all land use determinations pursuant to general, special or local law or charter . . . (GML § 694(5)); and

The Appellant's Primary Arguments

A. Enforcement of the UDAA Act is Beyond DOB's Statutory Jurisdiction

WHEREAS, the Appellant, citing Abiele Contracting, Inc. v. New York City School Construction Authority, 91 N.Y.2d 1, 10 (1997); Finer Lakes Racing Ass'n. Inc. v. New York State Racing and Wagering Board, 45 N.Y.2d 471, 480, asserts that an administrative agency can only act within the scope of the authority granted it by statute and that a determination made in excess of that authority is unlawful and void; and

WHEREAS, the Appellant cites to City Charter § 643 for the function of DOB; City Charter § 643, states, in pertinent part:

The department shall enforce, with respect to buildings and structures, such provisions of the building code, zoning resolution, Multiple dwelling law, labor law and other laws, rules and regulations as may govern construction, alteration, maintenance, use occupancy, safety, sanitary conditions, mechanical equipment and inspection of buildings or structures of the city; and

WHEREAS, the Appellant cites to City Charter § 645, which provides that the Commissioner of Buildings is empowered:

(1) to examine and approve or disapprove plans for the construction or alteration of any building or structure... (2) to require that the construction or alteration of any building or structure, including the installation or alteration of any service equipment therein, shall be in accordance with the provisions of law and the rules, regulations and orders applicable thereto... (3) to issue certificates of occupancy for any building or structure situated in the city; and

WHEREAS, the Appellant asserts that DOB's review, pursuant to the Charter, is limited to the enforcement of technical standards found in the Building Code, the Zoning Resolution, and the Multiple Dwelling Law; and

WHEREAS, the Appellant relies on Matter of Tafnet Realty Corp. v. New York City Dep't. of Buildings, 116 Misc.2d 609 (Sup. Ct. NY Co. 1982), which involved DOB's issuance of housing violations against a hotel, for matters including rent control regulations and tenant harassment; and

WHEREAS, the Tafnet court held that:

the duties of the Buildings Commissioner, as set forth

in the city charter, deal 'exclusively' with structural and technical matters: the enforcement of the Building Code, the inspection of premises and the review of plans and issuance of permits. . . General living conditions are not within [the Commissioner's] jurisdiction; neither are violations of other laws, civil, or criminal, which may occur within buildings or structures; and

WHEREAS, the Appellant asserts that the UDAA Act does not establish technical standards and specific regulations applicable to the construction, alteration or use of buildings but, rather, addresses community preservation and redevelopment goals; and

WHEREAS, the Appellant asserts that the UDAAP program is administered by HPD and DOB does not have a specific role in its implementation; and

WHEREAS, the Appellant asserts that GML § 692 and City Charter § 1802(3) grant HPD the authority for implementation and oversight of UDAAP projects and further that HPD has its own set of regulations which describe procedure and restrictions with more specificity; and

WHEREAS, the Appellant asserts that the primary mechanism for ensuring compliance with the restrictions of a particular UDAAP project are set forth in a deed or lease or other instrument associated with the City's conveyance of the property; and

WHEREAS, the Appellant asserts that HPD has the enforcement authority and it may enforce the restrictions through its own process or in collaboration with the New York City Law Department; and

WHEREAS, the Appellant asserts that in the absence of express authority to DOB for the enforcement of UDAAP-related interests, HPD maintains the appropriate authority; and

WHEREAS, the Appellant distinguishes the Building Code, Zoning Resolution and Multiple Dwelling Law from the UDAA Act, asserting that the latter does not establish technical standards and specific regulations applicable to construction, alteration or use of buildings but which is designed for public policy initiatives; and

WHEREAS, the Appellant likens UDAAP to the Urban Renewal program; the Appellant cites to a letter from DOB in response to an inquiry about the enforcement of Urban Renewal provisions and DOB stated that it did not interpret or enforce the noted contract terms and referred the inquiry to HPD; and

WHEREAS, DOB disagrees with the Appellant and states that its Charter authority encompasses the UDAA Act for purposes of determining whether a new building application conforms with legal requirements; and

WHEREAS, DOB asserts that the enforcement of the UDAA Act, pertaining to new construction on accelerated UDAAP sites, such as the subject site, is within its jurisdiction; and

WHEREAS, DOB cites to its broad authority as set forth in City Charter §§ 643 and 645, noted above; and

WHEREAS, DOB asserts that nothing in the express language of the Charter prohibits it from considering the provisions of the UDAA Act in connection with new building

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applications; and

WHEREAS, DOB states that HPD does not have a statutory role in the disposition of a new building application or in the enforcement of the UDAA Act's provisions pertaining to new construction; and

WHEREAS, DOB states that the Law Department has advised that under the UDAA Act, HPD's role in accelerated UDAAPs consists of selecting City-owned properties for disposition pursuant to the statute, selecting grantees, negotiating terms, obtaining necessary public approvals, drafting the deed and conducting the closings; and

WHEREAS, accordingly, DOB has determined that HPD's role ends after the disposition and that DOB has the authority to enforce provisions of law, but not the Deed, which remains subject to HPD; and

WHEREAS, DOB states that, in the subject case, it is not enforcing the Deed, but rather the law; and

WHEREAS, DOB states that the UDAA Act sets forth specific limitations as to what may or may not lawfully be constructed upon the site and, thus, the provisions fall within its purview; and

WHEREAS, DOB states that the UDAA Act is silent as to the authority to enforce construction limitations (as opposed to Deed restrictions) and, thus, it is appropriately within DOB's authority since it is charged with enforcing construction laws, regulations and rules upon buildings and structures within New York City; and

WHEREAS, DOB distinguishes UDAA Act enforcement responsibilities, which it assumes because it finds that no other agency is identified as enforcing it, from the provisions at issue in Tafnet, where the Court identified the operative agencies who had enforcement powers, rather than DOB; and

WHEREAS, DOB asserts that in the absence of express authority, it may invoke broad Charter authority because no other agency has broad authority to enforce construction-related regulation; and

WHEREAS, HPD agrees with DOB that DOB has jurisdiction to enforce the UDAA Act; and

WHEREAS, HPD submits that DOB exercises jurisdiction from a practical standpoint because only DOB reviews a proposal at its inception and could stop a project before construction begins; and

WHEREAS, HPD asserts that its process of enforcement would be less efficient than that exercised by DOB because it could not raise a claim that a deed was violated until after the property owner demolished the building and construction on a new one began; and

WHEREAS, the Board notes, that although the parties disagree as to whether HPD or DOB has the authority to enforce the UDAA Act, the parties agree that the enforcement of the Deed is properly within the jurisdiction of HPD as grantor; and

WHEREAS, the Board notes that the true conflict is not over the jurisdiction but that the crux of the subject appeal concerns the discrete issue of whether, pursuant to the UDAA Act, there is a height limitation (other than by zoning) for a building on a site subject to an accelerated

UDAAP; and

WHEREAS, accordingly, although all parties – the Appellant, DOB, and HPD - agree that HPD has jurisdiction over the Deed, the question remains as to which agency maintains jurisdiction to enforce the UDAA Act from which the Deed arises; and

WHEREAS, the Board agrees that DOB has broad powers under the Charter to review and enforce construction-related regulations; and

WHEREAS, the Board appreciates that in certain instances DOB has express authority and, in other instances, it derives its authority from a more general understanding of the Charter powers and a recognition of DOB's unique position as the reviewer of building plans and issuer of building permits; and

WHEREAS, the Board finds that there are instances when DOB invokes its express authority to enforce statutes and there are instances when DOB is restricted from enforcing certain statutes (such as particular provisions of the Housing Maintenance Code and the Multiple Dwelling Law); and

WHEREAS, the Board notes that there may be other instances where it is appropriate to identify concurrent authority between DOB and another agency; and

WHEREAS, the Board notes that concurrent authority may manifest as multiple agencies whose approval is required for a single application review different elements of the same application; this includes instances when, in the process of reviewing plans, DOB may be alerted to another agency's jurisdiction, as it is with landmarks, wetland, and flood hazard regulations and thus a form of concurrent jurisdiction is evident; and

WHEREAS, the Board notes that DOB provided examples of concurrent jurisdiction with other agencies, but the Board distinguishes those examples from the subject of the appeal because the proffered agencies maintain a separate review process and enforcement practice; and

WHEREAS, the Board agrees with DOB that it exercises a range of so-called enforcement practices from direct to indirect, when otherwise not restricted from enforcement, and that a broad reading of the Charter authority suggests that the elements of the UDAA Act could fit within DOB's enforcement powers; and

WHEREAS, however, the Board respectfully disagrees that the subject criteria DOB seeks to enforce is within its exclusive authority; and

WHEREAS, the Board's conclusion arises from the following: (1) the UDAA Act is a statute related to process rather than the Building Code or other body of technical regulations, (2) unlike in the concurrent jurisdiction examples, DOB would generally not be aware that a project was subject to UDAAP because that is not one of the myriad criteria identified in DOB applications, and (3) it is not clear that DOB consistently reviews and enforces UDAA Act-related criteria in its review process; and

WHEREAS, as to HPD's assertions about procedural efficiency, the Board disagrees that DOB should have the enforcement power because it is in a better position than HPD to monitor compliance because, as noted, DOB may not be

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aware of UDAAP status in the course of its ordinary plan review and the Board finds that HPD would have the ability to oppose a project that does not comport with its Deeds prior to the completion of demolition and commencement of new construction; and

WHEREAS, however, the Board finds that the Appellant overstates the limits imposed on DOB's authority by Tafnet and finds that building height and number of dwelling units can readily be viewed as technical standards, reflected on building plans and within DOB's Charter powers, which can be distinguished from social and building management issues identified in Tafnet; and

WHEREAS, accordingly, the Board's determination is limited to the subject appeal and it finds that there may be UDAA Act, or related provisions that are within DOB's purview pursuant to its Charter power; the extent of DOB's authority need not be answered within this appeal since the underlying question is limited to whether the Appellant may proceed with the proposed plans to construct a building that exceeds the Building Code definition of low-rise; and

WHEREAS, further, the Board accepts that DOB has broad authority and that it may identify matters during its plan review, which are not generally before it and additionally the Board finds it reasonable for DOB to alert another agency when it identifies a non-complying condition, pursuant to a construction-related or other regulation; and

B. There is Not Any Basis for Height Restrictions on the Proposed Building

WHEREAS, the Appellant asserts that even if the UDAA Act were within DOB's jurisdiction, there is no basis for the requirement that a new building be low-rise as defined by the Building Code; and

WHEREAS, the Appellant asserts that the UDAA Act provides procedural guidelines as to when the accelerated UDAAP is permitted, including instances where the project "consists solely of the rehabilitation or conservation of existing private or multiple dwellings or the construction of one to four unit dwellings without any change in land use permitted by local zoning . . ." See GML §§ 693, 694(5) and 695(6)(d); and

WHEREAS, the Appellant asserts that the UDAA Act's only reference to low-rise structures is found in GML § 694(1), which states that "the agency shall prepare or cause to be prepared, with provisions which, where appropriate, are expressly designed to encourage and stimulate businesses experienced in the development of one to four family low-rise residential structures or minority owned enterprises . . ."; and

WHEREAS, the Appellant finds that the noted provision is to be read broadly and is far from establishing a low-rise mandate for all UDAAP projects; and

WHEREAS, the Appellant asserts that the language of the statute is clear and unambiguous and thus should be construed so as to give effect to its plain meaning and that the only restriction to projects within the accelerated UDAAP program are that it be limited to "the construction of one to four unit dwellings . . . without any change in land use permitted by local zoning . . ."; and

WHEREAS, the Appellant states, similarly, that the Mayor's and City Council's resolutions associated with the

UDAA Act and land disposition nor the Deed which effectuated the conveyance to Oaks Corp. contain any provision that limits new construction to a low-rise building or imposes any other building height limit; and

WHEREAS, the Appellant states that GML § 695(5) provides that any deed conveying UDAAP project property to a private entity shall contain the provisions describing and restricting the use of the property; the pertinent language about the building structure is on the first page of the Deed, as noted above; and

WHEREAS, specifically, DOB asserts that the legislative history and judicial interpretation of the UDAA Act establish bright-line, nondiscretionary requirements that new buildings subject to the UDAA Act must consist solely of one to four-unit dwellings, and that such must be low-rise; and

WHEREAS, accordingly, DOB maintains its position that the proposal does not comport with relevant provisions of the UDAA Act because the proposed 17-story building is not low-rise, as defined at Building Code § 403.1; and

WHEREAS, DOB interprets there to be a restriction to one to four-unit low-rise buildings based on the (1) identification of such language in the legislative history and (2) its interpretation of New York City Coalition for the Preservation of Gardens v. Giuliani, 175 Misc. 2d 644 (Sup. Ct. N.Y. Co., 1997), an Article 78 proceeding that challenged a plan to replace community gardens on City-owned lands with new development through the accelerated UDAAP mechanism; and

WHEREAS, although DOB states that there are bright-line requirements, it looks to the legislative history of the UDAA Act, which mentions the construction of "one and two family low rise residential structures" as part of the legislative purpose of fostering development or redevelopment; the specified dwelling type was expanded to include one to four family low-rise residential development; and

WHEREAS, DOB cites to the Court's decision in Gardens, stating that the Court found the purpose of the UDAA Act was "to facilitate the rehabilitation of salvageable existing private or multiple dwellings and the replacement, in kind, of structures that were lost, abandoned or destroyed . . . [or] to facilitate replacement of housing on an as is basis . . . so as to restore a neighborhood. . .to its original character." 175 Misc. 2d at 659-661; and

WHEREAS, DOB further cites the Court in Gardens for noting that the legislative history of the UDAA Act and the phrase "consists solely of the rehabilitation or conservation of existing private or multiple dwelling or the construction of one to four-unit dwellings" "strongly suggests that the phrase was meant to assure that waivers of review of speedy development without land use scrutiny would be confined to 'as-is' construction and would not exempt high-rise buildings . . ." Id., at 661; and

WHEREAS, DOB asserts that the proposed building, which is neither low-rise, per the Building Code, nor in-kind replacement of the existing five-story building creates non-compliance with the Building Code's definition of low-rise and the building plans cannot be approved; and

WHEREAS, DOB states that a height limitation was not

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in the Deed because it was HPD's intent that the building would be conserved and not reconstructed; and

WHEREAS, HPD concurs with DOB that the text, legislative history, and judicial interpretation of the UDAA Act establish clear, nondiscretionary requirements that new buildings on subject sites are limited to one to four-unit dwellings that are low-rise; and

WHEREAS, the Board has reviewed the arguments from (1) the Appellant that the UDAA Act language is unambiguous and from (2) DOB and HPD that the legislative history and case law inform the UDAA Act to require a height limitation of 75 feet on the subject UDAAP site; and

WHEREAS, the Board agrees with the Appellant that the language of the UDAA Act, as incorporated into the Deed, is unambiguous and does not set forth a prohibition on constructing a 17-story building with four residential units; and

WHEREAS, specifically, the Board finds that the UDAA Act language relevant to the accelerated UDAAP process associated with the subject site is clear and does not state any height limitation, as found in the Building Code, or otherwise; and

WHEREAS, because the language is clear and unambiguous, the Board does not find it necessary to examine the legislative history or case law, but it has considered DOB's references in support of its argument to analyze the intent of the text; and

WHEREAS, as to intent, the Board finds that neither the legislative history nor case law reaches DOB's conclusion that the Building Code definition of "low-rise" should be read into the statute to limit the height of the proposed building to 75 feet; and

WHEREAS, the Board finds the noted references to "low-rise" (1) fail to establish a nexus to the Building Code definition and (2) fail to establish a bright-line nondiscretionary requirement to impose a height limitation of 75 feet, pursuant to an imported Building Code definition; and

WHEREAS, the Board agrees with DOB that the Gardens court limits the bulk of the construction in that case, but also notes that the facts are not on point with the subject case nor does the Court set forth a requirement that construction on sites subject to an accelerated UDAAP be limited to a height of 75 feet; and

WHEREAS, specifically, the primary context of the Gardens case was to determine whether SEQRA review could be waived for a proposed 98-unit project; and

WHEREAS, in its discussion of the waiver for an accelerated UDAAP, which was also sought and granted, the Court discussed a purpose of the UDAAP initiative as:

to facilitate the rehabilitation of salvageable existing private or multiple dwellings and the replacement, in kind, of structures that were lost, abandoned or destroyed. The history and purpose of the law suggests, then, that this section was meant to facilitate replacement of housing on an as-is basis and in accordance with existing zoning regulations so as to restore a neighborhood as quickly and economically as possible to its original character. Id., at 661; and

WHEREAS, the Court also states:

the Legislature's declared purpose was to provide incentives for the proper redevelopment of such areas, to enlist participation by established entrepreneurs experienced in the development of low-rise residential structures meant to replace those generally found in such urban areas, and to stimulate private investment and redevelopment to prevent the spread of slums and blight. Id., at 660; and

WHEREAS, the Board notes that the Court recognizes that the anticipated nature of construction was in-kind replacement or that which may be performed by experienced low-rise developers; and

WHEREAS, however, the Board notes that a reference to in-kind replacement and its performance by those with experience in low-rise construction does not set forth a bright-line regulation as to height; and

WHEREAS, in fact, the Board notes that in-kind replacement does not necessarily exclude the construction of a building with a height greater than 75 feet; and

WHEREAS, the Board notes that the proposed building, which DOB specifically noted is aligned with adjacent buildings, is compatible with the neighborhood's character; this is another distinction from Gardens in which the purported absence of such contextual development was a primary concern; and

WHEREAS, the Board acknowledges that City Council, the Mayor, nor HPD may have contemplated that a four-unit building would reach the height of 170 feet or 17 stories, such as the proposed building, but, disagrees with DOB that there is a bright-line nondiscretionary requirement to restrict that height, pursuant to a definition found in a separate statute; and

WHEREAS, the Board appreciates that in 1999 the parties may not have even initially contemplated reconstruction, however, the language of the UDAA statute and the Deed, expressly provide for new construction, as the Court of Appeals affirmed in the 328 Owners Corp. decision; and

WHEREAS, the Board notes that the Court of Appeals in 328 Owners Corp. addressed the matter of intent, in its discussion of whether construction should be limited to conservation of the existing building, and that it ruled that, notwithstanding the original intent for the conservation of the existing building, the Deed does not limit the project to its conservation; and

WHEREAS, the Board notes that the Court did not rule on the subject of height limitations but, a determination that it not be limited to low-rise construction as may have been contemplated, supports the conclusion that the Court did not allow the known intent at the time of the conveyance to supersede the plain language of the Deed; and

WHEREAS, accordingly, the Board cannot conclude that new construction, as explicitly approved by the Court, should be limited to low-rise buildings, because of the City's unarticulated intent at the time of conveyance; and

WHEREAS, the Board finds that the omission of a height restriction, if one was intended, may be unfortunate but the plain language in the Deed, which does not contain such a

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restriction, and is not imputed with clear direction from the legislative history or case law, should be upheld in the absence of the articulation of such intent; and

WHEREAS, the Board agrees with the Appellant that the UDAA Act lacks specificity and, notwithstanding the Appellant's purchase of the site while litigation was pending in the matter, a purchaser would not be on notice of any height restriction since such a restriction does not appear in the Deed or associated provisions of the statute; and

WHEREAS, the Board agrees with the Appellant that neither the legislative history nor the Gardens case clearly support a finding that all accelerated UDAAP projects must be limited to a height of 75 feet; and

WHEREAS, finally, the Board notes that the Appellant represents that there are not any outstanding objections related to the Building Code, the Zoning Resolution, or the Multiple Dwelling Law, and that the Appellant thus asserts that the residential building, does not result in any land use change and complies with all local zoning, as required by the UDAA Act and the Deed; and

Conclusion

WHEREAS, the Board has determined that the UDAA Act, as reflected in and implemented through the Deed, sets forth the restrictions for development of the subject site and, which does not include a height limitation; and

WHEREAS, accordingly, the Board concludes the height of the proposed building is not limited other than by zoning; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated July 13, 2009, determining that the building height is limited to low-rise construction, is hereby granted.

Adopted by the Board of Standards and Appeals, April 20, 2010.

7-10-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Jacklyn & Gerard Rodman, lessees.

SUBJECT – Application January 21, 2010 – Reconstruction and enlargement of an existing single family dwelling located within the bed of a mapped street and the upgrade of existing non conforming private disposal system, contrary to General City Law Section 35 and Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 93 Hillside Avenue, north side of Hillside Avenue 130' east of the mapped Beach 180th Street, Block 16340, Lot p/o 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Commissioner Montanez5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 11, 2010, acting on Department of Buildings Application No. 420107299, reads in pertinent part:

“A1– The existing building to be reconstructed and altered lies within the bed of a mapped street contrary to General City Law, Article 3, Section 35; and

A2– The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings policy and General City Law Article 3, Section 35;”
and

WHEREAS, a public hearing was held on this application on March 23, 2010, after due notice by publication in the *City Record*, and then to continued hearing on April 20, 2010 with closure and decision on the same date; and

WHEREAS, by letter dated February 15, 2010, the Fire Department states that it has no objection to the subject proposal, with the following conditions: (1) the entire building be fully sprinklered in conformance with the sprinkler provisions of Fire Code § 503.8.2, Local Law 10/99, and Reference Standard 17-2B of the Building Code; and (2) interconnected smoke alarms be installed in accordance with Building Code § 907.2.10; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the entire building will be fully sprinklered; and

WHEREAS, by letter dated February 12, 2010, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated March 30, 2010, the Department of Transportation (“DOT”) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated January 11, 2010, acting on Department of Buildings Application No. 420107299, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received January 21, 2010”– one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the home 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;

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

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

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

Adopted by the Board of Standards and Appeals, April 20, 2010.

300-08-A

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

SUBJECT – Application December 9, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior M1-3 zoning district regulations. M1-2 /R5B zoning district.

PREMISES AFFECTED – 39-35 27th Street, east side of 27th Street, 125' northeast of the intersection of 27th Street and 40th Avenue, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Marvin Mitzner.

For Opposition: Steven Harrison, Barbara Lorine, Vienna Ferreri, Geo. L. Stamatiades, Noni Pratt, Melinda Parino and Megan Friedman.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M., for decision, hearing closed.

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. R4-1 zoning district.

PREMISES AFFECTED – 90-18 176th Street, between Jamaica and 90th Avenues, Block 9811, Lot 60 (tent), Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M. for continued hearing.

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 – Laid over to May 25, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, APRIL 20, 2010
1:30 P.M.**

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

ZONING CALENDAR

294-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Shree Ram FLP, owner.

SUBJECT – Application October 16, 2009 – Special Permit (§73-125) to legalize a one-story ambulatory diagnostic and treatment health care facility. R3A zoning district.

PREMISES AFFECTED – 3768 Richmond Avenue, west side of Richmond Avenue, 200’ south of the intersection with Petrus Avenue, Block 5595, Lot 11, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated September 17, 2009, acting on Department of Buildings Application No. 520015037, reads in pertinent part:

“ZR 22-14. BSA approval required for proposed ambulatory diagnostic or treatment facility (Use Group 4), containing more than 1,500 sq. ft. of floor area, is contrary to the zoning resolution;” and

WHEREAS, this is an application under ZR §§ 73-125 and 73-03, to permit, on a site within an R3A zoning district, the legalization of the use of a one-story and basement building as an ambulatory diagnostic/treatment health care facility (Use Group 4) with six parking spaces, contrary to ZR § 22-14; and

WHEREAS, a public hearing was held on this application on February 2, 2010 after due notice by publication in *The City Record*, with continued hearings on February 23, 2010 and March 23, 2010, and then to decision on April 20, 2010; and

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

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

WHEREAS, the subject site is located on the west side of Richmond Avenue, between Petrus Avenue and Wilson Avenue, within an R3A zoning district; and

WHEREAS, the site has a lot area of 7,413 sq. ft. and is currently occupied by a Use Group 4 ambulatory diagnostic/treatment health care facility and a detached garage; and

WHEREAS, the facility occupies 2,568 sq. ft. of floor area (0.35 FAR) on the first floor and in the basement; and

WHEREAS, the Board notes that a 1,500 sq. ft. ambulatory diagnostic/treatment health care facility use would be permitted as-of-right in the subject zoning district; and

WHEREAS, the special permit pursuant to ZR § 73-125 allows for an increase in the floor area of an ambulatory diagnostic/treatment health care facility use up to a maximum of 10,000 sq. ft. on the site, provided that the amount of open area and its distribution on the zoning lot conform to standards appropriate to the character of the neighborhood; and

WHEREAS, the existing facility, with a floor area of 2,568 sq. ft., is within the floor area permitted by the special permit; and

WHEREAS, the existing building provides a lot coverage of 24 percent (55 percent is the maximum permitted); a front yard with a depth of 23’-0” (a front yard with a depth of 18’-0” is the minimum required); side yards with widths of 14’-0” and 15’-0”, respectively (two side yards each with minimum widths of 10’-0” each are required); and a rear yard with a depth of 36’-0” (a rear yard with a depth of 30’-0” is required); and

WHEREAS, accordingly, the Board finds that the amount of open area and its distribution on the lot conform to standards appropriate to the character of the neighborhood; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-125; and

WHEREAS, the proposed ambulatory diagnostic/treatment health care facility complies with all other relevant zoning district regulations; and

WHEREAS, the applicant notes that the accessory parking for an ambulatory diagnostic/treatment health care facility of this size is six spaces (one space is required per 400 sq. ft. of floor area); and

WHEREAS, however, the applicant represents that the site qualifies for a waiver of the off-street parking requirements pursuant to ZR § 25-33 because fewer than ten parking spaces are required; and

WHEREAS, nonetheless, the applicant is providing six off-street parking spaces; and

WHEREAS, the applicant represents that the proposed facility is consistent with the neighborhood character which is characterized by a mix of residential uses and commercial office uses; and

WHEREAS, the applicant submitted a radius diagram indicating that commercial uses are located directly adjacent to the north and south and directly fronting on the subject

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site, including a chiropractor's office directly to the south and a three-story dental office directly across Richmond Avenue; and

WHEREAS, the plans indicate that the applicant is providing additional landscaping along the site's frontages on Richmond Avenue; and

WHEREAS, at hearing, the Board directed the applicant to comply with signage regulations related to community facilities; and

WHEREAS, in response, the applicant submitted a sign location plan and photographs reflecting that the excess signage has been removed from the site; and

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-03 and 73-125.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes each and every one of the required findings under ZR §§ 73-125 and 73-03, to permit, on a site within an R3A zoning district, the legalization of a one-story and basement ambulatory diagnostic/treatment health care facility (Use Group 4), contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 24, 2009" – six (6) sheets and "Received March 26, 2010" – one (1) sheet; and *on further condition*:

THAT the parameters of the building shall be as follows: 2,568 sq. ft. of floor area and six parking spaces, as shown on the BSA-approved plans;

THAT there shall be no change in the use of the building as an ambulatory diagnostic/treatment health care facility (Use Group 4) without prior application to and approval from the Board;

THAT landscaping shall be provided and maintained, as shown on the BSA-approved plans;

THAT signage shall be maintained in accordance with the BSA-approved plans;

THAT the hours of operation for the ambulatory diagnostic/treatment health care facility shall be: Monday through Friday, from 9:00 a.m. to 5:00 p.m.; Saturday, from 9:00 a.m. to 1:00 p.m.; and closed on Sunday;

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

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

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

THAT the approved plans shall be considered

approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, April 20, 2010.

214-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 3210 Riverdale Associates, LLC, owner.

SUBJECT – Application September 18, 2007 – Variance (§72-21) to allow a public parking garage and increase the maximum permitted floor area in a mixed residential and community facility building, contrary to §22-10 and §24-162. R6 zoning district.

PREMISES AFFECTED – 3217 Irwin Avenue, aka 3210 Riverdale Avenue, north side of West 232nd Street, Block 5759, Lots 356, 358, 362, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 1:30 P.M., for deferred decision.

239-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for YHA New York Inc., owner.

SUBJECT – Application October 24, 2007 – Variance (§72-21) to permit a community youth center (UG 4) in the cellar and first floor in a proposed three-story and penthouse mixed-use building, contrary to side yard (§24-35). R5 zoning district.

PREMISES AFFECTED – 57-38 Waldron Street, south side of Waldron Street, 43.71' west of 108th Street, east of Otis Avenue, Block 1959, Lot 27, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 1:30 P.M., for adjourned hearing.

28-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 133 Equity Corp., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 133 Taaffe Place, east side of Taaffe Place, 142'-2.5" north of intersection of Taaffe Place and Myrtle Avenue, Block 1897, Lot 4, Borough of Brooklyn.

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COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 1:30 P.M., for adjourned hearing.

162-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Steinway 30-33, LLC, owner; Steinway Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application April 27, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Planet Fitness*) in the cellar, first, and second floors in an existing two-story building; Special Permit (§73-52) to extend the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district. C4-2A/R5 zoning districts.

PREMISES AFFECTED – 30-33 Steinway Street, east side of Steinway Street, south of 30th Avenue, Block 680, Lot 32, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 1:30 P.M., for continued hearing.

214-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for LAL Astor Avenue Management Co., LLC, owner.

SUBJECT – Application June 29, 2009 – Special Permit (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR §22-14. R4-1 zoning district.

PREMISES AFFECTED – 1464 Astor Avenue, south side of Astor Avenue, 100' east of intersection with Fenton Avenue, Block 4389, Lot 26, 45, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Adam W. Rothkrug and Hiram A. Rothkrug.
For Opposition: Senator Jeff Klein and Bret Collazzi for Council Member Vacca

ACTION OF THE BOARD – Laid over to April 20, 2010, at 1:30 P.M., for adjourned hearing.

254-09-BZ thru 256-09-BZ

APPLICANT – Ivan F. Khoury, for Kearney Realty Corporation, owner.

SUBJECT – Application September 4, 2009 – Variance (§72-21) to legalize three existing homes, contrary to front yard (§23-45) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 101-03/05/07 Astoria Boulevard aka 27-31 Kearney Street, north side of Astoria Boulevard & northeasterly side of Kearney Street, Block 1659, Lot 51, 53, 56, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 8, 2010 at 1:30 P.M., for adjourned hearing.

271-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 132-40 Metropolitan Realty, LLC, owner; Jamaica Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 21, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Planet Fitness*) on the first, second, and third floors of an existing three-story building. C2-3 zoning district.

PREMISES AFFECTED – 132-40 Metropolitan Avenue, between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street. Block 9284, Lot 19, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 1:30 P.M., for continued hearing.

273-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application September 24, 2010 – Variance (§72-21) for the construction of a two-story, one-family home, contrary to side yards (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 117-40 125th Street, west side of 125th Street, 360' north of intersection with Sutter Avenue, Block 11746, Lot 64, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 18, 2010, at 1:30 P.M., for decision, hearing closed.

308-09-BZ

APPLICANT – Jorge F. Canepa, for Joseph Ursini, owner.

SUBJECT – Application November 20, 2009 – Variance (§72-21) to legalize a swimming pool located partially within a front yard and to allow two parking spaces to be located between the street line and the building street wall, contrary to §23-44 and §25-622. R3X zoning district.

PREMISES AFFECTED – 366 Husson Street, corner between Husson Street & Bedford Avenue, Block 3575, Lot 24, Borough of Staten Island

COMMUNITY BOARD #2SI

MINUTES

APPEARANCES –

For Applicant: Jorge Canepa.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 11,
2010, at 1:30 P.M., for decision, hearing closed.

331-09-BZ

APPLICANT – Slater & Beckerman, LLP, for 141 East 45th
Street, LLC, owner; R. H. Massage Services, P.C., lessee.
SUBJECT – Application December 22, 2009 – Special
Permit (§73-36) to legalize the operation of a physical
culture establishment (*River View Spa*) located on the
second and third floors in an existing three-story building.
C5-2.5 zoning district.

PREMISES AFFECTED – 141 East 45th Street, north side
of East 4th Street, between Lexington Avenue and Third
Avenue, Block 1300, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Neil Weisbard and Kyu Lee.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 25,
2010, at 1:30 P.M., for decision, hearing closed.

19-10-BZ

APPLICANT – Akerman Senterfitt LLP, for Oak Point
Property LLC, owner.

SUBJECT – Application February 3, 2010 – Special Permit
(ZR§ 73-482) to allow for an accessory parking facility in
excess of 150 spaces. M3-1 zoning district.

PREMISES AFFECTED – 100 Oak Point Avenue, south of
the Bruckner Expressway, west of Barry Street and Oak
Point Avenue, Block 2604, Lot 174, Borough of Bronx.

COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Calvin Wong and Steven M. Sinacori.

ACTION OF THE BOARD – Laid over to May 11,
2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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May 5, 2010

DIRECTORY

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Tuesday, April 27, 2010**

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196-08-BZ	792 Tenth Avenue / 455 West 53 rd Street, Manhattan
803-61-BZ	1416 Hylan Boulevard, Staten Island
291-03-BZ	1380 62 nd Street, Brooklyn
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14-10-BZ	38-50 Cooper Square, Manhattan
34-10-BZ	429 Broome Street, Manhattan

DOCKET

New Case Filed Up to April 27, 2010

58-10-BZ

16 Eckford Street, East side of Eckford Street between Engert Avenue and Newton Street., Block 2714, Lot(s) 1, Borough of **Brooklyn, Community Board: 1**. Special Permit (73-36) to allow the operation of a physical culture establishment. R6A/M1-2 district.

59-10-BZ

519 Eighth Avenue, Southwest corner of West 36th Street and Eighth Avenue., Block 759, Lot(s) 45, Borough of **Manhattan, Community Board: 4**. Special Permit (73-36) to allow legalization of physical culture establishment. M1-6 and C6-4M district.

60-10-BZ

54 Thompson Street, An L-shaped lot on the northeast corner of Thompson Street and Broome Street., Block 488, Lot(s) 7501, Borough of **Manhattan, Community Board: 2**. Variance to allow an eating and drinking establishment, contrary to use regulations. M1-5B district.

61-10-BZ

183 East Broadway, Through-lot has 43.5 ft. frontage on Henry Street and 26.1ft. Frontage on East Broadway., Block 284, Lot(s) 19, Borough of **Manhattan, Community Board: 3**. Variance to address the height limitations. R7-2 and C1-5 district.

62-10-A

100 Oak Point Avenue, South of the Bruckner Expressway, west of Barry Street and Oak Point Avenue., Block 2604, Lot(s) 174, Borough of **Bronx, Community Board: 2**. Construction not fronting a mapped street, contrary to GCL. M3-1 district.

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

CALENDAR

MAY 18, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 18, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

7-00-BZ

APPLICANT – Friedman & Gotbaum, for Trustees of the New York City Rescue Mission, owners.

SUBJECT – Application February 18, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the enlargement of a UG3 non-profit homeless shelter (New York City Rescue Mission) which expired on March 11, 2009; waiver of the rules. C6-2A zoning district.

PREMISES AFFECTED – 90 Lafayette Street, northwest corner of Lafayette and White Streets, Block 195, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #1M

151-05-BZ

APPLICANT – John R. Roe c/o Shalimar Management, for 100 Varick Street, LLC, owner.

SUBJECT – Application – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a 10 story residential building which expires on August 8, 2010. M1-6 zoning district.

PREMISES AFFECTED – 100 Varick Street, easterly side of Varick Street between Broome Street and Watts Street, Block 477, Lot 35, 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDARS

298-09-A

APPLICANT – Breezy Point Cooperative Inc., for Ann Baci, owner.

SUBJECT – Application October 23, 2009 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 109 Beach 217th Street, east side Beach 217th Street, 160' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

299-09-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Vincent Kennedy, lessee.

SUBJECT – Application October 23, 2009 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street contrary to General City Law Section 36, partially located within the bed of a mapped street contrary to General City Law Section 35 and the upgrade of a private disposal system in the bed of service road contrary to Department of Buildings Policy. R4 Zoning district.

PREMISES AFFECTED – 4 Lincoln Walk, west side Lincoln Walk, 100', south of paved Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

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 zoning district R7-1. 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

MAY 18, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 18, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

210-07-BZ

APPLICANT – Eric Palatnik, P.C., for Gasper Nogara, owner.

SUBJECT – Application August 30, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to 42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Luquer Street, Northern side of Luquer Street between Columbia and Hicks Streets, Block 513, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #6BK

CALENDAR

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 4th Street) southeast corner of intersection of Broadway and East 4th Street, Block 531, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

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 28th Street, south of Avenue L, Block 7646, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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). R3-2 zoning district.

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

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 27, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

603-86-BZ

APPLICANT – H. Irving Sigman, P.E., for 8826 Parsons LLC, owner.

SUBJECT – Application September 3, 2009 – Extension of Term for a Variance (§72-21) allowing the construction of retail stores (UG 6), which expired on September 8, 2007; Amendment to the accessory open parking area and refuse area and request to eliminate the term; Waiver of the Rules. R7A (Downtown Jamaica Special District) zoning district. **PREMISES AFFECTED** - 88-34 Parsons Boulevard, a/k/a 88-26/34 Parsons Boulevard. North west corner of Parsons Boulevard and 89th Avenue, Block 9762, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: H. Irving Sigman

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted variance to permit the construction of retail stores (Use Group 6), and an amendment to permit minor modifications to the previously approved plans; and

WHEREAS, a public hearing was held on this application on December 8, 2009 after due notice by publication in *The City Record*, with continued hearings on March 2, 2010 and April 13, 2010, and then to decision on April 27, 2010; and

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

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

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

WHEREAS, the site is located on the northwest corner of Parsons Boulevard and 89th Avenue, in an R7A zoning district within the Downtown Jamaica Special District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 8, 1987 when, under the

subject calendar number, the Board granted a variance to permit the construction of one-story retail stores (Use Group 6), to expire on September 8, 2007; and

WHEREAS, the applicant now seeks an extension of term for an additional 20 years; and

WHEREAS, the applicant represents that a 20-year term is necessary because: (1) quality tenants typically require a longer term over which to amortize their initial investment; (2) it would give the existing retail tenants and their employees job security and stability; (3) it would allow the property to stay competitive in the current economic climate; and (4) a shorter term would make it difficult to obtain conventional financing; and

WHEREAS, accordingly, the Board finds the requested 20-year term appropriate; and

WHEREAS, the applicant also requests an amendment to permit: (1) the relocation of the refuse area to the northwest corner of the parking lot and the increase in size of the refuse area to approximately 16'-0" by 18'-0", enclosed with an 8'-0" high fence and gate with 100 percent opaque screening; and (2) a modification to the accessory open parking lot to reflect an increase in the number of parking spaces from eight to nine, including one space for handicapped parking, and a change from a single-loaded perpendicular parking scheme to a double-loaded perpendicular parking scheme; and

WHEREAS, the applicant states that the relocation of the refuse area was necessary to permit the installation of and access to the exterior gas meters; and

WHEREAS, at hearing, the Board questioned whether the parking area was of a sufficient size for delivery trucks to maneuver during loading and unloading; and

WHEREAS, in response, the applicant submitted a letter from the owner of the site stating that the deliveries of supplies and merchandise to the stores do not conflict with the operation of the accessory parking facility because the delivery vehicles generally consist of small vans which are parked at the site for short periods of time, and because there is an approximately 18'-0" by 18'-0" area adjoining the rear of the building that is provided for loading and unloading operations; and

WHEREAS, at hearing, the Board directed the applicant to bring the site into compliance with C1 district signage regulations; and

WHEREAS, in response, the applicant submitted revised drawings, a revised signage analysis, and photographs of the site to show that the signage is being brought into compliance with C1 signage regulations; and

WHEREAS, the Board also inquired as to whether the applicant complies with the conditions set forth in the CEQR conditional negative declaration dated February 6, 1987; and

WHEREAS, in response, the applicant states that it either complies with or is in the process of complying with all conditions of the conditional negative declaration; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendments to the previously-approved variance 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*,

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and *amends* the resolution, as adopted on September 8, 1987, so that as amended this portion of the resolution shall read: “to extend the term for a period of 20 years from September 8, 2007 to expire September 8, 2027, and to amend the grant to permit the relocation and enlargement of the refuse area and the modification of the accessory open parking lot; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received September 3, 2009”- (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 8, 2027;

THAT all signage shall comply with C1 zoning regulations;

THAT the owner shall comply with the conditions set forth in the conditional negative declaration;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB App. No. 410193259)

Adopted by the Board of Standards and Appeals, April 27, 2010.

72-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for PGREF I 1633 Broadway Tower, L.P., owner; Equinox 50th Street, Incorporated, lessee.

SUBJECT – Application January 12, 2010 – Extension of Term to permit the continued operation of a Physical Cultural Establishment (*Equinox Fitness*) which expired on January 11, 2010. C6-7 (MID) zoning district.

PREMISES AFFECTED – 1633 Broadway, 215 West 50th Street; 210 West 51st Street, west side of Broadway between West 50th and West 51st Streets, Block 1022, Lot 43, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

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

January 11, 2010; and

WHEREAS, a public hearing was held on this application on April 13, 2010, after due notice by publication in *The City Record*, and then to decision on April 27, 2010; and

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

WHEREAS, Community Board 5, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the west side of Broadway, between 50th Street and 51st Street, in a C6-7 zoning district within the Special Midtown District; and

WHEREAS, the site is occupied by a 48-story commercial building; and

WHEREAS, the PCE use is located in the concourse level and first cellar level, and occupies a total of 24,696 sq. ft. of floor space; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 11, 2000 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on January 11, 2010; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on January 11, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from January 11, 2010, to expire on January 11, 2020, *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received January 12, 2010”- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 11, 2020;

THAT a certificate of occupancy shall be obtained by April 27, 2011;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 120209700)

Adopted by the Board of Standards and Appeals, April 27, 2010.

MINUTES

196-08-BZ

APPLICANT – Gage Parking Consultants, for 53-10 Associates, owner.

SUBJECT – Application October 13, 2009 – Amendment of a previous grant for public parking garage; amendment would enclose rooftop parking. C6-2 (Special Clinton District) zoning district.

PREMISES AFFECTED – 792 Tenth Avenue / 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Jeremiah Candreva.

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-approved public parking garage to permit a one-story enlargement of the existing building to enclose the rooftop parking area; and

WHEREAS, a public hearing was held on this application on December 15, 2009, after due notice by publication in *The City Record*, with continued hearings on January 26, 2010, March 16, 2010, and April 13, 2010, and then to decision on April 27, 2010; and

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

WHEREAS, Community Board 4, Manhattan, recommends approval of this application with the following conditions: (1) that all unnecessary curb cuts be removed; (2) that street trees be planted in accordance with ZR § 26-41; (3) that the height of the building not exceed the proposed 35’-4””; (4) that transient parking be accepted only from the Tenth Avenue entrance; (5) that the applicant shall not seek to increase the number of parking spaces currently in use; and (6) that the applicant submit a timetable to the Community Board stating when it anticipates to begin and complete each phase of the proposed construction; and

WHEREAS, the premises is located on the northeast corner of the intersection at Tenth Avenue and West 53rd Street, in a C6-2 zoning district within the Special Clinton District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 1949 when, under BSA Cal. No. 346-47-BZ, the Board granted a variance to permit the site to be occupied for a storage garage; and

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

WHEREAS, most recently, on January 13, 2009, the Board reinstated the prior variance for the operation of a public parking garage (Use Group 8) for a term of ten years, to expire on January 13, 2019; and

WHEREAS, the applicant now seeks an amendment to permit a one-story enlargement of the building; and

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

WHEREAS, the applicant states that there will be no increase in the number of parking spaces located at the site, as the purpose of the enlargement is solely to enclose the existing rooftop parking area; and

WHEREAS, the applicant proposes to enlarge the total floor space of the building from 15,063 sq. ft. to 20,355 sq. ft.; and

WHEREAS, the Board notes that this enlargement is within the parameters set forth at ZR § 11-412; and

WHEREAS, at hearing, the Board questioned whether the original plans for the proposed enlargement, which reflected a full build out of the second floor, complied with lot coverage provisions, which permit a maximum lot coverage of 70 percent on the second floor; and

WHEREAS, in response, the applicant submitted revised plans which reflected that the second floor will be setback in order to comply with the maximum lot coverage of 70 percent; and

WHEREAS, however, the applicant states that it seeks approval from DOB as to whether the setback can be reduced if portions of the garage are exempt from floor area calculations; and

WHEREAS, the Board recognizes that the applicant may seek to amend the second floor design if DOB determines that an alternate design maintains compliance with lot coverage requirements and would consider a request for an amendment to the plans if otherwise appropriate; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant agreed to: (1) eliminate the curb cut and garage exit located at the corner of West 53rd Street; (2) plant street trees in accordance with ZR § 26-41; (3) not exceed a height of 35’-4””; (4) limit access to transient parking to the Tenth Avenue entrance; (5) not exceed the existing number of parking spaces; and (6) provide the Community Board with a timetable for the proposed construction; and

WHEREAS, based upon the above, the Board finds that the requested amendments to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, as adopted on January 13, 2009, so that as amended this portion of the resolution shall read: “to permit a one-story enlargement of the existing building to enclose the rooftop parking spaces; *on condition* that the use shall substantially conform to drawings as filed with this application, marked “Received March 2, 2010”- (2) sheets and “March 18, 2010”-(4) sheets; and *on further condition*:

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

THAT the capacity of the garage shall be limited to 81 spaces and an additional ten reservoir spaces;

THAT the curb cut and garage exit at the corner of

MINUTES

West 53rd Street shall be eliminated as reflected on the BSA-approved plans;

THAT street trees shall be planted in accordance with the BSA-approved plans;

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

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

THAT DOB shall review all signage for compliance with C1 zoning district regulations;

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

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

(DOB Application No. 201084405)

Adopted by the Board of Standards and Appeals, April 27, 2010.

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: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M., for continued hearing.

291-03-BZ

APPLICANT – Stuart A. Klein, Esq., for 6202-6217 Realty LLC, owner.

SUBJECT – Application June 5, 2009 – Extension of term of a variance (§72-21) for construction of a new residential building; amendment to add increase the number of dwelling units, FAR, height and parking spaces. M1-1/R5B zoning districts.

PREMISES AFFECTED – 1380 62nd Street, corner of 62nd Street and 14th Avenue, Block 5733, Lots 35, 36, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Jay Goldstein.

THE VOTE TO CLOSE HEARING –

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

Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

157-07-BZY

APPLICANT – Howard Zipser, Akerman Senterfitt, LLP, for 55 Eckford Street Brooklyn LLC, owner.

SUBJECT – Application November 23, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6/M1-1 zoning district. M1-2 /R6A, M1-2 R6B, MX8 zoning district.

PREMISES AFFECTED – 55 Eckford Street, west side of Eckford Street, between Driggs Avenue and Engert Avenue, Block 2698, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Recused: Commissioner Hinkson1

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on March 23, 2010, after due notice by publication in *The City Record*, and then to decision on April 27, 2010; and

WHEREAS, New York State Assembly Member Joseph R. Lentol provided testimony in support of this application; and

WHEREAS, the subject premises is located on the west side of Eckford Street, between Driggs Avenue and Engert Avenue; and

WHEREAS, the premises is currently located partially within an M1-2/R6A (MX-8) zoning district and partially within an M1-2/R6B (MX-8) zoning district; and

WHEREAS, the development complies with the prior R6 (M1-1) zoning district regulations; and

WHEREAS, however, on May 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Greenpoint Williamsburg Rezoning; and

WHEREAS, on March 22, 2004, New Building Permit No. 301756319-01-NB (hereinafter, the “New Building Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows

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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, on October 23, 2007 the Board granted a two-year extension of time to complete construction and obtain a certificate of occupancy for the proposed development, pursuant to ZR § 11-332; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a "minor development"; and

WHEREAS, for "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the

Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated March 24, 2010, DOB stated that the New Building Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the original two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, as set forth in the prior case, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the foundation, the steel frame for six of the 12 proposed floors, and concrete slab floors for floors one through six; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing the steel frame and slab floors for floors one through six; a statement from the project developer describing the completed work; copies of concrete pour tickets; financial records; and copies of cancelled checks; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$1,379,767, or 17 percent, of the \$7,871,450 cost to complete; and

WHEREAS, as noted, the applicant has submitted financial records and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, the applicant states that delays in construction resulted from financial hardship, such that no

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construction has been undertaken at the site since the two-year extension of time was granted on October 23, 2007, and it is therefore relying on the work performed and expenditures made at the time of the initial vesting; and

WHEREAS, the applicant represents that the financing issues have now been resolved, and it anticipates that the proposed construction will be completed within 18 months; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the initial permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 301756319-01 NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on April 27, 2012.

Adopted by the Board of Standards and Appeals, April 27, 2010.

315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC., owner.

SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for a condominium hotel on the basis that the approved plans allow for exceeding of maximum permitted floor area. M1-6 zoning.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for adjourned hearing.

287-09-BZY & 288-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Hooshang Vaghari and Farhad Nobari, owners.

SUBJECT – Application October 9, 2009 – Extension of time (§11-332) to complete construction of a major development commenced under the prior R6 zoning. R5 zoning district.

PREMISES AFFECTED – 87-85 & 87-87 144th Street, east side of 144th Street between Hillside Avenue and 85th Avenue, Block 9689, Lot 6 & 7, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for decision, hearing closed.

303-09-BZY

APPLICANT – Ray Chen, for 517 53rd Street Inc, owner.
SUBJECT – Application October 30, 2009 – Extension of time (§11-332) to complete construction of an enlargement commenced under the prior C4-3 zoning district. R6B zoning district.

PREMISES AFFECTED – 517 53rd Street, between 5th and 6th Avenue, Block 608, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for continued hearing.

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.

SUBJECT – Application January 25, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district. R6 zoning district.

PREMISES AFFECTED – 1882 East 12th Street, west side, of East 12th Street, 75' north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman, Steve Wygoda and Paulette Durzieh.

For Opposition: Jay Goldstein, Betty Travitsky, Bella Center, Ed Saworski, Kathleen Jaworski and Stuart A. Klein.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

23-10-A thru 26-10-A

APPLICANT – Richard Bowers of Akerman Senterfitt, LLP, for Mia & 223rd Street Management Corp., owner.

SUBJECT – Application February 23, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations. R1-2 zoning district.

PREMISES AFFECTED – 39-39 223rd Street and 223-01/15/19 Mia Drive, between 223rd Street and Cross Island

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Parkway, Block 6343, Lots 154-157, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Calvin Wong.

For Opposition: Stuart A. Klein and Patricia Marin.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

57-10-A

APPLICANT – Eric Palatnik, P.C., for 517 53rd Street, Inc., owner.

SUBJECT – Application April 19, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior C4-3 zoning district. R6B zoning district.

PREMISES AFFECTED – 517 53rd Street, between Fifth Avenue and Sixth Avenue, Block 808, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, APRIL 27, 2010

1:30 P.M.

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

ZONING CALENDAR

311-09-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Matalon, owner.

SUBJECT – Application November 24, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)), side yard (§23-461(a)) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1092 East 22nd Street, between Avenue J and K, Block 7603, Lot 54, 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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 27, 2009, acting on Department of Buildings Application No. 320079641, reads:

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

WHEREAS, a public hearing was held on this application on January 26, 2010 after due notice by publication in *The City Record*, with continued hearings on March 2, 2010 and March 23, 2010, and then to decision on April 27, 2010; and

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

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

WHEREAS, the subject site is located on the west side of East 22nd Street, between Avenue J and Avenue K, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of 3,136 sq. ft. (0.63 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 3,136 sq. ft. (0.63 FAR) to 5,021 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,500 sq. ft. (0.50 FAR); and

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

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 4'-11" along the northern lot line (a minimum width of 5'-0" is required for each side yard); and

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

WHEREAS, at hearing, the Board questioned which portions of the existing home are being retained; and

WHEREAS, in response, the applicant submitted revised plans reflecting that portions of the floors and exterior walls of the existing home are being retained; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141,

23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 12, 2010"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 5,021 sq. ft. (1.0 FAR); an open space ratio of 60 percent; a side yard with a minimum width of 12'-3" along the southern lot line; a side yard with a minimum width of 4'-11" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

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

THAT DOB shall review all proposed balconies and 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, April 27, 2010.

330-09-BZ

APPLICANT – Eric Palatnik, P.C., for Zhenia Levinsky, owner.

SUBJECT – Application December 18, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space, lot coverage and floor area (§23-141) and rear yard (§23-47). R3-1 zoning district. PREMISES AFFECTED – 230 Amherst Street, between Oriental Boulevard and Esplanade, Block 8738, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 16, 2009, acting on

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Department of Buildings Application No. 310243616, reads in pertinent part:

1. Proposed floor area ratio contrary to ZR 23-141(a).
2. Proposed open space is contrary to ZR 23-141(a).
3. Proposed lot coverage is contrary to ZR 23-141(a).
4. Proposed rear yard is contrary to ZR 23-47;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for floor area ratio (FAR), open space, lot coverage, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on February 23, 2010 after due notice by publication in *The City Record*, with a continued hearing on April 13, 2010, and then to decision on April 27, 2010; and

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

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

WHEREAS, the subject site is located on the west side of Amherst Street, between Oriental Boulevard and Esplanade, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 4,160 sq. ft., and is occupied by a two-family home with a floor area of approximately 1,865 sq. ft. (0.45 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from approximately 1,865 sq. ft. (0.45 FAR) to approximately 4,014 sq. ft. (0.96 FAR); the maximum floor area permitted is 2,080 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 61 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 39 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 27'-2" (a minimum rear yard of 30'-0" is required); and

WHEREAS, at hearing, the Board requested that the applicant clarify the discrepancy between the lot dimensions of 40'-0" by 100'-0" reflected in the tax map on record at the Department of Finance ("DOF") and the lot dimensions of 40'-0" by 104'-0" claimed by the applicant; and

WHEREAS, in response, the applicant submitted a revised DOF tax map reflecting that the dimensions of the subject lot are 40'-0" by 104'-0"; and

WHEREAS, based upon its review of the record, the

Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

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

Therefore it is resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 25, 2010"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,014 sq. ft. (0.96 FAR); an open space of 61 percent; a lot coverage of 39 percent; a side yard with a width of 6'-9" along the northern lot line; a side yard with a width of 5'-0" along the southern lot line; and a rear yard with a minimum depth of 27'-2", as illustrated on the BSA-approved plans;

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

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

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

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, April 27, 2010.

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18-10-BZ

CEQR #10-BSA-044M

APPLICANT – Sheldon Lobel, P.C., for Fifty East Forty-Second Company, LLC, owner; East 42nd Street Fitness, LLC d/b/a Lucille Roberts, lessee.

SUBJECT – Application February 2, 2010 – Special Permit (§73-36) to allow a physical culture establishment (*Lucille Roberts*) in the cellar and a portion of the first floor in an existing 26-story building. C5-3 zoning district.

PREMISES AFFECTED – 50 East 42nd Street, Southeast corner of Madison Avenue, Block 1276, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

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Negative:.....

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THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated March 15, 2010, acting on Department of Buildings Application No. 120222936, reads in pertinent part:

“Proposed change of use on first floor and cellar to a physical culture establishment is not permitted as of right in C5-3 zoning district and is contrary to ZR Section 32-10... referred to the BSA for special permit as per ZR Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-3 zoning district, a physical culture establishment (PCE) in the cellar and first floor of a 26-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 23, 2010 after due notice by publication in *The City Record*, with a continued hearing on April 13, 2010, and then to decision on April 27, 2010; and

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

WHEREAS, Community Board 5, Manhattan, states that it has no objection to this application; and

WHEREAS, the subject site is located on the south east corner of East 42nd Street and Madison Avenue, within a C5-3 zoning district; and

WHEREAS, the site is occupied by a 26-story commercial building; and

WHEREAS, the PCE will occupy 227 sq. ft. of floor area on the first floor and 11,258 sq. ft. of additional floor space in the cellar; and

WHEREAS, the PCE will be operated as Lucille Roberts; and

WHEREAS, the proposed hours of operation are 7:00

a.m. to 9:00 p.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, at hearing, the Board requested that the applicant document that the proposed 84 sq. ft. of signage is permitted, or come into compliance with the C5 district regulations; and

WHEREAS, in response, the applicant agreed to reduce the signage to 42 sq. ft., which is permitted as-of-right, and submitted an affidavit from the owner and a letter from the sign contractor reflecting that the excess signage will be removed; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

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

WHEREAS, the PCE will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA044M, dated March 11, 2010; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental

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Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-3 zoning district, a physical culture establishment in the cellar and first floor of a 26-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 12, 2010”-(1) sheet and “Received April 20, 2010”-(1) sheet ; and *on further condition*:

THAT the term of this grant shall expire on April 27, 2020;

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

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

THAT all signage shall comply with C5 district regulations;

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

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

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 27, 2010.

186-08-BZ

APPLICANT – Petrus Fortune, P.E., for Kevin Mast, Chairman, Followers of Jesus Mennonite Church, owner.

SUBJECT – Application July 10, 2008 – Special Permit (§73-19) to allow the legalization and enlargement of a school (*Followers of Jesus Mennonite Church & School*) in a former manufacturing building, contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 3065 Atlantic Avenue, northwest corner of Atlantic Avenue and Shepherd Avenue, Block 3957, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 1:30 P.M., for deferred decision.

220-08-BZ

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

APPEARANCES –

For Applicant: Moshe Friedman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 18, 2010, at 1:30 P.M., for decision, hearing closed.

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: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 1:30 P.M., for continued hearing.

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, Patricia Vasquez, John

MINUTES

Vasquez, Frances Dasilva, Jaime Lopez, Yvette Lopez, Marie Michel Hosein, Stella Gillett and Ometa Holloway.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 1:30 P.M., for continued hearing.

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radonicic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Josh Rhinesmith.

ACTION OF THE BOARD – Laid over to May 18, 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 12th Street and Homecrest Avenue, eastside of Avenue S, Block 7291, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Josh Rhinesmith.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 1:30 P.M., for adjourned hearing.

304-09-BZ

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – Variance (§72-21) to allow the erection of a ten-story, mixed-use community facility and commercial building, contrary to floor area (§42-00, 43-12 and 43-122), height and sky exposure plane (§43-43), and parking (§44-21). M1-4 zoning district.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Jay Goldstein, Bonnie Stone, Hiram Rothkrug.

For Opposition: Viola Greene-Walker, Bill Wilkins, Sarah Crean, Gene Moore, Barney L. Kirton and Michael Bellovin.

ACTION OF THE BOARD – Laid over to June 15, 2010, at 1:30 P.M., for continued hearing.

307-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Zahava Hurwitz and Steven Hurwitz, owner.

SUBJECT – Application November 9, 2009 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to open space and floor area (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1358-1360 East 28th Street, West side of East 28th Street between Avenue M and Avenue N. Block 7663, Lot 73 & 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 11, 2010, at 1:30 P.M., for decision, hearing closed.

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 Flenry Arlin Salmon.

For Opposition: David Brody and Elliott Socci.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 1:30 P.M., for continued hearing.

13-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yakov Platnikov, owner.

SUBJECT – Application January 27, 2010 – Special Permit (§73-622) for the enlargement of an existing two -family home to be converted to a single family home, contrary to lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 79 Amherst Street, east side of Amherst Street, north Hampton Avenue, Block 8727, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Eric Palatnik.

MINUTES

ACTION OF THE BOARD – Laid over to June 8, 2010, at 1:30 P.M., for continued hearing.

14-10-BZ

APPLICANT – Friedman & Gotbaum, LLP, for Cooper Square Associates (LP), owners.

SUBJECT – Application January 29, 2010 – Special Permit (§73-19) to allow a Use Group 3 school (*Grace Church High School*). M1-5B zoning district.

PREMISES AFFECTED – 38-50 Cooper Square, west side of Cooper Square, 326'-9" south of Astor Place, Block 544, p/o 38, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Shelly Friedman.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 1:30 P.M., for continued hearing.

34-10-BZ

APPLICANT – James Chin & Associates, LLC, for Harry Tran, owner; Shu Ying Zhao, lessee.

SUBJECT – Application March 18, 2010 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*York Spa Beauty Care*) in the cellar and first floor of an existing five-story building. M1-5B zoning district.

PREMISES AFFECTED – 429 Broome Street, south side of Broome Street, from the corner formed by Broome and Crosby Street, Block 473, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Mindy Chin and Theresa Tlour.

For Opposition: Caroline Harris.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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May 20, 2010

DIRECTORY

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DOCKET

New Case Filed Up to May 11, 2010

63-10-BZ

163-18 Jamaica Avenue, south side of Jamaica Avenue, 126' east of Guy Brewer Boulevard., Block 10151, Lot(s) 7, Borough of **Queens, Community Board: 12.** Special Permit (73-36) to legalize the operation of a physical culture establishment. C6-3 district.

64-10-BZ

1253 East 29th Street, East side of East 29th Street between Avenue L and Avenue M., Block 7647, Lot(s) 23, Borough of **Brooklyn, Community Board: 14.** Special Permit (73-622) for the enlargement of a single family home. R2 district.

65-10-BZ

55 Beaumont Street, East side of Beaumont Street, south of Hampton Avenue., Block 8728, Lot(s) 83, Borough of **Brooklyn, Community Board: 15.** Special Permit (73-622) for the enlargement of a single family home. R3-1 district.

66-10-BZ

1618 Shore Boulevard, South side of Shore Boulevard between Oxford and Norfolk Streets., Block 8757, Lot(s) 86, Borough of **Brooklyn, Community Board: 15.** Special Permit (73-622) for the enlargement of a single family home. R3-1 district.

67-10-A

72 Bedford Avenue, West side of Bedford Avenue within the intersection of mapped 12th Avenue & Beach 204th Street., Block 16350, Lot(s) p/o 300, Borough of **Queens, Community Board: 14.** construction within the mapped street, contrary to GCL35. R4 district.

68-10-BZ

80-15 Lefferts Boulevard, Between Kew Gardens Road and Talbot Street., Block 3354, Lot(s) 38, Borough of **Queens, Community Board: 9.** Variance to allow a two-story office building, contrary to use regulations. R-5 district.

69-10-BZ

250 East 234th Street, East of the intersection of East 233rd and East 234th Streets., Block 3374, Lot(s) 13, Borough of **Bronx, Community Board: 12.** Variance to allow proposed residential use, contrary to use regulations. C8-1 district.

70-10-BZ

37-08 Union Street, Southwest corner of the intersection formed by Union Street and 37th Avenue., Block 4978, Lot(s) 46, p/o lot 25, Borough of **Queens, Community Board: 7.** Special Permit (73-66) to allow the proposed building. C4-3 district.

71-10-A

102-118 Turner Street, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 181, Borough of **Staten Island, Community Board: 3.** Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

72-10-A

104 Turner Street, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 182, Borough of **Staten Island, Community Board: 3.** Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

73-10-A

106 Turner Street, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 183, Borough of **Staten Island, Community Board: 3.** Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

74-10-A

108 Turner Street, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 184, Borough of **Staten Island, Community Board: 3.** Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

75-10-A

110 Turner Street, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 185, Borough of **Staten Island, Community Board: 3.** Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

76-10-A

112 Turner Street, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 186, Borough of **Staten Island, Community Board: 3.** Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

DOCKET

77-10-A

114 Turner Street, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 187, Borough of **Staten Island, Community Board: 3**. Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

78-10-A

116 Turner Street, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 188, Borough of **Staten Island, Community Board: 3**. Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

79-10-A

118 Turner Street, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 2, Borough of **Staten Island, Community Board: 3**. Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

80-10-A

11661 Woodrow Road, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 4, Borough of **Staten Island, Community Board: 3**. Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

81-10-A

1663 Woodrow Road, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 5, Borough of **Staten Island, Community Board: 3**. Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

82-10-A

1665 Woodrow Road, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 6, Borough of **Staten Island, Community Board: 3**. Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

83-10-A

1667 Woodrow Road, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 7, Borough of **Staten Island, Community Board: 3**. Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

84-10-A

1669 Woodrow Road, Between Crabtree Avenue and Woodrow Road., Block 7105, Lot(s) 8, Borough of **Staten Island, Community Board: 3**. Appeal for common law vesting rights to continue development under thr prior zoning district. R3-1 district.

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

CALENDAR

MAY 25, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 25, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

336-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 312 Flatbush Avenue LLC, owner; Crunch LLC d/b/a Crunch, lessee.

SUBJECT – Application May 11, 2010 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (Crunch Fitness) which expired on February 11, 2010; waiver of the rules. C2-4 zoning district.

PREMISES AFFECTED – 312/18 Flatbush Avenue, Northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #6BK

337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 312 Flatbush Avenue LLC, owner; Crunch LLC d/b/a Crunch, lessee.

SUBJECT – Application May 11, 2010 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (Crunch Fitness) which expired on February 11, 2010; waiver of the rules. C2-4 zoning district.

PREMISES AFFECTED – 324/34 Flatbush Avenue, Northwest corner of the intersection of Flatbush Avenue and Sterling Place. Block 1057, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #6BK

MAY 25, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 25, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

333-09-BZ

APPLICANT – Moshe M. Friedman, for Cong Yeshiva Beis Chaya Mushka, Inc., owner.

SUBJECT – Application December 23, 2009 – Variance (§72-21) to permit the vertical extension of an existing religious school. The proposal is contrary to floor area, lot coverage, height, sky exposure plane, front yard, and side yard (§24-11, §24-521, §24-34, and §24-35). R4 zoning district.

PREMISES AFFECTED –360 Troy Avenue aka 348-350 Troy Avenue aka 1505-1513 Carroll Street, northwest corner of Troy Avenue and Carroll Street, Block 1406, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD # 9BK

21-10-BZ

APPLICANT – Richard Lobel, P.C., for Aquila Realty Company, Incorporated, owner.

SUBJECT – Application February 12, 2010 – Special Permit (§73-243) to legalize an eating and drinking establishment with a drive-through. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roebling Avenue aka 1590 Hutchison River Parkway, southeast corner of Roebling Avenue and Hutchinson River Parkway, Block 5386, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

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 to ZR §72-21 to allow for the enlargement of a community facility (*NYU Langone Medical Center*) contrary to rear yard (ZR §24-36) and signage regulations (ZR §22-321, §22-331, §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

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 11, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

389-37-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Rosemarie Fiore, Georgette Fiore and George Fiore, owner.
SUBJECT – Application June 10, 2009 – Extension of Term (§11-411) of a previously granted Variance for the operation of a UG8 parking lot which expired on June 13, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on December 12, 2004 and Waiver of the Rules. R5/C1-2 zoning district.

PREMISES AFFECTED – 31-08 – 31-12 45th Street, southwest corner of 45th Street and 31st Avenue, Block 710, Lot 5, 6, 17, 18, 19, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term for a previously granted variance for the operation of a Use Group 8 parking lot, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in *The City Record*, with continued hearings on January 12, 2010, February 23, 2010 and April 13, 2010, and then to decision on May 11, 2010; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

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

WHEREAS, the subject site is located on the southwest corner of 45th Street and 31st Avenue, within a C1-2 (R5) zoning district; and

WHEREAS, the site is occupied by an open parking lot; and

WHEREAS, the Board has exercised jurisdiction over the site since April 5, 1938 when, under the subject calendar number, the Board granted a variance to permit the parking and

storage of more than five motor vehicles on the site, for a term of two years; and

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

WHEREAS, most recently, on December 16, 2003, the Board granted a five-year extension of term, which expired on June 13, 2008; a condition of the grant was that a certificate of occupancy be obtained by December 16, 2004; and

WHEREAS, the applicant now seeks a ten-year extension of the term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that it was unable to obtain a certificate of occupancy within the stipulated time in part due to procedural issues at the Department of Buildings; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant also seeks to remove the condition of the previous grant requiring the applicant to submit a financial study examining the feasibility of residential use at the site; and

WHEREAS, the applicant states that the condition requiring a financial analysis for residential development was not due to any problem with the operation or appearance of the site, but was included to encourage as-of-right development of the site; and

WHEREAS, the applicant further states that the subject parking lot has operated continuously on the site for over 70 years and is a benefit to the community, as parking is scarce in the surrounding area; and

WHEREAS, the applicant represents that the as-of-right residential development of the site is not feasible; and

WHEREAS, the applicant also seeks to amend the approved plans to reflect that the fencing does not provide 50 percent opaque screening; and

WHEREAS, the applicant states that the installation of screening would create a safety hazard for the users of the lot because it would block visual access into the lot; and

WHEREAS, the Board has determined that the removal of the condition requiring a financial analysis for residential development, and the amendment of the approved plans to remove the note requiring 50 percent opaque screening is appropriate; and

WHEREAS, at hearing, the Board questioned whether the applicant had a Department of Consumer Affairs (“DCA”) license that allows the parking of vehicles at the site; and

WHEREAS, in response, the applicant submitted a DCA license which is valid through March 2011; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated April 5, 1938, so that as amended this portion of the resolution shall read: “to extend

MINUTES

the term for ten years from June 13, 2008, to expire on June 13, 2018, to extend the time to obtain a certificate of occupancy to May 11, 2011, and to eliminate two specified conditions from prior approvals; *on condition* that all use and operations shall substantially conform to plans filed with this application marked "Received April 15, 2010"-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on June 13, 2018;

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

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

THAT a new certificate of occupancy shall be obtained by May 11, 2011;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 410230245)

Adopted by the Board of Standards and Appeals May 11, 2010.

223-98-BZ

APPLICANT – Andrea Claire/Peter Hirshman for Jilda Realty Corporation, owner.

SUBJECT – Application October 29, 2009 – Extension of Term of a previous variance that permits the operation of an automotive service station (UG 16B) which will expire on February 1, 2010; Amendment to allow used car sales (UG 16B); Extension of Time to obtain a Certificate of Occupancy which expired on June 10, 2003; Waiver of the Rules. R6B zoning district.

PREMISES AFFECTED – 51-59 Maujer Street, aka 451-459 Lorimer Street, northeast corner of the intersection of Maujer Street and Lorimer Street, Block 2785, Lot 31 & 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued operation of an automotive service station (Use Group 16), an extension of time to obtain a certificate of occupancy, and an amendment to permit the sale of motor vehicles; and

WHEREAS, a public hearing was held on this application on January 12, 2009, after due notice by publication in *The City Record*, with continued hearings on March 16, 2010 and April 13, 2010, and then to decision on May 11, 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 1, Brooklyn, recommends approval of this application; and

WHEREAS, City Council Member Diana Reyna recommends approval of this application; and

WHEREAS, United States Congressperson Nadia M. Velazquez provided written testimony in support of this application; and

WHEREAS, New York State Senator Martin Malave Dilan provided written testimony in support of this application; and

WHEREAS, the site is located on the northeast corner of Maujer Street and Lorimer Street, within an R6B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 20, 1943 when, under BSA Cal. No. 743-42-BZ, the Board granted a variance to permit a gasoline service station on Lot 32; and

WHEREAS, the term of the variance was extended at various times; and

WHEREAS, on February 1, 2000, the Board granted a new variance, under the subject calendar number to allow for the enlargement of the gasoline service station, which included the merger of Lot 31 and Lot 32, for a term of ten years, to expire on February 1, 2010; a new certificate of occupancy was required within 18 months of the grant; and

WHEREAS, the applicant now requests an additional 20-year term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to administrative oversight; and

WHEREAS, the applicant also seeks to amend the prior resolution to permit the sale of motor vehicles, limited to five, in the area used for storage of motor vehicles on the un-built portion of the lot, as reflected on the plans; and

WHEREAS, at hearing, the Board directed the applicant to: (1) eliminate signage associated with the gasoline service station use, but located on an adjacent residential building; (2) document signage on the site and remove any signage that is inconsistent with prior approvals and which does not comply with C1 zoning district regulations; and (3) ensure that all exterior lighting be directed downward, away from nearby residential uses; and

WHEREAS, in response, the applicant (1) removed the signage on the adjacent residential building; (2) removed banner signage and provided a sign analysis, which reflects that the existing and proposed signage is consistent with prior approvals and complies with C1 zoning district

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regulations; and (3) stated that all exterior lighting shall be directed downward, away from nearby residential uses; and

WHEREAS, the applicant also provided photographs of the site reflecting the signage condition and revised plans, which reflect the existing lift and proposed planters; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated February 1, 2000, so that as amended this portion of the resolution shall read: “to extend the term for 20 years from February 1, 2010, to expire on February 1, 2030; to grant an extension of time to obtain a certificate of occupancy to May 11, 2011; and to permit the inclusion of the sale of automobiles; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked “March 31, 2010”-(1) sheet and “April 27, 2010”-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on February 1, 2030;

THAT a certificate of occupancy shall be obtained by May 11, 2011;

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

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

(DOB Application No. 300732982)

Adopted by the Board of Standards and Appeals, May 11, 2010.

199-00-BZ

APPLICANT – John C. Chen, for En Ping Limited, owner; Valentine E. Partner Atlantis, lessee.

SUBJECT – Application March 3, 2010 – Extension of Term of a Special Permit (§73-244) for an Eating and Drinking Establishment (*Club Atlantis*) without restrictions on entertainment (UG12A) which expired on March 13, 2010. Waiver of the Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 76-19 Roosevelt Avenue, north west corner partly fronting Roosevelt Avenue and 77th Street, Block 1287, Lot 37, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: John C. Chen.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening and an extension of term of a previously granted special permit for an eating and drinking establishment without restrictions on entertainment (UG 12A), which expired on March 13, 2010, and an amendment to permit the installation of an access door to the adjacent restaurant; and

WHEREAS, a public hearing was held on this application on April 20, 2010, after due notice by publication in *The City Record*, and then to decision on May 11, 2010; and

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

WHEREAS, City Council Member Daniel Dromm provided written testimony in support of this application; and

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

WHEREAS, the subject site is located on the northwest corner of Roosevelt Avenue and 77th Street, within a C2-3 (R6) zoning district; and

WHEREAS, the site is occupied by an eating and drinking establishment with entertainment, operated as Club Atlantis, within a portion of a one-story building that occupies the entire zoning lot; and

WHEREAS, the building is also occupied by an enclosed garage for five vehicles, a restaurant (owned by the owner of the subject eating and drinking establishment), and four retail stores; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 13, 2001, when, under the subject calendar number, the Board granted a special permit under ZR § 73-244 to permit the legalization of an existing eating and drinking establishment with entertainment and dancing; and

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

WHEREAS, most recently, on July 17, 2007, the Board granted a three-year extension of term, which expired on March 13, 2010; and

WHEREAS, the applicant now requests an extension of term and amendment of the resolution to permit installation of a fire-proof self-closing access door to the adjoining restaurant and open area; and

WHEREAS, the applicant states that patrons will not be permitted to use the proposed access door, which will include an “Employees Only” sign; and

WHEREAS, based upon the above, the Board finds the requested extension and amendment appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on March 13, 2001, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for a period of three years from March 13, 2010, to expire on March 13, 2013, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received March 3, 2010’-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on March 13,

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2013;

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

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

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

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

(DOB Application No. 401018206)

Adopted by the Board of Standards and Appeals, May 11, 2010.

121-02-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, 9215 4th Avenue, LLC, owner.

SUBJECT – Application January 11, 2010 – Amendment (§73-11) to a special permit (§73-11) for an enlargement of a Physical Culture Establishment. C8-2 zoning district.

PREMISES AFFECTED – 9215 4th Avenue, east side of 4th Avenue, 105’ south of intersection with 92nd Street, Block 6108, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #10BK

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted special permit for a physical culture establishment (“PCE”), to legalize a 2,910 sq. ft. enlargement of the mezzanine; and

WHEREAS, a public hearing was held on this application on March 9, 2010, after due notice by publication in *The City Record*, with a continued hearing on April 20, 2010 and then to decision on May 11, 2010; and

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

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

WHEREAS, the subject site is located on a through lot with frontage on Fourth Avenue and Fifth Avenue, approximately 105 feet south of 92nd Street, in a C8-2 zoning district within the Special Bay Ridge District; and

WHEREAS, the site is occupied by a two-story and mezzanine commercial building; and

WHEREAS, the PCE currently occupies a total of 18,549 sq. ft. on the first floor and mezzanine of the building; and

WHEREAS, the PCE is operated as Harbor Fitness; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 26, 2002 when, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36 to legalize the existing PCE on the first floor and mezzanine of the subject building; and

WHEREAS, on July 18, 2006, under the subject calendar number, the Board granted an extension of term, to expire on January 1, 2016; and

WHEREAS, the applicant now seeks an amendment to reflect the enlargement of the mezzanine from 2,889 sq. ft. to 5,799 sq. ft., resulting in an increase in the total floor area of the PCE from 15,639 sq. ft. to 18,549 sq. ft.; and

WHEREAS, the applicant states that the increased space at the mezzanine level will be occupied by fitness machines as well as men’s and women’s locker rooms; and

WHEREAS, at hearing, the Board questioned whether the PCE complies with C8 district signage regulations, including projection requirements for the marquee located at the site; and

WHEREAS, in response, the applicant submitted a signage analysis and a marquee permit reflecting that the site complies with C8 district signage requirements; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the previous grant is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 26, 2002, so that as amended this portion of the resolution shall read: “to permit a 2,910 sq. ft. enlargement of the PCE use at the mezzanine; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received January 11, 2010”– (4) 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 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. 320085108)

Adopted by the Board of Standards and Appeals, May 11, 2010.

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363-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for 6002 Fort Hamilton Parkway Partners, owners; Michael Mendelovic, lessee.

SUBJECT – Application March 25, 2010 – Extension of Time to Complete Construction of a previously approved variance (§72-21) to convert an industrial building to commercial/residential use, which expired on July 19, 2009; Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 6002 Fort Hamilton Parkway, south of 61st, east of Hamilton Parkway, north of 60th Street, Block 5715, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Tzvi Friedman.

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction for the conversion of an existing industrial building to residential/commercial use; and

WHEREAS, a public hearing was held on this application on April 20, 2010, after due notice by publication in *The City Record*, and then to decision on May 11, 2010; and

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

WHEREAS, the site is located on a corner lot bounded by 60th Street to the north, Fort Hamilton Parkway to the east, and 61st Street to the south, within an M1-1 zoning district; and

WHEREAS, the site is occupied by a one- and three-story vacant warehouse/commercial building with approximately 51,474 sq. ft. of floor area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 19, 2005 when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing industrial building to residential/commercial use; and

WHEREAS, on November 21, 2006, the Board amended the grant to permit the removal of the proposed mezzanines, the reconfiguration of dwelling units, commercial space, and the parking lot, and other interior and exterior reconfigurations to the approved plans; and

WHEREAS, substantial construction was to be completed by July 19, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed due to financing issues and the discovery of asbestos containing material at the site; and

WHEREAS, the applicant represents that it has since resolved the financing issues, performed all necessary asbestos

abatement work, and provided an Asbestos Control Program certification to the Department of Buildings for approval; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 19, 2005, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction for a term of four years, to expire on July 19, 2013; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction shall be completed by July 19, 2013;

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. 301799034)

Adopted by the Board of Standards and Appeals May 11, 2010.

16-36-BZ

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

SUBJECT – Application October 27, 2009 – Extension of Time to obtain a Certificate of Occupancy of an existing Gasoline Service Station (*Gulf*) which expired on March 18, 2009; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue, southeast corner of the intersection between Westchester Avenue and White Plains Road, Block 3880, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M., for decision, hearing closed.

MINUTES

887-54-BZ

APPLICANT – Eric Palatnik, Esq., for 218 Bayside Operating LLC, owner.

SUBJECT – Application March 5, 2010 – Extension of Term (§11-411) for the continued use of gasoline station (*British Petroleum*) with accessory convenience store (*7-Eleven*) which expires on September 23, 2010. C2-2/R6B zoning district.

PREMISES AFFECTED – 218-01 Northern Boulevard, between 218th and 219th Street, Block 6321, Lot 21, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

834-60-BZ

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

SUBJECT – Application October 20, 2009 – Extension of Term for the continued use of a Gasoline Service Station (*Gulf*) with minor auto repairs which expired on March 7, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on March 2, 2000; Amendment to legalize an accessory convenience store and Waiver of the Rules. C2-4/R-7A, R-5B zoning district.

PREMISES AFFECTED – 140 Vanderbilt Avenue, northwest corner of Myrtle Avenue and Vanderbilt Avenue, Block 2046, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Joykiss Management, LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Term (§11-411 & §11-412) to allow the continued operation of an Eating and Drinking establishment (UG 6) which expired on March 15, 2004; Amendment to legalize alterations to the structure; Waiver of the Rules. C2-2 and R3-2 zoning districts.

PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, Northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

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

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

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to June 15, 2010, at 10 A.M., for continued hearing.

189-96-BZ

APPLICANT – John C. Chen, for Ping Yee, owner; Edith D'Angelo-Cnandong, 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 and Edith F. D'Angelo.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 10 A.M., for continued hearing.

4-00-BZ

APPLICANT – Eric Palatnik, P.C., for 243 West 30th Realty, LLC, owner; West Garden Incorporated, lessee.

SUBJECT – Application March 22, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued use of a Physical Culture Establishment (*West Garden*) which expires on May 30, 2010. M1-5 zoning district.

PREMISES AFFECTED – 243 West 30th Street, north side of West 30th Street, east of 8th Street, Block 780, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 25,

MINUTES

2010, at 10 A.M., for decision, hearing closed.

201-01-BZ

APPLICANT – Sheldon Lobel, P.C., for J.H.N. Corporation, owner.

SUBJECT – Application January 27, 2010 – Extension of Term (§72-01 & 72-22) of a previously approved variance permitting the operation of a automobile laundry, lubrication and accessory automobile supply store (UG16b); Amendment seeking to legalize changes and increase in floor area; and Waiver of the Rules. C4-1 zoning district.

PREMISES AFFECTED – 2591 Atlantic Avenue, northwest corner of Atlantic Avenue and Sheffield Avenue, Block 3668, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

103-05-A

APPLICANT – Rothkrug, Rothkrug, Spector, LLP, for Main Street Make Over 2, Incorporated, owner.

SUBJECT – Application April 20, 2010 – Application to reopen pursuant to a court remand (Appellate Division) for a determination of whether the Department of Buildings issued a permit in error based on alleged misrepresentations made by the owner during the permit application process.

PREMISES AFFECTED – 366 Nugent Street, southwest corner of the intersection of Nugent Street and Spruce Street, Block 2284, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale and Marcus Marino.

For Opposition: Lisa Orrantia.

ACTION OF THE BOARD – Laid over to June 15, 2010, at 10 A.M., for continued hearing.

51-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.

SUBJECT – Application February 4, 2010 – Amendment of a variance (§72-21) which permitted a Physical Culture Establishment, contrary to §32-00, and a dance studio (Use Group 9), contrary to §32-18. The amendment seeks to enlarge the floor area occupied by the PCE. C1-2/R2 zoning district

PREMISES AFFECTED – 188-02/22 Union Turnpike, Located on the south side of Union Turnpike between 188th and 189th Streets, Block 7266, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

287-09-BZY & 288-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Hooshang Vaghari and Farhad Nobari, owners.

SUBJECT – Application October 9, 2009 – Extension of time (§11-332) to complete construction of a major development commenced under the prior R6 zoning. R5 zoning district.

PREMISES AFFECTED – 87-85 & 87-87 144th Street, east side of 144th Street between Hillside Avenue and 85th Avenue, Block 9689, Lot 6 & 7, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for two four-story semi-detached residential buildings currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on March 23, 2010, after due notice by publication in *The City Record*, with a continued hearing on April 27, 2010, and then to decision on May 11, 2010; and

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

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

WHEREAS, the subject site consists of two contiguous zoning lots located on the east side of 144th Street, between Hillside Avenue and 88th Avenue; and

WHEREAS, the subject site has 50 feet of frontage along 144th Street, a depth of 100 feet, and a total lot area of 5,000 sq. ft.; and

WHEREAS, each zoning lot is proposed to be developed with a four-story eight-family semi-detached residential building, for a total of 16 dwelling units (the “Proposed Development”); and

WHEREAS, the Proposed Development complies with the former R6 zoning district parameters; and

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WHEREAS, however, on September 10, 2007 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Jamaica Plan Rezoning, which rezoned the site from R6 to R5; and

WHEREAS, because the Department of Buildings (“DOB”) did not find that work on the foundations was completed as of the Enactment Date, the applicant filed a request to continue construction pursuant to ZR § 11-331, which authorizes the Board to grant a six-month extension of time to complete required foundation work upon a finding that excavation had been completed and substantial progress made on foundations as of the Enactment Date; and

WHEREAS, on April 1, 2008, under BSA Cal. Nos. 231-07-BZY and 232-07-BZY, the Board determined that excavation had been completed and substantial progress made on foundations as of the Enactment Date and granted a six-month extension of time to complete the required foundation work under ZR § 11-331; and

WHEREAS, the applicant has submitted the following documentation to establish that the foundations were completed within six months of the Board’s grant pursuant to ZR § 11-331: (1) a foundation survey dated September 23, 2008 showing completed foundations on both Lot 6 and Lot 7; (2) concrete pour tickets reflecting that all required concrete was poured as of September 15, 2008; and (3) photographs dated September 24, 2008 showing completed foundations; and

WHEREAS, pursuant to ZR § 11-331, however, subsequent to the rezoning of a property, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-332, which authorizes the Board to grant an extension of time to complete construction for a “major development” that was previously authorized under a grant for an extension pursuant to ZR § 11-331; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for . . . three terms of not more than two years each for a major development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, the Board notes that the subject site is a “major development” pursuant to ZR § 11-31(c)(2) because it involves the construction of two buildings on contiguous zoning lots that have been planned as a unit and which are non-complying as a result of an amendment to the Zoning

Resolution; and

WHEREAS, as noted in the previous resolution, New Building Permit Nos. 402614701 and 402614694 (hereinafter, the “NB Permits”) were lawfully issued by DOB on August 9, 2007 and August 16, 2007, respectively, permitting the construction of the Proposed Development prior to the Enactment Date; and

WHEREAS, subsequent to the previous grant the applicant renewed the NB Permits, which remained in effect until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant, and directed the applicant to exclude pre-permit expenditures; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the NB Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the Proposed Development subsequent to the issuance of the permits includes: 100 percent of the excavation; 100 percent of the shoring; and installation of 100 percent of the footings and foundation; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the NB Permits; a breakdown of the construction costs by line item and percent complete; concrete pour tickets; a foundation survey; copies of cancelled checks; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$165,924, or 12 percent, out of the \$1,423,224 cost to complete; and

WHEREAS, as noted, the applicant has submitted financial records and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR

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§ 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Permit Nos. 402614701-01-NB and 402614694-01-NB, as well as all related permits for various work types either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on May 11, 2012.

Adopted by the Board of Standards and Appeals, May 11, 2010.

43-08-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application February 28, 2008 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35 . R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

3-10-A - 4-10-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application January 5, 2010 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35 . R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue and 29-46 145th Street, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

193-09-A

APPLICANT – Slater & Beckerman, LLP, for Margaret Sausa, owner.

SUBJECT – Application June 11, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R5 Zoning district . R4-1 Zoning district.

PREMISES AFFECTED – 78-46 79th Place, west side of 79th Place, between Myrtle Avenue and 78th Avenue, Block 3828, Lot 73, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

303-09-BZY

APPLICANT – Ray Chen, for 517 53rd Street Inc, owner.
SUBJECT – Application October 30, 2009 – Extension of time (§11-332) to complete construction of an enlargement commenced under the prior C4-3 zoning district. R6B zoning district

PREMISES AFFECTED – 517 53rd Street, between 5th and 6th Avenue, Block 608, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M., for decision, hearing closed.

57-10-A

APPLICANT – Eric Palatnik, P.C., for 517 53rd Street, Inc., owner.

SUBJECT – Application April 19, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior C4-3 zoning district. R6B zoning district.

PREMISES AFFECTED – 517 53rd Street, between Fifth Avenue and Sixth Avenue, Block 808, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

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 May 25, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MAY 11, 2010
1:30 P.M.**

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

ZONING CALENDAR

214-07-BZ

CEQR #08-BSA-017X

APPLICANT – Sheldon Lobel, P.C., for 3210 Riverdale Associates, LLC, owner.

SUBJECT – Application September 18, 2007 – Variance (§72-21) to allow a public parking garage and increase the maximum permitted floor area in a mixed residential and community facility building, contrary to §22-10 and §24-162. R6 zoning district.

PREMISES AFFECTED – 3217 Irwin Avenue, aka 3210 Riverdale Avenue, north side of West 232nd Street, Block 5759, Lots 356, 358, 362, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Maryann Barchuk.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 14, 2007, acting on Department of Buildings Application No. 201110831, reads in pertinent part:

“Transient parking at the premises is not permitted in an R6 zoning district pursuant to ZR 22-10;” and

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 29, 2010, acting on Department of Buildings Application No. 201110831, reads in pertinent part:

“Proposed development exceeds maximum floor area permitted by ZR 24-162;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R6 zoning district, the construction of an 11-story mixed-use residential/community facility building with transient parking, which does not conform to district use regulations and does not comply with floor area requirements, contrary to ZR §§ 22-10 and 24-162, and which ; and

WHEREAS, a public hearing was held on this application on September 22, 2009 after due notice by publication in *The City Record*, with continued hearings on November 24, 2009, February 9, 2010 and March 23, 2010, and then to decision on May 11, 2010; and

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

WHEREAS, Community Board 8, Bronx, recommends disapproval of this application, citing concerns that the proposed parking will have a detrimental effect on the surrounding neighborhood, and that the applicant should have been aware of the condition of the retaining wall along the western property line prior to the commencement of the project; and

WHEREAS, a representative for New York State Assembly Member Jeffrey Dinowitz provided testimony in opposition to this application; and

WHEREAS, certain residents of the community provided testimony in opposition to this application; and

WHEREAS, the subject site is bounded by Riverdale Avenue to the west, West 232nd Street to the south, and Irwin Avenue to the east, within an R6 zoning district; and

WHEREAS, the site has 190 feet of frontage on Irwin Avenue, a depth that ranges from approximately 67 feet to approximately 85 feet, and a total lot area of 14,224 sq. ft.; and

WHEREAS, the applicant states that the site is divided into two separate zoning lots for purposes of determining compliance with the bulk regulations of the Zoning Resolution, with a corner lot portion of the site extending 100 feet north from West 232nd Street, and the remaining portion of the site considered an interior through lot; and

WHEREAS, the site is currently vacant, however construction has commenced on the as-of-right building envelope for the proposed 11-story mixed-use residential/community facility building; and

WHEREAS, the proposed building will have a three-level parking garage with a total of 150 spaces, including 46 accessory residential spaces, 30 accessory community facility spaces, 49 non-accessory spaces for monthly-only rental, and 25 non-accessory spaces for transient use; and

WHEREAS, transient parking is not permitted in the subject R6 zoning district, thus the applicant seeks a use variance; and

WHEREAS, further, the proposed building will have the following non-compliances: a floor area of 80,230 sq. ft. (56,902 sq. ft. is the maximum permitted); and an FAR of 5.63 (4.0 FAR is the maximum permitted); and

WHEREAS, the applicant represents that the proposed building envelope is permitted as-of-right, but that the proposed transient parking use triggers the bulk waiver because all above-grade space in the garage must be counted as zoning floor area; and

WHEREAS, the Board notes that the 25 transient parking spaces will be located below grade, and as such it is only the accessory parking spaces and the non-accessory monthly-only spaces, which are both permitted as-of-right, which will be located above grade; and

WHEREAS, the applicant states that pursuant to ZR § 12-10, since at least one parking space in the proposed building is non-accessory, the entire parking structure is classified as a public parking garage such that all above-grade space is

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counted as floor area regardless of the location of the transient spaces within the facility; and

WHEREAS, the applicant further states that the transient parking use therefore increases the floor area of the proposed building by 24,390 sq. ft. because Parking Level 2 and 3 are located above-grade and must be included in the zoning floor area calculations; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the site is encumbered with a significant slope; (2) the presence of decomposed bedrock on the site; (3) the presence of a retaining wall along the western lot line; and (4) the site's groundwater conditions; and

WHEREAS, as to the change in grade, the applicant states that there is a difference in elevation at the site of approximately 35 feet between the southwest and southeast corners of the property and in excess of 50 feet between the northeast and northwest corners of the property; and

WHEREAS, the applicant represents that, due to these differences in elevation at the site, the residential portion of the building must be located at or above the Riverdale Avenue grade level in order to provide all apartments with access to legally required light and air; and

WHEREAS, as to the underlying bedrock conditions, the applicant states that the eastern portion of the site was underlain by decomposed bedrock along Irwin Avenue; and

WHEREAS, specifically, the applicant provided an engineering report (the "Engineering Report") which states that the site is underlain by severely decomposed bedrock with a nearly vertical dip which allowed water to run into the bedrock veins and decompose the bedrock to a depth of eight to ten feet; and

WHEREAS, the Engineering Report states that the decomposed bedrock conditions required excavation to a depth of ten to 15 feet below the Irwin Avenue grade level to ensure the building's foundation would rest on solid bedrock; and

WHEREAS, the applicant represents that the presence of the decomposed bedrock ultimately required the excavation and removal of approximately 1,270 cubic yards of additional soil and 5,080 cubic yards of additional rock, at an increased cost of approximately \$2 million; and

WHEREAS, the applicant states that the entire site was excavated to competent bedrock of approximate uniform depth due to the complexity of constructing the building with an alternative foundation system; and

WHEREAS, the applicant represents that the costs associated with the additional excavation required the construction of a parking/foundation level below the Irwin Avenue grade to fill the void previously occupied by the decomposed rock; and

WHEREAS, the applicant states that the additional parking level was necessary so that the residential portion of the building could remain at the Riverdale Avenue grade; and

WHEREAS, at hearing, the Board questioned whether an alternative foundation design could have been utilized to support a two-story parking garage at the site instead of excavating the entire site to a uniform depth and constructing a

third parking level; and

WHEREAS, in response, the applicant submitted a supplemental engineering report (the "Supplemental Report"), which analyzed the feasibility of three alternative foundation designs: (1) a foundation supported by auger cast piles; (2) a foundation supported by driven piles; and (3) a foundation built on spread footings with individual pits; and

WHEREAS, the Supplemental Report indicates that a foundation supported by auger cast piles would have been cost-prohibitive, as it would require an estimated 276 piles to support the proposed building at a total cost of approximately \$2.8 million, and extensive earth movement and re-grading would have been required at an additional cost of approximately \$300,000, as well as additional costs associated with a completely new foundation design; and

WHEREAS, the Supplemental Report further indicates that a foundation supported by driven piles would cost approximately 20 percent less than the auger cast pile foundation, but would still exceed the costs associated with the selected foundation design, and would create substantial risk to the surrounding structures due to the noise and vibrations that result from hammering the piles; and

WHEREAS, finally, the foundation built on spread footings was found to be impractical because it would result in a significant amount of over-excavation, as each individual footing pit would have to be excavated to competent bedrock before the footing could be poured and a pier constructed to support the foundation, and the pit would then have to be backfilled to enable construction equipment to be maneuvered throughout the site; and

WHEREAS, as to the retaining wall along the western lot line, the applicant states that once excavation had commenced and the base of the Riverdale Avenue retaining wall was exposed, it was discovered that a significant portion of the retaining wall had not been built on bedrock; and

WHEREAS, the applicant represents that the deeper excavation required by the underlying bedrock conditions necessitated significant underpinning to support the retaining wall, and that construction activity at the site was stopped for lengthy periods of time while the applicant worked with the Department of Transportation ("DOT") and the Department of Buildings ("DOB") to develop a plan to underpin the retaining wall and provide additional stabilization through a rock anchoring system; and

WHEREAS, the Engineering Report states that significant underpinning of the retaining wall to bedrock was required for approximately 105 feet of the wall's length, and a bedrock "bench" had to be cut beneath those portions of the retaining wall that were built on unsuitable soils and then brick between the top of the bedrock and the bottom of the retaining wall's footing; and

WHEREAS, the applicant states that DOB also required it to provide a 40-ft. access alley (filled with fill material) along the base of the retaining wall to enable access for maintenance and monitoring purposes, and the design of the building's foundation required revision to accommodate the increased lateral loads generated by the 40 feet of fill material; and

WHEREAS, as to the site's groundwater conditions, the

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Engineering Report states that the site has slow but continuous flow of groundwater from the north, west and south sides of the site, and that it is critical to channel the water away from behind the foundation walls to protect the foundation wall stability and maintain basement dryness; and

WHEREAS, the applicant states that, in order to address the site's groundwater flow, it was required to waterproof the cellar slab's underside with a vapor barrier and to install a drainage system to collect water and distribute it to a sump area where it can be pumped to the combined sewer in the street; and

WHEREAS, the applicant represents that the increased construction costs associated with the site's unique conditions totaled approximately \$2,467,489, and that the requested variance is necessary to offset these costs; and

WHEREAS, based upon the above, the Board finds that the site's change in grade, the presence of decomposed bedrock, the presence of a retaining wall along the western lot line, and the site's groundwater conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed: (1) an as-of-right building with 47 accessory residential parking spaces and 36 accessory community facility parking spaces for a total of 83 accessory spaces; and (2) a proposal with 23 accessory residential parking spaces, 17 accessory community facility parking spaces, and 110 non-accessory spaces for transient use; and

WHEREAS, the applicant concluded that the as-of-right scenario would not result in a reasonable return but that the scenario with 110 transient parking spaces would result in a reasonable rate of return; and

WHEREAS, at hearing, the Board directed the applicant to revise the financial analysis and to review lesser variance alternatives; and

WHEREAS, in response, the applicant provided interim proposals with a reduced number of transient parking spaces, and ultimately submitted a feasibility study which analyzed the proposed building with 46 accessory residential spaces, 30 accessory community facility spaces, 49 non-accessory spaces for monthly-only rental, and 25 non-accessory spaces for transient use; and

WHEREAS, the study concluded that that the proposed scenario would realize a reasonable return and a further reduced number of transient spaces could not generate the income required to offset the costs incurred in addressing the site's physical conditions; and

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

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

WHEREAS, the applicant states that the proposed variance only seeks to permit the use of excess space in the three-story garage for transient parking; and

WHEREAS, the applicant further states that the requested floor area waiver is only triggered because the accommodation of transient parking results in the inclusion of all above grade space in the calculations of zoning floor area, and that otherwise the proposed building fully complies with all bulk regulations for the R6 zoning district; and

WHEREAS, the applicant represents that the surrounding neighborhood is characterized by semi-detached and attached homes as well as several large multi-family residential buildings; and

WHEREAS, specifically, the applicant submitted a 400-ft. radius diagram reflecting that there is a seven-story residential building located directly across Riverdale Avenue from the site, and two 12-story residential buildings located one block south of the subject site; and

WHEREAS, the Board notes that there will be no signage associated with the parking garage use located on the exterior of the building; and

WHEREAS, the applicant represents that the proposal will not adversely affect traffic conditions along Irwin Avenue or the surrounding street network; and

WHEREAS, the applicant states that the majority of the parking at the site will be for accessory and monthly parking, which will have a limited effect on traffic in the surrounding area; and

WHEREAS, further, the applicant submitted a trip generation analysis which indicates that the monthly and transient parking uses will generate between 11 and 23 vehicle trips per hour, which is substantially fewer vehicle trips than that generated by the building's accessory parking spaces; and

WHEREAS, the trip generation analysis submitted by the applicant further indicated that the traffic volume generated by the transient and monthly parking uses will account for only five to six percent of the total traffic volume for the intersection of Irwin Avenue and West 232nd Street during the morning, midday, and evening peak hours; thus, the increase in volume attributed to the transient and monthly uses will not have a noticeable effect on the traffic levels at this intersection; and

WHEREAS, the applicant also submitted a traffic study for review and approval by DOT, to determine whether a curb cut for the proposed parking garage would adversely affect traffic conditions on Irwin Avenue and the surrounding roadways; and

WHEREAS, DOT approved the parking study and accepted the location of the curb cut, finding that the placement of the curb cut for the proposed building with 150 parking spaces would not create significant traffic circulation or safety impacts; and

WHEREAS, the applicant represents that the proposed public parking garage would be permitted pursuant to a Department of City Planning ("DCP") special permit under ZR § 74-511 if the subject site were located in a C1-1 zoning district; and

WHEREAS, specifically, the applicant represents that the subject site satisfies the requisite findings of the DCP special

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permit, in that the use is so located as to draw a minimum of vehicular traffic to and through local streets in nearby residential areas, and the garage has adequate reservoir space at the vehicular entrance to accommodate ten vehicles; and

WHEREAS, at hearing, the Board questioned how the proposed parking garage at the site would operate; and

WHEREAS, in response, the applicant states that the garage will have a total capacity of 150 parking spaces, with 43 spaces located on Parking Level 1, 39 spaces on Parking Level 2 and 68 spaces on Parking Level 3; and

WHEREAS, the applicant further states that the garage will be operated on a fully attended basis and will utilize a total of 30 lifts when operating at maximum capacity, with vehicles entering the parking garage and pulling into the ten-car reservoir lane on Parking Level 2 while they await attendant service; and

WHEREAS, the applicant further states that 25 of the spaces located on Parking Level 1 (the lowest level) will be designated solely for transient use with the remaining spaces on that level utilized for accessory residential spaces, Parking Level 2 will be used solely for storing accessory residential and non-accessory monthly parking, which will limit maneuvering into these spaces and reduce any resulting congestion in the reservoir and exit lanes, and Parking Level 3 will be used for accessory community facility and long-term parking; and

WHEREAS, at hearing, the Board also questioned whether it was feasible to rent the non-accessory spaces at the proposed site on a monthly-only basis and requested that the applicant provide a survey of parking garages and lots in the surrounding area to determine the number of garages renting spaces on a monthly-only basis; and

WHEREAS, in response, the applicant submitted a survey of more than 30 parking garages and lots in the Western Bronx and Upper Manhattan, reflecting that all but two of the garages surveyed offer hourly and daily parking in addition to monthly parking; and

WHEREAS, the applicant states that the two garages that offer monthly-only parking are distinguishable from the subject site in that one such garage is a self-parking facility that does not provide attendant service and the other garage is located within a warehouse structure that also contains auto body and auto repair uses; and

WHEREAS, the applicant represents that the lack of any other monthly-only parking facilities in the area establishes that a scenario with monthly-only parking is not feasible for the subject site and underscores the difficulty the applicant would have in securing an operator for such a facility; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, as noted above, the applicant initially proposed to construct a building with 23 accessory residential parking spaces, 17 accessory community facility parking

spaces, and 110 non-accessory spaces for transient use; and

WHEREAS, at the Board's direction, the applicant revised its proposal several times to minimize the requested number of transient parking spaces, ultimately providing the current proposal with 46 accessory residential spaces, 30 accessory community facility spaces, 49 non-accessory spaces for monthly-only rental, and 25 non-accessory spaces for transient use; and

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

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

WHEREAS, the project is classified as an unlisted action pursuant to 6 NYCRR Part 617.12 (aj) and 617.5.

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") 08BSA017X, dated September 17, 2007; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a negative determination 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 R6 zoning district, the construction of an 11-story mixed-use residential/community facility building with transient parking, which does not conform to district use regulations and does not comply with floor area requirements; *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 7, 2010" - thirteen (13) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a maximum total floor area of 80,230 sq. ft. (5.63 FAR); and 150 parking spaces, as indicated on the BSA-approved plans;

THAT the parking garage shall be limited to a total of 150 parking spaces, including 46 accessory residential spaces,

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30 accessory community facility spaces, 49 non-accessory spaces for monthly-only rental, and 25 non-accessory spaces for transient use;

THAT the 25 transient parking spaces shall be located on Parking Level 1 (the lowest level), in accordance with the BSA-approved plans;

THAT there shall be no signage associated with the parking garage use on the exterior of the building;

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

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

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

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

Adopted by the Board of Standards and Appeals, May 11, 2010.

272-09-BZ

CEQR #10-BSA-022Q

APPLICANT – Jeffrey A. Chester, Esq., for Bob Roberts, owner; The Fitness Place Astoria N.Y. Inc., lessee.

SUBJECT – Application September 24, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Lucille Roberts*) on the second and third floors in an existing three-story building. C5-2.5 (M.D) zoning district.

PREMISES AFFECTED – 32-62 Steinway Street, north side, 281’ east of 34th Avenue, Block 656, Lot 61, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Jeffrey A. Chester.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated January 25, 2010, acting on Department of Buildings Application No. 410053230, reads in pertinent part:

“Physical culture establishment in zoning district C4-2...is not permitted as per ZR Section 73-36.

Therefore must be referred to Board of Standards and Appeals for special permit;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to allow, on a site within a C4-2 zoning district, the re-establishment of a special permit for continued use of

a physical culture establishment (PCE) in the cellar, first floor and second floor of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 2, 2010 after due notice by publication in *The City Record*, with a continued hearing on April 13, 2010, and then to decision on May 11, 2010; and

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

WHEREAS, Community Board 1, Queens, recommends approval of the application, with the following conditions: (1) the applicant obtains a valid certificate of occupancy; (2) the PCE satisfies all requirements of the Americans with Disabilities Act and Local Law 58; and (3) the applicant timely renews the grant prior to its expiration; and

WHEREAS, the Fire Department provided testimony requesting that the applicant be granted a short term and time limits for obtaining a certificate of occupancy and public assembly permits, to ensure that the subject special permit is timely renewed; and

WHEREAS, the subject site is located on the west side of Steinway Street, between 34th Avenue and 35th Avenue, within a C4-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 19, 1995 when, under BSA Cal. No. 138-93-BZ, the Board granted a special permit for the legalization of a PCE in the cellar, first floor and second floor of a two-story commercial building, which expired on September 19, 2000; and

WHEREAS, the applicant represents that Lucille Roberts has operated the site as a PCE continuously since the time of the original grant; and

WHEREAS, the applicant now seeks to re-establish the special permit; and

WHEREAS, the applicant represents that the special permit was not timely renewed due to administrative oversight; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE occupies a total of 8,390 sq. ft. of floor area on the first floor and second floor and 4,195 sq. ft. of additional floor space in the cellar; and

WHEREAS, the PCE is operated as Lucille Roberts; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 8:00 a.m. to 9:30 p.m.; Friday, from 9:00 a.m. to 8:30 p.m.; and Saturday and Sunday, from 9:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, in response to concerns raised by the Community Board, the applicant represents that the PCE is in compliance with the Americans with Disabilities Act and Local Law 58/87; and

WHEREAS, at hearing, the Board questioned whether the site complies with C4 district signage regulations and

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directed the applicant to remove the flagpoles located on the roof of the building; and

WHEREAS, in response, the applicant submitted a signage analysis reflecting that the site is in compliance with the C4 district regulations, and states that it has hired a contractor to remove the flagpoles from the building; and

WHEREAS, at hearing, the Board requested that the applicant confirm whether it was in compliance with the condition from the prior grant that all step aerobics classes be limited to the cellar of the building; and

WHEREAS, in response, the applicant represents that all aerobics classes are held in the cellar; and

WHEREAS, at hearing, the Board questioned whether the applicant received Department of Buildings' ("DOB") sign-off on the building's sprinkler system; and

WHEREAS, in response, the applicant states that the building is sprinklered throughout, and submitted a copy of the DOB application to install the sprinkler system, but notes that DOB has not signed-off on the installation; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

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

WHEREAS, the PCE will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA022Q, dated September 23, 2009; and

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

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-2 zoning district, the continued operation of a physical culture establishment in the cellar, first floor and second floor of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 25, 2010"-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 11, 2015;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT all signage shall comply with C4 district regulations;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a new certificate of occupancy shall be obtained by November 11, 2010;

THAT DOB shall review and approve the existing sprinkler system;

THAT the flagpoles shall be removed from the roof of the building;

THAT public assembly permits shall be obtained and renewed as required;

THAT the use of the site shall comply with all relevant provisions of the Noise Code;

THAT Local Law 58/87 compliance shall be reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 11, 2010.

MINUTES

307-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Zahava Hurwitz and Steven Hurwitz, owner.

SUBJECT – Application November 9, 2009 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to open space and floor area (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1358-1360 East 28th Street, West side of East 28th Street between Avenue M and Avenue N. Block 7663, Lot 73 & 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 9, 2009, acting on Department of Buildings Application No. 320082094, reads in pertinent part:

- “1. Proposed floor area is contrary to ZR 23-141.
2. Proposed open space ratio is contrary to ZR 23-141.
3. Proposed rear yard is contrary to ZR 23-47;”
and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in *The City Record*, with continued hearings on February 9, 2010, March 9, 2010, April 13, 2010 and April 27, 2010, and then to decision on May 11, 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, the subject site is located on the west side of East 28th Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the site consists of two lots (Lots 73 and 75), each occupied by a semi-detached single-family home, which are proposed to be merged into one lot (Tentative Lot 73) with a single-family detached home; and

WHEREAS, the subject site has a total lot area of 5,500 sq. ft., and is occupied by two semi-detached single-

family homes with a total floor area of 3,117 sq. ft. (0.57 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 3,117 sq. ft. (0.57 FAR) to 5,743 sq. ft. (1.04 FAR); the maximum permitted floor area is 2,750 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 50 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 22’-6” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant originally proposed a home with a floor area of 5,903 sq. ft. (1.07 FAR), an open space ratio of 48 percent, and a rear yard with a minimum depth of 21’-0”;

WHEREAS, at hearing, the Board raised concerns regarding the size of the proposed home, specifically as to the home’s FAR and height, and whether it was in character with the surrounding neighborhood; and

WHEREAS, in response, the applicant reduced the size of the home to 1.04 FAR, reduced the height of the home, and provided evidence to establish that the home fits within the context of the surrounding area; and

WHEREAS, specifically, the applicant states that seven percent of homes on the subject block within a 100-ft. radius of the site have FARs greater than 1.04, and the applicant provided evidence that the home located to the rear of the site at 1349 East 27th Street has an FAR of 1.18, the home located on the subject block, at 2710 Avenue M has an FAR of 1.24, and the home located at 1375 East 27th Street has a floor area of 7,260 sq. ft.; and

WHEREAS, the applicant also submitted an extended streetscape showing that the height of the proposed home will be the same as several houses on the subject block, and will be 18 inches shorter than at least one other home on the block; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, 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

MINUTES

N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 20, 2010"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 5,743 sq. ft. (1.04 FAR); an open space ratio of 50 percent; a perimeter wall height of 22'-10"; a side yard with a minimum width of 8'-0" along the northern lot line; a side yard with a minimum width of 5'-0" along the southern lot line; a rear yard with a minimum depth of 22'-6"; and one parking space, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 11, 2010.

308-09-BZ

APPLICANT – Jorge F. Canepa, for Joseph Ursini, owner.
SUBJECT – Application November 20, 2009 – Variance (§72-21) to legalize a swimming pool located partially within a front yard and to allow two parking spaces to be located between the street line and the building street wall, contrary to §23-44 and §25-622. R3X zoning district.

PREMISES AFFECTED – 366 Husson Street, corner between Husson Street & Bedford Avenue, Block 3575, Lot 24, Borough of Staten Island

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, May 11, 2010.

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 Jim Hinaman.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 1:30 P.M., for continued hearing.

14-09-BZ

APPLICANT – Eric Palatnik, P.C., for Orenstein Brothers, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application January 26, 2009 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store and automotive laundry (UG 16B). C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2294 Forest Avenue, Southeast intersection of Forest Avenue and South Avenue, Block 1685, Lot 15, 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

189-09-BZ

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

MINUTES

190-09-A

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

192-09-BZ

APPLICANT – Richard Lobel, for Leon Mann, owner.

SUBJECT – Application June 16, 2009 – Variance (§72-21) to allow for the construction of a department store (UG10), contrary to use regulations (§§22-00, 32-00). R6 and R6/C2-3 zoning districts.

PREMISES AFFECTED – 912 Broadway, northeast corner of the intersection of Broadway and Stockton Street, Block 1584, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 1:30 P.M., for adjourned 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 12th Street and Homecrest Avenue, eastside of Avenue S, Block 7291, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 1:30 P.M., for continued hearing.

19-10-BZ / 62-10-A

APPLICANT – Akerman Senterfitt LLP, for Oak Point Property LLC, owner.

SUBJECT – Application February 3, 2010 – Special Permit (ZR§ 73-482) to allow for an accessory parking facility in excess of 150 spaces, and proposed construction not fronting

a legally mapped street, contrary to General City Law Section 36. M3-1 zoning district.

PREMISES AFFECTED – 100 Oak Point Avenue, south of the Bruckner Expressway, west of Barry Street and Oak Point Avenue, Block 2604, Lot 174, Borough of Bronx.

COMMUNITY BOARD #2BZX

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 15, 2010, at 1:30 P.M., for decision, hearing closed.

20-10-BZ

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner; Soul Cycle East 83rd Street, LLC, lessee.

SUBJECT – Application February 8, 2010 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment (*Soul Cycle*) on the ground floor of an existing six-story building. C1-9 zoning district.

PREMISES AFFECTED – 1470 Third Avenue, a/k/a 171-173 East 83rd Street, northwest corner of East 83rd Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 25, 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.

For Opposition: Mary Ann Okin, Susan Klapper, Judy Baron and Georgeann DiSomma.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 1:30 P.M., for continued hearing.

MINUTES

30-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Susan Shalitzky, owner.

SUBJECT – Application March 8, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1384 East 22nd Street, west side of East 22nd Street, between Avenues M and N, Block 7657, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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May 26, 2010

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182-09-BZ	612 West 180 th Street, Manhattan
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DOCKET

New Case Filed Up to May 18, 2010

85-10-BZ

309-311 East Fordham Road, Northwest corner of Kingbridge Road and East Fordham Road., Block 3154, Lot(s) 94, Borough of **Bronx, Community Board: 7**. Special Permit (73-36) to allow the operation of a physical culture establishment. C4-4 district.

86-10-BZ

93-08 95th Avenue, Southern side of 95th Avenue, approximately 50 feet east of 93rd Street., Block 9036, Lot(s) 3, Borough of **Queens, Community Board: 9**. Special Permit (11-411, 11-412) for enlargement of existing building. R5 district.

87-10-BZ

1333 East 24th Street, East side of East 24th Street, 260 feet south of Avenue M., Block 7660, Lot(s) 31, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home. R2 district.

88-10-BZ

1327 East 21st Street, South east corner of east 21st Street and Avenue L., Block 7639, Lot(s) 41, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home. R2 district.

89-10-BZ

53 Mercer Street, West side between Grand and Broome Streets., Block 474, Lot(s) 14, Borough of **Manhattan, Community Board: 2**. Variance to all the use of the ground floor and cellar for retail use and occupancy. M1-5B district.

90-10-BZ

58-06 Springfield Boulevard, Corner of the west side of Springfield Boulevard west north side of the Horace Harding Expressway, Block 7471, Lot(s) 7 & 45, Borough of **Queens, Community Board: 11**. Variance to allow a two-story building house of worship, contrary to use regulations. R2-A district.

91-10-BZ

123 Coleridge Street, South of hampton Street., Block 8735, Lot(s) 35, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family home. R3-1 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JUNE 8, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 8, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

589-31-BZ

APPLICANT – Eric Palatnik, P.C., for Asha Ramnath, owner.

SUBJECT – Application March 5, 2010 – Amendment pursuant to ZR 11-413 to permit the proposed change of use group from UG16 (Gasoline Service Station) to UG16 (Automotive Repair) with accessory used car sales. R3-2 zoning district.

PREMISES AFFECTED – 159-02 Meyer Avenue, intersection of Mayer Avenue, 159th Street, Linden Boulevard, Block 12196, Lot 1, Borough of Queens.

COMMUNITY BOARD #12Q

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 26th Avenue, 26th Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

COMMUNITY BOARD #7Q

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 (ZR 25-21) and (ZR 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

APPEALS CALENDARS

49-10-A thru 52-10-A

APPLICANT – Philip L. Rampulla, for Daniel Master, owner.

SUBJECT – Application April 9, 2010 – Proposed construction of a four single family homes not fronting on a mapped street contrary to General City Law Section 36. R3-1 zoning district. Series: 49-10-A thru 52-10-A

PREMISES AFFECTED – 28, 26, 22, 20 Winchester Avenue, south side of Winchester Avenue, east of Tennyson Drive, Block 5320, Lot 45, Borough of Staten Island.

COMMUNITY BOARD #3SI

JUNE 8, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 8, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

92-08-BZ

APPLICANT – Riker Danzig, for Boquen Realty, LLC, owner.

SUBJECT – Application April 14, 2008 – Variance pursuant to 72-21 to allow for UG 6 use below the floor level of the second story, encroach within the required rear yard, and increase the allowable floor area, contrary to ZR 42-14, 43-12 and 43-26. M1-5B zoning district.

PREMISES AFFECTED – 13 Crosby Street, east side of Crosby Street between Grand and Howard Street, Block 233, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #4M

40-10-BZ

APPLICANT – Sheldon Lobel, PC, for Campworth LLC, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to allow for an existing building to be converted for commercial use, contrary to ZR 22-10. C4-4A/R5B zoning district.

PREMISES AFFECTED – 150 Kenilworth Place, through-lot between Campus Road and Kenilworth Place, Block 7556, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

48-10-BZ

APPLICANT – Rampulla Associates Architects, for Outerbridge Commons, LP, owner; 2965 Veterans Road West, owners.

SUBJECT – Application April 9, 2010 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Retro Fitness*). M1-1 district/Special South Richmond District.

PREMISES AFFECTED – 2965 Veterans Road West, Veterans Road West and Tyrellan Avenue, Block 7511, Lots 1, 75 & 150, Borough of Staten Island.

COMMUNITY BOARD #3SI

59-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Kaufman 8th Avenue Associates, owner; Bension Salon Inc., lessee.

SUBJECT – Application April 23, 2010 – Special Permit (73-36) to allow a physical culture establishment (*Luxe Den Salon & Spa*). M1-6/C6-4M.

PREMISES AFFECTED – 519 Eighth Avenue, southwest corner of West 36th Street and Eighth Avenue, Block 759, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #4M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 18, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

16-36-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.

SUBJECT – Application October 27, 2009 – Extension of Time to obtain a Certificate of Occupancy of an existing Gasoline Service Station (*Gulf*) which expired on March 18, 2009; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue, southeast corner of the intersection between Westchester Avenue and White Plains Road, Block 3880, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy, which expired on March 18, 2009; and

WHEREAS, a public hearing was held on this application on February 2, 2010 after due notice by publication in *The City Record*, with continued hearings on March 16, 2010, and April 20, 2010, and then to decision on May 18, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Westchester Avenue and White Plains Road, within a C2-2 (R5) zoning district; and

WHEREAS, the site is occupied by a gasoline service station and an accessory convenience store; and

WHEREAS, the site has a total lot area of 13,500 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 18, 1950 when, under the subject calendar number, the Board granted a variance to permit the

reconstruction of a gasoline service station with accessory uses at the site for a term of 15 years; and

WHEREAS, the grant was subsequently amended and the term extended at various times; and

WHEREAS, most recently, on March 18, 2008, the Board granted a ten-year extension of the term, to expire on November 1, 2017; and

WHEREAS, a condition of the grant was that a new certificate of occupancy be obtained by March 18, 2009; and

WHEREAS, the applicant now seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant to: (1) close the southern curb cut on White Plains Road, in accordance with the condition from the previous grant; (2) confirm that the signage on the site complies with C2 district signage regulations; and (3) confirm that the lighting at the site complies with the lighting plan that was previously approved by the Board; and

WHEREAS, in response, the applicant submitted: (1) copies of work permits issued by the Department of Buildings and the Department of Transportation related to the closure of the southern curb cut on White Plains Road, and photographs reflecting that the curb cut has been closed; (2) a revised signage analysis reflecting that the site complies with C2 district regulations; and (3) a new lighting plan that substantially complies with the previously-approved lighting plan; and

WHEREAS, based upon the above, the Board finds that the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated April 18, 1950, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy, to expire on May 18, 2011; *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by May 18, 2011;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 201108078)

Adopted by the Board of Standards and Appeals May 18, 2010.

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1045-67-BZ

APPLICANT – Michael A. Cosentino, for Thomas Abruzzi, owner.

SUBJECT – Application October 30, 2009 – Extension of term of a variance (§72-21) for an accessory parking lot to be used for adjoining commercial uses, which expired on June 27, 1998; waiver of the Rules; and an Amendment to eliminate the term. R2 zoning district

PREMISES AFFECTED – 160-10 Crossbay Boulevard, Crossbay Boulevard between 160th Avenue and 161st Avenue, Block 14030, Lot 6, 20, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Michael A. Cosentino and Anthony S. Cosentino.

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an amendment to eliminate the term of a previously granted variance for the operation of an accessory parking lot for an adjoining commercial use and to remove a condition restricting the hours of operation of the parking lot, which expired on June 27, 1998; and

WHEREAS, a public hearing was held on this application on March 16, 2010, after due notice by publication in *The City Record*, with a continued hearing on April 20, 2010, and then to decision on May 18, 2010; and

WHEREAS, Community Board 10, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the subject site consists of two zoning lots (Lots 6 and 20), which occupy an entire city block, bounded by 92nd Street to the west, 160th Avenue to the north, Cross Bay Boulevard to the east, and 161st Avenue to the south, partially within an R2 zoning district and partially within a C2-2 zoning district; and

WHEREAS, the site is occupied by a post office, retail stores (Use Group 6), and an open parking lot; and

WHEREAS, the Board has exercised jurisdiction over the site since June 12, 1973 when, under the subject calendar number, the Board granted a variance to permit, in an R2 zoning district, the construction and maintenance of an accessory parking lot for the adjoining commercial establishment, for a term of five years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, on May 10, 1988, the Board granted a ten-

year extension of term, which expired on June 12, 1998; and

WHEREAS, the applicant now seeks to eliminate the term of the grant; and

WHEREAS, the applicant represents that the elimination of the term is appropriate because the owner has maintained the accessory parking lot at the site continuously since the time of the original grant; and

WHEREAS, additionally, the applicant represents that the elimination of the term helps to ensure stable, long-term tenants, which requires a long lease with the option to renew in order to make a commitment to the site; and

WHEREAS, the applicant also seeks to remove the condition of the previous grant requiring the applicant to close the gates to the parking lot after business hours; and

WHEREAS, the applicant states that the subject parking lot services a 24-hour drug store on the site which is open to the public and receives night-time deliveries, therefore requiring the parking lot to remain open 24 hours per day; and

WHEREAS, at hearing, the Board directed the applicant to provide the total number of parking spaces that are currently located at the site, and raised concerns about the parking layout and the maintenance of the fencing on the site; and

WHEREAS, in response, the applicant submitted a revised site plan with a chart reflecting that there are 21 parking spaces located in the C2-2 district and 127 parking spaces located in the R2 district, for a total of 148 spaces located on the site; the revised site plan also reflected improvements to the parking layout, including the addition of a no parking zone at the entrance of the parking lot from Cross Bay Boulevard; and

WHEREAS, the applicant also provided photographs reflecting the installation of screening to the chain link fence on both 160th Avenue and 161st Avenue and new entry and exit signs painted on the pavement of the parking lot; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to eliminate the term and remove the condition restricting the hours of operation of the parking lot is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated June 12, 1973, so that as amended this portion of the resolution shall read: “to eliminate the term and to remove the specified condition related to the permitted hours of operation of the parking lot from prior approvals; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received May 4, 2010”-(1) sheet; and *on further condition*:

THAT the site shall be maintained free of debris and graffiti;

THAT the landscaping, fencing, and sidewalks shall be adequately maintained in conformance with the approved plans;

THAT there shall be no parking on the sidewalks;

THAT all lighting shall be directed down and away from adjacent residential uses;

THAT the above conditions shall appear on the

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certificate of occupancy;

THAT all conditions from prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application Nos. 410227712, 410227721 and 410227730)

Adopted by the Board of Standards and Appeals May 18, 2010.

291-03-BZ

APPLICANT – Stuart A. Klein, Esq., for 6202-6217 Realty LLC, owner.

SUBJECT – Application June 5, 2009 – Extension of term of a variance (§72-21) for construction of a new residential building; amendment to add increase the number of dwelling units, FAR, height and parking spaces. M1-1/R5B zoning districts.

PREMISES AFFECTED – 1380 62nd Street, corner of 62nd Street and 14th Avenue, Block 5733, Lots 35, 36, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Jay Goldstein.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of time to complete construction, and an amendment to a previously granted variance which permitted the construction of a four-story residential building contrary to use regulations; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in *The City Record*, with a continued hearing on 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, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 10, Brooklyn, states that it has no objection to this application; and

WHEREAS, the site is located on the southwest corner of 62nd Street and 14th Avenue, partially within an R5 zoning district and partially within an M1-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 19, 2005 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the construction of a four-story residential building on the site, contrary to ZR § 42-00; and

WHEREAS, substantial construction was to be completed by April 19, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed due to financing issues; and

WHEREAS, thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant also requests an amendment to the original grant to permit modifications to the building; and

WHEREAS, the Board notes that the original approval reflected a four-story residential building with a total floor area of 33,463 sq. ft. (2.1 FAR); a total building height of 57'-1"; a streetwall height of 36'-9", with 15'-0" setbacks on both 14th Avenue and 62nd Street; 26 residential units; and an underground parking area containing 15 spaces; and

WHEREAS, under the current application, the applicant initially sought to amend the grant to permit: a five-story residential building with a total floor area of 42,541 sq. ft. (2.66 FAR); a total building height of 57'-1"; a streetwall height of 29'-0", with setbacks on both 15th Avenue and 62nd Street of 10'-0" at the fourth floor and 15'-0" at the fifth floor; 40 residential units; and 27 parking spaces; and

WHEREAS, the applicant asserted that the changes were required due to the unforeseen downturn in the economy, which exacerbated the unique physical conditions and unnecessary hardship that was the basis of the original grant, such that the proposed modifications are necessary to realize a reasonable return on the project; and

WHEREAS, in support of the request, the applicant submitted a financial analysis and a letter from a real estate broker; and

WHEREAS, during the hearing process, the Board stated that it did not find the applicant's claim of an increased hardship since the time of the original grant compelling; and

WHEREAS, specifically, the Board found the financial analysis and purported requirement for additional floor area unconvincing, stating that the applicant's request was based on market conditions that have affected many property owners and that the original variance adequately compensated the applicant for the land use-related hardships associated with the site; and

WHEREAS, in response, the applicant revised the proposed plans to reflect a five-story residential building with: (1) no increase in floor area, (2) no increase in the total building height; (3) a reduction in the streetwall height from 36'-9" to 29'-0", with 15'-0" setbacks at both 14th Avenue and 62nd Street; (4) an increase in the open space from 46 percent to 48.5 percent; (5) a decrease in the lot coverage from 54 percent to 51.5 percent; (6) an increase in the size of the side yard along the northern lot line, from 30'-0" to 45'-0"; (7) an increase in the number of dwelling units from 26 to 33; and (8) an increase in the number of accessory parking spaces from 15 to 20; and

WHEREAS, the applicant states that the proposed reconfiguration of the building, which reduces the average apartment size from approximately 1,097 sq. ft. to approximately 825 sq. ft. and reduces the floor-to-ceiling heights from 11'-0" to between 9'-6" and 10'-0", allows it to build an additional floor and increase the number of dwelling

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units and parking spaces without increasing the building envelope or floor area approved under the original variance; and

WHEREAS, the applicant submitted a revised financial analysis reflecting that the proposed modifications reflect the minimum variance necessary to realize a reasonable return; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance, specifically with regard to its findings pursuant to ZR §§ 72-21(b), (c), and (e); and

WHEREAS, accordingly, the Board finds that the requested extension of time to complete construction and the proposed amendment to the previously-approved plans are appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 19, 2005, so that as amended this portion of the resolution shall read: "to grant an extension of time to complete construction for a term of four years, to expire on April 19, 2013, and to permit the noted modifications to the approved plans; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received April 13, 2010"- (10) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 33,463 sq. ft. (2.1 FAR); 33 dwelling units; five stories; an open space ratio of 48.5 percent; a lot coverage of 51.5 percent; a side yard with a width of 30'-0" along the northern lot line; a side yard with a width of 45'-0" along the western lot line; a wall height of 29'-0"; a total height of approximately 57'-1"; setbacks of 15'-0" on 14th Avenue and 62nd Street; and parking for 20 cars, as per the BSA-approved plans;

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. 301534819)

Adopted by the Board of Standards and Appeals, May 18, 2010.

58-07-BZ

APPLICANT – Eric Palatnik, P.C., for Vito Savino, owner.
SUBJECT – Application October 27, 2009 – Amendment to previously granted variance for a residential building to include two additional objections: dwelling unit size (§23-23) and side yard regulations (§23-461(a)). R3A zoning district.

PREMISES AFFECTED – 18-02 Clintonville, Clintonville

and 18th Avenue, Block 4731, Lot 9, Borough of Queens.

COMMUNITY BOARD #7BK

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for the construction of a two-story two-family home contrary to lot area and floor area ratio ("FAR") regulations, to permit additional waivers for front yard and minimum dwelling unit size, and to permit minor modifications to the previously-approved plans; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in *The City Record*, with a continued hearing on April 20, 2010, and then to decision on May 18, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 7, Brooklyn, recommends approval of this application, with the following conditions: (1) a 20'-0" side yard be provided; (2) the 10'-0" front yard on 18th Avenue be changed to 9'-5"; (3) the FAR remain the same; (4) the dwelling unit size of 810 sq. ft. be approved; and (5) the application be permitted as an amendment; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of 18th Avenue and Clintonville Street, within an R3A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 4, 2007 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the construction of a two-story two-family home on a lot that does not comply with the minimum lot area and exceeds the maximum FAR, contrary to ZR §§ 23-32 and 23-141; and

WHEREAS, the applicant represents that subsequent to the approval of the original grant, the owner discovered two additional non-compliances that were not presented in the original filing; and

WHEREAS, the current proposal also includes changes to the originally approved plans; and

WHEREAS, thus, the applicant now requests an amendment to seek waivers for a front yard less than the minimum required depth pursuant to ZR § 23-45, and dwelling units less than the minimum required size pursuant to ZR § 23-23, and also seeks an amendment to permit modifications to the originally approved plans; and

WHEREAS, specifically, the applicant proposes to

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provide a front yard with a minimum depth of 8'-10" (a front yard with a minimum depth of 15'-0" is required), two dwelling units of approximately 810 sq. ft. each (dwelling units with a minimum size of 925 sq. ft. are required), a side yard of 20'-0" along the western lot line, rather than the previously-approved 18'-7" side yard; and interior modifications; and

WHEREAS, the applicant notes that it shifted the building 1'-5" to the east in order to comply with the Community Board's request that a 20'-0" side yard be provided along the western lot line, and that in doing so the front yard at the northeast corner of the building was reduced from a depth of 10'-0" to a depth of 8'-10", but that the remainder of the front yard along 18th Avenue remains at the depth noted on the originally approved plans of 10'-0"; and

WHEREAS, the applicant represents that the unique conditions of the subject lot that gave rise to the original variance, namely its small size and irregular shape, also justify the requested waiver of the additional objections; and

WHEREAS, the applicant represents that due to the unique size and shape of the lot, a home with a complying front yard would not allow for floor plates of a sufficient width to provide a habitable and marketable home, and a two-family home with complying dwelling unit sizes could not be constructed on the subject lot; and

WHEREAS, at hearing, the Board directed the applicant to provide an analysis to document the need for a two-family home; and

WHEREAS, in response, the applicant submitted a letter from a real estate broker, a pro forma analysis, and additional financial information indicating that construction of a two-family home rather than a single-family home is necessary to provide a reasonable return on development; and

WHEREAS, specifically, the applicant represents that the surrounding area is predominantly characterized by two- and three-family homes and that a single-family home would not be marketable; and

WHEREAS, in support of this assertion, the applicant submitted photographs and an area map reflecting that the majority of homes in the area immediately surrounding the subject site are two-family or three-family homes and that the adjacent sites are occupied by three-story three-family homes; and

WHEREAS, based upon its review of the evidence, the Board finds the proposed two-story two-family home to be compatible with the surrounding neighborhood; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, the Board finds that the requested amendment does not alter the Board's findings made for the original variance, specifically with regard to its findings pursuant to ZR §§ 72-21(c), and (e); and

WHEREAS, accordingly, the Board finds that the requested amendments to include additional objections and to modify the previously-approved plans are appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 4, 2007, so that as amended this portion of the resolution shall

read: "to permit the construction of a two-story two-family home that does not comply with zoning requirements for lot area, floor area ratio, dwelling unit size, and front yard, contrary to ZR §§ 23-32, 23-141, 23-23 and 23-45, and to permit the noted modifications to the approved plans; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received October 27, 2009"- (8) sheets and "Received January 15, 2010"- (1) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 1,620 sq. ft. (0.74 FAR); a minimum dwelling unit size of approximately 810 sq. ft.; a front yard with a minimum depth of 8'-10"; a side yard with a minimum width of 20'-0" along the western lot line; a total height of 21'-2"; and parking for a minimum of two cars, as per the BSA-approved plans; and

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. 402320332)

Adopted by the Board of Standards and Appeals, May 18, 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 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 10 A.M., for continued hearing.

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

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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: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 22,
2010, at 10 A.M. for continued hearing.

280-98-BZ

APPLICANT – Rampulla Associates Architects, for MARS
Holding, LLC, owner.

SUBJECT – Application February 13, 2010 – Extension of
Term of a variance (§72-21) for the continued operation of a
UG4 Dental Office which expired on February 8, 2010;
Amendment to convert the basement garage into dental
office floor area. R-2 zoning district.

PREMISES AFFECTED – 2936 Hylan Boulevard, east side
of Hylan Boulevard, 100' north of Isabella Avenue, Block
4015, Lot 14, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phillip L. Rampulla.

ACTION OF THE BOARD – Laid over to June 8,
2010, at 10 A.M., for continued hearing.

7-00-BZ

APPLICANT – Friedman & Gotbaum, for Trustees of the
New York City Rescue Mission, owners.

SUBJECT – Application February 18, 2009 – Extension of
Time to Complete Construction of a previously granted
Variance (§72-21) for the enlargement of a UG3 non-profit
homeless shelter (*New York City Rescue Mission*) which
expired on March 11, 2009; waiver of the rules. C6-2A
zoning district.

PREMISES AFFECTED – 90 Lafayette Street, northwest
corner of Lafayette and White Streets, Block 195, Lot 21,
Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Lori Cuisinier and Pastor Vernhager.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 8,
2010, at 10 A.M., for decision, hearing closed.

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development
Corporation, owner.

SUBJECT – Application February 5, 2010 – Extension of
Term (§72-01 & §72-22) of a variance (§72-21) to allow a

physical culture establishment (*Squash Fitness Center*) to
operate in a C1-4 zoning district, which will expire on July
17, 2011; Extension of Time to obtain a certificate of
occupancy, which expired on January 28, 2010; Waiver of
the Rules.

PREMISES AFFECTED – 107-24 37th Avenue aka 37-16
108th Street, Southwest corner of 37th Avenue and 108th
Street, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 8,
2010, at 10 A.M., for decision, hearing closed.

151-05-BZ

APPLICANT – John R. Sore c/o Shalimar Management, for
100 Varick Street, LLC, owner.

SUBJECT – Application May 10, 2010 – Extension of Time
to Complete Construction of a previously granted Variance
(§72-21) for the construction of a 10-story residential
building which expires on August 8, 2010. M1-6 zoning
district.

PREMISES AFFECTED – 100 Varick Street, easterly side
of Varick Street between Broome Street and Watts Street,
Block 477, Lot 35, 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: John R. Sore.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 8,
2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

62-08-A

APPLICANT – Eric Palatnik, P.C. for Benny Ulloa, owner.
SUBJECT – Application March 27, 2009 – Proposed
construction not fronting on a legally mapped street,
contrary to General City Law, Section 36. R1-2 zoning
district.

PREMISES AFFECTED – 398 Nugent Street, Nugent
Street, North of Saint George Road, Block 2284, Lot 25,
Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

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THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, May 18, 2010.

299-09-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Vincent Kennedy, lessee.

SUBJECT – Application October 23, 2009 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street, contrary to General City Law Section 36, and partially located within the bed of a mapped street, contrary to General City Law Section 35, and upgrade of a private disposal system in the bed of service road, contrary to Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 4 Lincoln Walk, west side Lincoln Walk, 100’, south of paved Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated October 6, 2009 acting on Department of Buildings Application No. 420021274, reads in pertinent part:

“A1– The proposed enlargement is on a site located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3 Sect. 35 of the General City Law.

A2– The site and building is not fronting on an official mapped street therefore no permit or Certificate can be issued as per Art. 3, Sect. 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291 (C26-401.1) of the Administrative Code of the City of New York.

A3– The private disposal system being upgraded is in the bed of a private service road contrary to Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on May 18, 2010 after due notice by publication in the *City Record*, and then to closure and decision on the same

date; and

WHEREAS, by letters dated February 23, 2010 and April 14, 2010, the Fire Department states that it has no objection to the subject proposal, and states that the applicant is not required to provide a sprinkler system under Fire Code § 503.8.2, because the applicant’s alteration and conversion is less than 125 percent of the existing square footage; and

WHEREAS, by letter dated December 1, 2009, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated February 5, 2010, the Department of Transportation (“DOT”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the applicant’s property is not included in the agency’s ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 6, 2009, acting on Department of Buildings Application No. 420021274, is modified by the power vested in the Board by Sections 35 and 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received October 23, 2009” - one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 18, 2010.

298-09-A

APPLICANT – Breezy Point Cooperative Inc., for Ann Baci, owner.

SUBJECT – Application October 23, 2009 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 109 Beach 217th Street, east side Beach 217th Street, 160’ south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

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APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

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.

ACTION OF THE BOARD – Laid over to June 15, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, MAY 18, 2010 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

239-07-BZ

CEQR #08-BSA-029Q

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for YHA New York Inc., owner.

SUBJECT – Application October 24, 2007 – Variance (§72-21) to permit a community youth center (UG 4) in the cellar and first floor in a proposed three-story and penthouse mixed-use building, contrary to side yard (§24-35). R5 zoning district.

PREMISES AFFECTED – 57-38 Waldron Street, south side of Waldron Street, 43.71' west of 108th Street, east of Otis Avenue, Block 1959, Lot 27, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, May 18, 2010.

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

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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 1/2", and a rear yard with a depth of 34'-9 3/4"; 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

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

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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

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 two-story single-family home, which is contrary to ZR § 42-10,

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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: two stories, a maximum 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", 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.

273-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application September 24, 2010 – Variance (§72-21) for the construction of a two-story, one-family home, contrary to side yards (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 117-40 125th Street, west side of 125th Street, 360' north of intersection with Sutter Avenue, Block 11746, Lot 64, Borough of Queens.

COMMUNITY BOARD #10Q

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 24, 2009, acting on Department of Buildings Application No. 420001410, reads in pertinent part:

"Two proposed side yards are contrary to Section 23-461 of the Zoning Resolution and require a variance

from the Board of Standards and Appeals;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-2 zoning district, the proposed construction of a two-story single-family home that does not provide the required side yards, contrary to ZR § 23-461; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in *The City Record*, with continued hearings on March 16, 2010 and April 20, 2010, and then to decision on May 18, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Queens, recommends disapproval of this application; and

WHEREAS, certain members of the community testified in opposition to this application, citing the following primary concerns: (1) development of the site would restrict access and create a fire safety concern; (2) the proposed home will be situated too close to adjacent homes; and (3) whether the proposed home would obstruct an existing easement; and

WHEREAS, the site is located on the west side of 125th Street, 360 feet north of Sutter Avenue; and

WHEREAS, the site has a width of 20 feet, a depth of 100 feet, and a total lot area of approximately 2,000 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home; and

WHEREAS, the proposed home will have the following complying parameters: 1,199 sq. ft. of floor area (0.60 FAR); a front yard with a depth of 15'-0"; a rear yard with a depth of 41'-3"; a wall height of 20'-9"; and a total height of 24'-10"; and

WHEREAS, however, the applicant proposes to provide one side yard with a width of 4'-0", along the southern lot line, and a second side yard with a width of 1'-0", along the northern lot line, (side yards with minimum widths of 8'-0" and 5'-0" each are required); and

WHEREAS, the applicant's floor area calculations rely on ZR § 23-141(b), which allows for an additional 300 sq. ft. of floor area above the .50 FAR generally permitted if the site plan provides for an enclosed parking space within the side lot ribbon; and

WHEREAS, the applicant's plans reflect a detached garage at the rear of the site, within the side lot ribbon; and

WHEREAS, the Board notes that the floor area will be as approved by DOB and no waiver is sought for that condition; and

WHEREAS, the applicant states that side yard relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the narrowness of the subject site; and

WHEREAS, the applicant represents that the requested

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side yard waivers are necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing lot width of 20'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that if both required side yards were provided, the building would have an exterior width of only 7'-0"; and

WHEREAS, accordingly, the applicant represents that the side yard waivers are necessary to create a home of a reasonable width; and

WHEREAS, the applicant submitted a 400-ft. radius diagram, which reflects that every other lot with a width of 20 feet is occupied by a home, likely constructed prior to 1961, which do not provide the required yards; and

WHEREAS, the applicant asserts that many of the existing homes within the radius have comparable bulk to the proposed home, and provide a single side yard or one or both side yards with widths narrower than 5'-0" each or 13'-0" total; and

WHEREAS, as to the historic use of the site, the applicant states that building records reflect that a new building was constructed on the site in 1939 and that it was determined to be unsafe in 1979 and was ultimately demolished; and

WHEREAS, the applicant states, based upon building records, that the proposed home and site design are comparable to the prior home on the site; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable front yard regulations; and

WHEREAS, the Board has determined that because of the subject site's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized by single-family detached homes; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that that it complies with all relevant bulk regulations other than side yards; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R3-2 zoning district regulations for FAR, front and side yards, height, and parking; and

WHEREAS, the applicant notes that the site is encumbered by an easement with a width of 4'-0" along the southern lot line in order to provide access along a shared driveway; and

WHEREAS, the applicant provided a survey that reflects the easement; and

WHEREAS, accordingly, the applicant proposes to maintain a side yard with a width of 4'-0" along the southern lot line and no construction will occur within the easement; and

WHEREAS, the applicant's proposed garage will be lined up with the garage to the rear of the adjacent home to the south, where the easement ends; and

WHEREAS, the Board notes that the applicant initially proposed a home with a width of 16'-0" and a lot line condition along the northern lot line, but that the Board directed the applicant to revise the plans to reflect a home with a width of 15'-0" and a side yard of 1'-0" along the northern lot line to provide additional space between the proposed home and the existing home to the north; and

WHEREAS, the applicant provided an analysis that reflects that there are at least 14 homes within a 400-ft. radius of the site with similar widths and that there are three such homes directly across 125th Street and two others within 100 feet to the north; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's narrow width; and

WHEREAS, at the Board's request, the applicant submitted a title report, which reflects that the site has existed in its current configuration since before December 15, 1961 and its ownership was independent of the ownership of the three adjoining lots on December 15, 1961 and remains so currently; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

WHEREAS, the Board notes that the applicant initially proposed a home with a width of 16'-0" and no side yard along the northern lot line; and

WHEREAS, the Board directed the applicant to document the widths of homes within the surrounding area and the applicant found that many homes have widths of 15'-0"; and

WHEREAS, accordingly, the Board directed the applicant to reduce the width of the home to 15'-0", which reduced the extent of the side yard waiver while resulting in a home with a minimum width that is comparable to homes in the area; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except for side yards is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, in an R3-2 zoning district, the proposed construction of a two-story single-family home that does not provide the required side yards, contrary to ZR § 23-461; *on condition* that any and all work shall substantially conform to drawings as they apply to

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the objections above noted, filed with this application marked "Received May 11, 2010"– (4) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 1,199 sq. ft. of floor area (0.60 FAR), a side yard with a width of 4'-0" along the southern lot line; a side yard with a width of 1'-0" along the northern lot line; a front yard with a depth of 15'-0"; a rear yard with a depth of 41'-3"; a wall height of 20'-9"; a total height of 24'-10"; and parking for a minimum of one car, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 18, 2010.

14-10-BZ

CEQR #10-BSA-043M

APPLICANT – Friedman & Gotbaum, LLP, for Cooper Square Associates (LP), owners.

SUBJECT – Application January 29, 2010 – Special Permit (§73-19) to allow a Use Group 3 school (*Grace Church High School*). M1-5B zoning district.

PREMISES AFFECTED – 38-50 Cooper Square, west side of Cooper Square, 326'-9" south of Astor Place, Block 544, p/o 38, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Lori Cuisiner.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated March 16, 2010, acting on Department of Buildings Application No. 120232319, reads in pertinent part:

"ZR 42-12. Use Group 3 (educational facility and accessory uses to schools) are not permitted as-of-right in a M1 zoning district.

A BSA special permit per ZR Section 73-19 is

required;" and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-5B zoning district within the NoHo Historic District, the proposed use of an existing building by a Use Group 3 school, contrary to ZR § 42-12; and

WHEREAS, a public hearing was held on this application on March 23, 2010, after due notice by publication in the *City Record*, with a continued hearing on April 27, 2010, and then to decision on May 18, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the application is brought on behalf of the Board of Trustees of the Grace Church School ("Grace Church School"), a not-for-profit school; and

WHEREAS, the site is located on the west side of Cooper Square, between East 4th Street and Astor Place, within an M1-5B zoning district; and

WHEREAS, the site has a lot area of 19,877 sq. ft.; and

WHEREAS, the applicant states that the site is located on a portion of Lot 38, which also includes the buildings located at 32-36 Cooper Square; and

WHEREAS, the site is currently occupied by a four-story building with Use Group 4A medical offices, a Use Group 9 school for adults with accessory offices, and Use Group 6 offices; and

WHEREAS, the applicant proposes to renovate the existing building for use as a Use Group 3 school, specifically for Grace Church School's new high school division, with a floor area of 73,212 sq. ft. (the "Proposed High School"); and

WHEREAS, the applicant states that Grace Church School is attended by more than 400 students from pre-kindergarten through eighth grade, in addition to faculty and support staff; and

WHEREAS, the applicant states that Grace Church School currently occupies a building located at 86-92 Fourth Avenue, between East 10th Street and East 11th Street (the "Lower School"); and

WHEREAS, the applicant states that currently, eighth grade students from the Lower School graduate and enroll in other public and private secondary schools, and that Grace Church School now intends to launch the Proposed High School, which will eventually serve approximately 320 students both from the Lower School and from the surrounding community; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-5B zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

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WHEREAS, the applicant states that Grace Church School's program requires a building with a footprint between 5,000 sq. ft. and 70,000 sq. ft.; and

WHEREAS, the applicant's program for the Proposed High School includes classrooms, a cafeteria, a library, a resource center, science labs, general purpose rooms, art studios, art workshops, administrative offices, and storage space; and

WHEREAS, the applicant represents that Grace Church School has an additional programmatic need for the Proposed High School to be located proximate to the Lower School, to facilitate the travel of students and faculty between the Lower School and the Proposed High School, and to be located in the midst of the nearby universities, as Grace Church School will institute programs for the high school students to attend courses at NYU, Cooper Union, and the New School; and

WHEREAS, the applicant further represents that it conducted an evaluation of approximately 30 properties located on the blocks bounded by 29th Street to the north, Houston Street to the south, Sixth Avenue to the west, and Avenue C to the east, with footprints between 5,000 sq. ft. and 70,000 sq. ft.; and

WHEREAS, the applicant states that all but two of the 30 properties evaluated were found to be occupied by residential buildings, community facility buildings, or ongoing businesses, or were ultimately deemed to be too distant from the Lower School; and

WHEREAS, the applicant states that the first site, 605 East Ninth Street, was a six-story former school building which had stood vacant for more than 30 years since its 1974 decommission and was in such poor condition that the costs required to renovate the building's infrastructure were deemed prohibitive; and

WHEREAS, the second site, 770 Broadway, was a 15-story commercial building which was deemed impracticable because it could not provide a designated student entrance or designated student elevators, and the ceiling heights were too low for an educational facility; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located 169'-5" south of a C6-2 zoning district, 50'-0" west of a C6-1 zoning district, 161'-2" southwest of a C6-3 zoning district, and 365'-0" east of an R8B zoning district; the proposed use would be permitted as-of-right in all of these zoning districts; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that adequate separation from noise, traffic and other adverse effects of the surrounding M1-5B zoning district will be provided through the building's existing sound-attenuating exterior wall and window construction, which includes single-glazed windows on the first floor and double-glazed windows on the upper floors; and

WHEREAS, the applicant submitted a noise study stating that the existing sound-attenuating wall and window construction maintained an interior noise level below the 45 dBA level stipulated in the CEQR Interior Noise Level guidelines; and

WHEREAS, the applicant represents that adequate separation from noise is further maintained because, although the site is located within an M1-5B zoning district, the presence of nearby manufacturing use is minimal, as the site is predominantly surrounded by low-impact residential, community facility, and commercial uses which provide a noise buffer for the Proposed High School; and

WHEREAS, the Board finds that the conditions surrounding the site and the building's construction will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-5B zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant represents that it anticipates approximately five percent of the students at the Proposed High School to arrive by car or taxi, 25 percent to arrive by bus, 30 percent to arrive by subway, and 40 percent to walk to the school; and

WHEREAS, the applicant states that the majority of foot traffic anticipated for the Proposed High School will be accommodated by signalized crossings located at the intersections of Cooper Square and Astor Place to the north, and East Fifth Street to the south, and that the crosswalks at these two intersections connect to the sidewalk along the west side of Cooper Square leading to the subject site; and

WHEREAS, the applicant further states that it hopes to have crosswalk striping installed at four nearby intersections, including Lafayette Street at East Fourth Street, Lafayette Street at Astor Place, Cooper Square/Bowery at East Fourth Street, and Cooper Square at Astor Place, and to have "Yield to Pedestrians" signage installed at select approaches to the intersections; and

WHEREAS, the applicant notes that crossing guards are not anticipated because all of the students travelling to the subject site will be in high school; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

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WHEREAS, by letter dated March 25, 2010, DOT states that it has no objection to the proposed school, and states that it will prepare a school safety map with signs and markings upon the approval and completion of the Proposed High School; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant notes that a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC") dated February 28, 2001, addressing exterior changes not associated with the current proposal, remains in effect; and

WHEREAS, the applicant states that there are not any changes proposed to the exterior, which would disturb the conditions of the Certificate of Appropriateness; and

WHEREAS, as to proposed interior modifications, by letter dated May 12, 2010, LPC states that the proposed use change does not trigger LPC review but that if any interior modifications do, they will be reviewed and approved accordingly; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA043M, dated May 14, 2010; 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis has reviewed the project for potential

hazardous materials impacts; and

WHEREAS, the February 2010 Phase I Environmental Site Assessment identified several on- and off-site potential hazardous materials conditions that may have affected the subject building; and

WHEREAS, the applicant has submitted a Vapor Intrusion Sampling Protocol ("Sampling Protocol") and a Health and Safety Plan prepared by a qualified consultant, which has been approved by DEP, and the applicant proposes to test and identify any potential soil vapor intrusion pursuant to the approved Sampling Protocol and, if such soil vapor intrusion is found, to submit a remediation plan, including a health and safety plan ("Remediation Plan"), for approval by DEP prior to the commencement of any construction or demolition activities at the site; and

WHEREAS, prior to the issuance of any building permit by DOB that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject property, the applicant proposes to obtain from DEP either: (A) a Notice of No Objection ("Notice of No Objection") for the project, which shall be issued after the applicant has completed the work set forth in the DEP-approved Sampling Protocol and DEP has determined in writing that the results of such sampling demonstrate that no soil vapor intrusion remediation is required for the proposed project; or (B) a Notice to Proceed ("Notice to Proceed") for the property in the event that DEP has determined in writing that: (i) the project-specific Remediation Plan has been approved by DEP and (ii) the permit(s) respecting the property that permit grading, excavation, foundation, alteration, building or other permit respecting the property which permits soil disturbance or construction of the superstructure are necessary to further the implementation of the DEP-approved Remediation Plan; and

WHEREAS, prior to the issuance of any temporary or permanent Certificate of Occupancy by DOB, the applicant proposes to obtain from DEP either: (A) a Notice of Satisfaction ("Notice of Satisfaction") for the project in the event that DEP determines in writing that the DEP approved project-specific Remediation Plan has been completed to the satisfaction of DEP, or (B) a Notice of No Objection ("Notice of No Objection") for the project in the event that DEP determines in writing that the work has been completed as set forth in the project-specific DEP approved Sampling Protocol and the results of such sampling demonstrate that no soil vapor intrusion remediation is required for the proposed project; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City

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Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a Use Group 3 school, on a site in an M1-5B zoning district within the NoHo Historic District; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 6, 2010" -(9 sheets) and *on further condition*:

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the Project, the applicant or successor shall obtain from DEP, as applicable, either a Notice of No Objection, Notice to Proceed, or Notice of Satisfaction and shall comply with all DEP requirements to obtain such notices;

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 Notice of No Objection, or Notice of Satisfaction;

THAT the applicant shall obtain any supplemental approvals from LPC, as required;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 18, 2010.

210-07-BZ

APPLICANT – Eric Palatnik, P.C., for Gasper Nogara, owner.

SUBJECT – Application August 30, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Luquer Street, Northern side of Luquer Street between Columbia and Hicks Streets, Block 513, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

44-09-BZ

APPLICANT – Philip L. Rampulla, for Tony Chrampanis, owner.

SUBJECT – Application March 11, 2009 – Variance (§72-21) to allow for a two-story commercial building (UG 6) with accessory parking, contrary to use regulations (§22-00). R3-1 district.

PREMISES AFFECTED – 2175 Richmond Avenue, Eastside of Richmond Avenue 39.80' south of Saxon Avenue, Block 2361, Lot 12(tent), 14, 17, 22, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phillip Rampulla.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

29-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to legalize and enlarge a synagogue (*Chabad Israeli Center*), contrary to lot coverage, front yards, side yards, and parking regulations. R3X zoning district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for deferred decision.

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radonicic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

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.

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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, Maureen Coughlen and Robert Klein.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 1:30 P.M., for continued hearing.

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 4th Street) southeast corner of intersection of Broadway and East 4th Street, Block 531, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 1:30 P.M., for continued hearing.

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 28th Street, south of Avenue L, Block 7646, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Helanie Balsam.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 22, 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 27th Street, south of Avenue L, Block 7644, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

These resolution adopted on March 2, 2010, under Calendar No. 182-09-BZ and printed in Volume 95, Bulletin No. 10, is hereby corrected to read as follows:

182-09-BZ

CEQR #10-BSA-115M

APPLICANT – Eric Palatnik, P.C., for Congregation Mita, Inc., owner.

SUBJECT – Application June 4, 2009 – Variance (§72-21) to legalize the existing UG 3 novitiate and UG 4 house of worship (*Congregation Mita*), contrary to §24-35 (side yard) and §24-36 (rear yard). R7-2 zoning district.

PREMISES AFFECTED – 612 West 180th Street, 180th Street between Wadsworth and St. Nicholas Avenues, Block 2162, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #12M

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 18, 2009, acting on Department of Buildings Application No. 110160753, reads:

- “1. Proposed side yard of 4’-6” at second and third floors is contrary to ZR 24-35 which requires minimum 8’-0” width if side yard is provided.
2. Proposed rear yards at 3’-8”, 6’-4” and 13’-4” at second floor is contrary to ZR 24-36 which requires minimum 30’-0”.
3. Proposed increase of lot coverage from 81% to 83% is contrary to ZR 24-11 which requires maximum 65%;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R7-2 zoning district, the legalization of an existing novitiate (Use Group 3) and church (Use Group 4), which does not comply with side yard, rear yard and lot coverage regulations, contrary to ZR §§ 24-35, 24-36 and 24-11; and

WHEREAS, a public hearing was held on this application on December 15, 2009, after due notice by publication in *The City Record*, with a continued hearing on February 2, 2010, and then to decision on March 2, 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 12, Manhattan, states that it has no objection to the application; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal, citing concerns about traffic and the maintenance of the site; and

WHEREAS, this application is brought on behalf of Congregation Mita, a non-profit religious entity (the “Congregation”); and

WHEREAS, the subject site is located on the west side of West 180th Street, between Wadsworth Avenue and St. Nicholas Avenue, within an R7-2 zoning district; and

WHEREAS, the site has 75 feet of frontage on West 180th Street, a depth of 100 feet, and a total lot area of approximately 7,500 sq. ft.; and

WHEREAS, the site is currently occupied by a three-story community facility building with a novitiate (the “Church”), which provides accommodations to religious students (Use Group 3) and a house of worship (Use Group 4), for a total floor area of 18,329.67 sq. ft. (2.44 FAR); and

WHEREAS, the applicant currently seeks to legalize an enlargement to the Church which increased the degree of non-compliance of the side and rear yards; and

WHEREAS, the pre-existing building provided a rear yard with a depth of 2’-8” and side yards with widths of 4’-6” behind the full-width facade, which were pre-existing legal non-complying conditions (a rear yard with a depth of 30 feet and two side yards, if any side yards are provided, with minimum widths of 8’-0” each are required for a community facility); although, the first floor, with a height of less than 23 feet, was permitted within the required rear yard, pursuant to community facility regulations; and

WHEREAS, the enlarged second floor, which extended the pre-existing partial second floor was built on the footprint of the pre-existing first floor and maintains the existing non-complying side yards and rear yard; and

WHEREAS, the proposal provides for the following uses: (1) the cellar, which is occupied by a small cafeteria and kitchen, and mechanicals; (2) the main sanctuary on the first floor; (3) the novitiate’s lounge, kitchen, office, and sleeping quarters on the second floor; and (4) novitiate sleeping quarters on the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Congregation which necessitate the requested variance: (1) a house of worship to provide space for religious services and educational programming and (2) a novitiate to accommodate participants in the formal process of advancing through the sect’s spiritual ranks, which involves retreats with prayer and religious education; and

WHEREAS, the applicant represents that the religious training, which draws participants from around the world, requires the separation of the novitiates, ministers, pastors, and deacons from the rest of the Congregation during intense spiritual retreats six to nine times per year; and

WHEREAS, the applicant represents that the physical space requirements include (1) separate men’s and women’s sleeping quarters to accommodate approximately 51 participants; (2) a dining room which is separate from the remainder of the Congregation; (3) a study lounge which can accommodate all persons participating

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in the spiritual retreats to allow for education and prayer study; (4) a kitchen which is separate from the Congregation's general kitchen; and (5) space for laundry and other accessory uses; and

WHEREAS, further, the applicant represents that the novitiate facilities must be placed in close proximity to each other and nearby to but separate from the other portions of the building, which are generally accessible; and

WHEREAS, the applicant represents that, prior to the enlargement, the site was occupied by a house of worship constructed in the 1920s, which has historically been used by religious institutions; and

WHEREAS, the applicant states that in 2004, the Congregation enlarged the rear portion of the pre-existing second story of the building and added a partial third story at the front of the building such that the current building is a full two stories with a partial third story; and

WHEREAS, the applicant states that the Congregation enlarged the building, which provided only the sanctuary and a partial second floor in order to accommodate its programmatic needs; and

WHEREAS, the applicant represents that in an as-of-right enlargement, the novitiate's gathering space, which is now on the second floor, would have to be located on a smaller third or fourth floor; and

WHEREAS, the applicant represents that dividing the space up vertically on multiple smaller floors, rather than on one larger floor and one smaller floor, does not support the programmatic need of horizontal space to foster interaction and the exchange of ideas; and

WHEREAS, the applicant represents that the first floor house of worship accommodates the Congregation's needs for church services, which have been established since 1982, and thus maintaining the location was essential to its congregants; and

WHEREAS, the applicant represents that the size, layout and design of the pre-existing building was inadequate to serve the current needs of the congregation and would be inadequate for its future needs; and

WHEREAS, specifically, the applicant states that the pre-existing building at the site only accommodated the house of worship and not the novitiate; and

WHEREAS, the applicant states that the requested waivers enable the Congregation to legalize the existing building, maintain the use it accommodated and meet the interconnected programmatic needs of the novitiate; and

WHEREAS, the Board acknowledges that the Congregation, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an

application; and

WHEREAS, the Board notes that the applicant provided evidence of the Congregation's status as a non-profit religious institution and of the novitiate's status and established religious program; and

WHEREAS, in addition to its programmatic needs, the applicant represents that the existing building on the site constrains the ability to provide complying yards; and

WHEREAS, specifically, the applicant states that the existing side yards and rear yard do not comply with community facility regulations, and therefore the Congregation would be forced to set back the new portion of the second floor and the third floor to provide the complying side yards; and

WHEREAS, the applicant represents that, from a structural and design standpoint, it is more efficient to extrude the existing exterior walls such that the new walls do not create new non-compliance as to the yards, but rather increase the degree of the existing non-compliance, which is legal due to the pre-1961 construction of the pre-existing building; and

WHEREAS, the applicant notes that the third floor includes skylights to provide adequate light and air to the sleeping accommodations, since the windows at the front of the third floor are insufficient; the applicant represents that the addition of a fourth floor would eliminate the skylights and result in the need for a costly retrofitting of the front windows, which are old and arched-shaped; and

WHEREAS, the applicant represents that the existing third-floor windows can not be made operable and new custom-built windows would be required, at a significant expense to the Congregation; and

WHEREAS, thus, the applicant represents the programmatic need for larger floorplates with horizontal space to promote connectivity, the efficiency of extending the existing exterior walls, and the cost of retrofitting the existing building associated with adding a fourth floor, necessitated that the second floor be built out; and

WHEREAS, the applicant represents that, without the yard waivers, the floorplates would be constrained and there would not be sufficient space to accommodate all participants in the novitiate program; only a maximum of 44 people could be accommodated for sleeping and there would be a 54 percent loss in the common space on the second floor; the dining room and kitchen would similarly be reduced; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Congregation and the constraints of the historic building create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Congregation is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the enlarged building does not alter the essential character of the neighborhood, does not substantially impair the appropriate use

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or development of adjacent property, and is not detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed/existing use and floor area are permitted as-of-right in the subject zoning district and only the extension of the pre-existing non-complying yards is contrary to zoning district regulations; and

WHEREAS, specifically, the applicant notes that the height of 41'-8" is less than the heights of buildings on adjacent lots, including multiple dwelling buildings on either side of the site; and

WHEREAS, the radius diagram submitted by the applicant also establishes that the bulk and height of the Congregation's building are consistent with the bulk and height of the homes in the surrounding neighborhood, which have heights ranging between three and 32 stories; and

WHEREAS, as reflected on the radius diagram, the four sites at the rear of the site, occupied by a multiple dwelling, two stores, and an office building in three-story buildings, provide rear yards, which allows for open space adjacent to the Congregation's pre-existing absence of a rear yard; and

WHEREAS, the Board notes that the site could be developed as-of-right with a building with greater height and floor area, if all yards were provided; and

WHEREAS, the Board further notes that the enlargement does not create any new non-compliance but rather increases the degree of existing non-compliance; and

WHEREAS, the applicant notes that the subject enlargement is only minimally visible from the West 180th Street frontage; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the enlarged building complies with all Building Code, Fire Code, and any other relevant requirements specifically with regard to light and air and egress; and

WHEREAS, in response, the applicant stated that all requirements are met, including the location of the air-conditioning condensers; and

WHEREAS, the applicant agreed to review the plans with the Department of Buildings to confirm compliance; and

WHEREAS, in response to community concerns about traffic, the applicant states that the Congregation has installed a parking guard to direct traffic; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Congregation could occur on the existing lot; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board notes that the building complies with all bulk and use regulations, with the exception of the non-complying yards; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the

Congregation the relief needed both to meet its programmatic needs and to occupy a building that is compatible with the character of the neighborhood; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.12 (a) and 617.5; 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) 09BSA115M, dated May 22, 2009; 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 determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R7-2 zoning district, the legalization of an existing novitiate (Use Group 3) and church (Use Group 4), which does not comply with side yard, rear yard and lot coverage regulations, contrary to ZR §§ 24-35, 24-36 and 24-11, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 1, 2009" – Seven (7) sheets; and *on further condition*:

THAT the building parameters shall be as reflected on the approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4) and novitiate (Use Group 3);

THAT the above conditions shall be listed on the certificate of occupancy;

THAT DOB shall review the building for compliance with light and air and egress requirements;

THAT DOB shall review the building's mechanicals, including the air-conditioning condenser for compliance with all relevant regulations;

MINUTES

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 2, 2010.

***The resolution has been corrected to update part of the decision of the Borough Commissioner dated December 18, 2009. Corrected in Bulletin No. 21, Vol. 95, dated May 5, 2010.**

BULLETIN

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June 2, 2010

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41-10-BZ	522-566/596-600 First Avenue, Manhattan

DOCKET

New Case Filed Up to May 25, 2010

92-10-BZ

39 East 10th Street, North side of 10th Street, between University Place and Broadway, Block 562, Lot(s) 38, Borough of **Manhattan, Community Board: 2**. Variance to permit the construction of an elevator. R7-2 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JUNE 15, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 15, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

558-71-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for WB Management of NY LLC, owner.

SUBJECT – Application March 26, 2010 – Amendment to a previously granted Variance (72-21) to permit the change of a UG6 eating and drinking establishment to a UG6 retail use without limitation to a single use; minor reduction in floor area; increase accessory parking and increase to the height of the building façade. R3-1 zoning district.

PREMISES AFFECTED – 1949 Richmond Avenue, east side of Richmond Avenue at intersection with Amsterdam Place, Block 2030, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

139-92-BZ

APPLICANT – Samuel H. Valencia, for Samuel H. Valencia-Valencia Enterprises, owners.

SUBJECT – Application April 23, 2010 – Extension of Term for a previously granted Special Permit (§73-244) for the continued operation of a UG12 Eating and Drinking Establishment with Dancing (*Deseos*) which expired on March 7, 2010; Waiver of the Rules. C2-2/R6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53' east of 52nd Street, Block 1316, Lot 76, Borough of Queens.

COMMUNITY BOARD #2Q

164-04-BZ

APPLICANT – Sheldon Lobel, P.C., 2241 Westchester Avenue Realty Corporation, owner; Castle Hill Fitness Group, LLC, lessee.

SUBJECT – Application April 5, 2010 – Extension of Time to obtain a Certificate of Occupancy for a previously granted PCE (Planet Fitness) which expired on February 7, 2007; Amendment for change of operator, interior modification and change in the hours of operation; Waiver of the Rules. C2-1/R6 zoning district.

PREMISES AFFECTED – 2241 Westchester Avenue, northwest corner of Westchester Avenue and Glebe Avenue, Block 3963, Lot 57, Borough of Bronx.

COMMUNITY BOARD #10BX

280-09-A

APPLICANT – NYC Board of Standards and Appeals
SUBJECT – Review of Board decision pursuant to Sec 1-10(f) of the Board's Rules and 666(8) of the City Charter of an appeal challenging the Department of Building's authority under the City Charter to interpret or enforce provisions of Article 16 of the General Municipal Law relating to the construction of a proposed 17 story residential building. R10A zoning district.

PREMISES AFFECTED – 330 West 86th Street, south side of West 86th Street, 280 feet west of the intersection of Riverside Drive and West 86th Street, Block 1247, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEALS CALENDAR

237-09-A & 238-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP for Safet Dzemovski, owner.

SUBJECT – Application July 31, 2009 – Construction in the bed of a mapped street contrary to General City Law Section 35. R3X zoning district.

PREMISES AFFECTED – 81 & 85 Archwood Avenue aka 5219 Amboy Road, east side of Archwood Avenue, 198.25' north of Amboy Road, Block 6321, Lot 152 & 151, Borough of Staten Island.

COMMUNITY BOARD #3SI

67-10-A

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Eileen and James Conrad, lessee.

SUBJECT – Application May 4, 2010 – Proposed reconstruction and enlargement of an existing single family dwelling and the proposed upgrade of the existing non-conforming private disposal system within the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law. R4 zoning district.

PREMISES AFFECTED – 72 Bedford Avenue, west side of Bedford Avenue within the intersection of mapped 12th Avenue and Beach 204th Street, Block 16350, Lot p/o 300, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

JUNE 15, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 15, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

22-10-BZ

APPLICANT – Harold Weinberg, P.E., for RP Canarsie, LLC, owner; Sunshine Childrens Day Care, lessee.
SUBJECT – Application February 17, 2010 – Special Permit (§73-19) to allow the proposed one-story day care center. C8 zoning district.

PREMISES AFFECTED – 620 East 102nd Street, west side between Farragut Road and Glenwood Road, Block 8170, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #18BK

64-10-BZ

APPLICANT – Law Office Fredrick A. Becker, for Nechama Sonnenschine and Harry Sonnenschine, owners.
SUBJECT – Application April 29, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (§23-141); side yards (§23-461 & §23-48) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1253 East 29th Street, east side of East 29th Street, between Avenue L and Avenue M, Block 7647, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

87-10-BZ

APPLICANT – Dennis D. Dell’Angelo, for David Gluck, owner.

SUBJECT – Application May 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141), side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1333 East 24th Street, east side of East 24th Street, 260’ south of Avenue M, Block 7660, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

88-10-BZ

APPLICANT – Dennis D. Dell’Angelo, for Sarah Weiss, owner.

SUBJECT – Application May 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141) and side yards (§23-461). R-2 zoning district.

PREMISES AFFECTED – 1327 East 21st Street, south east corner of East 21st Street and Avenue L, Block 7639, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 25, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

4-00-BZ

APPLICANT – Eric Palatnik, P.C., for 243 West 30th Realty, LLC, owner; West Garden Incorporated, lessee.

SUBJECT – Application March 22, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued use of a Physical Culture Establishment (*West Garden*) which expires on May 30, 2010. M1-5 zoning district.

PREMISES AFFECTED – 243 West 30th Street, north side of West 30th Street, east of 8th Street, Block 780, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expires on May 30, 2010; and

WHEREAS, a public hearing was held on this application on May 11, 2010, after due notice by publication in *The City Record*, and then to decision on May 25, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the north side of West 30th Street, between Seventh Avenue and Eighth Avenue, within an M1-5 zoning district; and

WHEREAS, the PCE occupies a total of 4,264 sq. ft. of floor area on the first floor and mezzanine of a 12-story building, with an additional 1,884 sq. ft. of floor space located in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 30, 2000 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on May 30, 2010; and

WHEREAS, on September 14, 2004, the Board amended the grant to permit the legalization of 1,884 sq. ft. of area formerly approved as PCE accessory storage and mechanical area to eight all-purpose spa therapy rooms and one all-purpose spa shower/water therapy room in the cellar; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on May 30, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from May 30, 2010, to expire on May 30, 2020, *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of this grant shall expire on May 30, 2020;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 103161659)

Adopted by the Board of Standards and Appeals, May 25, 2010.

369-03-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 99-01 Queens Boulevard LLC, owner; TSI Rego Park LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application December 3, 2009 – Amendment to a variance (§72-21) for a physical culture establishment (*New York Sports Club*) to change in the owner/operator, decrease floor area, modify days and hours of operation, and eliminate parking condition. C1-2/R7-1 zoning district.

PREMISES AFFECTED – 99-01 Queens Boulevard, Northwest corner of Queens Boulevard and 67th Street, Block 2118, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

MINUTES

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for a physical culture establishment (“PCE”), to permit: (1) internal layout modifications and a correction in the floor area calculations; (2) a change in the operator of the PCE; (3) a change in the hours of operation; and (4) the removal of the requirement that off-site parking be provided; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in *The City Record*, with a continued hearing on April 20, 2010, and then to decision on May 25, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Queens, recommends approval of this application; and

WHEREAS, the site is located on a corner through lot bounded by 66th Road to the west, Queens Boulevard to the south, and 67th Avenue to the east, within a C1-2 (R7-1) zoning district; and

WHEREAS, the site is occupied by a two-story and cellar commercial building; and

WHEREAS, the PCE occupies a total of 5,790 sq. ft. of floor area on the first floor and mezzanine, with an additional 17,983 sq. ft. of floor space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 19, 2005 when, under the subject calendar number, the Board granted a variance to permit the operation of a PCE at the subject site; and

WHEREAS, the applicant now seeks an amendment to reflect internal layout modifications and the correct floor area calculations, including: a 1,402 sq. ft. reduction in the floor area on the first floor and mezzanine of the PCE, from a total of 25,175 sq. ft. of floor space to a total of 23,773 sq. ft. of floor space; and

WHEREAS, the applicant represents that this reduction is due to inaccuracies in the original floor area calculations; and

WHEREAS, the applicant also notes that the operating control of the PCE has changed from Sky Athletic Club to the New York Sports Club, and seeks approval of this change; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the applicant also seeks a change in the hours of operation at the site; and

WHEREAS, the applicant states that the current hours of operation are: Monday through Thursday, from 5:00 a.m. to 11:00 p.m.; Friday, from 5:00 a.m. to 9:00 p.m.; Saturday, from 7:00 a.m. to 7:00 p.m.; and Sunday, from 7:00 a.m. to 5:00 p.m.; and

WHEREAS, the applicant now proposes to change the hours of operation at the PCE to: Monday through Thursday, from 5:30 a.m. to 11:00 p.m.; Friday, from 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.;

and

WHEREAS, the applicant also requested to remove the requirement that off-site parking be provided; and

WHEREAS, the Board notes that the agreement to provide off-site parking was made between the applicant and the Community Board, and was not a condition or requirement in the Board’s approval; and

WHEREAS, at hearing, the Board questioned whether the height of the signage at the site was permitted under C1 district regulations; and

WHEREAS, in response, the applicant submitted a photograph of the prior use at the site reflecting a sign located at a similar height as the proposed signage, and states that it believes the proposed signage is a permitted pre-existing condition based on the prior signage at the site; and

WHEREAS, the Board takes no position as to whether the proposed signage is a permitted pre-existing condition and defers to the Department of Buildings (“DOB”) review of that matter; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendments to the grant are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 19, 2005, so that as amended this portion of the resolution shall read: “to permit internal layout modifications, a correction in the floor area calculations to reflect a 1,402 sq. ft. reduction of the PCE on the first floor and cellar mezzanine, a change in the operator of the PCE, and a change in the hours of operation of the PCE; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received December 3, 2009”– (4) sheets; and *on further condition*:

THAT signage at the site shall be as approved by DOB;

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 402640157)

Adopted by the Board of Standards and Appeals, May 25, 2010.

MINUTES

51-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.

SUBJECT – Application February 4, 2010 – Amendment of a variance (§72-21) which permitted a Physical Culture Establishment, contrary to §32-00, and a dance studio (Use Group 9), contrary to §32-18. The amendment seeks to enlarge the floor area occupied by the PCE. C1-2/R2 zoning district

PREMISES AFFECTED – 188-02/22 Union Turnpike, Located on the south side of Union Turnpike between 188th and 189th Streets, Block 7266, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of time to obtain a certificate of occupancy, which expired on May 10, 2010, and an amendment to a previously granted variance for a physical culture establishment (“PCE”) and dance studio, to permit a 1,072 sq. ft. enlargement of the first floor and a change in the operator of the PCE; and

WHEREAS, a public hearing was held on this application on April 13, 2010, after due notice by publication in *The City Record*, with a continued hearing on May 11, 2010, and then to decision on May 25, 2010; and WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, the site is located on the south side of Union Turnpike, between 188th Street and 189th Street, within a C1-2 (R2) zoning district; and

WHEREAS, the site is occupied by a one-story and cellar commercial building; and

WHEREAS, the PCE occupies a total of 8,647 sq. ft. of floor space in the cellar, and the existing dance studio occupies 1,198 sq. ft. of floor area on the first floor and approximately 3,473 sq. ft. of additional space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 12, 2006 when, under the subject calendar number, the Board granted a variance to permit the operation of a PCE and the legalization of the existing dance studio at the subject site, with certain conditions; and

WHEREAS, on February 10, 2009, the Board granted an extension of time to obtain a certificate of occupancy, which expired on May 10, 2010; and

WHEREAS, the applicant represents that the owner’s failure to obtain the certificate of occupancy within the stipulated time was due to construction delays; and

WHEREAS, the applicant now seeks an extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant also seeks an amendment to permit an expansion of the PCE use to a 1,072 sq. ft. portion of the first floor, resulting in an increase in the total floor space occupied by the PCE from 8,647 sq. ft. to 9,719 sq. ft.; and

WHEREAS, the applicant states that the proposed first floor space will serve as the primary means of access to the PCE, and will be occupied by a small juice bar, reception desk, restroom, offices and an elevator and stairs to the cellar; and

WHEREAS, the applicant notes that a new elevator is being installed on the PCE’s first floor as part of the proposed enlargement, and therefore the handicapped lift in the rear of the building listed on the previously-approved plans is no longer proposed; and

WHEREAS, additionally, the applicant notes that the operating control of the PCE has changed and seeks approval of this change; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, at hearing, the Board questioned whether the signage at the site complied with C1 district signage regulations; and

WHEREAS, in response, the applicant submitted a signage analysis reflecting that the signage at the site complies with C1 district regulations; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to obtain a certificate of occupancy and the proposed amendments to the grant 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 12, 2006, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to May 25, 2011, to permit a 1,072 sq. ft. expansion of the PCE on the first floor, and to permit a change in the operator of the PCE; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received February 4, 2010”– (3) sheets and “May 4, 2010”–(2) sheets; and *on further condition*:

THAT signage on the site shall comply with C1 district regulations;

THAT the above condition shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by May 25, 2011;

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT all conditions from the prior resolution not

MINUTES

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. 402279495)

Adopted by the Board of Standards and Appeals, May 25, 2010.

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.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 10 A.M., for adjourned hearing.

16-92-BZ

APPLICANT – NYC Board of Standards and Appeals.

OWNER: High Tech Park, Inc.

SUBJECT – Application April 21, 2009 – Dismissal for lack of prosecution for an extension of time to obtain a Certificate of Occupancy, and an Amendment to allow an additional non-conforming use on the zoning lot. R5/C1-3 zoning district.

PREMISES AFFECTED – 72/84 Sullivan Street, north side of Sullivan Street, east of Van Brunt Street, Block 556, Lot Tent.43, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

In Favor: Elizabeth Safian.

ACTION OF THE BOARD – Off Dismissal Calendar. Scheduled to June 22, 2010, at 10 A.M., for Public Hearing.

336-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 312 Flatbush Avenue LLC, owner; Crunch LLC d/b/a Crunch, lessee.

SUBJECT – Application May 11, 2010 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Special Permit (§73-36) for the operation of a Physical

Culture Establishment (*Crunch Fitness*) which expired on February 11, 2010; waiver of the rules. C2-4 zoning district. PREMISES AFFECTED – 312/18 Flatbush Avenue, Northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #6BK

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 June 8, 2010, at 10 A.M., for decision, hearing closed.

337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 312 Flatbush Avenue LLC, owner; Crunch LLC d/b/a Crunch, lessee.

SUBJECT – Application May 11, 2010 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*Crunch Fitness*) which expired on February 11, 2010; waiver of the rules. C2-4 zoning district.

PREMISES AFFECTED – 324/34 Flatbush Avenue, Northwest corner of the intersection of Flatbush Avenue and Sterling Place. Block 1057, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #6BK

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 June 8, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

300-08-A

APPLICANT – Blank Rome LLP by Marvin Mitzner, for Dutch Kills Partners, LLC, owner.

SUBJECT – Application December 9, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior M1-3 zoning district regulations. M1-2 /R5B zoning district.

PREMISES AFFECTED – 39-35 27th Street, east side of 27th Street, 125’ northeast of the intersection of 27th Street and 40th Avenue, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Ian Rasmussen.

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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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a proposed nine-story hotel building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in *The City Record*, with continued hearings on March 16, 2010 and April 20, 2010, and then to decision on May 25, 2010; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board, 1, Queens, recommends disapproval of this appeal; and

WHEREAS, several elected officials provided written and/or oral testimony in opposition to this application, including City Council Member Jimmy Van Bramer, State Assembly Member Margaret M. Markey, and State Assembly Member Catherine Nolan; and

WHEREAS, certain neighbors, represented by counsel, appeared in opposition to this appeal (hereinafter, the “Opposition”); and

WHEREAS, the subject site is located on the east side of 27th Street, between 39th Avenue and 40th Avenue, within an M1-2/R5B zoning district; and

WHEREAS, the site has approximately 50 feet of frontage along 27th Street, a depth of 100 feet, and a lot area of 5,009.5 sq. ft.; and

WHEREAS, the applicant proposes to construct a nine-story hotel building with a total floor area of 24,713 sq. ft. (4.94 FAR) (hereinafter, the “Building”); and

WHEREAS, the site was formerly located within an M1-3D zoning district; and

WHEREAS, however, on October 7, 2008 (hereinafter, the “Rezoning Date”), the City Council voted to adopt the Dutch Kills Rezoning, which rezoned the site to M1-2/R5B; and

WHEREAS, the applicant represents that the Building complies with the former M1-3D zoning district parameters; specifically, the proposed 4.94 FAR was permitted; and

WHEREAS, because the site is now within an M1-2/R5B zoning district, the Building would not comply with the maximum FAR of 2.0; and

WHEREAS, because the Building is not in compliance with the provisions of the M1-2/R5B zoning district and work on the foundation was not completed as of the Rezoning Date, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the

proposed development; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, the Board notes that New Building Permit No. 402569886-01-NB (the “Permit”), which authorized the development of a nine-story hotel building pursuant to M1-3D zoning district regulations was issued on December 4, 2007; and

WHEREAS, by letter dated December 17, 2009, the Department of Buildings (“DOB”) states that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Rezoning Date; and

WHEREAS, the Permit lapsed by operation of law on the Rezoning Date because the plans did not comply with the new M1-2/R5B zoning district regulations and DOB determined that the Building’s foundation was not complete; and

WHEREAS, thus, the Board finds that the Permit was validly issued by DOB to the owner of the subject premises and was in effect until its lapse by operation of law on October 7, 2008; and

WHEREAS, the validity of the Permit has not been challenged; and

WHEREAS, however, DOB states that there were numerous instances of work at the subject site being performed contrary to a Stop Work Order (“SWO”); and

WHEREAS, specifically, DOB states that on May 12, 2008, while a SWO was in effect for inadequate sheeting and shoring, unlawful work on concrete forms and the pouring of concrete was observed at the site; and

WHEREAS, DOB further states that on June 2, 2008, an inspector observed unlawful underpinning of the adjacent building located at 39-39 27th Street, and a SWO was again issued, with the only permitted work being sheeting and shoring; and

WHEREAS, subsequently, on September 12, 2008, DOB partially rescinded the SWO to allow for foundation and concrete work on all but the southern portion of the site; however, DOB states that on September 15, 2008 and September 18, 2008 an inspector observed unlawful foundation work at the site; and

WHEREAS, the applicant represents that at least some of the unlawful work performed at the site was due to the contractor’s mistaken interpretation as to the extent of the SWOs issued by DOB, and states that a portion of the work performed on the above-mentioned dates was within the scope of permitted work under the SWOs; and

WHEREAS, nonetheless, the applicant states that it has eliminated all work performed on the above dates from the vested rights analysis; and

WHEREAS, assuming that valid permits had been issued and that work proceeded under them, the Board notes that a common law vested right to continue construction generally exists where: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk,

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Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance."; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to substantial construction, the applicant states that before the Rezoning Date, the owner completed: (1) site preparation; (2) 75 percent of the excavation; (3) the creation of concrete forms for foundation, footings, and underpinning; and (4) the pouring of 25.89 cubic yards of concrete required for footings, 24.85 cubic yards of concrete required for the foundation, and 19 cubic yards of concrete required for underpinning; for a total of 69.74 cubic yards of concrete, or approximately 24 percent, out of a total of approximately 290 cubic yards of concrete required for all foundation work; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site; an affidavit from the engineer stating the amount of work completed; a construction schedule; copies of concrete pour tickets; cancelled checks; and accounting tables; and

WHEREAS, the applicant notes that a total of 85 cubic yards of concrete was poured at the site as of the Rezoning Date, but that it has not included more than 15 cubic yards of concrete that have been called into question as being related to work performed contrary to a SWO; and

WHEREAS, the Opposition argues that, while the work performed at the site as of the Rezoning Date may constitute 24 percent of the total work necessary to complete the foundation, it only constitutes approximately three percent of the work necessary to complete the entire project, and therefore substantial construction has not been completed; and

WHEREAS, the Board notes that, pursuant to ZR § 11-331, DOB would have vested the project if work on the foundation had been completed as of the Rezoning Date, and the Board could have granted an extension of time to complete construction upon a finding that excavation was complete and substantial progress made on foundations as of the Rezoning Date; thus, the Board finds it appropriate to consider the construction completed at the site not only in the context of the amount of work necessary to complete the entire project, but also in the context of the amount of work necessary to complete the foundation; and

WHEREAS, the Board concludes that given the size of the site, and based upon a comparison of the type and amount of work completed in the instant case with the type and amount

of work discussed by New York State courts, a significant amount of work was performed at the site prior to the rezoning; and

WHEREAS, accordingly, as to the amount of work performed, the Board finds that it was substantial enough to meet the guideposts established by case law; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the Rezoning Date, the owner expended \$820,231, including hard and soft costs and irrevocable commitments, out of \$3,837,850 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, invoices, cancelled checks, contractors applications for payment, accounting tables, and concrete pour tickets; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$546,700 for excavation, shoring, installation of foundations, architectural fees, and engineering fees; and

WHEREAS, the applicant further states that the owner also irrevocably owes an additional \$273,531 in connection with costs committed to the development under irrevocable contracts prior to the Rezoning Date; and

WHEREAS, at hearing, the Opposition challenged the veracity of the documentation provided by the applicant in support of approximately \$259,000 in costs related to the production of shop drawings, commencement of fabricating custom structural steel for the project, and metal decking which was purchased by the contractor and remains in his shop, and argues that such costs should be discounted from the expenditures; and

WHEREAS, the applicant has submitted original notarized copies of the relevant contractor's applications for payment in response to the Opposition's concerns and the Board's request, and the Board finds this evidence to be sufficient documentation of the expenditures at issue; and

WHEREAS, the Opposition argues that \$227,818 in expenditures related to architectural fees, general contractor fees, the purchase of steel, franchise fees, and other miscellaneous expenses related to the Building should be discounted from the analysis of substantial expenditures because they were made prior to the issuance of a valid permit; and

WHEREAS, in support of this argument, the applicant has cited a number of cases, see Town of Orangetown v. Magee, 88 N.Y.2d 41 (1996); Westbury Laundromat Inc., v. Mammina, 62 A.D.3d 888 (2d Dept. 2009); Lefrak Forest Hills Corp v. Galvin, 40 A.D. 2d 211 (2d Dept. 1972); Preble Aggregate v. Town of Preble, 263 A.D.2d 849 (3d Dept. 1999); Rudolf Steiner Fellowship Foundation v. DeLuccia, 90 N.Y.2d 453 (1997); Reichenbach v. Windward at Southampton, 80 Misc.2d 1031 (Supreme Court, Suffolk County, 1975) which recite the requirement that substantial

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construction be performed and substantial expenditures made *in reliance on a validly issued permit* (emphasis added); and

WHEREAS, the Board acknowledges that construction and expenditures must be made in reliance on a validly issued permit, but does not find the relevant consideration to be solely whether the costs were incurred or the payments made before or after the issuance of the permit, but rather whether such costs were specifically made in reliance upon such permit, be it issued or anticipated; and

WHEREAS, the Board notes that this issue was addressed in Glenel Realty Corp. v. Worthington, 4 A.D.2d 702 (2d Dept. 1957), where the court included costs in the vested rights analysis that were alleged to have been made prior to the issuance of a permit, finding that it was “immaterial under the circumstances here present that some of these obligations and some of these payments may have antedated the permits...all the obligations may well be said to have been justifiably assumed and all payments may well be said to have been justifiably made in reliance on the permits—whether such reliance was upon their anticipated, or upon their actual, issuance;” and

WHEREAS, the Board further notes that in Town of Orangetown v. Magee, one of the cases cited by the Opposition in support of its contention that all pre-permit expenses must be excluded from the vested rights analysis, the court included the purchase price of the original site, as well as the subsequent purchase of additional land, as part of the substantial expenditures that were made in reliance on the building permit, despite the fact that the land was purchased prior to the issuance of a valid building permit; and

WHEREAS, the Board finds that in the instant case, the \$227,818 in costs incurred or commitments made prior to the issuance of the building permit included payments for building materials and fees paid in anticipation of this specific project, and therefore such costs were made in reliance on the subsequently issued building permit; and

WHEREAS, the Opposition argues that the excavation work performed for the project would be necessary for any development at the site, and cites to Town of Hempstead v. Lynne, 32 Misc. 2d 312 (Supreme Ct., Nassau County, 1961) to support its contention that the excavation work and its associated costs should not be counted in the vested rights analysis because the costs were not exclusive to this project; and

WHEREAS, the Board notes that excavation work is expressly considered as part of the statutory analysis for an extension of time to complete construction under ZR § 11-331, and similarly finds the inclusion of such work and its associated costs to be appropriate under the common law; and

WHEREAS, further, the Board finds that the applicant has demonstrated that substantial construction has been undertaken and substantial expenditures made even if excavation work is excluded from the vested rights analysis; and

WHEREAS, the Opposition also argues that the \$31,000 associated with the demolition of the existing buildings on the site should be deducted from the expenditures in the vested rights analysis, as the costs were made prior to the issuance of a

valid permit, and because such costs are not exclusive to this project; and

WHEREAS, the applicant argues that the demolition was performed in reliance on the Permit, as it would not have demolished the two viable buildings on the site except in reliance upon the proposed development; and

WHEREAS, the Board acknowledges that demolition costs are not precluded from consideration in the vested rights analysis, but finds that the relevance of demolition costs may be difficult to ascertain in many circumstances; and

WHEREAS, the Board concludes that in the instant case, it is more appropriate to assess expenditure in light of total development costs absent demolition costs; and

WHEREAS, accordingly, the \$820,231 in total expenditures does not include the \$31,000 in costs associated with the demolition of the existing buildings; 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, the Opposition argues that it is not a factor to be established separate and apart from substantial construction and substantial expense, but rather is considered only in the context of the extent and cost of the actual construction performed, and that according to Town of Orangetown v. Magee, 88 N.Y.2d 41, 643 (1996), “the landowner’s actions relying on a valid permit must be so substantial that municipal action results in serious loss rendering the improvements essentially valueless;” and

WHEREAS, the Board notes that although it is not required by case law to consider the landowner’s loss outside the scope of the substantial construction and expenditures paradigm, it finds such a consideration allows it to gain a better understanding of the tangible effect a rezoning will have on a development; and

WHEREAS, the Board further notes that its consideration of such loss does not obscure the fact that vested rights cannot be conferred without a finding that substantial construction has been undertaken and substantial expenditures made in reliance on a valid building permit; and

WHEREAS, based upon the above, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant contends that the loss of approximately 14,694 sq. ft. of floor area that would result if this appeal is denied is significant; and

WHEREAS, the applicant states that the decrease in the permissible floor area under the new zoning would result in the elimination of 35 hotel rooms, from a 57-room hotel to a 22-room hotel, constituting approximately 61 percent of the

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hotel's rooms; and

WHEREAS, the applicant provided a financial analysis indicating an expected loss of approximately \$2,036,324 on a 22-room hotel project; and

WHEREAS, the applicant represents that a complying residential development at the site would result in an estimated loss of \$1,588,622, in light of the expenditures and financial commitments made in furtherance of the hotel project; and

WHEREAS, the applicant states that, in order to realize a reasonable rate of return on the premises, the owner entered into a franchise agreement with Howard Johnson and that it would be unable to maintain that franchise agreement with the elimination of 35 hotel rooms; and

WHEREAS, the applicant submitted a letter from Wyndham Hotel Group, the parent company to the Howard Johnson's brand, stating that it has a 50-room project minimum and would not be interested in a 22-room hotel; and

WHEREAS, the applicant also submitted letters from a second national hotel chain as well as a smaller hotel company indicating that a 22-room hotel would not be feasible, and a letter from a real estate broker stating that no franchise would be willing to consider a hotel with such a reduced room count, and that such a project would not be financially feasible; and

WHEREAS, the applicant represents that Howard Johnson may also hold the owner in default of the franchise agreement if it were required to eliminate 35 rooms and the owner would then be subject to a \$124,000 penalty for cancellation of its franchise agreement; and

WHEREAS, the Board agrees that the serious reduction in FAR, the loss of 35 hotel rooms, and the need to redesign would result in a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Rezoning Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 402569886-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, May 25, 2010.

303-09-BZY

APPLICANT – Ray Chen, for 517 53rd Street Inc, owner.
SUBJECT – Application October 30, 2009 – Extension of time (§11-332) to complete construction of an enlargement commenced under the prior C4-3 zoning district. R6B zoning district

PREMISES AFFECTED – 517 53rd Street, between 5th and 6th Avenue, Block 608, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, May 25, 2010.

1-10-A

APPLICANT – Elizabeth Safian, for Ciro Faiella & Joseph Faiella, owner.

SUBJECT – Application January 4, 2010 – Appeal to an Order of Closure issued by the Department of Buildings. Per the Order, the site's commercial vehicle storage, public parking lot, trucking terminal and a salvage yard uses constitute an illegal use in a residential district contrary to Administrative Code Section 28-212.2. R5 zoning district. PREMISES AFFECTED – 527 East 86th Street, 116' east of Foster Avenue, fronting East 86th Street, Block 7965, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION: 1

WHEREAS, this is an appeal of an Order of Closure for the subject premises, issued by the Commissioner of the Department of Buildings ("DOB") on December 3, 2009 (the "Order"), brought by the property owner (hereinafter "Appellant"); and

WHEREAS, the Order states, in pertinent part:

"It is my determination that the storage of commercial vehicles, a public parking lot, a trucking terminal, and a salvage yard constitute illegal commercial and/or manufacturing uses in a residence district and, therefore, the subject premises is ORDERED CLOSED . . ."; and

WHEREAS, a public hearing was held on this appeal on April 13, 2010 after due notice by publication in *The City Record*, and then to decision on May 25, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and

1 Headings are utilized only in the interest of clarity and organization.

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Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, provided written testimony in opposition to the appeal and in support of the closure of the site; and

WHEREAS, the subject site is located on the north side of East 86th Street, between Foster Avenue and Farragut Road, in an R5 zoning district; and

WHEREAS, the site is irregularly-shaped with 159 feet of frontage on East 86th Street and a lot area of approximately 16,000 sq. ft.; and

WHEREAS, the site is occupied by a two-story residential building, a one-story commercial building with a floor area of approximately 1,575 sq. ft., which is occupied by offices for a food service program, and several trailers; and

WHEREAS, the Appellant states that the open portion of the site is used for truck parking, but not for a public parking lot, trucking terminal, or salvage yard, as stated in the Order; and

WHEREAS, the subject appeal is limited to the continued operation of the truck parking use; and

WHEREAS, the certificate of occupancy (“CO”) for the site, dated December 23, 1959, reflects the following: cellar – ordinary; first/second – one-family; first - restaurant; and parking spaces for two cars; and

CRITERIA FOR MAINTAINING A NON-CONFORMING USE

WHEREAS, DOB and the Appellant agree that the site is currently within an R5 zoning district and that the existing truck parking and other uses currently active at the site, including the Use Group 6 office use, are not permitted as-of-right uses within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming truck parking use is permitted to remain, the Appellant must meet the ZR criteria for a “non-conforming use” as defined at ZR § 12-10; and

WHEREAS, ZR § 12-10 defines “non-conforming” use as “any lawful *use*, whether of a *building or other structure* or of a tract of land, which does not conform to any one or more of the applicable *use* regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto”; and

WHEREAS, additionally, ZR § 52-61 – Discontinuance - Non-Conforming Uses – General Provisions - states that: “If, for a continuous period of two years, either the *non-conforming use of land with minor improvements* is discontinued, or the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such land . . . shall thereafter be used only for a conforming *use*”; and

WHEREAS, accordingly, as per the ZR, the applicant must establish that the use was established before it became unlawful, by zoning, on December 15, 1961 and it must have continued without any two-year period of discontinuance since then; and

WHEREAS, neither DOB nor the Appellant contest that this is the appropriate standard to apply to the analysis of whether the non-conforming truck parking use may continue at the site; and

PROCEDURAL HISTORY

WHEREAS, DOB states that its inspectors observed nonconforming use at the site, leading to five inspection reports noting such use; and

WHEREAS, DOB determined that truck parking and other noted uses were not permitted in the subject R5 zoning district and proceeded to enforce against Appellant pursuant to Administrative Code § 26-127.2, otherwise known as the Padlock Law; and

WHEREAS, in sum and substance, the Padlock Law provides DOB with the authority to declare illegal commercial uses in residential zoning districts to be a nuisance, and to then close such uses; and

WHEREAS, however, prior to the issuance of an Order of Closure, the Padlock Law provides that the owner is entitled to a hearing at the City’s Office of Administrative Trials and Hearings (“OATH”); and

WHEREAS, on February 3, 2009, DOB served a petition against the Appellant, asserting a violation of ZR § 22-00, specifically that the site “is in violation of the Zoning Resolution in that, although located in an R5 residence district, the premises has been used for the storage of commercial vehicles, and as a public parking lot, a trucking terminal, and a salvage yard. Such occupancy is contrary to the Zoning Resolution, which does not permit as-of-right commercial or manufacturing uses in residence districts”; and

WHEREAS, on May 8, 2009, DOB served an amended petition, which also asserts that the site is illegally used as an ice manufacturing business; and

WHEREAS, on July 10, 2009, OATH held a hearing on the matter; and

WHEREAS, by a Report and Recommendation, dated October 23, 2009, OATH issued a recommendation for closure of non-conforming use at the site; and

WHEREAS, subsequently, DOB issued its Order; and

WHEREAS, pursuant to the City Charter, Appellant may appeal the Order to the Board, and the Board has the authority to review the validity of the Order and the underlying issues *de novo*; it is not bound by any finding or determination of OATH, nor is any other party; and

WHEREAS, accordingly, the Appellant appealed the Order to the Board; OATH’s Report and Recommendation has been entered as a part of the record on appeal, but the Board has not relied on it in its analysis; and

SITE HISTORY

WHEREAS, the Appellant states that between 1953 and 1961, the northern 200 feet of Block 7965, perpendicular to Foster Avenue was located within a manufacturing zoning district; and

WHEREAS, tax maps reflect that the site is approximately 116 feet from Foster Avenue; and

WHEREAS, accordingly, the Appellant asserts that, until 1961 a zoning district boundary line divided the site and the northern portion of the site, to a width of 84 feet (the “Northern Portion”) was within a manufacturing zoning district while the southern portion of the site, to a width of 75 feet (the “Southern Portion”) was within a residential zoning district; and

WHEREAS, in 1961, the entire site was zoned R5,

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which it remains today; and

WHEREAS, the Appellant states that the truck parking use began in the mid-1950s, when such use was permitted on the Northern Portion; and

WHEREAS, the Appellant asserts that his grandfather purchased the site in the 1950s, when Lot 33 was under a different lot configuration, as part of Lot 39 that extended to the corner of East 86th Street and Foster Avenue; Lot 39 no longer exists; and

WHEREAS, the Appellant states that his grandfather operated a restaurant on a portion of the larger original lot (Lot 39) which has since been subdivided and is now under separate ownership from Lot 33; and

WHEREAS, the Appellant has submitted earlier COs for what was then Lot 39, which reflect a restaurant use near to the corner of East 86th Street and Foster Avenue; and

WHEREAS, the Appellant does not have information to explain the full history of the configuration of lots 33 and 39 throughout the 1950s, so questions remain as to which lots were occupied by which activities prior to 1961; and

WHEREAS, however, the Appellant states that he took control of the truck parking business, which passed through his mother, in the mid-1970s; and

WHEREAS, the Appellant continues to operate the truck parking business at the site, which consists of patrons renting space to park trucks in the open area on the current Lot 33; and

WHEREAS, the Appellant has submitted business records dating back to 1976, which reflect that he has collected rent from entities to park commercial vehicles since that time; and

WHEREAS, based on the business records dating from 1976 to 2009, DOB stipulated at the OATH hearing that the Appellant had established that the site was used continuously for truck parking from 1976 to 2009; and

WHEREAS, however, as noted, DOB requires that the Appellant establish that the trucking use, which was rendered non-conforming by the 1961 R5 zoning designation, existed on the Northern Portion prior to 1961 and that it continued without any interruption of two years until 1976; and

WHEREAS, DOB states, and the Appellant acknowledges, that the truck parking business cannot be established as a pre-existing non-conforming use on the Southern Portion because such use was not permitted under the pre-1961 zoning scheme or under the current R5 designation; and

WHEREAS, the Appellant concedes that he does not have any ability to legally establish or maintain the use on the Southern Portion; accordingly, the subject of this appeal is the Northern Portion and establishing the pre-existence and continuation of the use there; and

APPELLANT'S ARGUMENTS

1. Commercial Vehicle Parking Can Be Established Notwithstanding Its Absence on the Current CO

WHEREAS, the Appellant contends that the truck parking use has existed at the site since the late 1950s, but that the business was an informal one which lacks record-keeping of any kind and that the original owners and many others who may have had firsthand knowledge of the use are deceased; and

WHEREAS, the Appellant concedes that the only remaining record of the use prior to 1976 is anecdotal evidence provided by individuals familiar with the site during the relevant period; and

WHEREAS, the Appellant asserts that the current use may continue despite the fact that it is not reflected on the current CO, issued in 1959; and

WHEREAS, the Appellant states that the CO was silent regarding commercial vehicle parking, but that that should not preclude him from establishing that the use has existed there, legally, nonetheless; and

WHEREAS, the Appellant relies on City of New York v. Victory Van Lines (69 A.D.2d 605, 418 N.Y.S.2d 792 (2d Dept. 1979)), for the premise that the absence of a CO reflecting a particular use does not preclude a property owner from establishing the existence of such use; and

WHEREAS, specifically, the Victory Van Lines court stated “[w]here the invalidity of the use prior to the effective date of the zoning restrictions lies in failure to secure a license, such invalidity does not preclude acquisition of a non-conforming use protected as against the operation of a subsequent zoning restriction” (citations omitted) 69 A.D.2d 605 at 610; and

WHEREAS, the Appellant also cites to Matter of Kennedy v. Zoning Board of Appeals of Town of North Salem (205 A.D.2d 629, 613 N.Y.S.2d 264 (2d Dept. 1994)), another case involving a rezoning that rendered a use non-conforming and what bearing the absence of a CO reflecting the non-conforming use had on the ability to continue the use; and

WHEREAS, the court in Kennedy stated that “[t]he failure to obtain a license does not render the use unlawful in the sense intended by zoning ordinances which preserve existing lawful uses” and “even assuming that a Certificate of Occupancy was in fact required, ‘[a] use which is otherwise lawfully maintained may be continued as a nonconforming use although the use failed to procure or renew a license, certificate, or other permit required by law,’” 205 A.D.2d at 631; and

WHEREAS, DOB distinguishes Victory Van Lines in that the nonconforming use in the subject case was not established as a legal nonconforming use prior to 1961, in part because it was not reflected on the CO, which would have been a requirement since truck parking, unlike the parking in Victory Van Lines, is not accessory to the primary use at the site, a restaurant and a residence; and

WHEREAS, the Board finds that the case law supports the argument that the analysis is not limited to whether the now non-conforming use was reflected on the CO; and

WHEREAS, the Board finds that it may determine that a non-conforming use can be established as having existed on a site in the manner required to establish the legality of the use prior to a zoning change; and

WHEREAS, guided by the courts, the Board does not find the omission of the truck parking business from the CO to be conclusive evidence that the use did not exist legally on December 15, 1961; and

WHEREAS, that said, the Board distinguishes the

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subject case from Victory Van Lines and Kennedy in at least two important ways: (1) in Victory Van Lines and Kennedy, the property owners were able to establish the existence of the non-conforming use prior to the effective date of the zoning change and (2) COs were not required for non-conforming uses at issue on their sites; and

WHEREAS, the use in Victory Van Lines dates back to approximately 1925, 36 years before the site was rezoned to residential use and the court found that the truck parking was accessory to the warehousing use at the site and, thus, a CO was not required to reflect the accessory use; the use in Kennedy, similarly, did not require a CO prior to a 1987 zoning ordinance adoption; and

WHEREAS, the Board notes that, on the contrary, the Appellant obtained a CO on December 23, 1959, for a use that was completely unrelated to commercial truck parking, just two years before the December 15, 1961 effective date of the ZR and within a few years of the purported late 1950s establishment of the use; and

WHEREAS, additionally, the Board does not find a compelling argument for why the Appellant omitted the truck parking use, which would have been a permitted use on the Northern Portion at the time of the CO's issuance, from the CO, if it was an established use at the site at that time; and

WHEREAS, the Board notes that the question of omitting an existing use, which would have been required to be noted on the CO from the CO at the time of its issuance was not the question in Victory Van Lines or Kennedy; and

2. Statutory Interpretation Principles and Estoppel Require a Decision in the Property Owner's Favor

WHEREAS, the Appellant asserts several general statutory interpretation principles in support of its claim that the non-conforming use should be permitted; and

WHEREAS, specifically, the Appellant states that the zoning regulations be strictly construed against the municipality seeking enforcement, citing to Ellington Construction v. Zoning Board of Appeals of Incorporated Village of New Hempstead (77 N.Y.2d 114, 564 N.Y.S.2d 1001 (1990)) and Glenel Realty Corp. v. Worthington (4 A.D.2d 702, 164 N.Y.S. 2d 635 (2d Dept. 1957)) and that the property owners be given every benefit in the interpretation of zoning ordinances; and

WHEREAS, the Board finds the citation to these cases to be misplaced as the subject case does not involve a question of interpretation, but rather one of meeting a threshold for establishing the existence of a use, which does not require interpretation, but rather evidence to support claims; and

WHEREAS, further, the Board notes that, with regard to non-conforming uses, the Court of Appeals has held that there is an exception to the general principle that the zoning ordinance be strictly construed in favor of the property owner; and

WHEREAS, in Off Shore Restaurant Corp. v. Linden (30 N.Y.2d 160, 331 N.Y.S.2d 397 (1972)), the Court stated, "the courts do not hesitate to give effect to restrictions on non-conforming uses . . . It is because these restrictions flow from a strong policy favoring the eventual elimination of

nonconforming uses" 30 N.Y.2d at 164; and

WHEREAS, additionally, the Board notes that the ZR contemplates the continuation of certain nonconforming uses and sets forth criteria for establishing the legality of such use; and

WHEREAS, the Board agrees with the Appellant that the ZR expressly permits the continuation of non-conforming uses under certain conditions and does not find that the requirement to establish the commencement of the use prior to the adoption of the 1961 ZR or the continuation of the use from 1961 to 1976 to be in conflict with the property owner's rights or the intent of the ZR or relevant case law; and

WHEREAS, the Board finds that the Appellant's arguments related to serious loss and estoppel are similarly misplaced in an analysis of whether or not a use can be established as legally non-conforming; and

WHEREAS, the Board notes that the Court of Appeals has rejected estoppel as a defense in a zoning case even when DOB has erroneously issued a permit and then revoked it; the Court held that "estoppel is not available against a local government for the purpose of ratifying an administrative error," Parkview Associates v. City of New York, 71 N.Y.2d 274, 283 (1988) (citation omitted), See also Accord Schorr v. New York City Dept. of Housing Preservation and Development, 10 N.Y.3d 776, 779 (2008); and

WHEREAS, the Board also notes that the Court in Parkview rejected a claim of vested rights and severe economic loss, finding that there was not any vested rights where the permit was invalid when issued and not in compliance with the law; and

WHEREAS, the Board notes that, the Appellant's claim for estoppel is even less persuasive than the property owner in Parkview because the property owner in Parkview had actually obtained approvals, however erroneously, from DOB; in the subject case, Appellant relies on DOB's lack of enforcement and absence of earlier violation of the non-conforming use at the site as a tacit approval; and

WHEREAS, the Board notes that DOB has not approved the use of the site since its issuance of the 1959 CO and it is not known whether DOB actually visited the site at that time and confirmed that all of the existing uses were appropriately reflected on the new CO; and

WHEREAS, DOB is unable to confirm the circumstances of the issuance of the CO; and

THE EVIDENCE

WHEREAS, in support of claims that the truck parking business has operated at the site from the 1950s to 1976 without interruption, six individuals appeared at hearing and described recollections of seeing trucks at the site; and

WHEREAS, the Appellant states that the testimony presented at hearing was not available at the time of the OATH hearing and came from those who lived nearby or visited the area during the relevant time period; and

WHEREAS, the Board notes that the testimony included statements from people who lived nearby and recalled seeing trucks at the site during the relevant period, which except for one individual who lived nearby and claimed to use the site for parking, was in the nature of casual observation; and

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WHEREAS, the documentary evidence provided from the individual who asserts that he parked trucks for his business at the site for the relevant periods includes a certificate of incorporation for his business, which required the use of trucks, dated 1966; and

WHEREAS, although the Board did not find any reason to discredit the testimony, the Board notes that the testimony failed to establish (1) that the use existed at the site prior to December 15, 1961, (2) a timeline of continuous use from prior to December 15, 1961 to 1976, and (3) that the truck parking use was present on what is currently the Northern Portion of Lot 33; and

WHEREAS, the Board concludes that the testimony, which lacked specificity, and the limited documentary evidence alone cannot support the assertions that the use existed on the Northern Portion and not instead the Southern Portion or the earlier lot configuration, including former Lot 39, or even an adjacent un-related lot, throughout the relevant periods; and

THE STANDARD OF REVIEW

WHEREAS, the Appellant cites to Stein v. Board of Appeals of Town of Islip, 100 A.D. 2d 590, 473 N.Y.S.2d 535 (2d Dept 1984), to support the assertion that the rules of evidence need not be strictly applied by a zoning board; specifically “[a] zoning board of appeals is not constrained by the rules of evidence and may conduct informal hearings,” 100 A.D. 2d at 590; and

WHEREAS, instead of the rules of evidence, the Appellant states that the Board may base its determination on “substantial evidence” as set forth in New York’s Civil Practice Law and Rules § 7803(4); and

WHEREAS, the Appellant cites to several New York State cases to describe what it finds to be the “substantial evidence” standard within a zoning context; and

WHEREAS, DOB finds that the Appellant has not met the substantial evidence standard; and

WHEREAS, the Board agrees with the Appellant that it is not required to follow the rules of evidence and may base its determination on a different standard, but is able to distinguish cases the Appellant cites, on the facts; and

WHEREAS, the Appellant cites to 300 Gramatan Ave. Associates v. State Div. of Human Rights (45 N.Y.2d 176, 179, 408 N.Y.S.2d 54 (1978)), in which the Court of Appeals stated that “upon a judicial review of findings made by an administrative agency, a determination is regarded as being supported by substantial evidence when the proof is ‘so substantial that from it an inference of the existence of the fact found may be drawn reasonably’” (citation omitted); and

WHEREAS, the Appellant identifies substantial evidence as involving weighing the quality and quantity of the proof and that there is sufficient relevant proof so that a reasonable mind may accept it as adequate to support a conclusion of fact and that substantial evidence is less than a preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt, citing to Gramatan and Siano v. Dolce, 256 A.D.2d 582, 682 N.Y.S.2d 445 (2d Dept. 1998); and

WHEREAS, Gramatan involved a potential tenant for an apartment who claimed that he was prohibited from renting the apartment because of his race; he was able to provide a clear

timeline of the events and communication surrounding his rejection from the rental to the extent that the Court stated: “substantial evidence consists of proof within the whole record of such quality and quantity as to generate conviction in and persuade a fair and detached fact finder that, from that proof as a premise, a conclusion or ultimate fact may be extracted reasonably and probatively and logically,” 45 N.Y.2d at 181; and

WHEREAS, additionally, the Appellant states that courts have relied on testimonial evidence to establish the continuity of a non-conforming use; and

WHEREAS, the Appellant cites to Walter v. Harris (163 A.D.2d 619, 558 N.Y.S.2d 266 (3d Dept. 1990)), which involved a dispute between neighbors as to whether the storage and maintenance of heavy equipment and vehicles could be established as a pre-existing legal non-conforming use in that it pre-dates the relevant zoning ordinance; and

WHEREAS, the property owner seeking to establish the pre-existence of the use offered testimony from his father, the former owner, that he had witnessed the use at the site for approximately 45 years; and

WHEREAS, the Board notes that the court in Walter accepted testimonial evidence from the property owner’s father but that, as in Gramatan, there were additional facts set forth beyond testimonial evidence; and

WHEREAS, additional factors in Walter include that: (1) the property owner’s 200-year-old family business of timber harvesting and wood processing was directly related to the vehicle parking such that although the timber business was not a primary use at the site, there was a clear un-interrupted connection between the use of the site and the property owner’s continuous nearby business; (2) the purported discontinuation of the use for 18 months while the site was leased out was the neighbor’s primary contention rather than that the use could not be established as existing before the enactment of the zoning ordinance or that there were other interruptions; and (3) because the site had not been reconfigured and was not separated by a zoning district boundary line, it was only necessary to establish the pre-existence and continuation of the non-conforming use somewhere on the site rather than on a specific part of the site as in the subject case; and

WHEREAS, the court found that the 18-month period during which the property was leased to another timber-harvesting business before being returned to the original owner who built a garage for the storage of equipment did not disrupt the continuity of the use; and

WHEREAS, the Board finds that, due to the history of use at the site at issue in Walter and the continuous configuration of the lot, the testimony had significant specificity and the quality of the evidence in Walter is greater than that in the subject case, which involves (1) impressionistic testimony from casual observers, (2) a less tangible link between the property owners and the use of the site for the non-conforming use, and (3) a meaningful evolution of the lot boundaries that is not apparent to casual observers, but which is critical because the use’s presence on the Southern Portion or on adjacent lots does not support the continuation of the use on the Northern Portion; and

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WHEREAS, the Board has considered the criteria for establishing substantial evidence including (1) the quality and quantity of the evidence, (2) the specificity of the testimony, and (3) whether there is any evidence to support the testimony; and

WHEREAS, the Board finds that the quality of the evidence is insufficient to establish the required criteria because it lacks critical specificity regarding a continuous timeline and the exact location of the use on the lot; and

WHEREAS, the witnesses' testimony involved casual recollections and was not rooted in evidence like the strong fact-based foundation set forth in Gramatan and Walter, and, thus, concludes that the substantial evidence threshold, as described by the courts in those cases, has not been met; and

WHEREAS, as to the credibility of the witnesses, the Board does not find any reason to discredit their testimony; and

WHEREAS, the Appellant cites to cases which state that zoning board's have the ability to weigh the evidence and state that "where there is room for choice, neither the weight which might be accorded or the choice which might be made by a court are germane upon an analysis for the presence of substantial evidence before the commissioner," 45 N.Y.2d at 179; and

WHEREAS, further, the Appellant notes that "the Court must give deference to the findings of the board" (E & B Realty v. Zoning Board of Appeals of the Village of Roslyn, 275 A.D.2d 779 (2d Dept. 2000)) and "may not weigh the evidence or reject the choice made by the zoning board 'where the evidence is conflicting and room for choice exists'" (Wickes v. Kaplan, 1/2/2002 N.Y.L.J. 20 (col. 5) (2d Dept. 2002)); and

WHEREAS, the Board has weighed the evidence and determined that the Appellant is not able to establish (1) whether the use existed on the Northern Portion prior to 1961; (2) where on the lot, which changed dimensions throughout time, and is divided by a zoning district boundary line not visible to the casual observer, the use existed; and (3) whether there was continuity of the use from 1961 to 1976; and

CONCLUSION

WHEREAS, in sum, the Board concludes as follows: (1) the truck parking use was permitted by zoning on the Northern Portion at the time of the December 23, 1959 issuance of the CO for Lot 33; (2) Appellant has not established that the commercial truck parking use existed on the Northern Portion as of December 15, 1961; (3) the Appellant has not established that the truck parking use has continued on the Northern Portion, without a two-year interruption from 1961 to 1976; and (4) thus, the truck parking use does not meet the criteria required for continuing such use within an R5 zoning district and must cease operations; and

Therefore it is Resolved that this appeal, which challenges an Order of Closure issued by DOB on December 3, 2009, is denied.

Adopted by the Board of Standards and Appeals, May 25, 2010.

57-10-A

APPLICANT – Eric Palatnik, P.C., for 517 53rd Street, Inc., owner.

SUBJECT – Application April 19, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior C4-3 zoning district. R6B zoning district.

PREMISES AFFECTED – 517 53rd Street, between Fifth Avenue and Sixth Avenue, Block 808, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete the enlargement of a four-story mixed-use commercial/residential building under the common law doctrine of vested rights; and

WHEREAS, this application was brought subsequent to a companion application under BSA Cal. No. 303-09-BZY, which was a request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-331; and

WHEREAS, the Board notes that separate applications were filed and that the applicant withdrew the application for the statutory vested rights case on May 12, 2010; the record is the same for both cases; and

WHEREAS, a public hearing was held on this appeal on April 27, 2010, after due notice by publication in *The City Record*, with a continued hearing on May 11, 2010, and then to decision on May 25, 2010; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the applicant states that the subject site consists of a 3,006 sq. ft. lot located on the north side of 53rd Street, between Fifth Avenue and Sixth Avenue; and

WHEREAS, the applicant proposes to (1) convert the first floor and cellar from residential to commercial use, and (2) add 884 sq. ft. of commercial floor area to the rear of the first floor and an additional 884 sq. ft. of commercial floor space to the rear of the cellar of an existing four-story residential building, with an existing floor area of 7705.5 sq. ft.; and

WHEREAS, as part of the project, the applicant states that it is also converting the first floor of the existing building from residential use to commercial use; and

WHEREAS, the subject site was formerly located within a C4-3 zoning district; and

WHEREAS, the proposed mixed-use building complies with the former zoning district parameters; and

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WHEREAS, however, on September 30, 2009 (hereinafter, the “Rezoning Date”), the City Council voted to adopt the Sunset Park Rezoning, which rezoned the site to R6B; and

WHEREAS, the proposed building does not comply with the R6B district parameters as to the commercial use, lot coverage, and rear yard; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, the Board notes that Alteration Permit No. 310292108-01-AL (the “Permit”), which authorized the proposed enlargement of the building and conversion of the first floor from residential to commercial use pursuant to C4-3 zoning district regulations was issued on June 9, 2009; and

WHEREAS, by letter dated December 21, 2009, the Department of Buildings (“DOB”) states that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Rezoning Date; and

WHEREAS, the Permit lapsed by operation of law on the Rezoning Date because the plans did not comply with the new R6B zoning district regulations and DOB determined that the required work had not been completed; and

WHEREAS, thus, the Board finds that the Permit was validly issued by DOB to the owner of the subject premises and was in effect until its lapse by operation of law on the Rezoning Date; and

WHEREAS, assuming that valid permits had been issued and that work proceeded under them, the Board notes that a common law vested right to continue construction generally exists where: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, the applicant cites to Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15 (2d Dept. 1976) for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;” and

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right.’ Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action;” and

WHEREAS, as to substantial construction, the applicant states that before the Rezoning Date, the owner had completed: 100 percent of the site preparation; 100 percent of the underpinning for the existing foundation; 100 percent of the demolition of existing interior partitions on the first floor; 100 percent of the front façade opening and

structural work; 73 percent of the excavation for the rear addition; 73 percent of the plumbing and sewer work; 50 percent of the front stair work; 49 percent of the cement floor and tiling work; and 15 percent of the cement block work; and

WHEREAS, the applicant notes that work continued at the site until a Stop Work Order (“SWO”) was issued on October 7, 2009, but states that only excavation work occurred at the site from the time of the Rezoning Date to the issuance of the SWO, and that all such work and associated costs has been excluded from the vested rights analysis; and

WHEREAS, the applicant submitted the following evidence to support its assertions regarding completed work: affidavits from the architect and project manager; and construction schedules; and

WHEREAS, the Board concludes that, based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the rezoning, and that said work was substantial enough to meet the guideposts established by case law; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are appropriately included in the applicant’s analysis; and

WHEREAS, the applicant states that prior to the Rezoning Date, the owner expended \$101,049, including hard and soft costs and irrevocable commitments, out of approximately \$170,000 budgeted for the entire enlargement; and

WHEREAS, as proof of the expenditures, the applicant has submitted cancelled checks, invoices, and accounting summaries; 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, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant contends that the loss of the \$101,049 associated with pre-Rezoning Date project costs that would result if this appeal were denied is significant; and

WHEREAS, the applicant states that if required to build in accordance with the new zoning, the owner would have to restore the entire cellar and the apartments at the first floor level, at an estimated cost of \$95,000; and

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WHEREAS, the applicant further states that it would also lose approximately \$30,000 in lost revenue from the proposed project; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any conforming construction, and the \$101,049 of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, the serious loss projected, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction had accrued to the owner of the premises as of the Rezoning Date.

Therefore it is Resolved that this appeal made pursuant to the common law doctrine of vested rights requesting a reinstatement of DOB Permit No. 310292108-01-AL, 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, May 25, 2010.

217-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 514-516 East 6th Street, owner.

SUBJECT – Application July 7, 2009 – An appeal seeking to vary the applicable provisions under the Multiple Dwelling Law as it applies to the enlargement of non-fireproof tenement buildings. R7-2 zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of East 6th Street, between Avenue A and B, Block 401, Lots 17 and 18, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

For Opposition: Harvey Epstein.

THE VOTE TO CLOSE HEARING –

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.

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 233rd Street,

Block 4972, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto.

ACTION OF THE BOARD – Laid over to June 22, 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. R4-1 zoning district.

PREMISES AFFECTED – 90-18 176th Street, between Jamaica and 90th Avenues, Block 9811, Lot 60 (tent), Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Mark Isaak.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 10 A.M. for continued hearing.

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.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 15, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MAY 25, 2010
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

214-09-BZ

CEQR #09-BSA-122X

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for LAL Astor Avenue Management Co., LLC, owner.

SUBJECT – Application June 29, 2009 – Special Permit (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR §22-14. R4-1 zoning district.

PREMISES AFFECTED – 1464 Astor Avenue, south side of Astor Avenue, 100’ east of intersection with Fenton Avenue, Block 4389, Lot 26, 45, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated June 1, 2009, acting on Department of Buildings Application No. 220004340, reads in pertinent part:

“Proposed treatment health care facility exceeding 1,500 s.f. is contrary to ZR 22-14 and requires special permit from BSA as per ZR 22-21, limited to a maximum of 10,000 square feet of floor area;” and

WHEREAS, this is an application under ZR §§ 73-125 and 73-03, to permit, on a site within an R4-1 zoning district, the construction of a three-story building, with a floor area of 9,989 sq. ft., to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 20 parking spaces, contrary to ZR § 22-14; and

WHEREAS, a public hearing was held on this application on September 22, 2009 after due notice by publication in *The City Record*, with continued hearings on November 10, 2009, January 12, 2010, February 9, 2010 and April 20, 2010, and then to decision on May 25, 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 11, Bronx, recommends disapproval of this application; and

WHEREAS, several elected officials provided written and/or oral testimony in opposition to this application, including: Borough President Ruben Diaz, Jr., City Council Member James Vacca, and State Senator Jeffrey D. Klein; and

WHEREAS, a local civic organization and certain neighborhood residents also provided written and oral testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the “Opposition;” and

WHEREAS, specifically, the Opposition raised concerns regarding: (1) the incompatibility of the proposed facility with the surrounding neighborhood; (2) increased traffic; (3) insufficient parking; (4) the lack of need for the facility and the absence of a specified operator; (5) whether the proposal fits within the legislative intent of the special permit; and (6) the effect of the proposed facility on the adjacent fire station; and

WHEREAS, the Fire Department also provided written and oral testimony raising concerns that the proposed construction would impact renovations contemplated for the adjacent fire station, and that the traffic generated by the proposed facility would interfere with fire equipment’s access and egress from its site, thus delaying the fire station’s response time; and

WHEREAS, the subject site is located on the south side of Astor Avenue, between Fenton Avenue and Eastchester Road, within an R4-1 zoning district; and

WHEREAS, the site has a lot area of 18,103 sq. ft. and is currently occupied by a two-story home with a floor area of 2,438 sq. ft., which is proposed to be demolished; and

WHEREAS, the applicant proposes to construct a three-story ambulatory diagnostic/treatment health care facility with a total floor area of 9,989 sq. ft. (0.55 FAR); and

WHEREAS, the applicant originally proposed a two-story building with a floor area of 9,996 sq. ft. (0.55 FAR), a lot coverage of 29 percent, a depth of 154’-8”, and a wall height of 21’-6”; and

WHEREAS, in response to concerns raised by the Opposition and at the direction of the Board, the applicant revised its proposal to provide a three-story building with a floor area of 9,989 sq. ft. (0.55 FAR), a lot coverage of 18 percent, a depth of 107’-8”, and a wall height of 30’-0”, in order to provide more open space on the lot; and

WHEREAS, pursuant to ZR § 25-31, one off-street accessory parking space is required for every 500 sq. ft. of floor area; thus, 20 parking spaces will be provided for the proposed 9,989 sq. ft. facility; and

WHEREAS, the applicant notes that a 1,500 sq. ft. ambulatory diagnostic/treatment health care facility use would be permitted as-of-right in the subject zoning district, but since it proposes a facility with a greater floor area, it seeks a special permit pursuant to ZR § 73-125; and

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WHEREAS, pursuant to ZR § 73-125, the Board may grant a request to permit an increase in the floor area of an ambulatory diagnostic/treatment health care facility use from 1,500 sq. ft. up to a maximum of 10,000 sq. ft. on the site, provided that the Board finds that the amount of open area and its distribution on the zoning lot conforms to standards appropriate to the character of the neighborhood; and

WHEREAS, the Board notes that other than the increase in floor area beyond 1,500 sq. ft. authorized by the special permit, the ambulatory diagnostic/treatment health care facility must comply with all zoning parameters of the underlying district; and

WHEREAS, the applicant states that the facility will have a floor area of 9,989 sq. ft., which the Board notes is less than the maximum of 10,000 sq. ft. permitted by the special permit; and

WHEREAS, the applicant further states that the proposed bulk, including a 30'-0" height, complies with the underlying zoning district regulations; and

WHEREAS, the applicant represents that the lot coverage for the proposed building is approximately 18 percent, which is significantly lower than the maximum permitted lot coverage of 55 percent, leaving approximately 82 percent of the zoning lot as open space (including landscaping and parking areas); and

WHEREAS, the applicant notes that, at the direction of the Board, it re-designed the building such that the majority of the construction is proposed to be located as close to Astor Avenue as possible, with the entire rear yard, to a depth of more than 100 feet, being retained as open area (including landscaping and parking areas); and

WHEREAS, accordingly, the Board finds that the bulk of the building, the amount of open area and its distribution on the zoning lot conform to standards appropriate to the character of the neighborhood; and

WHEREAS, the Opposition raised concerns that the proposed facility does not fit within the context of the surrounding neighborhood, specifically with regard to the size of the building and the amount of open space provided; and

WHEREAS, as to the size of the building, the applicant notes that the proposal's bulk complies with zoning district regulations, and that the site's lot area would allow for a residential building or another type of community facility building with approximately 36,000 sq. ft. of floor area; and

WHEREAS, as to the open space on the site, the applicant submitted an open area analysis of the surrounding area, which reflects that the lots located on the subject block have an average open area of 58.5 percent, compared to the 82 percent of open area located on the subject site; and

WHEREAS, as noted above, the applicant also revised the plans at the Board's direction to decrease the depth of the building from 154'-8" to 107'-8", thereby decreasing the lot coverage of the building from 29 percent to 18 percent and increasing the open space on the site; and

WHEREAS, the Board notes that the applicant also

revised the plans to provide a façade and roof for the building that are more in character with the surrounding residential buildings; and

WHEREAS, the Opposition also raised concerns about the amount of traffic that will be generated by the proposed facility, and whether there is sufficient parking on the site to accommodate the use; and

WHEREAS, in response, the applicant provided a traffic analysis based on a similar medical facility located in Queens, which indicates that a total of approximately 108 vehicles (including both patients and employees) are expected to travel to the proposed site each day, with no more than 35 vehicle trips expected during any peak hour, and with a peak parking accumulation of 17 cars; and

WHEREAS, the applicant also submitted a traffic analysis based on the standards set forth in the Institute of Transportation Engineers ("ITE") guidebook, which reflects that for the proposed facility a maximum of 180 cars can be expected to travel to the site per day, with no more than 37 vehicle trips during any peak hour, and with a peak parking accumulation of 20 cars; and

WHEREAS, the applicant represents that the ITE standards represent the most conservative scenario, as it assumes 100 percent travel by vehicle, with a vehicle occupancy of only one person per automobile; and

WHEREAS, the applicant notes that under either scenario it analyzed, the proposed facility would not generate more than 50 vehicle trips during any peak hour time period, and therefore the proposal is not expected to result in significant adverse impacts related to traffic or parking pursuant to the CEQR Technical Manual; and

WHEREAS, the applicant further notes that the proposal does not exceed a peak parking accumulation of 20 cars under either scenario, and that 20 parking spaces are proposed for the site, in accordance with ZR § 25-31; and

WHEREAS, the applicant states that while additional parking could have been provided at the rear of the building, the current proposal reflects an effort to balance the Opposition's requests that it both provide sufficient parking and also maximize the amount of landscaping provided at the rear; and

WHEREAS, during the course of the hearing process, the applicant revised its plans to provide drop-off areas at the front and rear of the building to insure that there would not be any traffic congestion in front of the building, with the drop-off area in the rear able to accommodate vehicles that exceed the size of passenger vehicles; and

WHEREAS, as to the Opposition's concerns that the applicant has not specified any particular tenants or types of medical offices that will be located in the proposed facility and that there is no need for another medical facility in the surrounding area, the Board notes that concerns about business-related decisions are not part of the analysis under this special permit; and

WHEREAS, the Opposition also argues that the proposed facility is not within an area the City Planning Commission originally intended to permit ambulatory diagnostic/treatment health care facilities of such a size

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when it created the subject special permit; and

WHEREAS, in response, the applicant notes that the provisions and findings of the subject special permit section are clear and unambiguous and they do not prohibit the location of the proposed facility at the subject site; therefore there is no cause to resort to the legislative intent; and

WHEREAS, the Opposition and the Fire Department also raised concerns that the construction of the proposed facility will: (1) cause flooding and damage to the adjacent fire station; (2) interfere with a pending public improvement project because it will prevent the fire station from storing its fire engine in a cage located on the street while the station is being renovated; (3) create traffic conditions that will delay the fire station's response time; and (4) replace the existing fire zone with a curb cut to access the parking lot; and

WHEREAS, in response, the applicant states that: (1) all construction is subject to review and approval by the Department of Buildings and the Department of Environmental Protection, the agencies responsible for construction safety and sanitary and storm water drainage; (2) the proposed construction will not interfere with the pending fire station renovation because the temporary placement of a cage on the street for the storage of the fire engine is not proposed to be located on the applicant's property and therefore it will not be affected by the proposed construction; (3) as noted above, the applicant has submitted traffic analyses and has revised the plans to include drop-off areas to insure that there will not be any traffic congestion at the front of the subject building; and (4) the installation of the curb cut and relocation of the fire hydrant does not create a non-compliance and will not affect the functionality of the fire zone, as it will insure that no vehicles park in that area; and

WHEREAS, the applicant states that in order to provide a turnaround with a 50'-0" diameter to accommodate larger vehicles the site requires the relocation of the curb cuts to the lot lines of the site; thus, the applicant revised the plans to reflect that the curb cuts will be relocated to the lot lines; and

WHEREAS, the Board directed the applicant to confirm whether the proposal complies with all regulations associated with curb cuts within fire zones and adjacency to a fire station; and

WHEREAS, in response, the applicant states that the proposal does not conflict with any fire access related regulations; and

WHEREAS, the applicant also states that it intends to relocate the existing fire hydrant such that it does not interfere with the location of the proposed curb cuts; and

WHEREAS, the Opposition submitted a letter signed by 30 residents in the surrounding area, requesting that a number of conditions be incorporated into the grant should the Board approve the special permit; and

WHEREAS, specifically, the Opposition requests conditions related to the use and operation of the parking lot, the use and operation of the proposed ambulatory diagnostic/treatment health care facility, and the

construction of the proposed facility; and

WHEREAS, in response to the Opposition's request, the applicant has agreed to the following primary conditions: (1) the installation of a wood fence around the parking lot to a height of 6'-0"; (2) the installation of concrete parking stops to prevent cars from entering the surrounding yards; (3) valet parking will be prohibited; (4) car lifts will be prohibited; (5) the installation of "No Idling" signs; (6) that the parking lot will be gated and secured after business hours; (7) the hours of operation shall be 8:00 a.m. to 8:00 p.m. on Monday through Friday, 9:00 a.m. to 2:00 p.m. on Saturday, and closed on Sunday; (8) the building will be kept free of graffiti at all times; (9) the fencing and landscaping on the site will be maintained at all times; (10) any underground oil tanks and contaminated soil will be removed in accordance with federal, state and local regulations; and (11) all construction will be coordinated with the adjacent fire station, Engine 97; and

WHEREAS, the Board notes that it will also require the installation of a 12'-0" by 4'-0" planted median in the center of the parking lot, as requested by the Opposition; and

WHEREAS, the Opposition also requested conditions stipulating that: (1) the term of the special permit be limited to five years; (2) no more than 14 employees may be present at the proposed facility at one time; (3) no building permit be issued that includes an occupancy classification of H1, H2, H3 or H4; and (4) the site not be used as a drug treatment center; and the Opposition also expressed concern regarding the creation, storage and disposal of hazardous materials; and

WHEREAS, as to a limited term, the Board notes that ZR § 73-125 does not place a term on the special permit authorized under that section, and that the subject proposal contemplates the construction of an entirely new building for the express use as an ambulatory diagnostic/treatment health care facility, which represents a significant investment; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has the authority to prescribe conditions and safeguards to the grant of a special permit, and the applicant's failure to comply with such conditions constitute the basis for the revocation of the grant; and

WHEREAS, based upon the above, the Board declines to adopt a condition limiting the term of the special permit; and

WHEREAS, as to the number of employees, the Board declines to adopt such a condition, noting that the number of parking spaces provided at the site complies with the parking requirements set forth in the Zoning Resolution, which takes employee usage of the site into account, and that the traffic analyses submitted by the applicant were conservative and based on both employee and patient trips to the proposed facility, which indicated that the site provides sufficient parking; and

WHEREAS, as to the use classification, the applicant agreed not to have any use on the site with an occupancy classification of H1, H2, H3 or H4, and notes that the instant

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proposal is for a medical facility, which generally has an occupancy classification of “B,” as opposed to “H”; and

WHEREAS, as to prohibiting a drug treatment facility at the site, the Board notes that the Opposition failed to provide any rationale for restricting the use; and

WHEREAS, the Board further notes that use of the site as a drug treatment facility is permitted as-of-right within the zoning district to a limit of 1,500 sq. ft., and is otherwise permitted by the subject special permit; and

WHEREAS, as to waste disposal, the applicant notes that all medical waste generated at the site will be stored and disposed of in accordance with relevant regulations; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-125; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, as noted above, the applicant will coordinate the proposed construction with the adjacent fire station; and

WHEREAS, accordingly, the Board finds that the proposal will not interfere with the renovation of the adjacent fire station, and will otherwise not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-03; and

WHEREAS, the project is classified as Unlisted pursuant to 6 NYCRR Part 617.2 (ak); and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA122X, dated June 30, 2009; and

WHEREAS, the EAS documents that the operation of the facility would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, a trip generation analysis dated April 5, 2010, determined that the proposed action would generate less than fifty new vehicle trips in any peak hour (below the CEQR Technical Manual threshold for conducting a detailed analysis of traffic impacts) and therefore the proposed action would not have any potentially significant adverse impacts related to traffic and parking; and

WHEREAS, the Board has determined that the operation of the facility will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings ZR §§ 73-125 and 73-03, to permit, on a site within an R4-1 zoning district, the construction of a three-story building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 20 parking spaces, contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 6, 2010” – three (3) sheets and “Received May 21, 2010” – three (3) sheets; and *on further condition*:

THAT the parameters of the building shall be as follows: a maximum floor area of 9,989 sq. ft. (0.55 FAR); a maximum lot coverage of 18 percent; a maximum wall height of 30’-0”; a maximum height of 35’-7” at the ridge; and 20 parking spaces, as per the approved plans;

THAT there shall be no valet parking on the site;

THAT there shall be no car lifts on the site;

THAT the site shall be gated and secured after business hours, in accordance with the BSA-approved plans;

THAT the hours of operation shall be limited to 8:00 a.m. to 8:00 p.m. Monday through Friday; 9:00 a.m. to 2:00 p.m. on Saturday; and closed on Sunday;

THAT all landscaping and fencing shall be provided and maintained in accordance with the approved plans;

THAT the site shall be maintained free of debris and graffiti;

THAT the facility operations, including waste storage and disposal, shall be in accordance with the Zoning Resolution, Building Code, and all other relevant regulations for the proposed use;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT any underground oil tanks or contaminated soil shall be removed in accordance with federal, state, and local regulations;

THAT construction at the site shall be coordinated with the adjacent fire station located at 1454 Astor Avenue;

THAT a storm water/sanitary sewer shall be as approved by DEP;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT substantial construction shall be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the

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Zoning Resolution, the Administrative Code, and any other relevant 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 25, 2010.

331-09-BZ

CEQR #10-BSA-036M

APPLICANT – Slater & Beckerman, LLP, for 141 East 45th Street, LLC, owner; R. H. Massage Services, P.C., lessee.
SUBJECT – Application December 22, 2009 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*River View Spa*) located on the second and third floors in an existing three-story building. C5-2.5 zoning district.

PREMISES AFFECTED – 141 East 45th Street, north side of East 4th Street, between Lexington Avenue and Third Avenue, Block 1300, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Neil Weisbard.

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 15, 2009, acting on Department of Buildings Application No. 120211476, reads in pertinent part:

“Physical culture or health establishment is not permitted as of right in C5-2.5 zoning district.

Refer to Board of Standards and Appeals for special permit pursuant to ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in a C5-2.5 zoning district within the Special Midtown District, the legalization of a physical culture establishment (“PCE”) on the second and third floors of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 20, 2010 after due notice by publication in *The City Record*, and then to decision on May 25, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application; and

WHEREAS, the subject site is located on the north side of East 45th Street, between Lexington Avenue and Third Avenue, in a C5-2.5 zoning district within the Special Midtown District; and

WHEREAS, the site is occupied by a three-story

commercial building; and

WHEREAS, the PCE occupies a total floor area of 1,932 sq. ft. on the second and third floors; and

WHEREAS, the PCE is operated as River View Spa; and
WHEREAS, the proposed hours of operation are 10:00 a.m. to 10:00 p.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for the practice of massage; and

WHEREAS, at hearing, the Board questioned whether the applicant was in compliance with a Fire Department violation order dated October 9, 2009, which required that the applicant: (1) provide a metal receptacle for each cubicle room on the second and third floors; (2) provide portable fire extinguishers on both the second and third floors; (3) properly hang the fire extinguishers between 2’-6” and 4’-0” above the floor; and (4) remove the exit sign showing the door leading to the third floor as an exit; and

WHEREAS, in response, the applicant submitted photographs reflecting its compliance with the Fire Department requirements and the Fire Department has no further objections; and

WHEREAS, the applicant represents that the proposed PCE meets the requirements in ZR § 81-13 for a special permit use in the Special Midtown District; and

WHEREAS, specifically, the applicant states that the proposed PCE use is consistent with other retail uses within the Special Midtown District and will provide a desirable amenity to the neighborhood; and

WHEREAS, as a result, the applicant states that the subject PCE use will strengthen the business core of Midtown Manhattan by improving working and living environments and will promote a desirable use of land and building development in accordance with the District Plan for Midtown wherein the value of land is conserved and tax revenue is protected; and

WHEREAS, accordingly, the Board finds that the proposed special permit use is consistent with the purposes and provisions of ZR § 81-00; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in

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operation since April 1, 2008, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between April 1, 2008 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10BSA036M, dated December 12, 2009; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in a C5-2.5 zoning district, within the Special Midtown District, the legalization of a physical culture establishment on the second and third floors of an existing three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 11, 2010" - Seven (7) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 1, 2018;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a new Certificate of Occupancy shall be obtained within six months of the date of this grant, by November 25, 2010;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed

DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2010.

20-10-BZ CEQR #10-BSA-046M

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner; Soul Cycle East 83rd Street, LLC, lessee. SUBJECT – Application February 8, 2010 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment (*Soul Cycle*) on the ground floor of an existing six-story building. C1-9 zoning district.

PREMISES AFFECTED – 1470 Third Avenue, a/k/a 171-173 East 83rd Street, northwest corner of East 83rd Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 13, 2010, acting on Department of Buildings Application No. 120178253, reads in pertinent part:

“Proposed ‘physical culture establishment’ is not permitted as-of-right in C1-9 zoning district. This use is contrary to Section 32-10 ZR. Requires a special permit from the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9 zoning district, the legalization of a physical culture establishment (“PCE”) on the first floor of a six-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 13, 2010 after due notice by publication in *The City Record*, with a continued hearing on May 11, 2010, and then to decision on May 25, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Hinkson; and

WHEREAS, Community Board 8, Manhattan,

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recommends approval of this application, but requested a review of the legality of the ground floor store frontage and signage; and

WHEREAS, the subject site is located on the northwest corner of East 83rd Street and Third Avenue, within a C1-9 zoning district; and

WHEREAS, the site is occupied by a six-story mixed-use commercial/residential building; and

WHEREAS, the PCE occupies a total floor area of approximately 1,480 sq. ft. on a portion of the first floor of the building; and

WHEREAS, the PCE is operated as Soul Cycle; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, at hearing, in response to the Community Board's concerns, the Board questioned whether the signage at the site, particularly the storefront windows, are in compliance with C1 district signage regulations and whether the storefront had been constructed pursuant to the required approvals; and

WHEREAS, in response, the applicant submitted a signage analysis indicating that the signage at the site complies with C1 district regulations, and a Department of Buildings work permit which included the installation of the new storefront; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since September 25, 2009, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between September 25, 2009 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental

review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA046M, dated February 3, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9 zoning district, the legalization of a physical culture establishment on the first floor of an existing six-story commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 29, 2010" - One (1) sheet and "Received May 5, 2010" - One (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on September 25, 2019;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all signage shall comply with C1 district regulations;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of

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plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2010.

160-08-BZ

APPLICANT – Dominick Salvati and Son Architects, for HJC Holding Corporation, owner.

SUBJECT – Application June 11, 2008 – Variance (§72-21) to permit the legalization of commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B), which is contrary to §22-00. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Bounded by Fountain, Stanley, Euclid and Wortman Avenues, Block 4527, Lot 61, 64, 67, 74-78, 80, 82, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Peter Hirschman, Frank Angelino and Jack Freeman.

ACTION OF THE BOARD – Laid over to June 15, 2010, at 1:30 P.M., for continued hearing.

28-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 133 Equity Corp., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 133 Taaffe Place, east side of Taaffe Place, 142'-2.5" north of intersection of Taaffe Place and Myrtle Avenue, Block 1897, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 8, 2010, at 1:30 P.M., for decision, hearing closed.

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 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 June 22, 2010 at 1:30 P.M., for adjourned hearing.

162-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Steinway 30-33, LLC, owner; Steinway Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application April 27, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Planet Fitness*) in the cellar, first, and second floors in an existing two-story building; Special Permit (§73-52) to extend the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district. C4-2A/R5 zoning districts.

PREMISES AFFECTED – 30-33 Steinway Street, east side of Steinway Street, south of 30th Avenue, Block 680, Lot 32, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safain.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 8, 2010, at 1:30 P.M., for decision, hearing closed.

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.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 22, 2010, at 1:30 P.M., for decision, hearing closed.

MINUTES

271-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 132-40 Metropolitan Realty, LLC, owner; Jamaica Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 21, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Planet Fitness*) on the first, second, and third floors of an existing three-story building, C2-3 zoning district.

PREMISES AFFECTED – 132-40 Metropolitan Avenue, between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street. Block 9284, Lot 19, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to June 15, 2010, at 1:30 P.M., for continued hearing.

282-09-BZ

APPLICANT – Steven Williams, P.E., for KC&V Realty, LLC, owner; Richard Ortiz, lessee.

SUBJECT – Application October 7, 2009 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Ritchie's Gym*) on the third floor of a four-story commercial building, C4-3 zoning district.

PREMISES AFFECTED – 54-19 Myrtle Avenue, northeast corner of Myrtle Avenue, intersection of Palmetto Street and Myrtle Avenue, Block 3445, Lot 9, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Steven Williams and Richard Ortiz.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 8, 2010, at 1:30 P.M., for decision, hearing closed.

325-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Yetev Lev 11th Avenue, owner.

SUBJECT – Application December 7, 2009 – Variance (§72-21) to permit the proposed four-story and mezzanine synagogue (*Congregation Yetev Lev*), contrary to lot coverage (§24-11), rear yard (§24-36) and initial setback of front wall (§24-522). R6 zoning district.

PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 15, 2010 at 1:30 P.M., for adjourned hearing.

333-09-BZ

APPLICANT – Moshe M. Friedman, for Cong Yeshiva Beis Chaya Mushka, Inc., owner.

SUBJECT – Application December 23, 2009 – Variance (§72-21) to permit the vertical extension of an existing religious school (*Congregation Yeshiva Beis Chaya Mushka*), contrary to floor area, lot coverage, height, sky exposure plane, front yard, and side yard regulations (§§24-11, 24-521, 24-34, and 24-35). R4 zoning district.

PREMISES AFFECTED – 360 Troy Avenue aka 348-350 Troy Avenue aka 1505-1513 Carroll Street, northwest corner of Troy Avenue and Carroll Street, Block 1406, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD # 9BK

APPEARANCES –

For Applicant: Moshe M. Friedman, Rabbi Levi Plotkin and Jean Suayna Cuarter.

ACTION OF THE BOARD – Laid over to June 15, 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, Hackjong Choi and Henry Salmon.

For Opposition: David Brodie, Howard Jackson, Michael Simon and Elliott Socci.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 1:30 P.M., for continued hearing.

21-10-BZ

APPLICANT – Richard Lobel, P.C., for Aquila Realty Company, Incorporated, owner.

SUBJECT – Application February 12, 2010 – Special Permit (§73-243) to legalize an eating and drinking establishment with a drive-through. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roelbling Avenue aka 1590 Hutchison River Parkway, southeast corner of Roelbling Avenue and Hutchinson River Parkway, Block 5386, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 15, 2010, at 1:30 P.M., for continued hearing.

MINUTES

30-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Susan Shalitzky, owner.

SUBJECT – Application March 8, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141) and less than the required rear yard (§23-47). R-2 zoning district. PREMISES AFFECTED – 1384 East 22nd Street, west side of East 22nd Street, between Avenues M and N, Block 7657, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 8, 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, 22-331, 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 –

For Applicant: Elis Wagner, Mark Lippi and Anne Harakawa.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 22, 2010, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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June 17, 2010

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Tuesday, June 8, 2010**

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40-10-BZ	150 Kenilworth Place, Brooklyn
48-10-BZ	2965 Veterans Road West, Staten Island
59-10-BZ	519 Eighth Avenue, Manhattan

DOCKET

New Case Filed Up to June 8, 2010

93-10-BZ

198 Varet Street, South side 170'6' west of White Street, between White Street and Bushwick Avenue, Block 3117, Lot(s) 24, Borough of **Brooklyn, Community Board:** Variance to permit the enlargement of an existing school contrary to bulk regulations..

94-10-A

27-24 21st Street, West side of 21st Street south of Astoria Boulevard., Block 539, Lot(s) 35, Borough of **Queens, Community Board: 1.** C22 district.

95-10-BZ

2216 Quentin Road, South side of Quentin Road between East 22nd Street and East 23rd Street., Block 6805, Lot(s) 6, Borough of **Brooklyn, Community Board: 15.** Special Permit (73-622) for the enlargement of a single family home. R3-2 district.

96-10-A

673 Hunter Avenue, North side of Hunter Avenue, bed of Jay Street., Block 3864, Lot(s) 99, Borough of **Staten Island, Community Board: 2.** Construction within and not fronting a mapped street, contrary to Section 35 of the General City Law, Article 3. R3-1 district.

97-10-A

675 Hunter Avenue, North side of Hunter Avenue, bed of Jay Street., Block 3864, Lot(s) 98, Borough of **Staten Island, Community Board: 2.** Construction within and not fronting a mapped street, contrary to General City Law, Article 3. R3-1 district.

98-10-BZ

44 Lispenard Street, On Lispenard Street, Block 194, Lot(s) 7503, Borough of **Manhattan, Community Board: 1.** Special Permit (73-03, 73-621) for a new enlargement. M1-5 TMU district.

99-10-BZ

2302 Avenue S, Located on the southeast corner of Avenue S and East 23rd Street., Block 7302, Lot(s) 1, Borough of **Brooklyn, Community Board: 15.** Special Permit (73-622) for the enlargement of a single family home. R3-2 district.

100-10-BZ

2512 Avenue R, South side of Avenue R between Bedford Avenue and East 26th Street., Block 6831, Lot(s) 5, Borough of **Brooklyn, Community Board: 15.** Special Permit (73-622) for the enlargement of single family home. R3-2 district.

101-10-BZ

54 Crosby Street, West side of Crosby Street between Broome and Spring Streets., Block 483, Lot(s) 29, Borough of **Manhattan, Community Board: 2.** Variance to allow a retail building , contrary to use regulations. M1-5B district.

102-10-A

48 Tioga Walk, West side of Tioga Walk +/-88.5' south of the mapped 6th Avenue., Block 16350, Lot(s) P/O 400, Borough of **Queens, Community Board: 14.** Construction within the mapped street, contrary to GCL. R4 district.

103-10-BZ

1036 East 24th Street, West side of East 24th Street between Avenue J and Avenue K., Block 7605, Lot(s) 60, Borough of **Brooklyn, Community Board: 14.** Special Permit (73-622) for the enlargement of a single family home. R2 district.

104-10-BZ

5002 19th Avenue, Corner formed by the Southerly side of 50th Street with the westerly side of 19th Avenue., Block 5461, Lot(s) 39, Borough of **Brooklyn, Community Board: 12.** Variance to permit a synagouge and rectory, contrary to bulk regulations. R5 district.

105-10-BZ

269 77th Street, Between 3rd Avenue and Ridge Boulevard., Block 5949, Lot(s) 54, Borough of **Brooklyn, Community Board: 10.** Special Permit (73-622) for the enlargement of a single family home. R-4A district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JUNE 22, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 22, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

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 which expired on May 26, 2009. Amendment of the August 26, 2008 BSA resolution to incorporate the King Street portion of the premises within the scope of the variance to facilitate a tax lot subdivision and permit a UG 16 warehouse and storage use in the King Street portion of the premises. 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

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

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

JUNE 22, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 22, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

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 pursuant to §72-21 to allow for five, two family residential buildings, contrary to ZR §42-00. M1-2 district.

PREMISES AFFECTED – 802, 804, 806, 808 and 810 East 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue. Block 2582, Lots 10, 11, 110, 111 and 112, Borough of Bronx.

COMMUNITY BOARD # 1BX

326-09-BZ

APPLICANT – Bryan Cave LLP, for Flushing Commomd LLC c/o Rockefeller Development Corporation, owner.

SUBJECT – Application December 11, 2009 – Special Permit (ZR §73-66) to allow for the development of four mixed use buildings which exceed the height regulations around airports. 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

65-10-BZ

APPLICANT – Eric Palatnik, P.C., for Anna Shteerman, 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

CALENDAR

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 ZR 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

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 8, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

336-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 312 Flatbush Avenue LLC, owner; Crunch LLC d/b/a Crunch, lessee.

SUBJECT – Application May 11, 2010 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*Crunch Fitness*) which expired on February 11, 2010; waiver of the rules. C2-4 zoning district. PREMISES AFFECTED – 312/18 Flatbush Avenue, Northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Absent: Vice Chair Collins.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a physical culture establishment (“PCE”), which expired on February 11, 2010; and

WHEREAS, a public hearing was held on this application on May 25, 2010, after due notice by publication in *The City Record*, and then to decision on June 8, 2010; and

WHEREAS, the PCE is located on the northwest corner of the intersection of Flatbush Avenue and Sterling Place; and

WHEREAS, the site consists of two adjacent lots – Lot 19 (324/34 Flatbush Avenue) and Lot 14 (312/18 Flatbush Avenue) within a C4-2 (R7A) zoning district; and

WHEREAS, the site is located in portions of the cellar and on the first floor and second floor of a two-story commercial building; and

WHEREAS, the PCE has a total floor area of 16,135 sq. ft., with an additional 2,697 sq. ft. of space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 23, 1999 when, under the subject calendar numbers, the Board granted special permits for each address, to expire on November 23, 2009; and

WHEREAS, on August 11, 2009, the Board granted an

extension of term and an amendment to legalize the use of the cellar space, extend the PCE use on the first floor from 629 sq. ft. of floor area to 2,515 sq. ft. of floor area at 324/34 Flatbush Avenue, and to reflect the change in ownership and operation of the PCE; and

WHEREAS, a condition of the grant was that a certificate of occupancy be obtained by February 11, 2010; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the specified date due in part to the restructuring of the corporate owner; and

WHEREAS, the applicant now requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board questioned whether the site complies with regulations associated with egress between the buildings; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that compliance with egress regulations will be verified with the Department of Buildings; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on November 23, 1999, so that as amended this portion of the resolution shall read: “to extend the time to obtain a certificate of occupancy to June 8, 2011, *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by June 8, 2011;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT DOB shall review egress for compliance with all relevant regulations;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 300740063)

Adopted by the Board of Standards and Appeals, June 8, 2010.

MINUTES

337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 312 Flatbush Avenue LLC, owner; Crunch LLC d/b/a Crunch, lessee.

SUBJECT – Application May 11, 2010 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*Crunch Fitness*) which expired on February 11, 2010; waiver of the rules. C2-4 zoning district. PREMISES AFFECTED – 324/34 Flatbush Avenue, Northwest corner of the intersection of Flatbush Avenue and Sterling Place. Block 1057, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Absent: Vice Chair Collins.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a physical culture establishment (“PCE”), which expired on February 11, 2010; and

WHEREAS, a public hearing was held on this application on May 25, 2010, after due notice by publication in *The City Record*, and then to decision on June 8, 2010; and

WHEREAS, the PCE is located on the northwest corner of the intersection of Flatbush Avenue and Sterling Place; and

WHEREAS, the site consists of two adjacent lots – Lot 19 (324/34 Flatbush Avenue) and Lot 14 (312/18 Flatbush Avenue) within a C4-2 (R7A) zoning district; and

WHEREAS, the site is located in portions of the cellar and on the first floor and second floor of a two-story commercial building; and

WHEREAS, the PCE has a total floor area of 16,135 sq. ft., with an additional 2,697 sq. ft. of space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 23, 1999 when, under the subject calendar numbers, the Board granted special permits for each address, to expire on November 23, 2009; and

WHEREAS, on August 11, 2009, the Board granted an extension of term and an amendment to legalize the use of the cellar space, extend the PCE use on the first floor from 629 sq. ft. of floor area to 2,515 sq. ft. of floor area at 324/34 Flatbush Avenue, and to reflect the change in ownership and operation of the PCE; and

WHEREAS, a condition of the grant was that a certificate of occupancy be obtained by February 11, 2010; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the specified date due in part to the restructuring of the corporate owner; and

WHEREAS, the applicant now requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board questioned whether the site complies with regulations associated with egress between the buildings; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that compliance with egress regulations will be verified with the Department of Buildings; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on November 23, 1999, so that as amended this portion of the resolution shall read: “to extend the time to obtain a certificate of occupancy to June 8, 2011, *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by June 8, 2011;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT DOB shall review egress for compliance with all relevant regulations;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 300740063)

Adopted by the Board of Standards and Appeals, June 8, 2010.

7-00-BZ

APPLICANT – Friedman & Gotbaum, for Trustees of the New York City Rescue Mission, owners.

SUBJECT – Application February 18, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the enlargement of a UG3 non-profit homeless shelter (New York City Rescue Mission) which expired on March 11, 2009; waiver of the rules. C6-2A zoning district.

PREMISES AFFECTED – 90 Lafayette Street, northwest corner of Lafayette and White Streets, Block 195, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Lori Cuisinier.

ACTION OF THE BOARD – Application granted on condition.

MINUTES

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,
Commissioner Hinkson and Commissioner Montanez4
Absent: Vice Chair Collins.....1
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction for the enlargement of an existing homeless shelter (Use Group 3); 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 8, 2010; and

WHEREAS, the premises had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the application is brought on behalf of the Trustees of the NYC Rescue Mission, a non-profit entity; and

WHEREAS, the subject premises is located on the northwest corner of Lafayette Street and White Street, within a C6-2A zoning district; and

WHEREAS, on May 30, 2000, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the enlargement of the existing shelter at the premises; and

WHEREAS, the applicant states that the original variance granted waivers for the operation of a Use Group 3 community facility use in an M1-5 zoning district, and for a front wall height of 88 feet, which exceeded the maximum permitted height and penetrated the sky exposure plane; and

WHEREAS, the applicant notes that the site was rezoned from an M1-5 zoning district to a C6-2A zoning district on June 4, 2008; and

WHEREAS, the applicant states that the use is now permitted as-of-right in the C6-2A zoning district, however the proposed building remains non-compliant with the underlying district height regulations; and

WHEREAS, a condition of the original grant was that substantial work be completed by May 30, 2004, in accordance with ZR § 72-23; and

WHEREAS, on August 11, 2004 the Board granted an extension of time to complete construction for 18 months, to expire February 10, 2005; and

WHEREAS, on September 11, 2007, the Board granted an extension of time to complete construction for an additional 18 months, to expire March 11, 2009; and

WHEREAS, the applicant represents that construction was delayed as funding requirements were being met; and

WHEREAS, the applicant represents that the NYC Rescue Mission has initiated a new fundraising campaign for the expansion of the mission as previously approved by the Board; and

WHEREAS, the applicant represents that the work has been divided into four phases, and that Phase I, II and III are fully complete and Phase IV is expected to be completed within 18 months; and

WHEREAS, accordingly, the applicant requests a further

extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that an additional extension of time to complete construction and obtain a certificate of occupancy is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated May 30, 2000, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a period of four years from the date of this grant; *on condition* that any and all work shall substantially conform to the approved drawings and *on further condition*:

THAT construction shall be completed by June 8, 2014;

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. 102242627)

Adopted by the Board of Standards and Appeals, June 8, 2010.

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owner.

SUBJECT – Application February 5, 2010 – Extension of Term (§72-01 & §72-22) of a variance (§72-21) to allow a physical culture establishment (Squash Fitness Center) to operate in a C1-4 zoning district, which will expire on July 17, 2011; Extension of Time to obtain a certificate of occupancy, which expired on January 28, 2010; Waiver of the Rules.

PREMISES AFFECTED – 107-24 37th Avenue aka 37-16 108th Street, Southwest corner of 37th Avenue and 108th Street, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,
Commissioner Hinkson and Commissioner Montanez4
Absent: Vice Chair Collins.....1
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term for a physical culture establishment (“PCE”), which expires July 17, 2011, and an extension of time to obtain a certificate of occupancy, which expired on January

MINUTES

28, 2010; and

WHEREAS, a public hearing was held on this application on April 20, 2010, after due notice by publication in *The City Record*, with a continued hearing on May 18, 2010, and then to decision on June 8, 2010; and;

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Queens, recommends approval of this application; and

WHEREAS, the site is located at the southwest corner of 37th Avenue and 108th Street, within a C1-4 (R6B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 17, 2001 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the legalization of an existing PCE on the first floor and a portion of the second floor of an existing two-story mixed-use manufacturing/office building within a C1-4 (R6B) zoning district for a term of five years to expire July 17, 2006; and

WHEREAS, on May 11, 2004, the grant was amended to permit the expansion of the PCE onto the entire second floor; and

WHEREAS, on August 21, 2007, under the subject calendar number, the Board reopened the variance to extend the term of the variance for an additional five years, to expire on July 17, 2011; and

WHEREAS, on August 19, 2008, the Board granted an extension of time to obtain a certificate of occupancy, to expire on February 19, 2009; and

WHEREAS, by letter dated January 12, 2009, the Board clarified that the PCE approved by the Board is located on the second floor only; and

WHEREAS, most recently, on July 28, 2009, the Board granted an extension of time to obtain a certificate of occupancy, to expire on January 28, 2010; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, the applicant also requests an extension of time to obtain a new certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and extension of time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 17, 2001, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years, to expire on June 8, 2020, and to grant an extension of time to obtain a certificate of occupancy, to expire on June 8, 2011; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 5, 2010” – (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 8, 2020;

THAT the above condition shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by June 8, 2011;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 402567254)

Adopted by the Board of Standards and Appeals, June 8, 2010.

151-05-BZ

APPLICANT – John R. Sore c/o Shalimar Management, for 100 Varick Street, LLC, owner.

SUBJECT – Application May 10, 2010 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a 10-story residential building which expires on August 8, 2010. M1-6 zoning district.

PREMISES AFFECTED – 100 Varick Street, easterly side of Varick Street between Broome Street and Watts Street, Block 477, Lot 35, 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: John R. Sore.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Absent: Vice Chair Collins.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, within an M1-6 zoning district, the construction of an eight-story residential building, which expires on August 8, 2010; 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 8, 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, the subject site is located on the east side of Varick Street, between Broome Street and Watts Street, within an M1-6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since August 8, 2006 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of an eight-story, 61-unit residential building; and

MINUTES

WHEREAS, substantial construction was to be completed by August 8, 2010, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that it has demolished the two existing buildings on the site, performed cleanup work, and conducted soil borings which indicated that bedrock suitable for bearing does not exist until a depth of 100 feet, and the subsurface conditions will substantially increase foundation costs for the proposed development; and

WHEREAS, the applicant states that due to funding delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated August 8, 2006, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on August 8, 2014; *on condition:*

THAT substantial construction shall be completed by August 8, 2014;

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. 103625436)

Adopted by the Board of Standards and Appeals, June 8, 2010.

589-31-BZ

APPLICANT – Eric Palatnik, P.C., for Asha Ramnath, owner.

SUBJECT – Application March 5, 2010 – Amendment pursuant (§11-413) to permit the proposed change of use group from UG16 (Gasoline Service Station) to UG16 (Automotive Repair) with accessory used car sales. R3-2 zoning district.

PREMISES AFFECTED – 159-02 Meyer Avenue, intersection of Mayer Avenue, 159th Street, Linden Boulevard, Block 12196, Lot 1, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 10 A.M., for continued hearing.

887-54-BZ

APPLICANT – Eric Palatnik, Esq., for 218 Bayside Operating LLC, owner.

SUBJECT – Application March 5, 2010 – Extension of Term (§11-411) for the continued use of gasoline station (*British Petroleum*) with accessory convenience store (*7-Eleven*) which expires on September 23, 2010. C2-2/R6B zoning district.

PREMISES AFFECTED – 218-01 Northern Boulevard, between 218th and 219th Street, Block 6321, Lot 21, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 15, 2010, at 10 A.M., for decision, hearing closed.

834-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.

SUBJECT – Application October 20, 2009 – Extension of Term for the continued use of a Gasoline Service Station (*Gulf*) with minor auto repairs which expired on March 7, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on March 2, 2000; Amendment to legalize an accessory convenience store and Waiver of the Rules. C2-4/R-7A, R-5B zoning district.

PREMISES AFFECTED – 140 Vanderbilt Avenue, northwest corner of Myrtle Avenue and Vanderbilt Avenue, Block 2046, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 15, 2010, at 10 A.M., for decision, hearing closed.

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 26th Avenue, 26th Avenue

MINUTES

and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joseph Morsellino.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 10 A.M., for continued hearing.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Joykiss Management, LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Term (§11-411 & §11-412) to allow the continued operation of an Eating and Drinking establishment (UG 6) which expired on March 15, 2004; Amendment to legalize alterations to the structure; Waiver of the Rules. C2-2 and R3-2 zoning districts.

PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, Northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to July 27, 2010, at 10 A.M., for continued hearing.

280-98-BZ

APPLICANT – Rampulla Associates Architects, for MARS Holding, LLC, owner.

SUBJECT – Application February 13, 2010 – Extension of Term of a variance (§72-21) for the continued operation of a UG4 Dental Office which expired on February 8, 2010; Amendment to convert the basement garage into dental office floor area. R-2 zoning district.

PREMISES AFFECTED – 2936 Hylan Boulevard, east side of Hylan Boulevard, 100' north of Isabella Avenue, Block 4015, Lot 14, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phillip L. Rampulla.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 15, 2010, at 10 A.M., for decision, hearing closed.

201-01-BZ

APPLICANT – Sheldon Lobel, P.C., for J.H.N. Corporation, owner.

SUBJECT – Application January 27, 2010 – Extension of Term (§72-01 & §72-22) of a previously approved variance permitting the operation of a automobile laundry, lubrication and accessory automobile supply store (UG16b);

Amendment seeking to legalize changes and increase in floor area; and Waiver of the Rules. C4-1 zoning district.

PREMISES AFFECTED – 2591 Atlantic Avenue, northwest corner of Atlantic Avenue and Sheffield Avenue, Block 3668, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 13, 2010, at 10 A.M., for decision, hearing closed.

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: Joseph Fullam.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 22, 2010, at 10 A.M., for decision, hearing closed.

111-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application to reopen pursuant to court remand (Appellate Division) to revisit the findings of a Special Permit (§73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and perimeter wall height (§23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Susan Klapper and Judith Baron.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,

MINUTES

Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1
ACTION OF THE BOARD – Laid over to July 13, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

49-10-A thru 52-10-A

APPLICANT – Philip L. Rampulla, for Daniel Master, owner.

SUBJECT – Application April 9, 2010 – Proposed construction of four single family homes not fronting on a mapped street, contrary to General City Law Section 36. R3-1 zoning district.

PREMISES AFFECTED – 28, 26, 22, 20 Winchester Avenue, south side of Winchester Avenue, east of Tennyson Drive, Block 5320, Lot 45, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Philip Rampulla.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Absent: Vice Chair Collins.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 26, 2010, acting on Department of Buildings Application Nos. 520030154, 520030136, 520030127, and 520030145, reads in pertinent part:

“The street giving access to the proposed construction of a new building Use Group 2 in R3-1 (SRD) Zoning District is not duly placed on the official Map of the City of New York and therefore is referred to the Board of Standards and Appeals (BSA) for approval;” and

WHEREAS, this is an application for permission to build four single-family semi-detached homes that do not front on a mapped street, contrary to General City Law Section 36; and

WHEREAS, a public hearing was held on this application on June 8, 2010, after due notice by publication in the *City Record*, with closure and decision on the same date; and

WHEREAS, by letter dated May 10, 2010, the Fire Department states that it has no objection to the proposal, as the proposed buildings are to be constructed on a street that is 38 feet in width, in accordance with New York City Fire Code Section FC 503.8.2; and

WHEREAS, based upon the above, the Board has determined that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated March 26, 2010, acting

on New Building Permit Nos. 520030154, 520030136, 520030127, and 520030145, is hereby modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawings filed with the application marked “Received May 25, 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 a Builder’s Pavement Plan be filed and approved before DOB issues any permits;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 8, 2010.

43-08-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application February 28, 2008 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35. R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 10 A.M., for continued hearing.

3-10-A & 4-10-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application January 5, 2010 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35. R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue and 29-46 145th Street, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 10 A.M., for continued hearing.

MINUTES

315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC., owner.

SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for a condominium hotel on the basis that the approved plans allow for exceeding of maximum permitted floor area. M1-6 zoning.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Stuart A. Klein.

ACTION OF THE BOARD – Laid over to July 27, 2010, at 10 A.M., for adjourned hearing.

298-09-A

APPLICANT – Breezy Point Cooperative Inc., for Ann Baci, owner.

SUBJECT – Application October 23, 2009 – Reconstruction and enlargement of an existing single family home notfronting a legally mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 109 Beach 217th Street, east side Beach 217th Street, 160’ south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 13, 2010, at 10 A.M., for decision, hearing closed.

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.

SUBJECT – Application January 25, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district. R6 zoning district.

PREMISES AFFECTED – 1882 East 12th Street, west side, of East 12th Street, 75’ north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman

For Opposition: Stuart A. Klein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 13, 2010, at 10 A.M., for decision, hearing closed.

23-10-A thru 26-10-A

APPLICANT – Richard Bowers of Akerman Senterfitt, LLP, for Mia & 223rd Street Management Corp., owner.

SUBJECT – Application February 23, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations. R1-2 zoning district.

PREMISES AFFECTED – 39-39 223rd Street and 223-01/15/19 Mia Drive, between 223rd Street and Cross Island Parkway, Block 6343, Lots 154-157, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Calvin Wong.

For Opposition: Stuart A. Klein and Patricia Marin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

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.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, JUNE 8, 2010
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

186-08-BZ

CEQR #09-BSA-066K

APPLICANT – Petrus Fortune, P.E., for Kevin Mast, Chairman, Followers of Jesus Mennonite Church, owner. SUBJECT – Application July 10, 2008 – Special Permit (§73-19) to allow the legalization and enlargement of a school (*Followers of Jesus Mennonite Church & School*) in a former manufacturing building, contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 3065 Atlantic Avenue, northwest corner of Atlantic Avenue and Shepherd Avenue, Block 3957, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: James E. Gochnauer.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Absent: Vice Chair Collins.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 1, 2009, acting on Department of Buildings Application No. 310051591, reads in pertinent part:

“ZR 42-00. Proposed Use Group 3 is not permitted in a manufacturing district. As per ZR 73-19 the Board of Standards and Appeals (BSA) can issue a special permit for the school aspect of the project;” and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site within an M1-1 zoning district, the legalization of a school (Use Group 3), contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on September 15, 2009, after due notice by publication in the *City Record*, with continued hearings on October 6, 2009 and November 17, 2009, and then to decision on June 8, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the Cypress Hills Local Development Corporation provided testimony in support of this application; and

WHEREAS, several members of the community testified in support of this application; and

WHEREAS, the application is brought on behalf of the Followers of Jesus Mennonite Church (the “Church”), and will be operated by the Followers of Jesus School (the “School”); and

WHEREAS, the site is located on the southwest corner of Atlantic Avenue and Shepherd Avenue, in an M1-1 zoning district; and

WHEREAS, the site has a lot area of 6,061 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story factory building that was most recently occupied as a church and is now occupied by the School; and

WHEREAS, the applicant proposes to renovate the existing building for continued use as a kindergarten through twelfth grade school (Use Group 3) and church building with a floor area of 12,757 sq. ft.; and

WHEREAS, the applicant represents that the proposed school meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M-1 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that the School initially operated in the same rented facilities as the Church, but that the Church was relocated to a separate facility due to the growth of the congregation and the increased enrollment at the School from 17 students to more than 30; and

WHEREAS, the applicant further states that the School presently serves 40 students from first grade through twelfth grade, and that to accommodate the continued growth of the School as well as the addition of a kindergarten program, the proposed building will serve an estimated 80 students from kindergarten through twelfth grade; and

WHEREAS, the applicant further states that in order to satisfy its program of providing a strong academic education in a Christian setting, the new facility will house the programs of both the Church and the School; and

WHEREAS, specifically, the proposal provides for the following uses: (1) a general meeting and assembly space for both Church and School use and an office/prayer room at the first floor; (2) five classrooms, offices, and a library/conference room at the second floor; and (3) a dining area accessory to the Church and fellowship hall to accommodate the School’s domestic arts program at the basement; and

WHEREAS, the applicant states that the School’s program requires a two-story building with a floor area of at least 8,000 sq. ft., a lot area of at least 5,000 sq. ft., a flexible floor plate configuration to accommodate both the larger

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assembly space needed for the congregation's sanctuary and the smaller classroom space, and an enclosed outside space for recreational use; and

WHEREAS, the applicant represents that the School's program also requires the use of an existing building to avoid the costs of new construction and provide the least disruption to the ongoing programs of the Church and the School; and

WHEREAS, the applicant states that the School has an additional programmatic need to be located in the Cypress Hills neighborhood, where the Church's congregation as well as the student body reside; and

WHEREAS, the applicant states that the Cypress Hills community is a densely-populated residential area characterized by small homes and businesses which has few large buildings or vacant lots suitable for the proposed School that are not already occupied and are available for purchase; and

WHEREAS, the applicant states that it evaluated the feasibility of two buildings in the Cypress Hills neighborhood: (1) 616 Jamaica Avenue; and (2) 91 Richmond Street; and

WHEREAS, the applicant represents that the building at 616 Jamaica Avenue was found to be too small because it was a one-story building that did not have sufficient floor area to accommodate the School's programmatic need for a large auditorium, classrooms, special purpose rooms, and recreational space; and

WHEREAS, the applicant further represents that the building at 91 Richmond Street was inadequate because the interior layout was not suitable for the construction of classrooms, and the church that owned the building ultimately decided it was not interested in selling it; and

WHEREAS, in addition, the applicant states that while it preferred to renovate an existing building to avoid the additional time and costs associated with constructing on a vacant lot, nevertheless it conducted a review of vacant lots available within a one-quarter mile radius of the subject site to determine if there were any available vacant lots that could satisfy the programmatic needs of the School; and

WHEREAS, the applicant determined that all of the vacant lots in the surrounding area were either too small to satisfy the School's programmatic needs, prohibitively expensive when costs of construction were considered, or not immediately available for purchase; and

WHEREAS, the applicant states that none of the sites investigated were therefore found to be able to accommodate the proposed school; and

WHEREAS, the applicant maintains that the results of the site search show that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant submitted a radius diagram which reflects that an R5 zoning district is located immediately to the north of the site on both sides of Shepherd Avenue, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant represents that, although the site is within an M1-1 zoning district, the surrounding area is largely developed with residential and commercial uses which are compatible with the proposed school; and

WHEREAS, the applicant states that the north side of the building abuts a church and that Shepherd Avenue to the north is a quiet residential street characterized by two-story homes in the adjacent R5 zoning district, and that across Shepherd Avenue to the east is a fast food restaurant which generates minimal noise; and

WHEREAS, the applicant further states that an auto repair shop is located adjacent to the west of the site, and Atlantic Avenue is a heavily-trafficked six-lane street located to the south of the site; and

WHEREAS, the applicant states that adequate separation from noise, traffic and other adverse effects of the surrounding M1-1 zoning district will be provided through the building's existing solid masonry exterior walls and double-glazed windows facing the auto repair shop to the west, and the installation of double-glazed windows on the east and south sides of the building, facing the fast food restaurant and Atlantic Avenue, respectively; and

WHEREAS, the Board finds that the conditions surrounding the site, the construction of the building, and the installation of double-glazed windows will adequately separate the school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-1 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that the students enrolled at the School reside in the surrounding community, and that approximately one-half of the students are anticipated to walk to school, approximately one-third of the students are anticipated to arrive by car, and the remainder are anticipated to arrive by public transportation; and

WHEREAS, the applicant further states that there is a bus stop located directly in front of the School on Atlantic Avenue which will provide transportation for a number of students, and there are several other public schools within a ten-block radius of the School with crossing guards located at the critical intersections along Atlantic Avenue, which provides the students crossing from the bus stop on the far side of Atlantic Avenue with assistance in crossing the street to the

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School; and

WHEREAS, the applicant also requested the installation of “No Standing – School Zone” signage from the Department of Transportation (“DOT”), to be located in front of the School on Shepherd Avenue to provide a safe loading and unloading zone for parent drop-off of students; and

WHEREAS, the applicant submitted a letter from DOT responding to the applicant’s request, which stated that the requested signage was unnecessary because there is no school busing for the subject site; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 09BSA066K, dated June 2, 2010; 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 Analysis has reviewed the project for potential hazardous materials and air quality impacts; and

WHEREAS, the applicant submitted the April 2010 Indoor Air Sampling (Soil Vapor Intrusion) report to DEP for review and approval; and

WHEREAS, DEP in its May 3, 2010 letter, stated that the report revealed that the VOC concentrations were either non-detectable or below the New York State Department of Health’s Guidance Levels and that the report is acceptable; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon

completion of the renovation; and

WHEREAS, DEP accepts the Revised Construction Health & Safety Plan, dated May 28, 2010; and

WHEREAS, DEP reviewed the applicant’s air quality screening analysis for boilers and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, based on the results of noise monitoring, a closed window condition with a minimum of 35 dBA window-wall attenuation and alternate means of ventilation (central air-conditioning or other DEP-approved means of ventilation) shall be maintained in order to achieve an interior noise level of 45 dBA; 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 §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a school (Use Group 3), on a site within an M1-1 zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received July 10, 2008” (1) sheet and “Received September 29, 2009” (4) sheets, and *on further condition*:

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT 35 dBA of window-wall noise attenuation with central air-conditioning or other DEP-approved means of ventilation shall be provided in the subject building;

THAT substantial construction be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 8, 2010.

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28-09-BZ

CEQR #09-BSA-074K

APPLICANT – Moshe M. Friedman, P.E., for 133 Equity Corp., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 133 Taaffe Place, east side of Taaffe Place, 142'-2.5" north of intersection of Taaffe Place and Myrtle Avenue, Block 1897, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Absent: Vice Chair Collins.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated February 12, 2009, acting on Department of Buildings Application No. 310122621 reads:

“Proposed multiple 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. There are no applicable bulk, parking or yard regulations”;

WHEREAS, this is an application under ZR § 72-21 to permit, within an M1-1 zoning district, the construction of a four-story, three-unit residential building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on September 22, 2009, after due notice by publication in the *City Record*, with continued hearings on January 26, 2010 and March 16, 2010, and then to decision on June 8, 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, the adjacent neighbor to the rear of the site provided testimony at hearing raising concerns that excavation would take place at the rear lot line and construction would extend into the rear yard; 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 approximately 83 feet, and a total lot area of 2,080 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant represents that the site had historically been occupied by residential use from approximately 1887 until 1994, when the existing residential

building was demolished due to fire damage; and

WHEREAS, in support of this statement, the applicant submitted a copy of an 1887 Sanborn Map and a 1941 certificate of occupancy reflecting residential occupancy of the site, and a demolition application filed by the City of New York on December 14, 1994; and

WHEREAS, the applicant proposes to construct a four-story three-unit residential building with a floor area of 4,571 sq. ft. (2.2 FAR) and a rear yard with a depth of 30'-0”;

WHEREAS, the applicant initially proposed to construct a four-story three-unit residential building with a floor area of 6,073 sq. ft. (2.92 FAR) and a rear yard with a depth of approximately 15'-4”;

WHEREAS, during the course of the hearing process, the Board directed the applicant to reduce the size of the building and increase the size of the rear yard; and

WHEREAS, the applicant first revised its plans to provide a four-story three-unit residential building with a floor area of 4,846 sq. ft. (2.33 FAR) and a rear yard with a depth of 23'-0”;

WHEREAS, the Board directed the applicant to further reduce its building, at which point the applicant revised its plans to the current proposal; 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: the site’s narrow width and shallow depth; and

WHEREAS, the applicant represents that the 25-ft. width and 83-ft. depth of the subject site is too narrow to accommodate a building with a loading dock and is too small to provide 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 were located on lots with widths and/or depths exceeding that of the subject site; and

WHEREAS, specifically, the land use map reflects that there are only five lots in the subject M1-1 district within 400 feet of the site that have conforming uses and are 25'-0” wide or less, and all of these lots are deeper and larger than the subject site; and

WHEREAS, the applicant represents that such analysis supports the assertion that the size of the site is infeasible for conforming manufacturing or commercial development; 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, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study that analyzed: (1) a conforming one-story manufacturing

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building with a total floor area of 2,080 sq. ft.; and (2) the proposed four-story residential building; and

WHEREAS, the feasibility study concluded that a conforming development would not realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant 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 land use map 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 two adjacent lots to the south of the site are occupied by residential buildings, and the adjacent lot to the north is occupied by a mixed-use residential/commercial building; and

WHEREAS, the Board agrees that there is a context for residential use in the area and finds that the introduction of three dwelling units will not impact nearby conforming uses; and

WHEREAS, as to bulk, the applicant notes that the proposed 2.2 FAR is within the zoning district parameters of the adjacent R6 district, and that the rear yard of 30 feet is consistent with R6 regulations; and

WHEREAS, at hearing, an adjacent neighbor raised concerns regarding the excavation of the rear lot line and construction in the rear yard at the site; and

WHEREAS, in response, the applicant stated that there will be no excavation or construction in the rear yard of the site, except for the potential removal of contaminated soil; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique conditions of the site; and

WHEREAS, as noted above, the applicant initially proposed to construct a four-story three-unit residential building with a floor area of 6,073 sq. ft. (2.92 FAR) and a rear yard with a depth of approximately 15'-4"; and

WHEREAS, during the course of the hearing process, the Board directed the applicant to reduce the size of the building and increase the size of the rear yard; and

WHEREAS, the applicant first revised its plans to provide a four-story three-unit residential building with a floor area of 4,846 sq. ft. (2.33 FAR) and a rear yard with a depth of 23'-0"; and

WHEREAS, the Board directed the applicant to further reduce its building, at which point the applicant revised its plans to the current proposal; 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) 09BSA074K, dated June 1, 2010; 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 Analysis has reviewed the project for potential hazardous materials; and

WHEREAS, DEP reviewed the Phase II Environmental Investigation and in its May 5, 2010 letter, requested a Remedial Action Plan and a Construction Health and Safety Plan be submitted to DEP for review and approval; 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 four-story, three-unit residential building, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 11, 2010"-(11) sheets; and *on further*

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condition:

THAT the following shall be the bulk parameters of the proposed building: four stories, a maximum floor area of 4,571 sq. ft. (2.2 FAR); a height of 40'-0"; and a rear yard with a minimum depth of 30'-0", as shown on the BSA-approved plans;

THAT this grant is contingent upon final approval from DEP before the issuance of construction permits other than permits needed for soil remediation;

THAT a Remedial Action Plan and a Construction Health and Safety Plan be submitted to DEP for review and approval prior to the commencement of any construction or demolition activities at the site;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain a Notice to Proceed from DEP;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain a Notice of Satisfaction from DEP; THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, June 8, 2010.

162-09-BZ

CEQR #09-BSA-107Q

APPLICANT – Sheldon Lobel, P.C., for Steinway 30-33, LLC, owner; Steinway Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application April 27, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Planet Fitness*) in the cellar, first, and second floors in an existing two-story building; Special Permit (§73-52) to extend the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district. C4-2A/R5 zoning districts.

PREMISES AFFECTED – 30-33 Steinway Street, east side of Steinway Street, south of 30th Avenue, Block 680, Lot 32, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safain.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Absent: Vice Chair Collins.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated April 15, 2009, acting on Department of Buildings Application No. 410236935, reads in pertinent part:

“Proposed change of use to physical culture establishment...must be referred to the BSA for approval;” and

WHEREAS, this is an application under ZR §§ 73-36, 73-52 and 73-03, to permit, on a site partially within a C4-2A zoning district and partially within an R5 zoning district, the extension of the C4-2A zoning district regulations 25 feet into the R5 zoning district, and the legalization of a physical culture establishment (PCE) in the cellar, first floor, and second floor of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 8, 2009 after due notice by publication in *The City Record*, with continued hearings on January 26, 2010, February 23, 2010, April 20, 2010, and May 25, 2010, and then to decision on June 8, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on a through lot with frontage on Steinway Street and Newtown Road, between 30th Avenue and 31st Avenue; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE occupies a total floor area of 9,606 sq. ft. on a portion of the first floor and the entire second floor, with an additional 8,335 sq. ft. of floor space located in the cellar; and

WHEREAS, the PCE is operated as Planet Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 24 hours; Friday, from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, at hearing, the Board raised concerns regarding: (1) the storage of garbage at the rear of the site, within the R5 zoning district; and (2) whether the sprinklers in the building were ever inspected and approved by the Department of Buildings (“DOB”); and

WHEREAS, in response, the applicant submitted revised plans reflecting that garbage will be stored in the cellar, and states that garbage collection occurs five times a week, Sunday through Thursday; and

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WHEREAS, additionally, the applicant submitted documentation reflecting that the sprinkler system in the building passed inspection on May 20, 2010, and was scheduled to receive sign-off from DOB; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the applicant also requests a special permit pursuant to ZR § 73-52 to extend the C4-2A zoning district regulations 25 feet into the portion of the zoning lot located within an R5 district; and

WHEREAS, the applicant states that the majority of the zoning lot is located within a C4-2A zoning district that runs parallel to Steinway Street and extends 95 feet into the site, but that the remaining portion of the zoning lot is located within an R5 zoning district; and

WHEREAS, the portion of the site that is within the C4-2A zoning district occupies approximately 8,317 sq. ft. (87 percent) of the zoning lot, and the portion of the site that is within the R5 zoning district occupies approximately 1,198 sq. ft. (13 percent) of the zoning lot; and

WHEREAS, the R5 portion fronts on Newtown Road and occupies a triangular portion of the site, located to the east of the C4-2A portion; and

WHEREAS, the C4-2A district permits PCE use pursuant to ZR § 73-36; the R5 district permits only residential uses; and

WHEREAS, the applicant states that the subject building, and the commercial use therein, extends only 10 feet into the R5 zoning district; therefore, by allowing the C4-2A use regulations to apply to 25 feet of the total width of the R5 portion of the lot, the proposed PCE use will be permitted in the subject building; and

WHEREAS, however, a very small triangular-shaped portion of the lot will remain solely within the R5 district, even after the boundary line is moved 25 feet east, and may only be used for community facility or residential use; and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of December 15, 1961, is divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided: (a) that, without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (b) that such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold single ownership requirement, the applicant submitted deeds establishing that the subject property existed in single ownership since prior to December 15, 1961; and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence showing that the zoning lot was in single ownership prior to December 15,

1961 and continuously from that time onward; and

WHEREAS, as to the threshold 50 percent requirement, as discussed above, approximately 8,317 sq. ft. of the site's total lot area is located within the C4-2A zoning district, which is more than the required 50 percent of lot area; and

WHEREAS, as to the first finding, the applicant represents that it would not be economically feasible to use or develop the R5 portion of the zoning lot for a permitted use; and

WHEREAS, specifically, the applicant states that the R5 portion is irregularly shaped, with a width of approximately 88 feet and a depth ranging from 38 feet to nearly zero feet at its narrowest point, and the applicable front, rear and side yard regulations would make it impossible to develop a complying building on the irregular site; and

WHEREAS, the applicant further states that the R5 portion of the site has a lot area of 1,198 sq. ft., which does not satisfy the minimum lot area requirement of at least 3,800 sq. ft. for detached residences and 1,700 sq. ft. for other residences in R5 districts; and

WHEREAS, based upon the above, the Board finds that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R5, for a permitted use; and

WHEREAS, as to the second finding, the applicant states that the proposed development is consistent with existing land use conditions and anticipated projects in the immediate area; and

WHEREAS, specifically, the applicant states that the PCE is operated in an existing building located primarily within a C4-2A zoning district, and that the surrounding buildings fronting Steinway Street predominantly contain offices and retail establishments; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C4-2A zoning district portion of the lot into the R5 portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the proposed action will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36, 73-52 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since December 1, 2008, without a special permit; and

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WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between December 1, 2008 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.09BSA107Q, dated April 24, 2009; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36, 73-52 and 73-03, to permit, on a site partially within a C4-2A zoning district and partially within an R5 zoning district, the extension of the C4-2A zoning district regulations 25 feet into the R5 zoning district, and the legalization of a PCE in the cellar, first floor, and second floor of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 19, 2010” – three (3) sheets and “Received May 21, 2010” – one (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on December 1, 2018;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a Certificate of Occupancy shall be obtained by June 8, 2011;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by

the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 8, 2010.

282-09-BZ CEQR #10-BSA-024Q

APPLICANT – Steven Williams, P.E., for KC&V Realty, LLC, owner; Richard Ortiz, lessee.

SUBJECT – Application October 7, 2009 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Ritchie's Gym*) on the third floor of a four-story commercial building, C4-3 zoning district.

PREMISES AFFECTED – 54-19 Myrtle Avenue, northeast corner of Myrtle Avenue, intersection of Palmetto Street and Myrtle Avenue, Block 3445, Lot 9, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Absent: Vice Chair Collins.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated January 19, 2010, acting on Department of Buildings Application No. 420089353, reads:

“32-10. Proposed physical culture establishment is not permitted as of right in a C4-3 district, secure approval from Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3 zoning district, the legalization of a physical culture establishment (“PCE”) on the third floor of a four-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 2, 2010 after due notice by publication in *The City Record*, with a continued hearing on May 25, 2010 and May 25, 2010, and then to decision on June 8, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

MINUTES

WHEREAS, the subject site is located on the northeast corner of Myrtle Avenue and Palmetto Street, within a C4-3 zoning district; and

WHEREAS, the site is occupied by a four-story commercial building; and

WHEREAS, the PCE occupies a total floor area of 6,150 sq. ft., comprising the entire third floor of the building; and

WHEREAS, the PCE is operated as Ritchie's Gym; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 6:00 a.m. to 11:00 p.m.; Friday, from 6:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, at hearing, the Board questioned whether the signage at the site, particularly the painted mural on the Palmetto Street side of the building, was in compliance with C4 district signage regulations, and directed the applicant to remove any non-complying signage; and

WHEREAS, in response, the applicant submitted photographs reflecting that the mural on Palmetto Street has been removed; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since January 1, 2002, without a special permit; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10-BSA-024Q, dated September 8, 2009; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous

Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3 zoning district, the legalization of a physical culture establishment on the third floor of an existing four-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 11, 2010" – Four (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 8, 2015;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all signage shall comply with C4 district regulations;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a new Certificate of Occupancy shall be obtained by June 8, 2011;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 8, 2010.

MINUTES

30-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Susan Shalitzky, owner.

SUBJECT – Application March 8, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141) and less than the required rear yard (§23-47). R-2 zoning district. PREMISES AFFECTED – 1384 East 22nd Street, west side of East 22nd Street, between Avenues M and N, Block 7657, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Absent: Vice Chair Collins.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 8, 2010, acting on Department of Buildings Application No. 320125342, reads:

“The proposed enlargement of the existing one-family residence in an R-2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to the open space ratio and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the rear yard and is contrary to Section 23-47 of the Zoning Resolution;” 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, and rear yard, contrary to ZR §§ 23-141 and 23-47; 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 May 25, 2010, and then to decision on June 8, 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 the effect the enlargement would have on the adjacent property; and

WHEREAS, the subject site is located on the west side of East 22nd Street between Avenue M and Avenue N, in an

R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,085 sq. ft. (0.52 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,085 sq. ft. (0.52 FAR) to 4,046 sq. ft. (1.01 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 120 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, at hearing the Board questioned which portions of the original home were being retained; and

WHEREAS, in response, the applicant submitted revised plans showing that portions of the foundation walls, first and second floor walls, and portions of the floor beams on the first and second floor are being retained; and

WHEREAS, as to the neighbor’s concerns, the Board notes that the proposal provides for complying side yards and fits within the permitted building envelope; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received March 8, 2010”-(3) sheets, “May 19, 2010”-(5) sheets, “May 26, 2010”-(6) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,046 sq. ft. (1.01

MINUTES

FAR); a maximum open space ratio of 120 percent; a side yard with a minimum width of 5'-0" along the northern lot line; a side yard with a minimum width of 8'-0" along the southern lot line; a rear yard with a minimum depth of 20'-0"; a maximum wall height of 23'-0", and a maximum total height of 37'-6", 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 8, 2010.

92-08-BZ

APPLICANT – Riker Danzig, for Boquen Realty, LLC, owner.

SUBJECT – Application April 14, 2008 – Variance (§72-21) to allow for Use Group 6 below the floor level of the second story in an existing building, contrary to use, rear yard and floor area regulations (§42-14, 43-12 and 43-26). M1-5B zoning district.

PREMISES AFFECTED – 13 Crosby Street, east side of Crosby Street between Grand and Howard Street, Block 233, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Juan D. Reyes.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

192-09-BZ

APPLICANT – Richard Lobel, for Leon Mann, owner.

SUBJECT – Application June 16, 2009 – Variance (§72-21) to allow for the construction of a department store (UG10), contrary to use regulations (§§22-00, 32-00). R6 and R6/C2-3 zoning districts.

PREMISES AFFECTED – 912 Broadway, northeast corner of the intersection of Broadway and Stockton Street, Block 1584, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

254-09-BZ thru 256-09-BZ

APPLICANT – Ivan F. Khoury, for Kearney Realty Corporation, owner.

SUBJECT – Application September 4, 2009 – Variance (§72-21) to legalize three existing homes, contrary to front yard (§23-45) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 101-03/05/07 Astoria Boulevard aka 27-31 Kearney Street, north side of Astoria Boulevard & northeasterly side of Kearney Street, Block 1659, Lot 51, 53, 56, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Ivan F. Khoury and Rebecca Pytosh.

ACTION OF THE BOARD – Laid over to July 13, 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 12th Street and Homecrest Avenue, eastside of Avenue S, Block 7291, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 22, 2010, at 1:30 P.M., for continued hearing.

297-09-BZ

APPLICANT – Marvin Mitzner, Esq., for 180 Ludlow Development LLC, owner.

SUBJECT – Application October 20, 2009 – Variance (§72-21) to allow for the conversion of a recently constructed commercial building for residential use, contrary to rear yard regulations (§23-47). C4-4A zoning district.

PREMISES AFFECTED – 180 Ludlow Street, east side of Ludlow Street approximately 125' south of East Houston Street, Block 412, Lot 48, 49, 50, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Ian Rasmussen.

ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for adjourned hearing.

MINUTES

13-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yakov Platnikov, owner.

SUBJECT – Application January 27, 2010 – Special Permit (§73-622) for the enlargement of an existing two-family home to be converted to a single family home, contrary to lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 79 Amherst Street, east side of Amherst Street, north Hampton Avenue, Block 8727, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

34-10-BZ

APPLICANT – James Chin & Associates, LLC, for Harry Tran, owner; Shu Ying Zhao, lessee.

SUBJECT – Application March 18, 2010 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*York Spa Beauty Care*) in the cellar and first floor of an existing five-story building. M1-5B zoning district.

PREMISES AFFECTED – 429 Broome Street, south side of Broome Street, from the corner formed by Broome and Crosby Street, Block 473, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Mindy Chin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for decision, hearing closed.

40-10-BZ

APPLICANT – Sheldon Lobel, PC, for Campworth LLC, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to allow for an existing building to be converted for commercial use, contrary to ZR 22-10. C4-4A/R5B zoning district.

PREMISES AFFECTED – 150 Kenilworth Place, through-lot between Campus Road and Kenilworth Place, Block 7556, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most and Babara Cohen.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

48-10-BZ

APPLICANT – Rampulla Associates Architects, for Outerbridge Commons, LP, owner; 2965 Veterans Road West, owners.

SUBJECT – Application April 9, 2010 – Special Permit (§73-36) to allow a physical culture establishment (*Retro Fitness*). M1-1 zoning district/Special South Richmond District.

PREMISES AFFECTED – 2965 Veterans Road West, Veterans Road West and Tyrellan Avenue, Block 7511, Lots 1, 75 & 150, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phillip Rampulla.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for decision, hearing closed.

59-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Kaufman 8th Avenue Associates, owner; Bension Salon Inc., lessee.

SUBJECT – Application April 23, 2010 – Special Permit (§73-36) to allow a physical culture establishment (*Luxe Den Salon & Spa*). M1-6/C6-4M zoning district.

PREMISES AFFECTED – 519 Eighth Avenue, southwest corner of West 36th Street and Eighth Avenue, Block 759, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to July 27, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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June 23, 2010

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280-98-BZ	2936 Hylan Boulevard, Staten Island
558-71-BZ	1949 Richmond Avenue, Staten Island
139-92-BZ	52-15 Roosevelt Avenue, Queens
102-95-BZ	50 West 17 th Street, Manhattan
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160-08-BZ	651-671 Fountain Avenue, Brooklyn
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325-09-BZ	1364 & 1366 52 nd Street, Brooklyn
333-09-BZ	360 Troy Avenue, aka 348-350 Troy Avenue, Brooklyn
21-10-BZ	2801 Roebing Avenue, aka 1590 Hutchinson River Parkway, Bronx
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64-10-BZ	1253 East 29 th Street, Brooklyn
87-10-BZ	1333 East 24 th Street, Brooklyn
88-10-BZ	1327 East 21 st Street, Brooklyn

DOCKET

New Case Filed Up to June 15, 2010

106-10-BZ

240 West 38th Street, 3rd Floor, Located on south side of West 38th Street between 7th and 8th Avenue., Block 787, Lot(s) 64, Borough of **Manhattan, Community Board: 5**. Special Permit (42-31, 73-36) to legalize the operation of a physical culture establishment. M1-6 district.

107-10-BZ

12-24 149th Street, Between 12th Avenue and Cross Island Parkway., Block 4486, Lot(s) 21, Borough of **Queens, Community Board: 7**. Variance to allow minimum side yard requirements for community facility, contrary to bulk regulations. R2 district.

108-10-BZ

54-32 Myrtle Avenue, Intersection of Myrtle Avenue and Madison Street., Block 3544, Lot(s) 27, Borough of **Queens, Community Board: 5**. Special Permit (73-36) to allow the operation of a physical culture establishment. C4-3 district.

109-10-BZ

1614 East 14th Street, West side of East 14th Street between Avenue P and Kings Highway., Block 6776, Lot(s) 11, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family home. 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 13, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 13, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

914-86-BZ

APPLICANT – Stuart A. Klein, Esq., for Union Temple of Brooklyn, owner; Eastern Athletic, Incorporation, lessee.
SUBJECT – Application March 31, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (Eastern Athletic) which expired on May 17, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on November 12, 1998; Amendment to the interior layout and the hours of operation; Waiver of the Rules. R8X zoning district.
PREMISES AFFECTED – 1-19 Eastern Parkway, north side of Eastern Parkway, between Plaza Street, east and Underhill Avenue, Block 1172, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #8BK

44-97-BZ & 174-00-BZ

APPLICANT – Stuart A. Klein, Esq., for SDS Leonard, LLC, owner; Millennium Sports, LLC, lessee.
SUBJECT – Applications March 30, 2010 and March 18, 2010 – Extension of Term of a previously granted Special Permit (§32-31) for the continued operation of a Physical Culture Establishment which expired on October 28, 2007; Amendment of room changes in sub-cellar; Waiver of the Rules. C6-2A zoning district.
PREMISES AFFECTED – 78-80 Leonard Street & 79 Worth Street, between Broadway and Church Street, Block 173, Lot 4, 19, 20, Borough of Manhattan.
COMMUNITY BOARD #1M

159-99-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Beis Meir, Incorporation, owner.
SUBJECT – Application March 25, 2010 – Amendment to Legalize modification to a previously granted Variance (72-21) of a one story UG4 Synagogue and Yeshiva (*Congregation Beis Meir*). M2-1 zoning district.
PREMISES AFFECTED – 1347-1357 38th Street, north side of 38th Street, between 13th Avenue and 14th Avenue, Block 5300, Lot 55, Borough of Brooklyn.
COMMUNITY BOARD #12BK

APPEALS CALENDAR

71-10-A thru 84-10-A

APPLICANT – Eric Palatnik, P.C., for Brighton Street, LLC, owners.
SUBJECT – Application May 10, 2010 – Appeal seeking a determination that the owner has acquired a vested right to complete construction under the prior R3-2 zoning district. R3-1 Zoning district. Series Cal. Nos. 71-10-A thru 84-10-A.
PREMISES AFFECTED – 102-118 Turner Street and 1661 to 1669 Woodrow Road, between Crabtree Avenue and Woodrow Road, Block 7105, Lots 181 thru 188 and 2 thru 8, Borough of Staten Island.
COMMUNITY BOARD #3SI

JULY 13, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 13, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.
SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (ZR §24-11), front yard (ZR §24-34), height (ZR §24-521) and rear yard (ZR §24-382) regulations. R3-2 district.
PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9,11,12,23,24, Borough of Queens.
COMMUNITY BOARD #8Q

39-10-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi, owner.
SUBJECT – Application March 22, 2010 – Variance (§72-21) for the legalization of a single family home contrary to side yards ZR 23-461. R-5 zoning district.
PREMISES AFFECTED – 2032 East 17th Street, East 17th Street and Avenue T, Block 7321, Lot 20, Borough of Brooklyn.
COMMUNITY BOARD #15BK

CALENDAR

58-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner.

SUBJECT – Application April 22, 2010 – Special Permit (§73-36) to allow a physical culture establishment (*Barones Health Club*)

in the existing one-story building. M1-2/R6A zoning district, mapped within the MX8 special purpose district.

PREMISES AFFECTED –16 Eckford Street, east side of Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

66-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yury, Aleksandr, Tatyana Dreysler

SUBJECT – Application May 3, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141) and side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 1618 Shore Boulevard, South side of Shore Boulevard between Oxford and Norfolk Streets. Block 8757, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JUNE 15, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

887-54-BZ

APPLICANT – Eric Palatnik, Esq., for 218 Bayside Operating LLC, owner.

SUBJECT – Application March 5, 2010 – Extension of Term (§11-411) for the continued use of gasoline station (*British Petroleum*) with accessory convenience store (*7-Eleven*) which expires on September 23, 2010. C2-2/R6B zoning district.

PREMISES AFFECTED – 218-01 Northern Boulevard, between 218th and 219th Street, Block 6321, Lot 21, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for the continued use of an automobile service station, which expires on September 23, 2010, and for an amendment to legalize changes to the previously-approved plans; 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 8, 2010, and then to decision on June 15, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) the term be limited to five years; (2) a security guard be stationed at the premises from 8:00 p.m. to 2:00 a.m. on Friday and Saturday nights during summer evenings to monitor noise and loitering at the site; (3) snow be removed from the surrounding streets, including 218th Street; (4) the site be maintained free of garbage and debris; and (5) the trees and landscaping along 218th Street be trimmed; and

WHEREAS, the site is located on the north side of Northern Boulevard between 218th Street and 219th Street, within a C2-2 (R6B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1955 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by an automobile showroom with supplementary servicing, including gasoline dispensing service, for a term of 15 years; and

WHEREAS, on March 18, 1958, the Board granted an amendment to permit the construction of a gasoline service station, lubritorium, minor auto repairs, car washing, office, sales, and storage and parking of motor vehicles; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on March 17, 2001, the grant was amended to permit the construction of a 2,900 sq. ft. accessory convenience store and the installation of a metal canopy over the existing pump islands, and the term was extended for a term of ten years from the expiration of the prior grant, to expire on September 23, 2010; and

WHEREAS, the applicant now seeks a ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant also seeks an amendment to legalize the existing site conditions, including: (1) the replacement of the five previously existing 4,000 gallon underground storage tanks with three 10,000 gallon tanks; (2) the installation of 15 lighting fixtures to the canopy instead of the 12 fixtures shown on the approved plans; and (3) a 25-ft. curb cut on 219th Street, instead of the 24-ft. curb cut shown on the approved plans; and

WHEREAS, the applicant also seeks to modify the previously-approved signage; and

WHEREAS, at hearing, the Board directed the applicant to improve the site conditions including the removal of any garbage and debris from the site; and

WHEREAS, in response, the applicant submitted photographs reflecting that all garbage and excess stored items have been removed from the site; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant provided a letter from the operator stating that its employees will monitor noise and loitering by patrons, snow will be removed from all sidewalks at the site in the future, the site will be maintained free of garbage and debris, and the landscaping on 218th Street will be trimmed; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendment to the previously-approved plans is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated May 3, 1955, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the date of this grant, to expire on June 15, 2020, and to permit the noted amendments to the previously-approved plans; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received May 25,

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2010”-(5) sheets; and *on further condition:*

THAT the term of the grant shall expire on June 15, 2020;

THAT the site shall be maintained free of debris and graffiti;

THAT landscaping be provided and maintained on the site;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by June 15, 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. 420126679)

Adopted by the Board of Standards and Appeals June 15, 2010.

834-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.

SUBJECT – Application October 20, 2009 – Extension of Term for the continued use of a Gasoline Service Station (*Gulf*) with minor auto repairs which expired on March 7, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on March 2, 2000; Amendment to legalize an accessory convenience store and Waiver of the Rules. C2-4/R-7A, R-5B zoning district.

PREMISES AFFECTED – 140 Vanderbilt Avenue, northwest corner of Myrtle Avenue and Vanderbilt Avenue, Block 2046, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of an automobile service station, which expired on March 7, 2006, an extension of time to obtain a certificate of occupancy, which expired on December 10, 2004, and an amendment to legalize changes to the previously-approved plans; and

WHEREAS, a public hearing was held on this application on February 23, 2010 after due notice by publication in *The City Record*, with continued hearings on April 13, 2010, May 11, 2010, and June 8, 2010, and then to decision on June 15, 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 2, Brooklyn, recommends approval of this application, but recommends a five-year term due to concerns that the operator uses on-street parking for vehicles being repaired at the site; and

WHEREAS, the site is located on the northwest corner of Myrtle Avenue and Vanderbilt Avenue, partially within a C2-4 (R7A) zoning district and partially within an R5B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 7, 1961 when, under the subject calendar number, the Board granted a variance to permit the construction and maintenance of a gasoline service station, lubritorium, minor auto repairs, car washing, utility room, office, sales of accessories and parking and storage of motor vehicles on the site, for a term of 20 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, on March 2, 1999, the Board granted an extension of term, which expired on March 7, 2006, and an amendment to permit the removal of the existing accessory automotive repair building, the installation of a metal canopy, and the construction of a one-story accessory building; and

WHEREAS, most recently, on December 10, 2002, the Board granted an extension of time to obtain a certificate of occupancy, which expired on December 10, 2004, and an amendment to permit the construction of a metal canopy; and

WHEREAS, the applicant now seeks a ten-year extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant also seeks approval of several changes to the previously-approved plans, including: (1) the conversion of a bathroom within the existing building to an accessory office; (2) modifying the site’s signage from Exxon to Gulf; (3) the conversion of the heater/storage room and the cashier’s area into an accessory convenience store; and (4) the paving of a portion of the landscaped area behind the existing building; and

WHEREAS, at hearing, the Board raised concerns about the presence of a U-Haul franchise with four rental vehicles on the site, particularly its effect on the lack of parking at the site, and directed the applicant to discontinue the operation of the U-Haul franchise; and

WHEREAS, in response, the applicant agreed to discontinue operation of the U-Haul franchise, and

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submitted: (1) photographs showing the removal of the U-Haul trucks; (2) an affidavit from the operator of the service station, stating that operation of the U-Haul franchise has been discontinued and will not be resumed; and (3) a copy of a "Closed Dealer Notification" from U-Haul; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping in the rear of the service station, in accordance with the previously-approved plans; and

WHEREAS, in response, the applicant submitted a photograph reflecting that the area at the rear of the service station has been planted in accordance with the previously-approved plans; and

WHEREAS, based upon the above, the Board finds that the requested extension of term, extension of time to obtain a certificate of occupancy, and amendment to the previously-approved plans is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated March 7, 1961, so that as amended this portion of the resolution shall read: "to extend the term for ten years from March 7, 2006, to expire on March 7, 2016, to extend the time to obtain a certificate of occupancy to June 15, 2011, and to permit the noted amendments to the previously-approved plans; *on condition* that all use and operations shall substantially conform to plans filed with this application marked "Received April 27, 2010"- (7) sheets; and *on further condition*:

THAT the term of the grant shall expire on March 7, 2016;

THAT the site shall be maintained free of debris and graffiti;

THAT landscaping shall be provided and maintained on the site in accordance with the BSA-approved plans;

THAT vehicles being serviced shall be parked and stored onsite;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by June 15, 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. 301858648)

Adopted by the Board of Standards and Appeals June 15, 2010.

280-98-BZ

APPLICANT – Rampulla Associates Architects, for MARS Holding, LLC, owner.

SUBJECT – Application February 13, 2010 – Extension of Term of a variance (§72-21) for the continued operation of a UG4 Dental Office which expired on February 8, 2010; Amendment to convert the basement garage into dental office floor area. R-2 zoning district.

PREMISES AFFECTED – 2936 Hylan Boulevard, east side of Hylan Boulevard, 100' north of Isabella Avenue, Block 4015, Lot 14, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Stephanie Miller.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term for the continued operation of a dentist office, which expired on February 8, 2010, and an amendment to allow for the extension of the dentist office use into a portion of the building occupied by residential use and other site modifications; and

WHEREAS, a public hearing was held on this application on April 13, 2010 after due notice by publication in *The City Record*, with continued hearings on May 18, 2010 and June 8, 2010, and then to decision on June 15, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application, citing the following concerns: (1) the absence of an explanation for a change in use group from 4 to 6, (2) there is an abundance of medical facilities in the area, (3) there is a failure to meet the findings of ZR § 72-21, (4) the absence of an explanation of how the financial return finding is met, (5) the absence of proof that there was not any neighborhood opposition, (6) incomplete evidence of surrounding uses, (7) the absence of unique conditions related to the lot, and (8) the potential for increased traffic; and

WHEREAS, the site is located on the east side of Hylan Boulevard, 100 feet north of Isabella Avenue, within an R2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 2000 when, under the subject calendar number, the Board granted a variance to permit the extension of a dentist office use (identified as Use Group 6), formerly operated as a home occupation, into a portion of the building occupied by residential use, in what was then an R3-2 zoning district; the site was rezoned to R2 in 2005; and

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WHEREAS, the applicant now seeks to eliminate the term; and

WHEREAS, the applicant also seeks to redesign the building to provide better access for elderly patients and those who require assistance accessing the elevated entrance; and

WHEREAS, the applicant also seeks the extension of the use and an approval of several changes to the previously-approved plans, including: (1) the removal of the exterior access ramp and installation of an elevator to service the basement and first floor; (2) the modification of the parking layout; (3) the modification of the basement space to eliminate the garage, create a new patient waiting room, reception area and administrative office, and to relocate the employee lounge and redesign the existing bathroom; and (4) the redesign of the first floor to eliminate the waiting room, reception area and records room to be replaced by new patient rooms; and

WHEREAS, the applicant states that the proposed changes, specifically the conversion of garage space to dentist office space, result in an increase in floor area of the building by 310 sq. ft.; and

WHEREAS, the applicant represents that the increase in floor area is within zoning district parameters for residential use; and

WHEREAS, the applicant states that the construction, the majority of which is interior work, will take approximately three months to complete; and

WHEREAS, the Board directed the applicant to (1) confirm whether the floor area calculations included the entire zoning lot and to modify accordingly, (2) confirm whether the proposed construction would affect a sewer easement, (3) modify the parking layout to be functional and to reduce the curb cut width, and (4) increase the amount of landscaping at the front of the building; and

WHEREAS, in response, the applicant (1) confirmed that the proposed increase in floor area maintains a complying condition across the zoning lot; (2) confirmed that the sewer easement would not be affected by the proposed construction; (3) modified the parking layout and curb cut configuration; and (4) revised the site plan to include additional landscaping; and

WHEREAS, the Board notes that the certificate of occupancy reflects that the dentist office is Use Group 6 but that the applicant proposes to revise the approval to reflect Use Group 4; and

WHEREAS, the Board notes that Use Group 4 uses are more limited in scope than Use Group 6 uses and finds the change in designation to be appropriate; and

WHEREAS, as to the Community Board's other concerns, the Board notes (1) that the proposed changes, including the elevator and the new waiting room, provide improved access to the existing facility and do not significantly increase its size or the number of visitors and (2) that the application reflects an extension of an existing variance for which the findings have been made, and do not trigger any new waivers, therefore the applicant is not

required to re-establish the findings set forth in ZR § 72-21; and

WHEREAS, based upon the above, the Board finds that the requested elimination of the term and noted amendments to the previously-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 February 8, 2010, so that as amended this portion of the resolution shall read: "to eliminate the term, to permit the noted amendments to the previously-approved plans, and to reflect the dentist office as a Use Group 4, rather than Use Group 6, use; *on condition* that all use and operations shall substantially conform to plans filed with this application marked "Received May 25, 2010"- (6) sheets; and *on further condition*:

THAT the site shall be maintained free of debris and graffiti;

THAT landscaping be provided and maintained on the site in accordance with the BSA-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by June 15, 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. 520027051)

Adopted by the Board of Standards and Appeals June 15, 2010.

558-71-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for WB Management of NY LLC, owner.

SUBJECT – Application March 26, 2010 – Amendment to a previously granted Variance (§72-21) to permit the change of a UG6 eating and drinking establishment to a UG6 retail use without limitation to a single use; minor reduction in floor area; increase accessory parking and increase to the height of the building façade. R3-1 zoning district.

PREMISES AFFECTED – 1949 Richmond Avenue, east side of Richmond Avenue at intersection with Amsterdam Place, Block 2030, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 10 A.M., for continued hearing.

MINUTES

139-92-BZ

APPLICANT – Samuel H. Valencia, for Samuel H. Valencia-Valencia Enterprises, owners.

SUBJECT – Application April 23, 2010 – Extension of Term for a previously granted Special Permit (§73-244) for the continued operation of a UG12 Eating and Drinking Establishment with Dancing (*Deseos*) which expired on March 7, 2010; Waiver of the Rules. C2-2/R6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53’ east of 52nd Street, Block 1316, Lot 76, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Samuel H. Valencia and Alejandro Valencia.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 10 A.M., for continued hearing.

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 UG12 Eating and Drinking Establishment (*Splash*) which expired on March 5, 2010. C6-4A zoning district.

PREMISES AFFECTED – 50 West 17th Street, south side of West 17th Street, between 5th Avenue and 6th Avenue, Block 818, Lot 78-20 67th Road, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 22, 2010, at 10 A.M., for decision, hearing closed.

164-04-BZ

APPLICANT – Sheldon Lobel, P.C., 2241 Westchester Avenue Realty Corporation, owner; Castle Hill Fitness Group, LLC, lessee.

SUBJECT – Application April 5, 2010 – Extension of Time to obtain a Certificate of Occupancy for a previously granted PCE (Planet Fitness) which expired on February 7, 2007; Amendment for change of operator, interior modification and change in the hours of operation; Waiver of the Rules. C2-1/R6 zoning district.

PREMISES AFFECTED – 2241 Westchester Avenue, northwest corner of Westchester Avenue and Glebe Avenue, Block 3963, Lot 57, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Elizabeth Safien.

For Opposition: Kenneth Kearns of CB#10 and Robert Bieder

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for continued hearing.

103-05-A

APPLICANT – Rothkrug, Rothkrug, Spector, LLP, for Main Street Make Over 2, Incorporated, owner.

SUBJECT – Application April 20, 2010 – Application to reopen pursuant to a court remand (Appellate Division) for a determination of whether the Department of Buildings issued a permit in error based on alleged misrepresentations made by the owner during the permit application process.

PREMISES AFFECTED – 366 Nugent Street, southwest corner of the intersection of Nugent Street and Spruce Street, Block 2284, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, 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.

280-09-A

APPLICANT – NYC Board of Standards and Appeals

SUBJECT – Review of Board decision pursuant to Sec 1-10(f) of the Board’s Rules and 666(8) of the City Charter of an appeal challenging the Department of Building’s authority under the City Charter to interpret or enforce provisions of Article 16 of the General Municipal Law relating to the construction of a proposed 17 story residential building. R10A zoning district.

PREMISES AFFECTED – 330 West 86th Street, south side of West 86th Street, 280 feet west of the intersection of Riverside Drive and West 86th Street, Block 1247, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ken Kurland of HPD, Mark David of DOB, Linda B. Rosenthal, David Rosenberg, Al Fredricks, Gale Brewer, Catherine List, Mark Biller and Batyn Lewton.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

MINUTES

Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to July 13,
2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

237-09-A & 238-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP for Safet Dzemovski, owner.
SUBJECT – Application July 31, 2009 – Construction in the bed of a mapped street contrary to General City Law Section 35. R3X zoning district.

PREMISES AFFECTED – 81 & 85 Archwood Avenue aka 5219 Amboy Road, east side of Archwood Avenue, 198.25’ north of Amboy Road, Block 6321, Lot 152 & 151, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to July 27,
2010, at 10 A.M., for continued hearing.

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: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to June 22,
2010, at 10 A.M., for deferred decision.

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.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 22,
2010, at 10 A.M., for decision, hearing closed.

67-10-A

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Eileen and James Conrad, lessee.

SUBJECT – Application May 4, 2010 – Proposed reconstruction and enlargement of an existing single family dwelling and the proposed upgrade of the existing non-conforming private disposal system within the bed of a mapped street, contrary to Article 3, Section 35 of the General City Law. R4 zoning district.

PREMISES AFFECTED – 72 Bedford Avenue, west side of Bedford Avenue within the intersection of mapped 12th Avenue and Beach 204th Street, Block 16350, Lot p/o 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 13,
2010, at 10 A.M., for postponed hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, JUNE 15, 2010
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

19-10-BZ & 62-10-A

APPLICANT – Akerman Senterfitt LLP, for Oak Point Property LLC, owner.

SUBJECT – Application February 3, 2010 – Special Permit (§73-482) to allow for an accessory parking facility in excess of 150 spaces, and proposed construction not fronting a legally mapped street, contrary to General City Law Section 36. M3-1 zoning district.

PREMISES AFFECTED – 100 Oak Point Avenue, south of the Bruckner Expressway, west of Barry Street and Oak Point Avenue, Block 2604, Lot 174, Borough of Bronx.

COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Steve Sinacori.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated January 19, 2010, acting on Department of Buildings Application No. 220045617 reads:

“Proposed accessory group parking facility of more than 150 vehicles is contrary to ZR 44-12 and must be referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR §§ 73-482 and 73-03 to permit an accessory group parking facility in excess of 150 spaces located within an M3-1 zoning district, contrary to ZR § 44-12; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 62-10-A pursuant to General City Law § 36, to allow the proposed construction not fronting on a legally mapped street; that application was granted on June 15, 2010; and

WHEREAS, a public hearing was held on this application on April 20, 2010 after due notice by publication in the *City Record*, with a continued hearing on May 11, 2010, and then to decision on June 15, 2010; and

WHEREAS, Community Board 2, Bronx, recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examinations by Chair Srinivasan and

Commissioner Ottley-Brown; and

WHEREAS, the subject site is located south of the Bruckner Expressway, west of Barry Street and Oak Point Avenue, east of East 149th Street, and north of the East river, within an M3-1 zoning district; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant now proposes to construct a 193,856 sq. ft. food and restaurant supply wholesale facility, to be operated by Jetro Cash and Carry, with 375 off-street accessory parking spaces at the site; and

WHEREAS, in order to meet its needs, the applicant seeks a special permit pursuant to ZR §§ 73-482, to permit parking for more than 150 vehicles; and

WHEREAS, pursuant to ZR § 73-482, the Board may permit accessory group parking facilities with more than 150 spaces in commercial or manufacturing districts, provided: (1) the facility has adequate reservoir space at the vehicular entrance to accommodate either ten automobiles or five percent of the total parking spaces provided by the facility, whichever is greater; and (2) that the streets providing access to such use will be adequate to handle the traffic generated thereby; and

WHEREAS, the applicant represents that the proposed parking facility has adequate reservoir space at the vehicular entrance; and

WHEREAS, the Board notes that the applicant is required to provide 19 reservoir spaces to accommodate the proposed 375 parking spaces; and

WHEREAS, the applicant submitted a site plan reflecting 19 reservoir spaces will be provided at the site, which is equivalent to five percent of the 375 proposed spaces at the site; and

WHEREAS, accordingly, the Board finds that the proposed parking facility has adequate reservoir space at the vehicular entrance; and

WHEREAS, the applicant asserts that the streets providing access to the proposed facility are adequate to handle the traffic it will generate; and

WHEREAS, the applicant submitted a traffic study analyzing thirteen intersections within an area bounded by Bruckner Boulevard to the north, the East River to the south, Dupont Street to the east, and East 141st Street to the west; and

WHEREAS, the study area transportation network consists of both local streets and arterials; to the east of the site, the streets within the study area are generally oriented in a grid-pattern, while directly to the west of the site there are no formal streets with the exception of East 149th Street; and

WHEREAS, the traffic study indicates that Bruckner Boulevard, Leggett Avenue, Barry Street and Oak Point Avenue are the main access corridors distributing demand to and from the site; Bruckner Boulevard is a major north-south arterial, which is divided into a main roadway and a service roadway in each direction in the vicinity of the subject site; and

WHEREAS, the applicant states that the proposed warehouse will be accessible through two access easements from Barry Street (the “Barry Street Access Easement”) and from East 149th Street (the “East 149th Street Access Agreement”); the Barry Street Access Easement has a mapped width of 50 feet and runs from Barry Street to the site, with an

MINUTES

approximately 30-ft. wide curb cut that provides access to the easement; and the East 149th Street Access Easement has a mapped width of 42'-6" and runs from East 149th Street to the edge of the subject site, with an approximately 40-ft. wide curb cut that provides access to the easement; and

WHEREAS, the applicant states that both the Barry Street and the East 149th Street access roads currently exist; the applicant submitted a copy of the easement agreement pertaining to Barry Street access, and states that the easement for the East 149th Street access will be recorded subsequent to the Board's determination; and

WHEREAS, the traffic study submitted by the applicant states that the streets providing access to the proposed facility are adequate to handle the traffic generated by the development without adverse impact; and

WHEREAS, the applicant states that due to the low project-generated demand, the availability of multiple access and egress routes, and the proximity of Bruckner Boulevard, the proposed 375 parking spaces would not cause significant adverse traffic impacts at any of the intersections within the study area; and

WHEREAS, based upon the above, the Board concludes that the findings required under ZR § 73-482 have been met; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the New York City Industrial Development Agency (IDA), as lead agency, has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) SEQRA No. 09017, dated June 8, 2010; and

WHEREAS, the IDA has determined that the proposed action will not have a significant adverse impact on the environment and has issued a Negative Declaration for SEQRA No. 09017, dated June 8, 2010; and

Therefore it is Resolved that the Board of Standards and Appeals adopts the IDA determination and makes each and every one of the required findings under ZR §§ 73-482 and 73-03 to permit an accessory group parking facility in excess of 150 spaces located within an M3-1 zoning district, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 17, 2010" three (3) sheets and "Received May 4, 2010" one (1) sheet; and *on further condition*:

THAT the parking facility shall be limited to 375 parking spaces with a minimum of 19 reservoir spaces;

THAT signage shall comply with all relevant regulations;
THAT the Barry Street Access Easement and the East 149th Street Access Easement shall be recorded and maintained;

THAT any change in the access to the site shall be reviewed by the Board;

THAT the above conditions shall appear on the certificate of occupancy;

THAT substantial construction shall be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 15, 2010.

160-08-BZ

APPLICANT – Dominick Salvati and Son Architects, for HJC Holding Corporation, owner.

SUBJECT – Application June 11, 2008 – Variance (§72-21) to permit the legalization of commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B), which is contrary to §22-00. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Bounded by Fountain, Stanley, Euclid and Wortman Avenues, Block 4527, Lot 61, 64, 67, 74-78, 80, 82, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Peter Hirschman, Frank Angelino and Helene Carnegliz.

For Opposition: Ronald J. Dillon.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for decision, hearing closed.

271-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 132-40 Metropolitan Realty, LLC, owner; Jamaica Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 21, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Planet Fitness*) on the first, second, and third floors of an existing three-story building.

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C2-3 zoning district.

PREMISES AFFECTED – 132-40 Metropolitan Avenue, between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street. Block 9284, Lot 19, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for decision, hearing closed.

304-09-BZ

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – Variance (§72-21) to allow the erection of a ten-story, mixed-use community facility and commercial building, contrary to floor area (§42-00, 43-12 and 43-122), height and sky exposure plane (§43-43), and parking (§44-21). M1-4 zoning district.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Stuart A. Klein.

ACTION OF THE BOARD – Laid over to July 27, 2010, at 1:30 P.M., for adjourned hearing.

325-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Yetev Lev 11th Avenue, owner.

SUBJECT – Application December 7, 2009 – Variance (§72-21) to permit the proposed four-story and mezzanine synagogue (*Congregation Yetev Lev*), contrary to lot coverage (§24-11), rear yard (§24-36) and initial setback of front wall (§24-522). R6 zoning district.

PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel, Rabbi Herman Joseph, Stefanie Fedak and Jacob ?

For Opposition – Stuart A. Klein.

ACTION OF THE BOARD – Laid over to August 3, 2010 at 1:30 P.M., for continued hearing.

333-09-BZ

APPLICANT – Moshe M. Friedman, for Cong Yeshiva Beis Chaya Mushka, Inc., owner.

SUBJECT – Application December 23, 2009 – Variance (§72-21) to permit the vertical extension of an existing religious school (*Congregation Yeshiva Beis Chaya Mushka*), contrary to floor area, lot coverage, height, sky exposure plane, front yard, and side yard regulations (§§24-11, 24-521, 24-34, and 24-35). R4 zoning district.

PREMISES AFFECTED – 360 Troy Avenue aka 348-350 Troy Avenue aka 1505-1513 Carroll Street, northwest corner of Troy Avenue and Carroll Street, Block 1406, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD # 9BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for decision, hearing closed.

21-10-BZ

APPLICANT – Richard Lobel, P.C., for Aquila Realty Company, Incorporated, owner.

SUBJECT – Application February 12, 2010 – Special Permit (§73-243) to legalize an eating and drinking establishment with a drive-through. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roelbling Avenue aka 1590 Hutchison River Parkway, southeast corner of Roelbling Avenue and Hutchinson River Parkway, Block 5386, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to July 27, 2010, at 1:30 P.M., for adjourned hearing.

22-10-BZ

APPLICANT – Harold Weinberg, P.E., for RP Canarsie, LLC, owner; Sunshine Childrens Day Care, lessee.

SUBJECT – Application February 17, 2010 – Special Permit (§73-19) to allow the proposed one-story day care center. C8 zoning district.

PREMISES AFFECTED – 620 East 102nd Street, west side between Farragut Road and Glenwood Road, Block 8170, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Frank Sellitto.

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for continued hearing.

MINUTES

Jeff Mulligan, Executive Director

64-10-BZ

APPLICANT – Law Office Fredrick A. Becker, for Nechama Sonnenschine and Harry Sonnenschine, owners.
SUBJECT – Application April 29, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yards (§23-461 & §23-48) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1253 East 29th Street, east side of East 29th Street, between Avenue L and Avenue M, Block 7647, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to July 27, 2010, at 1:30 P.M., for continued hearing.

Adjourned: P.M.

87-10-BZ

APPLICANT – Dennis D. Dell’Angelo, for David Gluck, owner.

SUBJECT – Application May 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141), side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1333 East 24th Street, east side of East 24th Street, 260’ south of Avenue M, Block 7660, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis D. Dell’Angelo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 13, 2010, at 1:30 P.M., for decision, hearing closed.

88-10-BZ

APPLICANT – Dennis D. Dell’Angelo, for Sarah Weiss, owner.

SUBJECT – Application May 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141) and side yards (§23-461). R-2 zoning district.

PREMISES AFFECTED – 1327 East 21st Street, south east corner of East 21st Street and Avenue L, Block 7639, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis D. Dell’Angelo.

ACTION OF THE BOARD – Laid over to July 27, 2010, at 1:30 P.M., for continued hearing.

BULLETIN

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110-10-BZY

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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, 6th 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 40th and East 41st 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 12th 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, 6th 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 26th Avenue, 26th 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 26th 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 26th Avenue to 212-95 26th 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

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UG12 Eating and Drinking Establishment (Splash) which expired on March 5, 2010. C6-4A zoning district.

PREMISES AFFECTED – 50 West 17th Street, south side of West 17th Street, between 5th Avenue and 6th Avenue, Block 818, Lot 78-20 67th 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 Montanez5

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 17th 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 13th 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,

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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 Montanez5
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

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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 38th 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.

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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 Montanez5

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

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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.

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ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
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

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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 97th 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 233rd 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.

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R4-1 zoning district.
PREMISES AFFECTED – 90-18 176th Street, between Jamaica and 90th 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 28th 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 Montanez5

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 28th 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

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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

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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 147th Street, South side of East 147th Street, east of the intersection of East 147th 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 12th 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.

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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 4th Street) southeast corner of intersection of Broadway and East 4th 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 27th 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-

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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.

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*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 Montanez5
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

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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.**

BULLETIN

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July 22, 2010

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114-10-BZY

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115-10-BZY

26-60 30th Street, North side of 30th Street, 565.80' west of corner formed by Astoria Boulevard & 30th Street., Block 597, Lot(s) 124, Borough of **Queens, Community Board: 1**. Extension of Time (11-331) to complete construction under prior zoning district. R6B district.

116-10-BZY

35-16 Astoria Boulevard, South side of Astoria Boulevard between 35th and 36th Streets., Block 633, Lot(s) 39- & 140, Borough of **Queens, Community Board: 1**. Extension of Time (11-331) to complete construction under prior zoning district. R6B district.

117-10-BZ

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118-10-BZ

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119-10-BZ

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120-10-A

5 Devon Walk, East side of Devon Walk 21.06' south of mapped Oceanside Avenue., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Construction not fronting a mapped street, contrary to GCL. R4 district.

121-10-A

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122-10-BZ

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123-10-A

3931 Mulvey Avenue, 301.75' north of East 233rd Street, Block 4972, Lot(s) 60, Borough of **Bronx, Community Board: 12**. Modification of existing certificate of occupancy for installation of an automatic sprinkler system. M1-1 district.

124-10-A

3927 Mulvey Avenue, 249.32' north of East 233rd Street., Block 4972, Lot(s) 162, Borough of **Bronx, Community Board: 12**. Modification of existing certificate of occupancy for installion of automatic sprinkler system. M1-1 district.

125-10-A

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126-10-BZ

856 Remsen Avenue, South side of Remsen Avenue, approximately 312' northwest of Avenue D., Block 7920, Lot(s) 5, Borough of **Brooklyn, Community Board: 18**. Special Permit (73-36) to allow the operation of a physical culture establishment. M1-1 district.

127-10-BZ

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DOCKET

128-10-BZ

147-58 77th Road, 150th Road, Block 6688, Lot(s) 31,
Borough of **Queens, Community Board: 8**. Variance to
allow a three story synagogue, school and Rabbi apartment.
R4 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

AUGUST 3, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 3, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

736-45-BZ

APPLICANT – Walter T. Gorman, P.E., for Mildel Property Associates, LLC, owner; ExxonMobil Corporation, lessee. SUBJECT – Application May 6, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (Mobil) which expires on March 17, 2011. C2-4/R8 zoning district.

PREMISES AFFECTED – 3740 Broadway, north east corner of West 155th Street, Block 2114, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #12M

1715-61-BZ

APPLICANT – Mitchell S. Ross, for 21st Century Cleaners Corporation, owner.

SUBJECT – Application June 22, 2010 – Extension of Time to Obtain a Certificate of Occupancy of a UG6A dry cleaning establishment (21st Century Cleaners) which expired on June 8, 2010. R3X zoning district.

PREMISES AFFECTED – 129-02 Guy R. Brewer Boulevard, south west corner of 129th Avenue and Guy R. Brewer Boulevard, Block 2276, Lot 59, Borough of Queens.

COMMUNITY BOARD #12Q

60-90-BZ

APPLICANT – EPDSCO, Incorporated for Nissim Kaley, owner.

SUBJECT – Application May 18, 2010 – Extension of Term of a previously granted Special Permit (§73-211) for the continued use of a Gasoline Service Station (*Citgo*) and Automotive Repair Shop which expired on February 25, 2001; Waiver of the Rules. C2-1/R3X zoning district.

PREMISES AFFECTED – 525 Forest Avenue, north side of Forest Avenue between Lawrence Avenue and Davis Avenue, Block 148, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #1SI

98-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 278 Eighth Associates, owner; TSI West 23 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application May 19, 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 November 1, 2006; Amendment to change the hours of operations; Waiver of the Rules. C2-7A zoning district.

PREMISES AFFECTED – 270 Eighth Avenue, northeast corner of Eighth Avenue and West 23rd Street, Block 775, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEALS CALENDAR

102-10-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc, owner; Tricia Kevin Davey, lessees.

SUBJECT – Application June 7, 2010 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 48 Tioga Walk, west side of Tioga Walk, south of 6th Avenue, Block 16350, Lot p/o400, Borough of Queens.

COMMUNITY BOARD #14Q

AUGUST 3, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 3, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

251-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bethany House of Worship Incorporated, owner.

SUBJECT – Application August 28, 2009 – Variance (§72-21) to permit the development of a two-story house of worship. The proposal is contrary to ZR §24-34 (front yard) and §25-31 (parking). R3-2 zoning district.

PREMISES AFFECTED – 130-34Hawtree Creek Road, West side of Hawtree Creek Road, 249.93 feet north of 133rd Avenue. Block 11727, Lot 58, Borough of Queens.

COMMUNITY BOARD #10Q

86-10-BZ

APPLICANT – Sheldon Lobel, P.C., for STM Development, LLC, owners.

SUBJECT – Application May 12, 2010 – Pursuant to (§11-411 & §11-412) for the re-instatement of a previously granted Variance for a UG16 Manufacturing Use which expired on June 10, 1980; the legalization of 180 square foot

CALENDAR

enlargement at the rear of the building; waiver of the rules.
R-5 zoning district.
PREMISES AFFECTED – 93-08 95th Avenue, south side of
95th Avenue, Block 9036, Lot 3, Borough of Queens.
COMMUNITY BOARD #9Q

91-10-BZ

APPLICANT – Eric Palatnik, P.C., for Lawrence Kimel,
owner.
SUBJECT – Application May 17, 2010 – Special Permit
(§73-622) for the enlargement of an existing single family
home contrary to open space, lot coverage and floor area
(§23-141); side yard (§23-461); rear yard (§23-47) and
perimeter wall height (§23-631). R3-1 zoning district.
PREMISES AFFECTED –123 Coleridge Street, south of
Hampton Street, Block 8735, Lot 35, Borough of Brooklyn.
COMMUNITY BOARD #15BK

93-10-BZ

APPLICANT – Harold Weinberg P.E., for Paul Grosman,
owner; Williamsburg Charter School, lessee.
SUBJECT – Application May 25, 2010 – Variance (§72-21)
to allow for reuse of the ground floor of the Williamsburg
Charter School for a gymnasium, cafeteria, and multi-
purpose room, contrary to floor area regulations.
PREMISES AFFECTED – 198 Varet Street, south side
170'6" west of White Street and Bushwick Avenue, Block
3117, Lot 24, Borough of Brooklyn.
COMMUNITY BOARD #1BK

98-10-BZ

APPLICANT – Stuart A. Klein, Esq., for Geriann Tepedino,
owner.
SUBJECT – Application June 1, 2010 – Special Permit
(§73-621) to allow a rooftop addition to an existing five-
story, mixed-use building. The proposal is contrary to ZR
§111-111. Area B-1 of Tribeca Mixed-Use special purpose
district, Tribeca East Historic District and M1-5 zoning
district.
PREMISES AFFECTED – 44 Lispenard Street, between
Church Street and Broadway, Block 194, Lot 7503, Borough
of Manhattan.
COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 13, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

201-01-BZ

APPLICANT – Sheldon Lobel, P.C., for J.H.N. Corporation, owner.

SUBJECT – Application January 27, 2010 – Extension of Term (§72-01 & §72-22) of a previously approved variance permitting the operation of a automobile laundry, lubrication and accessory automobile supply store (UG16b); Amendment seeking to legalize changes and increase in floor area; and Waiver of the Rules. C4-1 zoning district. PREMISES AFFECTED – 2591 Atlantic Avenue, northwest corner of Atlantic Avenue and Sheffield Avenue, Block 3668, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued operation of an automobile laundry, lubrication and accessory supply store (Use Group 16), and an amendment to legalize changes to the previously approved plans and operation of the site; and

WHEREAS, a public hearing was held on this application on March 23, 2010, after due notice by publication in *The City Record*, with continued hearings on May 11, 2010 and June 8, 2010, and then to decision on July 13, 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, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on a corner through lot bounded by Atlantic Avenue to the south, Georgia Avenue to the west and Sheffield Avenue to the east, within a C4-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 19, 1950 when, under BSA

Cal. No. 789-49-BZ, the Board granted a variance to permit the construction of a gasoline service station, lubratorium, car washing, motor vehicle repair shop, and office at the site; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, on April 13, 1966, under BSA Cal. No. 1280-65-BZ, the Board reinstated the variance and permitted the construction of an additional one-story enlargement to the service building; and

WHEREAS, on February 1, 1977, under BSA Cal. No. 1280-65-BZ, the Board amended the grant to prohibit gasoline pumps and to omit the automobile service station use on the site, for a term of ten years; and

WHEREAS, on July 9, 2002, under the subject calendar number, the Board reinstated the variance to permit the enlargement of the existing building to be used as an automobile laundry, lubrication and detailing establishment and accessory automobile supply store, to expire April 16, 2012; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, the applicant also seeks an amendment to legalize the following changes to the previously approved plans: (1) an increase in the building's floor area from 8,300 sq. ft. to 9,125 sq. ft.; (2) the enlargement of the cellar; (3) an increase in the building height to 14'-0", with a 9'-6" parapet wall (total height of 23'-6"); (4) the reconfiguration of the oil change, auto laundry and accessory sales uses on the first floor of the building; and (5) the relocation of the building's restrooms and the creation of a small office space within the accessory sales portion of the building; and

WHEREAS, at hearing, the Board questioned whether the applicant needed the increase in floor area to 9,125 feet or the cellar enlargement; and

WHEREAS, in response, the applicant states that the 825 sq. ft. increase in floor area and the cellar enlargement are necessary to provide additional room for cars to maneuver into the service area; to enclose the previously approved canopy area; to allow the installation of a customer bathroom, elevator lift and office area in the retail portion of the building; and to provide additional space for car wash supplies, accessory retail storage, an employee locker room, bathrooms, and an elevator lift in the cellar; and

WHEREAS, the applicant further states that the increased bulk at the site is permitted as-of-right in the subject C4-1 zoning district, and that the enlargement did not increase the number of conveyor lines used by the car wash or the number of service bays used by the lube center, and it did not increase the number of vehicles the car wash or lube center are able to service on a daily basis; and

WHEREAS, the applicant also proposes the following amendments to the operation of the site: (1) installation of an entrance along Atlantic Avenue with a width of 37'-3"; (2) extension of the wall and railing along Atlantic Avenue around the corner along the Georgia Avenue frontage; and (3) a change in the hours of operation; and

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WHEREAS, the applicant states that in order to provide the ten reservoir spaces required by the Zoning Resolution and the Board's 2002 grant, the applicant needs to amend the plans to provide the proposed entrance along the Atlantic Avenue frontage to enable the auto laundry customers to enter from Atlantic Avenue; and

WHEREAS, the applicant notes that the auto laundry has been functioning illegally with an entrance via Georgia Avenue that is not contemplated on the previously-approved plans; the proposed amendment will enable the applicant to rectify this illegal condition; and

WHEREAS, the applicant states that the relocation of the auto laundry entrance to Atlantic Avenue will enable the applicant to remove the existing southernmost curb cut on Georgia Avenue; and

WHEREAS, at hearing, the Board directed the applicant to demonstrate the feasibility of the proposed modifications to the car wash layout, in light of the required U-turn vehicles must make at the entrance; and

WHEREAS, in response, the applicant submitted information from the Architectural Graphics Standards, the reference guide used to generate the turning circles depicted on the plans, which reflects that the diameter of the turning circle for mid-size cars is 43'-0", and the diameter of the turning circle for full-size cars is 46'-0"; therefore the proposed layout, which provides 43'-3" of turning space, can accommodate all small- and mid-size vehicles, but certain large vehicles will require attendants to make a three-point turn to enter the car wash; and

WHEREAS, the applicant also submitted a survey of the actual turning circle dimensions for a variety of newly manufactured vehicles, which reflects that virtually all sedans and minivans and most sport utility vehicles have turning circle diameters that will enable them to make the necessary U-turn and maneuver into the car wash lane under the proposed layout, and that only certain types of trucks and large sport utility vehicles exceed the space available and will require attendants to make a three-point turn to enter the car wash; and

WHEREAS, the applicant states that in order to ensure proper maneuvering of vehicles into the car wash entry, it will provide an attendant area where patrons will drop off their vehicles to attendants who will maneuver their vehicle into the car wash entrance while the patron proceeds into the accessory sales center; and

WHEREAS, the Board directed the applicant to install bollards along the property's southern and western lot lines, rather than the proposed metal railings, to enable patrons to access the sidewalk after exiting their vehicles at the attendant area; and

WHEREAS, in response, the applicant submitted revised plans reflecting the installation of bollards along the southern and western lot lines, painted striping to direct vehicles entering the car wash's reservoir lanes and attendant area, and the installation of a sign directing patrons to drop off their vehicles at the attendant area and exit to the sidewalk (where they can proceed to the car wash's accessory sales center); and

WHEREAS, as to the hours of operations, the applicant requests that the car wash be permitted to operate 24 hours per day, while the hours of operation at the lube center will generally be limited to 7:00 a.m. to 7:00 p.m., daily, in accordance with the prior grant; and

WHEREAS, the applicant represents that the 24-hour operation of the car wash will not adversely impact the surrounding area because from the hours of approximately 7:00 p.m. to 7:00 a.m. only exterior washing will be permitted, while interior vacuuming will be prohibited; and

WHEREAS, the applicant states that the extended hours of operation for the car wash will also enable the applicant to clean and maintain the site and its car washing equipment during the slower hours, and will discourage vandalism and graffiti at the site; and

WHEREAS, further, the applicant notes that other car washes in the area remain open for 24 hours a day and that it requests such hours to remain competitive; and

WHEREAS, the Board directed the applicant to notify neighbors within a 200-ft. radius to see if there was any objection to the proposal; and

WHEREAS, the applicant notified the neighbors and the Board did not receive any objections; and

WHEREAS, at hearing, the Board questioned whether the site complies with C4 district signage regulations; and

WHEREAS, in response, the applicant submitted a signage analysis reflecting that the site complies with the C4 district regulations; and

WHEREAS, based upon the above, the Board finds that the requested extension of term, and amendments are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 9, 2002, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the date of the grant, to expire on July 13, 2020; and to permit the noted amendments to the previously-approved plans; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked "June 30, 2010"-(3) sheets and "July 9, 2010"-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on July 13, 2020;

THAT curb cuts, railing, bollards, and signage be installed and maintained, as reflected on the BSA-approved plans;

THAT site operations, including traffic flow and attendant parking, be maintained as reflected on the BSA-approved plans;

THAT signage on the site shall comply with C4 district regulations;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by July 13, 2011;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure

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compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 301084289)

Adopted by the Board of Standards and Appeals, July 13, 2010.

103-05-A

APPLICANT – Rothkrug, Rothkrug, Spector, LLP, for Main Street Make Over 2, Incorporated, owner.

SUBJECT – Application April 20, 2010 – Application to reopen pursuant to a court remand (Appellate Division) for a determination of whether the Department of Buildings issued a permit in error based on alleged misrepresentations made by the owner during the permit application process.

PREMISES AFFECTED – 366 Nugent Street, southwest corner of the intersection of Nugent Street and Spruce Street, Block 2284, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the Appellant seeks to have permits for the construction of a single-family home reinstated, absent City Planning Commission (“CPC”) approval of a restoration plan, for a matter previously before the Board; and

WHEREAS, the Supreme Court, Appellate Division, has remitted the subject case to the Board for further review of a single question related to the Appellant’s construction application, as discussed below; 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 July 13, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

Procedural History

WHEREAS, the case was formerly before the Board subject to a Final Determination issued in response to a request that the Department of Buildings (“DOB”) lift the “Hold” status from DOB Application No. 500584799 so that the associated building permit could be renewed and reinstated; and

WHEREAS, DOB determined that CPC approval of a restoration plan, pursuant to ZR §§ 105-02 and 105-40 was required for the construction of a new home and a retaining wall at the site; the Final Determination reads “Denied. CPC

restoration plan required”; and

WHEREAS, on December 13, 2005, under the subject calendar number, the Board denied the property owner’s appeal of the Final Determination, thus concluding that a restoration plan is required for the home and the retaining wall; and

WHEREAS, the property owner filed an Article 78 proceeding (Mainstreet Makeover 2 Inc. v. BSA, 2008 NY Slip Op 08325 (2d Dept. 2008)), appealing the Board’s decision, and the court overturned the Board; and

WHEREAS, the Board appealed the Supreme Court decision and the Appellate Division provided a modified judgment; the Appellate Division (1) affirmed the portion of the Board’s decision which identified the construction of a new retaining wall as being subject to CPC approval pursuant to ZR § 105-40, (2) denied the property owner’s request to direct DOB to reissue the permits, and (3) remitted the matter to the Board solely for “a determination on the issue of whether DOB issued the permit in error based upon alleged misrepresentations made by the architect during the permit application process with respect to plans to demolish the existing home and construct a new one on a different portion of the lot”; and

WHEREAS, the Appellate Division concluded that the property owner must seek CPC approval for the retaining wall, but that the requirement for CPC approval for the home construction is based on whether or not the Board determines that “DOB issued the permit with knowledge of the petitioner’s plans, such that it cannot be said that the DOB issued its permit based upon erroneous presumptions due to misrepresentations”; and

WHEREAS, pursuant to the Court’s order, if the Board finds that DOB did have knowledge of the full extent of the Appellant’s plans, then the Board should direct DOB to renew and reinstate the permits, without the requirement for CPC approval of the demolition and construction of the home; and

WHEREAS, however, if the Board finds that DOB did not have knowledge of the full extent of the plans, then the Board must require the Appellant to secure CPC approval for the home’s demolition and new construction; and

WHEREAS, accordingly, the scope of the Board’s review is limited to whether the property owner misrepresented the extent of the demolition and construction of the home; none of the other issues of the original appeal, such as the analysis of the retaining wall, are under review; and

The Facts

WHEREAS, the following facts are agreed upon by all parties; and

WHEREAS, the subject site is an approximately 100 ft. by 130 ft. lot, with 12,072 sq. ft. of lot area, and is located within an R1-2 zoning district within the Special Natural Area District, NA-1 (“SNAD”); and

WHEREAS, the site was previously occupied by a two-story, single-family home with 1,417 sq. ft. of floor area constructed around 1920 (the “Original Home”); and

WHEREAS, the Appellant demolished the Original Home and constructed a new three-story home with 5,052 sq. ft. of floor area (the “New Home”) on a completely different footprint on a different portion of the lot; and

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WHEREAS, all parties agree that the Appellate Division has directed the Board to consider all relevant documents associated with the DOB approval in its analysis of whether or not there was misrepresentation; and

WHEREAS, the key documents which led to the approval of the plan to demolish the Original Home and build the New Home, without CPC approval are: (1) a pre-consideration, dated November 8, 2002, signed by the project architect and approved by then Borough Commissioner Canepa (the "Pre-Consideration"); (2) the building plans, filed January 28, 2003 with the Pre-Consideration and approved March 3, 2003, (the "Plans"); and (3) the PW-1 Alteration application documents, stamped September 29, 2003 (the "Application Documents"); and

WHEREAS, the Pre-Consideration, which was submitted and approved without any corresponding plans, states, in pertinent part:

The client intent is to enlarge the existing house and to replace and relocate the existing square footage so as to be in compliance with existing zoning and to upgrade the structural integrity of the structure. In addition, the client intends to increase the square footage of the residence . . .

As a structure built prior to the establishment of the Special Natural Area District in 1974 all alterations may be made without filing with the City Planning Commission . . . as a 'new building' application it would have to go to the City Planning Commission for approval as a 'new development' which clearly dose [sic] not truly represent this house accurately; and

WHEREAS, the Plans reflect the complete demolition of the Original Home and the construction of the New Home on a new footprint, with a new foundation, new floors, new walls, and a new roof, entirely unrelated to the Original Home; and

WHEREAS, the Plans also reflect the construction of a retaining wall, excavation, filling, and changes in topography and the existing drainage system; and

WHEREAS, the Application Documents describe a "horizontal enlargement," "vertical enlargement," and "partial demolition" of the existing two-story one-family home and "an increase of existing floor area by 3,569 sq. ft.; and The Appellant's Primary Arguments

WHEREAS, the Appellant asserts the following primary arguments to support its claim that it did not misrepresent the extent of the proposed construction: (1) the application was approved pursuant to DOB's Technical Policy and Procedure Notice #1/02 ("TPPN 1/02"), which provides for certain construction to be exempted from the requirement of filing a new building application; (2) DOB understood that the Appellant was trying to avoid the requirement for CPC approval; and (3) DOB, including then-Borough Commissioner Canepa, who approved the Pre-Consideration, had an understanding of the full extent of the construction; and

WHEREAS, the Appellant asserts that TPPN 1/02 states that a new building application is required for alterations where an existing building is completely demolished to grade or more than 50 percent of the area of exterior walls of a building are

removed in addition to removal of the roof and all floors above grade, and any portion of the foundation system is altered or enlarged, except where such requirement is waived by a Borough Commissioner, in certain circumstances; and

WHEREAS, TPPN 1/02's exception provision at the time of the Appellant's approval (it has since been modified) is as follows:

The Borough Commissioner, upon review, may grant exceptions to the requirements for a "New Building" application set forth above when a building is subject to specific zoning provisions for existing buildings by virtue of its being located in a special use district or otherwise subject to special permit provisions from . . .

. City Planning Commission, and classification as a "new building" would adversely affect its status under "existing building" provisions; and

WHEREAS, the Appellant's architect also noted that since the Original Home was built prior to the 1974 establishment of the Special Natural Area District, all alterations may be made without filing with CPC; and

WHEREAS, the Appellant asserts that it was clear in its filing that the intent was to avoid the requirement for CPC review and approval of a restoration plan; and

WHEREAS, the Appellant concludes that because the intention of avoiding CPC review was known, there was not any misrepresentation as to the extent of the construction plans; and

WHEREAS, the Appellant concludes that because (1) the TPPN does not include language that prohibits a determination that the subject construction be considered an alteration, rather than a new building, (2) application materials identified the objective of bypassing CPC review, and (3) the Plans reflect the demolition of the Original Building and construction of the New Building, DOB understood the full extent of the proposed construction; and

WHEREAS, the Appellant asserts that the plans establish a basis for DOB's understanding that the Original Home would be demolished and yet the proposal would be accepted as an alteration-type application; and

WHEREAS, as to the Application Documents, the Appellant notes that it stated that there will be "relocation of existing square footage" and noted that demolition will occur, which suggests that there was not any misrepresentation; and

WHEREAS, finally, at hearing, the Appellant also stated that DOB directed it to use the noted terminology in its Pre-Consideration and Application Documents and that because the plans did not require the capping of the Original Home's sewer line, it was not technically a demolition, despite complete demolition of the Original Home's structure and failure to re-use any part of it; and

DOB's Response

WHEREAS, DOB states that it issued New Building Permit No. 500584799 in error based on misrepresentations made by the owner during the permit application process with respect to the owner's plans to demolish the Original Home and construct a New Home on a different portion of the lot; and

WHEREAS, DOB reiterates its arguments from the 2005 Appeal that the relevant question is whether the development is

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a site alteration subject to CPC approval and not whether the correct application was filed, however, in direct response to the Appellate Division's remand, it provides the following arguments in support of its claim that the Appellant misrepresented its plans throughout the process; and

WHEREAS, DOB refers to its October 11 and November 22, 2005 responses in the 2005 Appeal for its arguments as to whether there was misrepresentation; and

WHEREAS, DOB states that its prior letters provide sufficient facts to establish that the owner misrepresented the nature and scope of the proposed work in order to secure a permit allowing an application to be filed as an "alteration" rather than a "development" in order to avoid CPC review pursuant to ZR §§ 105-02 and 105-40; and

WHEREAS, DOB maintains its position that the Appellant's pre-consideration request was an inaccurate representation of the proposed work, given the scope of the work filed for under the application and performed at the site; and

WHEREAS, DOB cites to the prior Board resolution, which states that "the construction of a dwelling with its own foundations on a portion of the lot previously unoccupied can in no way be characterized as an alteration of an existing building, especially where such existing building was located on another part of the lot and completely demolished . . . and logically, it can only be construed as construction of a new building on the lot, which falls squarely within the definition of 'development'"; and

WHEREAS, further, DOB notes that the resolution states that "the architect's pre-consideration request does not accurately reflect either the actual nature of the work proposed under the Application nor the actual work that occurred"; and

WHEREAS, additionally, DOB cites that the Board stated that "based upon the inaccurate representations made by the architect, the Board is unsurprised that permission was granted to file the proposed work as an alteration-type application rather than as a new building"; and

WHEREAS, the Board agrees with DOB that it analyzed the question of misrepresentation in the prior decision, as noted above, and concluded that the Appellant had misrepresented its plans to DOB through a series of inaccurate written statements; and

WHEREAS, although DOB finds that the Board has already decided that there was misrepresentation, in furtherance of the Court's order, it sets forth the following assessment anew: there is a contrast between the Pre-Consideration and the Application Documents which shows that the Appellant misrepresented the work as an enlargement when seeking permission to file an alteration-type permit application and submitted the pre-consideration grant with the Plans to demolish the Original Home and construct the New Home and retaining wall when it applied for the permit; and

WHEREAS, as noted above, in the pre-consideration request, the Appellant stated an "intent to enlarge the existing house and to replace and relocate the existing square footage . . . and to upgrade the structural integrity of the structure," "to increase the square footage of the residence" and concludes that "an application . . . for approval as a 'new development' . . .

clearly dose [sic] not truly represent this house accurately"; and

WHEREAS, DOB notes that the former Staten Island Borough Commissioner Jorge Canepa granted the pre-consideration request on November 8, 2002, without the benefit of seeing the plans that were filed on January 28, 2003, with the signed pre-consideration request; and

WHEREAS, DOB notes that the Pre-Consideration describes an enlargement, while the Plans, show something drastically different: the demolition of an existing two-story 1,417 sq. ft. building and the construction of a three-story 5,052 sq. ft. building on a new footprint, with a new foundation, new floors, new walls and a new roof, entirely unrelated to the Original Home; and

WHEREAS, DOB states that the Appellant further obscured the true nature of the scope of work by describing it in the Application Documents as a "horizontal enlargement, "vertical enlargement" and "partial demolition" of the existing two-story one-family residential building with cellar and an "increase of existing floor area: by 3,569 sq. ft.; and

WHEREAS, DOB asserts that the Appellant sought preliminary approval for work that he falsely portrayed as an enlargement in order to obtain a permit for demolition and new construction without triggering the requirement for CPC approval; and

WHEREAS, DOB contends that it is not necessary to know whether former Borough Commissioner Canepa understood the true nature of the work at the time he granted the pre-consideration request in order to decide the matter on appeal; and

WHEREAS, DOB contends that Mr. Canepa's personal belief is not relevant because the written record establishes that the Appellant's pre-consideration request inaccurately describes the work for which it later sought a permit; and

WHEREAS, DOB states that it is not reasonable to argue that the written record is an accurate and complete description of work only if it is supplemented by a DOB employee's knowledge of additional information that is undocumented and may be inconsistent with that record; and

WHEREAS, DOB notes that DOB clerks, inspectors, attorneys, and the public rely on the accuracy and completeness of information contained within application documents and written records; and

WHEREAS, finally, DOB states that although TPPN 1/02 did not set forth a numerical standard for how much of a building could be demolished and still be considered an alteration, DOB did not have a policy of issuing waivers from the requirement to file new building type applications consistent with the TPPN in instances where an entire existing building would be demolished and a new building would be built in a different location; and

Conclusion

WHEREAS, the Board has reviewed TPPN 1/02 and agrees with the Appellant that it does not set forth any specific criteria for when a proposal may be eligible for the exception to the requirement for filing a new building application; and

WHEREAS, however, the Board does not agree that the absence of such criteria establishes that there is not any limit to how much of a building can be demolished and still fit within

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the available exception and accepts DOB's assertion that borough commissioners did not have discretion to accept the entire spectrum of construction proposals, including one like the subject proposal, that provided for the complete demolition of the Original Home and the construction of a completely unrelated New Home, as fitting within an exception; and

WHEREAS, the Board notes that the exception to the requirement for a new building filing is just that, an exception, and should not be construed to allow for the broadest interpretation as the Appellant suggests; and

WHEREAS, the Board finds the Appellant's contention that, because it revealed the fact that it was seeking to avoid CPC review, it did not misrepresent its plans, to be unconvincing; and

WHEREAS, further, the Board recognizes that TPPN 1/02 specifically notes the ability to avoid CPC review; however, the Board does not find awareness of the Appellant's intent to bypass the review or consideration that the TPPN addresses such review, to lead to the conclusion that there was not misrepresentation as to the extent of the proposed construction; and

WHEREAS, the Board reviewed the Pre-Consideration, the Plans, and the Application Documents and finds that (1) the Pre-Consideration, when read independently and when considered in the context of being presented at the beginning of the approval process, suggests work that does not rise to the level of the demolition of the Original Home and construction of the unrelated New Home, (2) the Plans reflect more extensive construction, and (3) the Application Documents, again, reflect a lesser degree of construction; and

WHEREAS, the Board finds that, viewed independently, each of the three noted sources describe a different construction plan and that there is not any explanation for changing the description of the plan at different stages of the review process other than error or misrepresentation; and

WHEREAS, the Board notes that the Appellant states that the language used to describe the project was deliberate, thus there is not any suggestion that the changes in the way the project was described was an error; and

WHEREAS, the Board asked the Appellant why it did not clearly state its plans to demolish the Original Home rather than describe it as an enlargement and relocation of floor area, and was unconvinced by the Appellant's response that this was DOB policy because, since there was an exception to the requirement to file a new building permit, there does not appear to be any reason to avoid accurately describing the project; and

WHEREAS, further, the Board notes that if the Borough Commissioner had such broad discretion to apply the exception, pursuant to TPPN 1/02, as the Appellant suggests, then an accurate description of the proposal should not have interfered with the approval; and

WHEREAS, the Appellant has failed to provide any evidence of a DOB policy to manipulate commonly understood land use terms such as "enlargement" and "floor area" or to establish that there was any policy, or otherwise any logical reason, to describe the same project differently at different states of the approval process; and

WHEREAS, the Board agrees with DOB's position that

the body of DOB records, including plans and communication between property owners and DOB employees, is given considerable weight and that those records are afforded great deference as they are what is relied upon in light of the passage of time and potential changes in DOB staff; and

WHEREAS, accordingly, the Board denies the Appellant's request to subpoena testimony from former Borough Commissioner Canepa because it finds that any conversation from 2002, if it could even be recalled, would not supersede a series of communication as recorded in official DOB documents; and

WHEREAS, the approvals arise from and are memorialized in the approved documents – written text and illustrations – not from conversations, of which there is no record; and

WHEREAS, the Board notes that the Appellant submitted a copy of the Pre-Consideration with all subsequent filing materials at DOB even though the Pre-Consideration was granted in the absence of any plans and, thus, bears no relationship to the Plans, which were never before former Borough Commissioner Canepa at the time of the Pre-Consideration; and

WHEREAS, this fact – that Mr. Canepa's Pre-Consideration arose at the early stage of the approval process – is further reason for denying the Appellant's request to subpoena testimony from Mr. Canepa, because he did not have the benefit of reviewing and approving the Plans, which are part of the entire approval process under review per the remand, with the pre-consideration request; and

WHEREAS, in conclusion, the Board notes that the Appellant represented in its Pre-Consideration and Application Documents that it planned to "enlarge the existing house," "upgrade [its] structural integrity," and "increase the square footage of the residence;" and

WHEREAS, the Appellant, admittedly, relied on statements, including the above-noted language, to obtain an approval that would allow it to avoid CPC review of its plans; and

WHEREAS, in light of the fact that the Appellant instead completely demolished the Original Home and constructed a New Home with no relationship to the Original Home, the Board concludes that the Appellant misrepresented the extent of its construction plan and its proposal, like the proposal for the retaining wall, is subject to CPC review; and

WHEREAS, the Board notes that the Appellant also stated in the Application Documents that "the intent of [the TPPN's] exclusion clause was to specifically address the problem faced by like homeowners attempting to improve their homes;" and

WHEREAS, bearing in mind the Appellant's own words, the Board identifies a connection between a goal of improving one's home set forth in the Application Documents and the elements of the Pre-Consideration (enlargement, upgrading structural integrity, and increasing floor area), but is unable to find any connection between either of those proposals and the complete demolition of a home, which far exceeds any notion of improving one's home or upgrading its structural integrity; and

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WHEREAS, accordingly, the Board has determined that the Appellant misrepresented its plans to DOB during the process of seeking DOB approval.

Therefore it is Resolved that the answer to the court's question on remand as to whether there was misrepresentation on behalf of the Appellant in the context of DOB Application No. 500584799 is affirmative.

Adopted by the Board of Standards and Appeals, July 13, 2010.

111-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application to reopen pursuant to court remand (Appellate Division) to revisit the findings of a Special Permit (§73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and perimeter wall height (§23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD# 15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez

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Recused: Commissioner Hinkson.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 6, 2006, acting on Department of Buildings Application No. 301914178, reads:

“Provide minimum side yards as per ZR 23-48

FAR exceeds that permitted by ZR 23-141

Proposed wall height exceeds that permitted by ZR 23-631;” and

WHEREAS, as will be discussed in more detail below, the applicant represents that it has resolved the non-compliances related to the side yards and height; and

WHEREAS, accordingly, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the legalization of an enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”) and open space, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on January 26, 2010 after due notice by publication in *The City Record*, with continued hearings on March 9, 2010, April 13, 2010, and June 8, 2010, and then to decision on July 13, 2010; and

WHEREAS, the premises and surrounding area had

site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, on April 24, 2007, the Board denied an application for the legalization of the enlargement of a home at the site, upon a finding that the construction that occurred at the site failed to meet the required finding of an enlargement of an existing building, as set forth in ZR § 73-622, but rather constituted the construction of a new building; and

WHEREAS, in the absence of a positive determination on the threshold finding, the Board did not make the remainder of the special permit findings; and

WHEREAS, on May 25, 2007, the applicant commenced an Article 78 proceeding in Kings County Supreme Court to review the Board's determination; and WHEREAS, on November 20, 2007, the Supreme Court granted the petition, directing the Board to grant the application; the Board appealed this decision; and

WHEREAS, on September 22, 2009, the Appellate Division, Second Department, concurred that the Board should not deny the application based on a failure to establish that the home constitutes an enlargement and remanded the matter back to the Board to review the findings of the special permit, pursuant to ZR §§ 73-622 and 73-03, specifically the question of whether the home was compatible with neighborhood character; and

WHEREAS, the Appellate Division held that in this case, the Board must accept that the applicant satisfies the criteria for an enlargement, specifically due to special and unforeseen circumstances requiring the demolition of the pre-existing building; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application, with the following primary concerns: (1) the proposal is new construction rather than an enlargement, and therefore is not eligible for the special permit; (2) the perimeter wall height is greater than the maximum permitted height of 21'-0” and the total height is greater than the maximum permitted height of 35'-0”; (3) the grade level is not depicted accurately on the plans; and (4) the plans DOB approved subsequent to the Board's 2007 denial should not have been approved; and

WHEREAS, the Board notes that 19 community members submitted consent forms in support of the application; and

WHEREAS, as to the Opposition's argument that the applicant demolished the previously existing home and the current proposal constitutes new construction which is not eligible for the subject special permit, the Board notes that the issue of whether the home is eligible for the special permit is not currently before it, as the Appellate Division has ordered the Board to accept the building as meeting the special permit threshold requirement and remanded the case to the Board solely to review the remaining findings of the special permit; and

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WHEREAS, the subject site is located on the west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, in the Manhattan Beach neighborhood of Brooklyn; and

WHEREAS, the subject site has a total lot area of 3,241 sq. ft.; and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks to legalize the existing floor area of 2,550 sq. ft. (0.79 FAR); the maximum permitted floor area is 1,620 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to legalize the open space ratio of 64.5 percent (65 percent is the minimum required); and

WHEREAS, as noted, the applicant represents that since the Board's denial of the original application, it has cured the objections issued by DOB related to side yards and perimeter wall height, and that the only remaining non-complying conditions are FAR and open space; and

WHEREAS, the Board notes that DOB has reviewed plans subsequent to the Board's denial, including as-of-right plans to obtain permits so that construction could continue at the site in 2007; and

WHEREAS, the Board notes that the applicant made certain modifications to the plans originally submitted to the Board and since the as-of-right plans were submitted to DOB, including sloping the wall to cure side yard non-compliance; and

WHEREAS, the applicant submitted a December 15, 2009 inspection report from DOB and represents that it reflects DOB's approval of the current building envelope, such that side yard and height relief is not required; and

WHEREAS, however, the Opposition maintains that the subject home has a non-complying perimeter wall height of approximately 29'-10" (the maximum permitted is 21'-0"), a non-complying total height of approximately 41'-5" (35'-0" is the maximum permitted), and that the grade level is not appropriately measured; and

WHEREAS, the Board notes that it does not have the authority under ZR § 73-622 to waive the perimeter wall height or total height and that the applicant is not seeking such waivers; and

WHEREAS, the compliance of the building envelope, including perimeter wall height and total height, will be subject to DOB review; and

WHEREAS, as to the Opposition's concerns about the plans the applicant submitted in 2007 so that it could continue construction, the Board does not find that to be relevant to the review of the subject special permit application since the subject application is for the legalization of the existing building, as reflected on the current plans, which will be reviewed and approved by DOB subsequent to the Board's approval; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding

area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, in an R3-1 zoning district, the legalization of an enlargement of a single-family home, which does not comply with the zoning requirements for FAR and open space, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 21, 2010"-(16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,550 sq. ft. (0.79 FAR); a minimum open space of 64.5 percent; a side yard with a minimum width of 0'-11" along the northern lot line; a side yard with a minimum width of 4'-9" along the southern lot line; a maximum perimeter wall height of 21'-0", and a maximum total height of 35'-0"; as illustrated on the BSA-approved plans;

THAT DOB shall review the building envelope, including the perimeter wall height and total height for compliance with relevant zoning regulations;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, July 13, 2010.

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280-09-A

APPLICANT – NYC Board of Standards and Appeals
SUBJECT – Review of Board decision pursuant to Sec 1-10(f) of the Board’s Rules and 666(8) of the City Charter of an appeal challenging the Department of Building’s authority under the City Charter to interpret or enforce provisions of Article 16 of the General Municipal Law relating to the construction of a proposed 17 story residential building. R10A zoning district.

PREMISES AFFECTED – 330 West 86th Street, south side of West 86th Street, 280 feet west of the intersection of Riverside Drive and West 86th Street, Block 1247, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Albert Fredericks and Ken Kurland of HPD.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the appeal comes before the Board in response to a Final Determination letter dated July 13, 2009 and affirmed on September 8, 2009, from the Manhattan Borough Commissioner of the Department of Buildings (“DOB”) (the “Final Determination”) addressed to a representative of the subject property owner (330 West 86th Street LLC, the “Appellant”)1, with respect to DOB Application No. 110193102; and

WHEREAS, the Final Determination states, in pertinent part:

Article 16 of the General Municipal Law (“GML”) limits development of subject buildings to low rise structures with one to four dwelling units. As your client’s proposed development is more than 75 feet in height, it is a ‘high rise’ as defined in the New York City Building Code and thus not in compliance with the requirements of the GML, the applicability of which, to the subject property has been confirmed by the Court of Appeals decision in *328 Owners Corp. v. 330 West Oaks Corp.* and the City of New York, reported at 8 N.Y. 3d 372 (2007); and

WHEREAS, a public hearing was held on this appeal on January 26, 2010, after due notice by publication in *The City Record*, with a continued hearing on March 23, 2010, and then to decision on April 20, 2010 (the “April Resolution”); and

WHEREAS, subsequent to the Board’s decision, the Board received (1) a request from the Department of Housing Preservation and Development (“HPD”) to modify, but not

reverse, the April Resolution to eliminate a portion of the determination, (2) a request from a representative of two neighboring buildings at 328 West 86th Street and 332 West 86th Street (the “Neighbors”) that the case be re-heard, vacated, or dismissed based on procedural concerns, (3) service of an Article 78 proceeding from the Neighbors (*328 Owners Corp. and 86th Apartment Corporation v. Board of Standards and Appeals et al*, Index No. 106677/10), and (4) submissions from the Appellant in response to HPD and the Neighbors and stating opposition to the request to modify the April Resolution or otherwise disturb the decision based on procedural grounds; and

WHEREAS, the Board received written testimony in opposition to the April Resolution and in support of HPD’s request from City Council Member Gale Brewer; State Senator Eric T. Schneiderman also provided written testimony in opposition to the April Resolution; and

WHEREAS, additionally, certain community members provided written testimony in opposition to the proposed construction; and

WHEREAS, the Board re-opened the case to consider whether to modify its decision and a public hearing was held on this application on June 15, 2010, after due notice by publication in *The City Record*, and then to decision on July 13, 2010; and

WHEREAS, at the public hearing on June 15, 2010, the Board voted in favor of reviewing the April Resolution, pursuant to § 1-10(f) of the Board’s Rules of Practice and Procedure; and

WHEREAS, accordingly, this resolution supersedes the resolution dated April 20, 2010; and

WHEREAS, a representative of HPD, the Appellant, and the Neighbors provided testimony at the hearing; and

WHEREAS, City Council Member Gale Brewer, a representative of State Assembly Member Linda Rosenthal, a representative of the Coalition for a Livable West Side, a representative of the West 86th Street Neighborhood Association, and a representative of Community Board 7 provided testimony in opposition to the application and in support of HPD’s request to modify the Board’s decision; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, during the original hearing process, Board staff reached out to HPD to inquire if it had a direct response to the matters of the appeal; and

WHEREAS, HPD ultimately submitted on the matters raised during the appeal, in support of DOB’s position as expressed through its submissions and testimony; and

Procedural History

WHEREAS, the subject appeal concerns the proposed construction of a 17-story (including penthouse) four-unit building at 330 West 86th Street on a site that is currently occupied by a five-story eight-unit building, within an R10A zoning district; and

1 The Board notes that the ownership of the property has changed since the issuance of the Final Determination and the commencement of the appeal, but that counsel for the original Appellant is authorized by the new owner to pursue the appeal and has the same interest as the original owner. “Appellant” signifies prior and current owner.

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WHEREAS, the site is the subject of a 1999 Urban Development Action Area Project (“UDAAP”), which, at HPD’s request, the City, which had acquired the site through an *in rem* proceeding, conveyed to the then-tenants – organized as 330 West Oaks Corp. (“Oaks Corp.”) – through the accelerated UDAAP process; and

WHEREAS, in approving the project, City Council waived the otherwise applicable requirements that a UDAAP initiative be part of a designated Urban Development Action Area (“UDAA”) and undergo the more extensive Uniform Land Use Review Procedure (“ULURP”) review; and

WHEREAS, in 2001, Oaks Corp. sold the building to the Appellant; and

WHEREAS, in anticipation of that sale, the cooperative corporation that owns the adjacent building to the east at 328 West 86th Street (“328 Owners Corp.”), commenced litigation against Oaks Corp. and the City asserting that (1) the site could only be used for rehabilitation or conservation of the existing building or the construction of a new one to four unit dwelling, (2) the new owner must adhere to the restrictions associated with the grant and the original owner, and, in the alternative, and (3) the City’s conveyance to Oaks Corp. should be declared null and void; 328 Owners Corp. added the Appellant as a party to the litigation after it acquired the site; and

WHEREAS, the City asserted cross claims that (1) the site could only be used for rehabilitation or conservation of the existing building and (2) the owner and all successors must be restricted to using the site as described in the associated deed (the “Deed”); and

WHEREAS, the Court of Appeals, by decision dated April 3, 2007, determined that (1) there is a restriction limiting the use of the property to the rehabilitation or conservation of the building or the construction of a new one to four unit building, and (2) such a restriction is binding on subsequent owners of the site, including the Appellant (although the Court states that a property owner may seek to have the restrictions extinguished, pursuant to Real Property Actions and Proceedings Law § 1951, so that they would not run in perpetuity); and

WHEREAS, the Court noted that Article 16 of the General Municipal Law (“GML”), which sets forth the UDAA Act, should be read into the Deed, but that neither the Deed nor the GML limits the construction on the site to conservation of the existing building; and

WHEREAS, the outstanding question about the effective period of the Deed restrictions is not the subject of this appeal, which is limited to the Final Determination; and

WHEREAS, after the Court of Appeals decision, the Appellant filed an application at DOB for a new building permit in June 2008; the Appellant represents that a 17-story building has been under DOB review since at least 2000 and that the building complies with all relevant zoning requirements; and

WHEREAS, on May 7, 2009, DOB issued a notice of objections, which states that per the GML:

The proposed height fails to comply with and is in excess of the use restrictions of Article 16 of the General Municipal Law, which restrictions have been

confirmed by and are reflected in the final judgment and permanent injunction affirmed by NY Court of Appeals in 328 Owners Corp. v. 330 West Oaks Corp., and the City of New York, reported at 8 N.Y.3d 372 (2007). The proposed building meets the definition of high rise per Building Code because it has occupied floors located more than 75 feet (22 860 mm) above the lowest level of fire department vehicle access; and

WHEREAS, the May 7, 2009 objection is the basis for the Final Determination on appeal; and

WHEREAS, the Appellant asserts that DOB’s determination is erroneous because (1) enforcement of the UDAA Act falls outside of DOB’s authority under the City Charter and (2) nothing in the UDAA Act or in any administrative determination, court decision or legal instrument concerning the site imposes such a height limit; and Relevant Provisions of the the General Municipal Law and the Deed

WHEREAS, the source of the Deed language is within the GML’s provisions setting forth the criteria for the accelerated UDAAP process; GML §§ 693 and 694, which state, in pertinent part:

. . . if a proposed urban development action area project is to be developed on an eligible area and consists solely of the rehabilitation or conservation of existing private or multiple dwellings or the construction of one to four unit dwellings without any change in land use permitted by local zoning, the governing body . . . may waive the area designation requirement. (GML § 693)

Any approval of an urban development action area project shall be in conformance with the standards and procedures required for all land use determinations pursuant to general, special or local law or charter . . . (GML § 694(5)); and

WHEREAS, the pertinent provision of the Deed between the City and Oaks Corp. is as follows:

WHEREAS, the project to be undertaken by Sponsor (‘Project’) consists solely of the rehabilitation or conservation of existing private or multiple dwellings or the construction of one to four unit dwellings without any change in land use permitted by existing zoning . . . ; and

The Appellant’s Primary Argument

- Enforcement of the UDAA Act is Beyond DOB’s Statutory Jurisdiction

WHEREAS, the Appellant, citing Abiele Contracting, Inc. v. New York City School Construction Authority, 91 N.Y.2d 1, 10 (1997); Finger Lakes Racing Ass’n. Inc. v. New York State Racing and Wagering Board, 45 N.Y.2d 471, 480, asserts that an administrative agency can only act within the scope of the authority granted it by statute and that a determination made in excess of that authority is unlawful and void; and

WHEREAS, the Appellant cites to City Charter § 643 for the function of DOB; City Charter § 643, states, in pertinent part:

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The department shall enforce, with respect to buildings and structures, such provisions of the building code, zoning resolution, Multiple dwelling law, labor law and other laws, rules and regulations as may govern construction, alteration, maintenance, use occupancy, safety, sanitary conditions, mechanical equipment and inspection of buildings or structures of the city; and

WHEREAS, the Appellant cites to City Charter § 645, which provides that the Commissioner of Buildings is empowered:

(1) to examine and approve or disapprove plans for the construction or alteration of any building or structure... (2) to require that the construction or alteration of any building or structure, including the installation or alteration or any service equipment therein, shall be in accordance with the provisions of law and the rules, regulations and orders applicable thereto... (3) to issue certificates of occupancy for any building or structure situated in the city; and

WHEREAS, the Appellant asserts that DOB's review, pursuant to the Charter, is limited to the enforcement of technical standards found in the Building Code, the Zoning Resolution, and the Multiple Dwelling Law; and

WHEREAS, the Appellant relies on Matter of Tafnet Realty Corp. v. New York City Dep't. of Buildings, 116 Misc.2d 609 (Sup. Ct. NY Co. 1982), which involved DOB's issuance of housing violations against a hotel, for matters including rent control regulations and tenant harassment; and

WHEREAS, the Tafnet court held that:

the duties of the Buildings Commissioner, as set forth in the city charter, deal 'exclusively' with structural and technical matters: the enforcement of the Building Code, the inspection of premises and the review of plans and issuance of permits. . . General living conditions are not within [the Commissioner's] jurisdiction; neither are violations of other laws, civil, or criminal, which may occur within buildings or structures . . . It is improper for the Buildings Commissioner to use revocation of a building permit as punishment for activity outside the scope of his jurisdiction, and which he has no independent knowledge, as a means of effecting policies of other city agencies; and

WHEREAS, the Appellant asserts that the UDAA Act does not establish technical standards and specific regulations applicable to the construction, alteration or use of buildings but, rather, addresses community preservation and redevelopment goals; and

WHEREAS, the Appellant asserts that the UDAAP program is administered by HPD and DOB does not have a specific role in its implementation; and

WHEREAS, the Appellant asserts that GML § 692 and City Charter § 1802(3) grant HPD the authority for implementation and oversight of UDAAP projects and further that HPD has its own set of regulations which describe procedure and restrictions with more specificity; and

WHEREAS, GML § 692(4) (Definitions) identifies

HPD's authority and states:

'Agency'. The officer, board, commission, department, or other agency of the municipality designated by the governing body, or as otherwise provide by law, to carry out the functions vested in the agency under this article or delegated to the agency by the governing body in order to carry out the purpose and provisions of this article, except that in a city having a population of one million or more, the term 'agency' shall mean a department of housing preservation and development; and

WHEREAS, City Charter § 1802(3) (Department of Housing Preservation and Development – Powers and Duties of the Commissioner) includes:

all functions of the city, and all powers, rights and duties as provided by any federal, state or local law or resolution, relating to slum clearance, slum prevention and urban renewal; neighborhood conservation; prevention and rehabilitation of blighted, substandard, deteriorated or unsanitary areas, and publicly-aided and public housing . . . ; and

WHEREAS, further, the Appellant asserts that the primary mechanism for ensuring compliance with the restrictions of a particular UDAAP project are set forth in a deed or lease or other instrument associated with the City's conveyance of the property; and

WHEREAS, the Appellant asserts that HPD has the enforcement authority and it may enforce the restrictions through its own process or in collaboration with the New York City Law Department; and

WHEREAS, the Appellant asserts that in the absence of express authority to DOB for the enforcement of UDAAP-related interests, HPD maintains the appropriate authority; and

WHEREAS, the Appellant distinguishes the Building Code, Zoning Resolution and Multiple Dwelling Law from the UDAA Act, asserting that the latter does not establish technical standards and specific regulations applicable to construction, alteration or use of buildings but which is designed for public policy initiatives; and

WHEREAS, the Appellant states that the UDAA Act is similar to programs such as Urban Renewal and those administered by the Empire State Development Corporation, in which publicly-owned property is conveyed to private entities, subject to various restrictions designed to ensure that the property will be redeveloped and used in a way that benefits the surrounding community and the general public and that the UDAA Act is designed to further broad community preservation and redevelopment goals and does not establish technical standards that are within DOB's authority; and

WHEREAS, drawing a parallel to the Urban Renewal program, the Appellant cites to a letter from DOB, dated August 2, 2006, in response to residents' inquiry about the enforcement of Urban Renewal provisions at a site subject to an Urban Renewal Plan and DOB stated that it did not interpret or enforce the noted contract terms and referred the inquiry to HPD; and

WHEREAS, specifically, DOB states that "The Department of Buildings does not interpret or enforce

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provisions of the contracts referenced in your letter in its permitting process” and refers the concerned party to HPD, “which is the agency upon which has devolved primary responsibility for overseeing the contracts you have referenced”; and

WHEREAS, DOB disagrees with the Appellant and states that its Charter authority encompasses the UDAA Act for purposes of determining whether a new building application conforms with legal requirements; and

WHEREAS, DOB asserts that the enforcement of the UDAA Act, pertaining to new construction on accelerated UDAAP sites, such as the subject site, is within its jurisdiction; and

WHEREAS, DOB cites to its broad authority as set forth in City Charter §§ 643 and 645, noted above; and

WHEREAS, DOB asserts that nothing in the express language of the Charter prohibits it from considering the provisions of the UDAA Act in connection with new building applications; and

WHEREAS, DOB states that HPD does not have a statutory role in the disposition of a new building application or in the enforcement of the UDAA Act’s provisions pertaining to new construction; and

WHEREAS, DOB states that the Law Department has advised that under the UDAA Act, HPD’s role in accelerated UDAAPs consists of selecting City-owned properties for disposition pursuant to the statute, selecting grantees, negotiating terms, obtaining necessary public approvals, drafting the deed and conducting the closings; and

WHEREAS, accordingly, DOB asserts that HPD’s role ends after the disposition and that DOB has the authority to enforce provisions of law, but not the Deed, which remains subject to HPD; and

WHEREAS, DOB states that, in the subject case, it is not enforcing the Deed, but rather the law; and

WHEREAS, DOB states that the UDAA Act sets forth specific limitations as to what may or may not lawfully be constructed upon the site and, thus, the provisions fall within its purview; and

WHEREAS, DOB states that the UDAA Act is silent as to the authority to enforce construction limitations (as opposed to Deed restrictions) and, thus, it is appropriately within DOB’s authority since it is charged with enforcing construction laws, regulations and rules upon buildings and structures within New York City; and

WHEREAS, DOB distinguishes UDAA Act enforcement responsibilities, which it assumes because it finds that no other agency is identified as enforcing it, from the provisions at issue in Tafnet, where the Court identified the operative agencies who had enforcement powers, rather than DOB; and

WHEREAS, DOB asserts that in the absence of express authority, it may invoke broad Charter authority because no other agency has broad authority to enforce construction-related regulation; and

WHEREAS, HPD agrees with DOB that DOB has jurisdiction to enforce the UDAA Act; and

WHEREAS, HPD submits that DOB exercises

jurisdiction from a practical standpoint because only DOB reviews a proposal at its inception and could stop a project before construction begins; and

WHEREAS, HPD asserts that its process of enforcement would be less efficient than that exercised by DOB because it could not raise a claim that a deed was violated until after the property owner demolished the building and construction on a new one began; and

WHEREAS, accordingly, although all parties – the Appellant, DOB, and HPD - agree that HPD has jurisdiction over the Deed, they disagree as to which agency maintains jurisdiction to enforce the UDAA Act; and

The Appellant’s Alternate Argument

– There was Not a Sufficient Basis for DOB to Issue the Objection

WHEREAS, the Appellant has stated that its primary argument is that DOB lacks the authority to enforce the UDAA Act, but that, if the Board were to disagree, and find that DOB acted appropriately in the subject case, then, it proffers the alternate argument that even if the UDAA Act were within DOB’s jurisdiction, there is no basis for the requirement that a new building be low-rise as defined by the Building Code; and

WHEREAS, the Appellant asserts that the UDAA Act provides procedural guidelines as to when the accelerated UDAAP is permitted, including instances where the project “consists solely of the rehabilitation or conservation of existing private or multiple dwellings or the construction of one to four unit dwellings without any change in land use permitted by local zoning . . .” See GML §§ 693, 694(5) and 695(6)(d); and

WHEREAS, the Appellant asserts that the UDAA Act’s only reference to low-rise structures is found in GML § 694(1), which states that “the agency shall prepare or cause to be prepared, with provisions which, where appropriate, are expressly designed to encourage and stimulate businesses experienced in the development of one to four family low-rise residential structures or minority owned enterprises . . .”; and

WHEREAS, the Appellant finds that the noted provision is to be read broadly and is far from establishing a low-rise mandate for all UDAAP projects; and

WHEREAS, the Appellant asserts that the language of the statute is clear and unambiguous and thus should be construed so as to give effect to its plain meaning and that the only restriction to projects within the accelerated UDAAP program are that it be limited to “the construction of one to four unit dwellings . . . without any change in land use permitted by local zoning . . .”; and

WHEREAS, the Appellant states, similarly, that the Mayor’s and City Council’s resolutions associated with the UDAA Act and land disposition nor the Deed which effectuated the conveyance to Oaks Corp. contain any provision that limits new construction to a low-rise building or imposes any other building height limit; and

WHEREAS, the Appellant states that GML § 695(5) provides that any deed conveying UDAAP project property to a private entity shall contain the provisions describing and restricting the use of the property; the pertinent language about the construction is on the first page of the Deed, as noted above; and

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WHEREAS, DOB asserts that the legislative history and judicial interpretation of the UDAA Act establish bright-line, nondiscretionary requirements that new buildings subject to the UDAA Act must consist solely of one to four-unit dwellings, and that such must be low-rise; and

WHEREAS, accordingly, DOB maintains its position that the proposal does not comport with relevant provisions of the UDAA Act because the proposed 17-story building is not low-rise, as defined at Building Code § 403.1; and

WHEREAS, DOB interprets there to be a restriction to one- to four-unit low-rise buildings based on the (1) identification of such language in the legislative history and (2) its interpretation of New York City Coalition for the Preservation of Gardens v. Giuliani, 175 Misc. 2d 644 (Sup. Ct. N.Y. Co., 1997), an Article 78 proceeding that challenged a plan to replace community gardens on City-owned lands with new development through the accelerated UDAAP mechanism; and

WHEREAS, DOB asserts that the proposed building, which is neither low-rise, per the Building Code, nor in-kind replacement of the existing five-story building creates non-compliance with the Building Code's definition of low-rise and the building plans cannot be approved; and

WHEREAS, DOB states that a height limitation was not in the Deed because it was HPD's intent that the building would be conserved and not reconstructed; and

WHEREAS, HPD concurs with DOB that the text, legislative history, and judicial interpretation of the UDAA Act establish clear, nondiscretionary requirements that new buildings on subject sites are limited to one- to four-unit dwellings that are low-rise; and

The Board's Determination

WHEREAS, pursuant to § 1-10(f) of the Board's Rules of Practice and Procedure, the Board may on its own motion review its decision and reverse or modify it provided that "no such review shall prejudice the rights of any person who has in good faith acted thereon before it is reversed or modified"; and

WHEREAS, as noted, the Board, on its own motion at the June 15, 2010 public hearing, voted to review its decision; and

WHEREAS, the Board agrees that DOB has broad powers under the Charter to review and enforce construction-related regulations; and

WHEREAS, the Board appreciates that in certain instances DOB has express authority and, in other instances, it derives its authority from a more general understanding of the Charter powers and a recognition of DOB's unique position as the reviewer of building plans and issuer of building permits; and

WHEREAS, the Board notes that there may be instances where DOB has concurrent authority with another agency; and

WHEREAS, the Board notes that concurrent authority may manifest as multiple agencies, whose approval is required for a single application, review different elements of the same application; this includes instances when, in the process of reviewing plans, DOB may be alerted to another agency's jurisdiction, as it is with landmarks, wetland, and flood hazard regulations and thus a form of concurrent jurisdiction is

evident; and

WHEREAS, the Board notes that DOB provided examples of concurrent jurisdiction with other agencies, but the Board distinguishes those examples from the subject of the appeal because the proffered agencies maintain a separate review process and enforcement practice; and

WHEREAS, the Board agrees with DOB that it exercises a range of so-called enforcement practices from direct to indirect, when otherwise not restricted from enforcement, and that a broad reading of the Charter authority suggests that elements of the UDAA Act could fit within DOB's enforcement powers; and

WHEREAS, however, the Board respectfully disagrees that the subject criteria DOB seeks to enforce, and addresses in its Final Determination, is within its authority; and

WHEREAS, the Board's conclusion arises from the following: (1) the Appellant states, and the Board agrees, that the UDAA Act is a statute related to policy and process, which can be distinguished from bodies of technical regulations, (2) the Appellant states, and the Board agrees, that unlike in the concurrent jurisdiction examples, DOB would generally not be aware that a project was subject to UDAAP because that is not one of the myriad criteria identified in DOB applications, and (3) the Board finds that it is not clear that DOB consistently reviews and enforces UDAA Act-related criteria in its approval process; and

WHEREAS, specifically, as to the nature of the UDAA Act, the Appellant states, and the Board agrees, that the UDAA Act, which concerns community preservation and redevelopment goals, can be distinguished from bodies of technical regulations such as the Zoning Resolution or Building Code, which are clearly within DOB's jurisdiction; and

WHEREAS, as to DOB generally being aware that a site is subject to UDAAP, it is not among the criteria available in the Buildings Information System and would not be within the scope of DOB's review process; rather, the UDAAP criteria is set forth within a deed established with HPD; and

WHEREAS, as to DOB's practice, DOB has not asserted that it has a method for identifying and reviewing UDAA Act criteria; and

WHEREAS, the Board notes that HPD recognizes that Article 16 of the GML names HPD specifically and identifies it as the agency charged with the responsibility of implementing the UDAA Act, and that HPD states that it has been implementing the UDAA Act for several decades; and

WHEREAS, as to HPD's assertions about procedural efficiency, the Board disagrees that DOB should be recognized as the enforcement agency because it is in a better position than HPD to monitor compliance because, as noted, there is not a mechanism to alert DOB to a project's UDAAP status in the course of its ordinary plan review and the Board finds that HPD would have the ability to oppose a project that does not comport with its deeds prior to the completion of demolition and commencement of new construction; and

WHEREAS, the Board accepts that DOB has broad authority and that it may identify matters during its plan review, which are not generally before it and additionally the Board finds it reasonable for DOB to alert another agency

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when it identifies a non-complying condition, pursuant to a construction-related or other regulation; and

WHEREAS, however, the Board agrees with the Appellant that the provisions of the UDAA Act at issue in this appeal are not within the scope of DOB's general enforcement power under the Charter and that, rather, they lie within HPD's jurisdiction as set forth in the Charter and the UDAA Act; and

WHEREAS, the Board's determination is limited to the facts of the subject appeal; the Board acknowledges that there may be UDAA Act, or related provisions, not considered during the course of the subject appeal, that are within DOB's purview pursuant to its Charter power; and

WHEREAS, however, in this instance, DOB does not have authority to enforce the GML or the UDAAP provisions and therefore, the threshold question of jurisdiction is not met; and

WHEREAS, the Board has reviewed the secondary arguments: (1) from the Appellant that the UDAA Act language is unambiguous and does not set forth a height limit for the subject building and (2) from DOB and HPD that the legislative history and case law inform the UDAA Act establish a required height limitation of 75 feet on the subject site; and

WHEREAS, because the Board has determined that DOB does not have the authority to enforce the noted provisions in this instance, and since it finds that it is within HPD's authority, which the Charter has not granted the Board the jurisdiction to review, the Board declines to evaluate the merits of the Appellant's alternate argument, and DOB and HPD's rebuttals, on the question of height restrictions; and

WHEREAS, the Board notes that the Appellant asserts that it will be prejudiced by a modification of the decision, but the Board finds that (1) the Appellant's primary argument in the original appeal was that DOB lacks jurisdiction to enforce the noted provisions of the UDAA Act, (2) the Appellant asserts that the substantive questions on restrictions on the construction have already been answered in another forum, (3) the Board's review of its April Resolution does not constitute a reversal, and (4) the question of prejudice, as set forth in the Rules, is limited to whether or not the Appellant has acted in reliance on the prior decision; since the April Resolution and the modified decision both allow for the Appellant to proceed at DOB, the Board finds the argument about prejudice unpersuasive; and

WHEREAS, the Neighbors, community members, and elected officials raised other concerns including those about notification, a change in ownership of the site, and matters that were beyond the scope of a review of the April Resolution; and

WHEREAS, the Board notes that its Rules do not require notification of neighbors, the Community Board, or elected officials in interpretative appeals and that a change in ownership has not affected the Appellant's standing to pursue the appeal; and

WHEREAS, the Board notes that, although the Neighbors assert that the specifics of the case, involving ongoing litigation, warrants the Board exceeding the requirements of its Rules, they do not establish any basis for

such action and the Neighbors concede that the Board has followed its Rules; and

WHEREAS, as noted, the Board does not find the change in ownership of the site from one party with interest in the appeal to another party with interest in the appeal, to have any bearing on the substantive matters before it; and

WHEREAS, accordingly, the Board has not found the supplemental procedural arguments to be availing; and

WHEREAS, the Board concludes that (1) the Board agrees with the Appellant's primary argument that DOB exceeded its authority by enforcing the GML in the subject matter, and (2) since the Board accepts the Appellant's primary argument, it declines from taking a position on the alternate argument, the analysis of which relies on a finding that DOB appropriately exercised its authority in enforcing the GML in the subject matter.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated July 13, 2009, determining that the building height is limited to low-rise construction, is hereby granted.

Adopted by the Board of Standards and Appeals, July 13, 2010.

589-31-BZ

APPLICANT – Eric Palatnik, P.C., for Asha Ramnath, owner.

SUBJECT – Application March 5, 2010 – Amendment pursuant (§11-413) to permit the proposed change of use group from UG16 (Gasoline Service Station) to UG16 (Automotive Repair) with accessory used car sales. R3-2 zoning district.

PREMISES AFFECTED – 159-02 Meyer Avenue, intersection of Mayer Avenue, 159th Street, Linden Boulevard, Block 12196, Lot 1, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for continued hearing.

558-71-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for WB Management of NY LLC, owner.

SUBJECT – Application March 26, 2010 – Amendment to a previously granted Variance (§72-21) to permit the change of a UG6 eating and drinking establishment to a UG6 retail use without limitation to a single use; minor reduction in floor area; increase accessory parking and increase to the height of the building façade. R3-1 zoning district.

PREMISES AFFECTED – 1949 Richmond Avenue, east side of Richmond Avenue at intersection with Amsterdam Place, Block 2030, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

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ACTION OF THE BOARD – Laid over to August 17, 2010, at 10 A.M., for continued hearing.

914-86-BZ

APPLICANT – Stuart A. Klein, Esq., for Union Temple of Brooklyn, owner; Eastern Athletic, Incorporation, lessee.
SUBJECT – Application March 31, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (*Eastern Athletic*) which expired on May 17, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on November 12, 1998; Amendment to the interior layout and the hours of operation; Waiver of the Rules. R8X zoning district.

PREMISES AFFECTED – 1-19 Eastern Parkway, north side of Eastern Parkway, between Plaza Street, east and Underhill Avenue, Block 1172, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Abigail Patterson.

ACTION OF THE BOARD – Laid over to August 24, 2010, at 10 A.M., for continued hearing.

139-92-BZ

APPLICANT – Samuel H. Valencia, for Samuel H. Valencia-Valencia Enterprises, owners.

SUBJECT – Application April 23, 2010 – Extension of Term for a previously granted Special Permit (§73-244) for the continued operation of a UG12 Eating and Drinking Establishment with Dancing (*Deseos*) which expired on March 7, 2010; Waiver of the Rules. C2-2/R6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53' east of 52nd Street, Block 1316, Lot 76, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Samuel H. Valencia and Alejandro Valencia.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for continued hearing.

44-97-BZ & 174-00-BZ

APPLICANT – Stuart A. Klein, Esq., for SDS Leonard, LLC, owner; Millennium Sports, LLC, lessee.

SUBJECT – Applications March 30, 2010 and March 18, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment which expired on October 28, 2007; Amendment of plans in sub-cellar; Waiver of the Rules. C6-2A zoning district.

PREMISES AFFECTED – 78-80 Leonard Street & 79 Worth Street, between Broadway and Church Street, Block 173, Lot 4, 19, 20, Borough of Manhattan.

COMMUNITY BOARD #1M

For Applicant: Abigail Patterson.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for continued hearing.

159-99-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Beis Meir, Incorporation, owner.

SUBJECT – Application March 25, 2010 – Amendment to legalize modification to a previously granted Variance (§72-21) of a one-story UG4 Synagogue and Yeshiva (*Congregation Beis Meir*). M2-1 zoning district.

PREMISES AFFECTED – 1347-1357 38th Street, north side of 38th Street, between 13th Avenue and 14th Avenue, Block 5300, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

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 97th Avenue, Block 10007, Lot 108, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR §11-331 to renew a building permit and extend the time to complete construction of a three-story two-family home in accordance with the permit for New Building Permit No. 410026975 (the “NB Permit”) and with the proposed work under unapproved Alteration Application No. 410049594 (the “Alteration Application”); and

WHEREAS, the case was filed on May 23, 2008; and

WHEREAS, the Board notes that the NB Permit proposed the construction of a three-story two-family home at

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95-04 Allendale Street, directly abutting and sharing the western wall of an existing two-story two-family detached building with a non-complying eastern side yard located at 95-06 Allendale Street; the Alteration Application proposed the removal of a portion of 95-06 Allendale Street to provide a complying side yard; and

WHEREAS, the Department of Buildings (“DOB”) submitted a letter dated November 26, 2008, stating that the NB Permit was unlawfully issued because it relied on the proposed work under the Alteration Application in order to satisfy the side yard requirement, and the Alteration Application was not approved and permitted prior to the April 30, 2008 zoning text amendment; and

WHEREAS, on February 24, 2009, a public hearing was held on this application after due notice in The City Record; at the hearing the applicant agreed to meet with DOB to attempt to resolve outstanding issues with the NB Permit, and a continued hearing was scheduled for April 7, 2009; and

WHEREAS, the applicant submitted a letter dated March 30, 2009, stating that it had not been able to meet with DOB to resolve the issues related to the application; and

WHEREAS, DOB submitted a letter dated April 1, 2009, stating that it would provide the applicant with the opportunity to submit construction documents necessary to cure the yard objection, at which point DOB may approve the Alteration Application and rescind its revocation of the NB Permit, but that the NB Permit would remain lapsed unless and until the Board granted the applicant’s vested rights application; and

WHEREAS, on April 7, 2009, the Board adjourned the hearing to May 12, 2009; on May 12, 2009 the hearing was again adjourned until June 16, 2009; and

WHEREAS, on June 16, 2009, a public hearing was held on this application wherein the applicant was given until August 11, 2009 to submit responses to outstanding issues with the application, and a continued hearing was set for August 25, 2009; and

WHEREAS, the applicant submitted a letter dated August 17, 2009, stating that it was submitting a subdivision proposal at DOB to resolve the objections to the application, and requesting an adjournment of the August 25, 2009 hearing in order to amend its application and secure subdivision approval from DOB; and

WHEREAS, on August 25, 2009, the Board adjourned the hearing to November 24, 2009; and

WHEREAS, the applicant submitted a letter dated November 12, 2009, requesting an adjournment of the November 24, 2009 hearing in order to resolve DOB’s objections to its subdivision proposal; and

WHEREAS, on November 24, 2009, the Board adjourned the hearing to February 2, 2010; and

WHEREAS, the applicant submitted a letter dated January 20, 2010, stating that DOB approved its proposed subdivision, but requested an adjournment of the February 2, 2010 hearing in order to perform the work associated with the approved subdivision; and

WHEREAS, on February 2, 2010, the Board adjourned the hearing to June 22, 2010; and

WHEREAS, the applicant submitted a letter dated May

5, 2010, stating that, due to financial constraints, the owner had not moved forward with the required paperwork or demolition work related to its revised proposal and requesting that the Board take the case off its hearing calendar; and

WHEREAS, the Board notes that there have been no hearings on the subject application since June 16, 2009, and that it has repeatedly adjourned scheduled hearings at the applicant’s request to provide the applicant with additional time to resolve outstanding issues at DOB; and

WHEREAS, the Board further notes that the subject application is a request to continue construction pursuant to ZR § 11-331, which permits the Board to renew a building permit and authorize a six-month extension of time to complete the required foundations; however, pursuant to ZR § 11-332, construction must be completed and a certificate of occupancy obtained within two years of the Rezoning Date; and

WHEREAS, the Board notes that the Rezoning Date was on April 30, 2008, and therefore even if the Board granted the subject application, the two year extension of time to complete construction has already expired; and

WHEREAS, on June 17, 2010, Board staff informed the applicant that, due to a failure to prosecute the application, the Board would put the case on the July 13, 2010 dismissal calendar; and

WHEREAS, at the June 22, 2010 public hearing, the Board placed the matter on the July 13, 2010 dismissal calendar; and

WHEREAS, the applicant did not appear at the July 13, 2010 hearing; and

WHEREAS, accordingly, due to the applicant’s lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 147-08-BZY is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, July 13, 2010.

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. R4-1 zoning district.

PREMISES AFFECTED – 90-18 176th Street, between Jamaica and 90th Avenues, Block 9811, Lot 60 (tent), Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for four three-story three-family residential buildings currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on March 9, 2010, after due notice by publication in *The City Record*, with continued hearings on April 20, 2010, May 25, 2010 and June 22, 2010, and then to decision on July 13, 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, the adjacent neighbors, represented by counsel, provided written and oral testimony in opposition to this application (hereinafter, the “Opposition”), with the following primary concerns: (1) construction was performed at the site subsequent to the filing of the subject application; (2) the status of 90-22 176th Street, which did not vest its foundations, is not clear; (3) the proposed construction will cause damage to the surrounding properties; (4) a portion of the proposed development encroaches on the neighboring property and the applicant has failed to remove the encroachment as required by court order; and (5) the proposed buildings are not compatible with the surrounding area; and

WHEREAS, the subject site is located on the west side of 176th Street, between 90th Avenue and Jamaica Avenue, within an R4-1 zoning district; and

WHEREAS, the subject site has a width of approximately 67 feet, a depth of approximately 174 feet, and a lot area of approximately 11,635 sq. ft.; and

WHEREAS, the site consists of five tentative tax lots: Lot 60 (90-18 176th Street); Lot 62 (90-22 176th Street); Lot 160 (175-19 Lauren Court); Lot 161 (175-21 Lauren Court); and Lot 162 (175-23 Lauren Court); and

WHEREAS, as to the Opposition’s concerns regarding 90-22 176th Street (Lot 62), the Board notes that it was the subject of a prior application pursuant to BSA Cal. No. 230-07-BZY, in which the Board denied the applicant’s request for an extension of time to complete the foundation of a three-story residential building pursuant to ZR § 11-331 based on a determination that the subject permit was invalid; and

WHEREAS, accordingly, 90-22 176th Street (Lot 62) is not a part of the subject application; and

WHEREAS, the site is proposed to be developed with four three-story three-family residential buildings (the “Buildings”); and

WHEREAS, the development complies with the former R6 zoning district parameters; and

WHEREAS, however, on September 10, 2007 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Jamaica Plan Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, on June 28, 2007, the Department of

Buildings (“DOB”) issued New Building Permit Nos. 402568226-01-NB and 402568459-01-NB, and on July 3, 2007, DOB issued New Building Permit Nos. 402568440-01-NB and 402568468-01-NB (collectively, the “New Building Permits”), permitting construction of the Buildings; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the Buildings and had completed 100 percent of their foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

WHEREAS, for a “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such

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requirement has been met.”; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the New Building Permits were lawfully issued for the proposed development to the owner by DOB prior to the Enactment Date; and

WHEREAS, on April 25, 2008, DOB issued a Notice of Objections for the site with the intent to revoke the subject permits; and

WHEREAS, on February 4, 2009, DOB cleared all objections and approved the R6 zoning for the subject site upon a finding that the foundations were installed prior to the zoning change; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued prior to the Enactment Date and were timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Opposition argues that work continued at the site until November 2009, and construction again took place in April and May 2010, subsequent to the two-year time limit to complete construction which expired on September 10, 2009; and

WHEREAS, the Board directed the applicant to cease any construction at the site and to ensure that no construction is performed prior to the reinstatement of the New Building Permits; and

WHEREAS, in response, the applicant acknowledges that construction occurred on the site subsequent to the expiration of the two-year time limit, but represents that since the time of the subject application in October 2009, the delivery of building materials is the only activity that has occurred on the site; and

WHEREAS, the applicant provided evidence that complaints made by neighbors to DOB resulted in inspections of the site, and that all complaints regarding illegal work since October 2009 were dismissed upon DOB’s inspection; and

WHEREAS, the Board notes that any work performed at the site subsequent to the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of September 10, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permits and until September 10, 2009, substantial

construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit and until September 10, 2009 includes: 100 percent of excavation and backfill; 100 percent of the footings and foundation; 100 percent of the waterproofing; 100 percent of the boring for percolation tests; 75 percent of the drywell installation; and 43 percent of the water main connection, backflow exemption and sprinkler design; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the New Building Permits; a breakdown of the construction costs by line item and percent complete; construction contracts; invoices; copies of cancelled checks; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before September 10, 2009; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$114,105, or approximately 11 percent of the \$1,081,623 cost to complete; and

WHEREAS, as noted, the applicant has submitted a breakdown of the construction costs by line item and percent complete; construction contracts; invoices; and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, as to the Opposition’s concern that the proposed construction will cause damage to the adjacent properties, the Board notes that construction must proceed in accordance with all relevant Building Code requirements related to safe construction; and

WHEREAS, as to the Opposition’s argument regarding the encroachment onto the neighboring property, the applicant states that the encroachment that must be removed in accordance with the court settlement relates to underpinning, and that the owner intends to remove any underpinning encroachment once construction resumes at the site; and

WHEREAS, the Board notes that the aforementioned concerns regarding property damage and encroachment are not within the purview of the analysis for a vested rights application and it is not within the Board’s jurisdiction to resolve disputes between property owners; and

WHEREAS, the Board further notes that the Opposition’s claims were appropriately brought before a civil court, and it is similarly not within the purview of the vested rights analysis to enforce the court’s stipulation; and

WHEREAS, the Opposition also argues that the application should be denied because the Buildings will be

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incompatible with the surrounding community; and

WHEREAS, the Board understands that the Buildings do not comply with the new zoning parameters, however, if the owner has met the test for a vested rights determination pursuant to ZR § 11-332, the owner's property rights may not be negated based on concerns about neighborhood character; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332; and *Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew Building Permit Nos. 402568226-01-NB, 402568459-01-NB, 402568440-01-NB and 402568468-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on July 13, 2012.

Adopted by the Board of Standards and Appeals, July 13, 2010.

23-10-A thru 26-10-A

APPLICANT – Richard Bowers of Akerman Senterfitt, LLP, for Mia & 223rd Street Management Corp., owner.

SUBJECT – Application February 23, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations. R1-2 zoning district.

PREMISES AFFECTED – 39-39 223rd Street and 223-01/15/19 Mia Drive, between 223rd Street and Cross Island Parkway, Block 6343, Lots 154-157, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 four two-story single-family homes under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on April 27, 2010 after due notice by publication in The City Record, with a continued hearing on June 8, 2010, and then to decision on July 13, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends disapproval of this application, citing concerns that the current owner purchased the property after the zoning change and therefore any hardship is self-created; and

WHEREAS, the adjacent neighbors, represented by counsel, provided written and oral testimony in opposition to the application (hereinafter, the “Opposition”), with the following primary concerns: (1) the underlying building permits are invalid; (2) a large portion of the construction and expenditures relied upon by the applicant occurred after the date that the site was rezoned; (3) there is insufficient documentation of the expenditures made by the applicant; (4) the owner did not act in good faith; (5) there are outstanding objections which have not been satisfied; and (6) construction at the site was done illegally because the owner did not obtain necessary insurance nor conduct proper inspections; and

WHEREAS, the applicant proposes to develop the subject site with four two-story single-family homes; and

WHEREAS, the subject site was formerly located within an R2 zoning district; and

WHEREAS, however, on April 12, 2005 (hereinafter, the “Rezoning Date”), the City Council voted to adopt the Bayside Rezoning, which rezoned the site to R1-2; and

WHEREAS, the applicant represents that the development complies with the former R2 district parameters, specifically the front yard depth was permitted; and

WHEREAS, because the site is now within an R1-2 district, the development does not comply with the minimum front yard depth; and

WHEREAS, the applicant notes that the rezoning resulted in the subject front yard non-compliance for only two of the four homes (39-39 223rd Street and 223-19 Mia Drive), but that the subject application is necessary for all four homes because the site is a single zoning lot and no certificates of occupancy can be issued until the zoning objections are removed; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, on February 18, 2004, the Department of Buildings (“DOB”) issued New Building Permit No. 401762017-01-NB; on March 22, 2004, DOB issued New Building Permit Nos. 401762026-01-NB and 401762035-01-NB; and on March 24, 2004, DOB issued New Building Permit No. 401762044-01-NB (collectively, the “New Building Permits”), permitting construction of the subject homes; and

WHEREAS, the Opposition argues that the New Building Permits were invalid at the time they were issued due to a number of alleged fatal defects related to open space, wall height, front and side yards, and separation between buildings; and

WHEREAS, in response, the applicant notes that DOB issued a letter dated March 18, 2010 stating that the New Building Permits were lawfully issued, authorizing construction of the proposed homes prior to the Rezoning Date,

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and that DOB issued a second letter dated June 7, 2010, in response to concerns raised by the Opposition, which reiterated DOB's determination that the New Building Permits were lawfully issued; and

WHEREAS, the Opposition further argues that the New Building Permits are invalid because three detached garages on the site were overbuilt and impinged on open space requirements at the time they were issued, thereby rendering the entire project illegal; and

WHEREAS, in response, the applicant states that the garages were filed under separate New Building applications and are not a part of this application, however, the applicant nonetheless submitted a reconsideration granted by the DOB Borough Commissioner, reflecting that the objections related to the size of the garages were resolved on August 17, 2009; and

WHEREAS, the Opposition also contends that the New Building Permits are invalid because DOB has issued numerous objections for the New Building Permits and the applicant has failed to demonstrate that the outstanding objections have been satisfied; and

WHEREAS, in response, the applicant submitted a letter from DOB dated May 13, 2010, stating that all substantive objections have been successfully resolved by the applicant; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and were timely renewed until the expiration of the two-year term for construction; and

WHEREAS, the Board notes that ZR § 11-31(c)(2) defines construction such as the proposed development, which involves the construction of two or more buildings on a single zoning lot, as a "major development"; and

WHEREAS, for a "major development," ZR § 11-331 permits an extension of time to complete construction and obtain a certificate of occupancy upon a finding that the foundations for at least one building of the development had been completed prior to the Rezoning Date; and

WHEREAS, the Board notes that as of the Rezoning Date the owner had obtained permits for the development and had completed foundation work for at least one of the homes, such that the right to continue construction was vested by DOB pursuant to ZR § 11-331; 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, certificates of occupancy were 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 New Building Permits pursuant to ZR § 11-332 before the deadline of May 12, 2007 and is therefore requesting additional time to complete construction and obtain certificates 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 Dep't. 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 Dep't. 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, the Opposition argues that the applicant did not act in good faith because it did not acquire ownership of the site until after the Rezoning Date and therefore had knowledge of the rezoning; and

WHEREAS, specifically, the Opposition states that as of the Rezoning Date, the owner of the site was 63 Drive Corporation, and ownership was not transferred to the current owner, Mia & 223 Management Corporation, until October 12, 2006; and

WHEREAS, in response, the applicant provided evidence that both the prior owner, 63 Drive Corporation, and the current owner, Mia & 223 Management Corporation, are owned entirely by the same individual, and therefore the owner acted in good faith reliance on the New Building Permits; and

WHEREAS, the Board notes that a site's ownership is not a relevant element in the vested rights analysis, as a property owner succeeds to all the right, title and interest in the property held by its predecessor-in-interest and transferred to it (see Caponi v. Walsh, 228 A.D. 86 (2d Dep't 1930); see also Elsinore Prop. Owners Ass'n v. Morwand Homes; 52 A.D. 1105 (2d Dep't 1955)); and

WHEREAS, the Opposition further argues that it would be inequitable to allow the applicant to derive the benefits of the change in ownership from 63 Drive Corporation to Mia & 223 Management Corporation without acknowledging that the latter corporation took ownership with full knowledge of the downzoning and thus cannot claim vested rights; and

WHEREAS, because the Board is an administrative body, rather than a court, it is not empowered to grant equitable

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relief (see People ex rel. New York Tel. Co. v. Pub. Serv. Comm., 157 A.D. 156, 163 (3d Dep't 1913) (administrative body "ha[s] no authority to assume the powers of a court of equity"); see also Faymor Dev. Co. v Bd of Stds. and Apps, 45 N.Y.2d 560, 565 (1978)), and therefore cannot consider equitable arguments in connection with an application to vest a building permit under the common law; and

WHEREAS, as to substantial construction, the Board notes that DOB determined that the applicant had completed foundation work for at least one of the homes 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 as of April 12, 2007, the applicant completed all of the foundations, constructed the superstructures of each building, constructed exterior walls, and installed staircases, electrical wiring, windows, roofing, plumbing, exterior finishes, and interior finishes; and

WHEREAS, the applicant states that construction of the homes is entirely completed, and that the only work remaining is to obtain any outstanding DOB sign-offs and certificates of occupancy; and

WHEREAS, in support of the assertion that the owner has undertaken substantial construction, the applicant submitted the following evidence: photographs of the site; bank statements, invoices; work orders; and copies of checks; and

WHEREAS, the Board notes that it has not considered any work performed subsequent to April 12, 2007 and the applicant represents that its analysis is based on work performed up to that date; and

WHEREAS, the Opposition submitted documents in support of its claim that the applicant did not perform controlled subgrade inspections at the site, as required by Building Code § 27-723, and contends that therefore the foundation work cannot be considered complete and the project cannot be vested; and

WHEREAS, the Board does not make any determination on the structural sufficiency of the foundations at the site, and notes that DOB reviews the sufficiency of the foundations as a condition prior to final approval and issuance of a certificate of occupancy; and

WHEREAS, accordingly, the Board defers to DOB's determination; and

WHEREAS, the applicant states that even if there are issues with the sufficiency of the foundations, such that a significant portion of the concrete poured at the site and/or all subsequent work relying on the foundations cannot be considered in the analysis, the applicant would still satisfy the common law vested rights criteria based solely on the remaining foundation work and related expenditures; and

WHEREAS, the Board agrees that the applicant has provided sufficient evidence to establish that substantial construction has been undertaken and expenditures made such that the applicant has established a vested right to continue construction under the common law even if there are issues with portions of the foundation, such that DOB's initial vesting determination pursuant to ZR § 11-331(b)

would not have been made; and

WHEREAS, the Opposition argues that a large portion of the construction and expenditures included in the subject application occurred after the Rezoning Date, and therefore must be discounted from the vested rights analysis; and

WHEREAS, in response, the applicant notes that ZR § 11-331(b) authorizes construction to be continued as-of-right for an additional two years beyond the Rezoning Date when, in the case of a major development, the foundations for at least one building of the development have been completed prior to the Rezoning Date; and

WHEREAS, the applicant states that DOB permitted the subject construction to continue as-of-right for an additional two years pursuant to ZR § 11-331(b), and therefore the Board should consider the construction and expenditures that occurred between April 12, 2005 and April 12, 2007 in addition to the work and expenditures before the Rezoning Date; and

WHEREAS, the Board finds that, based on DOB's determination that the applicant satisfied ZR § 11-331(b), the effective date for the purposes of calculating substantial construction and expenditures in the vested rights analysis is extended two years from the Rezoning Date, to April 12, 2007; 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 \$1,096,379 or 72 percent, including hard and soft costs and irrevocable commitments, out of \$1,509,010 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted bank statements, invoices, and copies of checks; and

WHEREAS, the Opposition argues that the applicant has not provided sufficient documentation of the claimed expenditures, noting that much of the evidence consists of copies of checks which have not been signed or cancelled and satisfactions of liens which are unsigned and unsworn; and

WHEREAS, in response, the applicant submitted bank statements which correspond to \$583,163 worth of the copies of checks which were not fully executed, and states that some of the copies of checks and lien releases are not fully executed because such records were unavailable given the six-year gap between the issuance of the permits and the commencement of this application; and

WHEREAS, the applicant notes that in addition to the bank statements it has submitted copies of signed checks or other financial documentation for an additional \$355,886 in

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expenditures, and therefore has accounted for \$939,049 out of its claimed expenditures of \$1,096,379; and

WHEREAS, the applicant represents that the bank statements, in conjunction with the copies of signed checks, invoices submitted for work completed, the absence of construction liens, and the tangible evidence of the work completed at the site, are sufficient evidence to establish that substantial expenditures were incurred by the applicant; and

WHEREAS, the Board notes that even if it could only rely on the bank statements as evidence of the applicant's expenditures, the \$583,163, or 39 percent of the \$1,509,010 budgeted for the entire project, would still be sufficient to establish that substantial expenditures have been made; 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, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if vesting were not permitted, it would result in the demolition of the front five feet of the two homes affected by the rezoning (39-39 223rd Street and 223-19 Mia Drive), including removal of the front load-bearing walls, five feet of the load-bearing side walls, and the front five feet of the pitched roofs; and

WHEREAS, the applicant states that removal of the front five feet of these homes would result in the need to construct new foundations to support the new front load-bearing walls that will be relocated five feet deeper into the site; the need for temporary support of the first story, second story, and roof during the demolition and rebuilding of the load bearing walls; and the need to gut and rebuild substantial portions of the homes' interiors; and

WHEREAS, the applicant represents that demolishing portions of the two affected homes and rebuilding them to comply with the rezoning would cost a total of approximately \$1,055,000; and

WHEREAS, the applicant states that approximately 795 sq. ft. of floor area would be lost in the two homes affected by the rezoning, as a result of the need to remove five feet along the 53-ft. width of each home; and

WHEREAS, the applicant represents that the reduction in floor area would result in an additional loss of approximately \$715,500 in sellable floor area; 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, the Opposition argues that vested rights should be denied in the instant case because the applicant and its contractors did not have liability insurance in place as required by the § 27-204(b) of the Building Code; and

WHEREAS, the Board notes that the issue of liability insurance is properly within the purview of DOB and is unrelated to the common law vested rights determination; however, the applicant nonetheless submitted a letter from DOB in response to the Opposition, which stated that the applicant satisfied DOB's insurance requirements and the project had general liability insurance in place as of February 18, 2004; 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 Nos. 401762017-01-NB, 401762026-01-NB, 401762035-01-NB, and 401762044-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, July 13, 2010.

298-09-A

APPLICANT – Breezy Point Cooperative Inc., for Ann Baci, owner.

SUBJECT – Application October 23, 2009 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 109 Beach 217th Street, east side Beach 217th Street, 160' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for deferred decision.

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.

SUBJECT – Application January 25, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district. R6 zoning district.

PREMISES AFFECTED – 1882 East 12th Street, west side, of East 12th Street, 75' north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

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For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for deferred decision.

43-08-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application February 28, 2008 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35. R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to August 24, 2010, at 10 A.M., for adjourned hearing.

3-10-A & 4-10-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application January 5, 2010 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35. R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue and 29-46 145th Street, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to August 24, 2010, at 10 A.M., for adjourned continued.

67-10-A

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Eileen and James Conrad, lessee.

SUBJECT – Application May 4, 2010 – Proposed reconstruction and enlargement of an existing single-family dwelling and the proposed upgrade of the existing non-conforming private disposal system within the bed of a mapped street, contrary to Article 3, Section 35 of the General City Law. R4 zoning district.

PREMISES AFFECTED – 72 Bedford Avenue, west side of Bedford Avenue within the intersection of mapped 12th Avenue and Beach 204th Street, Block 16350, Lot p/o 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary D. Lenhart.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for continued hearing.

71-10-A thru 84-10-A

APPLICANT – Eric Palatnik, P.C., for Brighton Street, LLC, owners.

SUBJECT – Application May 10, 2010 – Appeal seeking a determination that the owner has acquired a vested right to complete construction under the prior R3-2 zoning district. R3-1 zoning district.

PREMISES AFFECTED – 102-118 Turner Street and 1661 to 1669 Woodrow Road, between Crabtree Avenue and Woodrow Road, Block 7105, Lots 181 thru 188 and 2 thru 8, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik, Coppotelli Matasalla.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, JULY 13, 2010
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

160-08-BZ

CEQR #08BSA-092K

APPLICANT – Dominick Salvati and Son Architects, for HJC Holding Corporation, owner.

SUBJECT – Application June 11, 2008 – Variance (§72-21) to permit the legalization of commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B), which is contrary to §22-00. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Bounded by Fountain, Stanley, Euclid and Wortman Avenues, Block 4527, Lot 61, 64, 67, 74-78, 80, 82, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Peter Hirschman, Frank R. Angelino.

For Opposition: Ronald J. Dillon.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated June 3, 2008, acting on Department of Buildings Application No. 310139025, reads in pertinent part:

“The proposed commercial storage of motor vehicles (bus storage) sales and repairs Use Group 6 & 16 (replacing BSA Cal. Number 841-76-BZ and 78-79-BZ) in an R4 zoning district is not permitted as per Section 22-00 of the New York City Zoning Resolution and is referred to the BSA for a variance;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R4 zoning district, the legalization of commercial storage of motor vehicles (bus parking) with repairs and accessory fuel storage (Use Group 16) which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on November 10, 2009 after due notice by publication in *The City Record*, with continued hearings on January 12, 2010, March 2, 2010, April 13, 2010, May 25, 2010 and June 15, 2010, and then to decision on July 13, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Brooklyn, recommends disapproval of this application; and

WHEREAS, a representative of the Concerned Homeowners Association provided written and oral testimony in opposition to this application (hereinafter, the “Opposition”), with the following primary concerns: (1) the site is not unique; (2) the prior variances expired and therefore commercial/manufacturing use is not grandfathered on the site; (3) the site value is overpriced and a conforming development could provide a reasonable return; and (4) the proposal constitutes a self-created hardship; and

WHEREAS, several members of the community testified in support of the application; and

WHEREAS, the subject site comprises the entirety of Block 4527, bounded by Stanley Avenue to the north, Euclid Avenue to the east, Wortman Avenue to the south, and Fountain Avenue to the west, within an R4 zoning district; and

WHEREAS, the site is irregularly shaped, with approximately 207’-10” of frontage on Stanley Avenue, 500’-0” of frontage on Euclid Avenue, 70’-0” of frontage on Wortman Avenue, and 502’-11” of frontage on Fountain Avenue, and a lot area of 77,729 sq. ft.; and

WHEREAS, on June 7, 1977, under BSA Cal. No. 841-76-BZ, the Board granted a variance over a portion of the subject site consisting of Lots 61, 64, 77, 78, 80, 113 and 120, to permit the enlargement in area of an existing automobile wrecking yard including the sale of new and used cars and parts with accessory automobile repairs, for a term of ten years; and

WHEREAS, on October 30, 1979, under BSA Cal. No. 78-79-BZ, the Board granted a variance to permit the enlargement in area of the existing automobile wrecking and dismantling establishment approved pursuant to BSA Cal. No. 841-76-BZ, onto Lots 94 and 110 (current Lot 94); and

WHEREAS, subsequently, the grants were amended and the terms extended until their expiration on June 7, 2007; and

WHEREAS, as to the Opposition’s argument that the prior variances expired and commercial/manufacturing use is not grandfathered on the site, the Board agrees and therefore has required the filing of the subject application for a new variance for the entire site; and

WHEREAS, the applicant states that the aforementioned variances related to the entirety of Block 4527 except for a 100’-0” by 190’-0” parcel at the northeast corner of the subject site (the “Northeast Parcel”); and

WHEREAS, the applicant further states that the subject site, including the Northeast Parcel, is currently occupied as an open commercial storage for bus parking, with motor vehicle repairs and accessory fuel storage (Use Group 16); and

WHEREAS, the applicant notes that the site is occupied by the operations of the L & M Bus Corporation, which provides school bus transportation for the Department of Education, Interagency Transportation Solutions, and the

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Department of Homeless Services, and employs 275 people predominantly from the surrounding neighborhood; and

WHEREAS, the applicant proposes to legalize the current use of the site as open commercial storage for bus parking, with repairs and accessory fuel storage; and

WHEREAS, commercial use is not permitted in the subject R4 zoning district, thus the applicant seeks a use variance to permit the subject Use Group 16 uses; and

WHEREAS, the Board notes that the site is the subject of a padlock petition and closure action pursuant to Administrative Code § 28-212.1, and that the applicant executed a stipulation with the Department of Buildings (“DOB”), dated November 21, 2008, which allows for operation of the site while the applicant pursues the subject application for a variance to legalize the existing conditions; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the irregular shape of the site; (2) the existing subsurface soil conditions at the site; (3) the history of development on the site and associated contamination; (4) the site’s location on a heavily-trafficked thoroughfare; and (5) the preponderance of adjacent manufacturing and commercial land uses; and

WHEREAS, as to the site’s irregular shape, the applicant states that the site has an irregular trapezoidal shape, with 207’-10” of frontage on Stanley Avenue, 500’-0” of frontage on Euclid Avenue, 70’-0” of frontage on Wortman Avenue, and 502’-11” of frontage on Fountain Avenue; and

WHEREAS, the applicant states that the site has a maximum width of approximately 225’-0” on the northern portion of the site and a minimum width of 70’-0” on the southern portion of the site; and

WHEREAS, the applicant submitted Sanborn maps reflecting that the majority of the surrounding block and lot configurations are more regular than the subject site; and

WHEREAS, specifically, the applicant represents that the typical through block in the R4 zoning district to the east of the subject site has a uniform width of approximately 200’-0”; and

WHEREAS, the applicant states the irregular width of the subject site restricts residential development as compared to the typical 200’-0” wide through block; and

WHEREAS, in support of its argument that the irregular and unique configuration of the block constrains the development of the site to its full density, the applicant submitted plans reflecting that a rectangular-shaped site with an equivalent lot area could provide 32 two-family homes, as compared to the 28 two-family homes that can be constructed on the subject site due to the inclusion of required yards and setbacks; and

WHEREAS, during the course of the hearing process, the Board raised concerns that the Northeast Parcel was not subject to the prior variances on the site, and that when it is separated from the variance sites it is a regular site in terms of its size and shape and therefore does not suffer any hardship; and

WHEREAS, in response, the applicant states that excluding the Northeast Parcel from the subject site would

create an even more irregular configuration on the remainder of the site, and as such, its inclusion is both rational and practical in order to alleviate some of the hardship on the site; and

WHEREAS, as to the soil conditions at the site, the applicant states that the site has a high water table and contains a significant amount of urban fill that requires the use of pile foundations for the construction of each home under a complying residential development scenario; and

WHEREAS, the applicant submitted a report from a geotechnical consultant (the “Geotechnical Report”) along with area wide historical maps showing flood plains which reflect that a historic creek ran directly through the subject site, and historic and urban fill materials were deposited on the site to an average depth of nine to ten feet to raise it to the current elevation, which is approximately four to six feet above the adjacent sites; and

WHEREAS, the Geotechnical Report also reflects that groundwater was encountered at the site at a depth of nine to ten feet; and

WHEREAS, the Geotechnical Report states that the presence of existing fill materials can lead to excessive total and differential settlement, and recommends the use of pile foundations which would add an additional cost of approximately \$27,000 for each home; and

WHEREAS, the applicant states that the need for pile foundations is unique to the subject site, and submitted data from the Department of Buildings indicating that most of the recent residential developments in the surrounding area were not constructed on pile foundations; and

WHEREAS, specifically, the applicant provided evidence that only three out of 20 of the most recent residential developments in the area were constructed with pile foundations; and

WHEREAS, in addition to the need for pile foundations, the Geotechnical Report states that the site will require additional dewatering and earthwork considerations due to the unique soil conditions on the site; and

WHEREAS, the applicant represents that the aforementioned soil conditions are unique to the subject site, as adjacent properties have never been historically filled, and the path of the creek was generally in a north-south direction, such that it did not extend to any of the sites to the east which are located in the R4 zoning district; and

WHEREAS, as to the history of development on the site, the applicant states that portions of the subject site have been occupied by commercial and manufacturing uses since at least 1937, similar to the uses found within the M1-1 zone located across Fountain Avenue to the west of the site; and

WHEREAS, in support of this statement, the applicant has submitted certificates of occupancy and Sanborn Maps evidencing the prior commercial and manufacturing uses of the site; and

WHEREAS, the applicant states that the commercial history of the site is further evidenced by the variances granted by the Board under BSA Cal. Nos. 841-76-BZ and 78-79-BZ, which permitted the continued use and expansion of the existing automobile wrecking yard and sale of new and used cars and parts with accessory automobile repairs throughout the

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subject site, with the exception of the Northeast Parcel; and

WHEREAS, the applicant represents that the long term use of the site for manufacturing uses is evidence that residential uses are not viable; and

WHEREAS, the applicant further represents that the history of manufacturing uses at the site has potentially resulted in contamination on the site that would require the excavation and disposal of soils that would increase the costs associated with the construction of a conforming residential development; and

WHEREAS, the applicant submitted a report from its environmental consultant, stating that soil borings indicate that the urban fill material is contaminated by a number of hazardous materials; and

WHEREAS, the applicant states that, due to the contamination, the soil must be remediated before any residential development can occur on the site; and

WHEREAS, the applicant submitted a cost estimate for the soil remediation prepared by its financial analyst, which reflects a remediation cost for the entire site of approximately \$600,000, and approximately \$201,000 for the Northeast Parcel alone; and

WHEREAS, during the course of the hearing process, the Board questioned whether contamination of the Northeast Parcel should be considered as part of the site's hardship since it was never subject to the prior variances on the site, and any contamination of the Northeast Parcel may have been self-created; and

WHEREAS, in response, the applicant states that although the Northeast Parcel was not subject to the variances on the other portions of the site, the Sanborn maps submitted to the Board reflect that it nonetheless has a history of commercial use dating back to at least 1951, which pre-dates the current zoning scheme and the variances granted on the remainder of the site; and

WHEREAS, the applicant further states that the soil boring samples which evidenced high levels of contaminants that require remediation were taken from within the Northeast Parcel; and

WHEREAS, as to the site's location, the applicant states that Fountain Avenue is a 100-ft. wide, heavily-trafficked thoroughfare, and that there is a preponderance of adjacent manufacturing and commercial land uses; and

WHEREAS, the applicant represents that the high volume of commercial traffic and the resultant noise on Fountain Avenue due to the adjacent M1-1 zoning district inhibits the residential use of the property; and

WHEREAS, the applicant also asserts that an abundance of commercial and manufacturing uses in the surrounding area diminishes the marketability of the site for a conforming residential use; and

WHEREAS, the applicant submitted a land use map reflecting that a large M1-1 zoning district is located adjacent to west of the subject site, another M1-1 zoning district is located two blocks to the south of the site, and an M3-1 zoning district is located six blocks to the east of the subject site; and

WHEREAS, the applicant states that the subject site fronts Fountain Avenue, which is the district boundary line

between the R4 and M1 zoning districts, and the M1 district directly across Fountain Avenue is fully occupied with commercial, manufacturing and industrial uses, which makes the proposed site less desirable for residential use; and

WHEREAS, the applicant also provided a list of several large commercial and manufacturing uses located in the surrounding area; and

WHEREAS, the Board does not find the location on Fountain Avenue or the surrounding uses to be unique conditions to the site, noting that Fountain Avenue and the surrounding blocks have residential uses, some of which were developed recently, suggesting that the location and surrounding uses do not directly affect the use of the site for residential development; and

WHEREAS, however, the Board finds that a conforming development of the site in strict compliance with the Zoning Resolution is not feasible due to the constraints the irregularity of the site places on maximizing the density and FAR on the site, in combination with the need to offset additional construction costs associated with the pile foundations and soil remediation; and

WHEREAS, accordingly, the Board finds that the irregular shape of the subject lot, its history of development, and its unique soil conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed: (1) a conforming residential development with 16 two-family homes; (2) a lesser variance which contemplated the conforming residential development of the Northeast Parcel, with the remainder of the site occupied by the existing bus parking and motor vehicle repairs use; and (3) the proposed scenario with bus parking and motor vehicle repairs throughout the entire site; and

WHEREAS, at hearing, the Board directed the applicant to revise the conforming residential scenario to maximize the number of dwelling units and floor area on the site, and to analyze an alternative with conforming residential development of the Northeast Parcel, independent from the remainder of the site; and

WHEREAS, in response, the applicant submitted a revised feasibility study which analyzed: (1) a conforming residential development with 28 two-family homes; (2) a lesser variance which contemplated the conforming residential development of the Northeast Parcel, with the remainder of the site occupied by the existing bus parking and motor vehicle repairs use; (3) the conforming residential development of the Northeast Parcel, independent from the remainder of the site; and (4) the proposed scenario with bus parking and motor vehicle repairs throughout the entire site; and

WHEREAS, the study concluded that the as-of-right and lesser variance scenarios would not result in a reasonable return, but that only the proposed scenario would realize a reasonable return; and

WHEREAS, specifically, the feasibility study showed

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that even if the Northeast Parcel were not included within the subject site, conforming residential development would still not be feasible on the Northeast Parcel due to costs associated with the pile foundation and remediation costs; and

WHEREAS, the applicant also submitted an analysis of a regular rectangular-shaped site with an equivalent lot area to the subject site that could accommodate 32 two-family homes and provide a reasonable return, which showed that but for the irregular shape of the site, conforming residential development would be able to overcome the additional costs associated with the pile foundations and soil remediation; and

WHEREAS, during the course of the hearing process, the Board questioned the financial analysis with regards to the site value, revenues, and cost of construction; and

WHEREAS, the Board notes that the financial consultant provided responses that addressed each issue to the satisfaction of the Board; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed development will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area is characterized by a mix of residential, commercial, and manufacturing uses; and

WHEREAS, the applicant submitted a land use map reflecting that a large M1-1 zoning district is located adjacent to the west of the subject site, another M1-1 zoning district is located two blocks to the south of the site, and an M3-1 zoning district is located six blocks to the east of the subject site; and

WHEREAS, the applicant states that the subject site fronts Fountain Avenue, which is the district boundary line between the R4 and M1-1 zoning districts, and the M1-1 district directly across Fountain Avenue is fully occupied with commercial, manufacturing and industrial uses; and

WHEREAS, the applicant also listed a number of large commercial and manufacturing uses located in the surrounding area, including the Brooklyn Union Gas Gate Station located two blocks south of the site; the Department of Sanitation building located less than one-half mile from the site; and the United States Postal Service building located 11 blocks from the site; and

WHEREAS, the applicant notes that a portion of the subject site has been occupied commercially since at least 1937, and the majority of the site was occupied since 1979 by an automobile wrecking yard including the sale of new and used cars and parts with accessory automobile repairs, pursuant to the variances granted by the Board under BSA Cal. Nos. 841-76-BZ and 78-79-BZ; and

WHEREAS, the applicant submitted a report from the Department of City Planning which discusses the decline of the residential market in the surrounding area, as well as research conducted by the Furman Center reflecting a significant

increase in foreclosures; the applicant states that no new work permits have been issued by the Department of Buildings for the construction of new homes in the surrounding area since 2005; and

WHEREAS, the applicant submitted a letter from the Department of Transportation ("DOT") dated October 5, 2009, which states that the proposed action will not result in significant traffic impacts; and

WHEREAS, at hearing, the Board raised concerns with the existing use and operation of the site and its impact on nearby residential uses, noting that the existing site conditions did not satisfy the finding required to be made under ZR § 72-21(c); and

WHEREAS, the Board directed the applicant to provide an operational plan and site improvements that will minimize the impact of the proposed development on the surrounding residential uses; and

WHEREAS, as to its operational plan, the applicant states that it has reduced the number of buses operating on the site from approximately 165 to 125, including buses awaiting repair, buses undergoing bi-annual inspections, and buses on call; and

WHEREAS, the applicant further states that it has limited activities on the site to the storage and dispatch of the 125 buses, and minor repairs including oil changes and changing tires and light bulbs; and

WHEREAS, the applicant states that 20 parking spaces have been designated for employee parking on the site; the applicant represents that 20 spaces are sufficient for its 275 employees because the majority of employees walk to work or take the subway or bus and the company provides a shuttle service to and from the subway and bus stations to encourage use of public transportation among its employees; and

WHEREAS, the applicant further states that the internal circulation on the site has been improved through the creation of one contiguous site with an internal pathway to the Wortman Avenue portion of the site, permitting buses to reach the repair shop and fuel pump portion of the site without exiting the site on Wortman Avenue and re-entering on Fountain Avenue; and

WHEREAS, the applicant states that all access to the site has been consolidated with ingress and egress at the two Fountain Avenue curb cuts facing the manufacturing zoned blocks, and the three existing curb cuts on Euclid Avenue, Wortman Avenue, and Stanley Avenue will be closed, thereby eliminating all curb cuts facing residentially zoned blocks; thus, all of the bus operation on the site will be consolidated, and the traffic will be reduced along with the presence of buses on the three residentially zoned blocks opposite the site; and

WHEREAS, the applicant notes that the hours of operation for the buses at the site will be limited to Monday through Friday, from 6:00 a.m. to 7:15 p.m., and Saturday and Sunday, from 8:00 a.m. to 4:00 p.m.; the hours of operation for the repair shop will be limited to Monday through Friday, from 6:00 a.m. to 5:00 p.m.; and

WHEREAS, as to the site improvements, the applicant submitted a beautification plan, which includes: (1) removal of the second story of the two-story storage shed located along Euclid Avenue; (2) painting the metal repair structures on the

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site; (3) the installation of a new chain link fence with a height of eight feet around the perimeter of the entire site, with privacy slats installed throughout the fencing; (4) the planting of 44 new street trees and 172 new evergreen trees around the perimeter of the site; and (5) the installation of new sidewalks and tree pits, each with a width of four feet, on Stanley Avenue, Euclid Avenue and Wortman Avenue; and

WHEREAS, the Board notes that the implementation of the aforementioned improvements to the operational plan and site conditions is necessary in order for the applicant to satisfy ZR § 72-21(c); and

WHEREAS, as noted above, the current site conditions do not satisfy ZR § 72-21(c); thus, the Board finds it appropriate to condition the resolution on the implementation of the noted improvements to the operational plan and the site conditions and to set a timetable for the implementation of such improvements; and

WHEREAS, the Board requires the following schedule for the implementation of the noted site improvements: (1) the revised hours of operation, parking layout and internal circulation at the site will be implemented immediately upon the Board's approval of the subject variance application; (2) the removal of the second story of the storage shed and the painting of the metal repair structures will be completed by September 15, 2010; (3) the new sidewalks, tree pits, and planting strips will be installed by April 15, 2011; (4) the new fencing and slats will be installed by May 15, 2011; and (5) the proposed landscaping and the planting of street trees will be completed by July 15, 2011; and

WHEREAS, the Board notes that pursuant to ZR § 72-22, it has the authority to prescribe conditions and safeguards to the grant of a variance, and the applicant's failure to comply with such conditions constitute the basis for the revocation of the grant or the denial of a future application for renewal of the grant; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Board notes that the applicant provided an analysis of a lesser variance scenario with the Northeast Parcel occupied by conforming residential development and the remainder of the site occupied by the existing bus storage use, as well as a separate analysis for the conforming residential development of the Northeast Parcel, independent from the remainder of the site; and

WHEREAS, the applicant provided evidence that the alternative scenarios were not feasible; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, as to the Opposition's contention that the applicant did not satisfy the ZR § 72-21 findings related to the uniqueness of the site, the ability to realize a reasonable return,

and whether the hardship was self-created, the Board notes that the applicant has submitted Sanborn maps, certificates of occupancy, geotechnical reports, foundation surveys, environmental studies, several alternative schemes of development, and numerous financial reports in support of this application, which the Board finds sufficient to satisfy these findings; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA-092K, dated March 19, 2010; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R4 zoning district, the legalization of commercial storage of motor vehicles (bus parking) with repairs and accessory fuel storage (Use Group 16), which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 29, 2010"- (4) sheets and "April 1, 2010"(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on July 13, 2013;

THAT the total number of buses on the site shall be limited to 125;

THAT the activities on the site shall be limited to the storage and dispatching of 125 buses and minor repairs;

THAT 20 parking spaces shall be provided on the site for employee parking;

THAT the existing curb cuts on Euclid Avenue, Wortman Avenue, and Stanley Avenue shall be eliminated in accordance with the BSA-approved plans;

THAT the hours of operation for bus storage and parking

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shall be limited to Monday through Friday, from 6:00 a.m. to 7:15 p.m., and Saturday and Sunday, from 8:00 a.m. to 4:00 p.m.; and the hours of operation for the repair shop shall be limited to Monday through Friday, from 6:00 a.m. to 5:00 p.m.;

THAT the second story of the two-story accessory storage shed along Euclid Avenue shall be removed and the metal repair structures on the site shall be painted by September 15, 2010;

THAT sidewalks, tree pits, and planting strips shall be installed and maintained in accordance with the BSA-approved plans by April 15, 2011;

THAT fencing shall be installed and maintained in accordance with the BSA-approved plans, by May 15, 2011;

THAT landscaping and street trees shall be provided and maintained in accordance with the BSA-approved plans by July 15, 2011;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by January 13, 2012;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 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: Hiram A. Rothkrug.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough

Commissioner, dated November 7, 2008, acting on Department of Buildings Application No. 200811407, reads in pertinent part:

“Proposed three family dwelling without required 8’-0” side yard is contrary to 23-462(a) ZR and ZR 23-49;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R5 zoning district, an existing semi-detached residential building that does not provide the required side yard, contrary to ZR §§ 23-462 and 23-49; and

WHEREAS, a public hearing was held on this application on December 15, 2009, after due notice by publication in *The City Record*, with continued hearings on March 16, 2010, April 27, 2010, and June 22, 2010, and then to decision on July 13, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Bronx, recommends disapproval of this application; and

WHEREAS, the Department of Buildings (“DOB”) appeared and provided submissions in opposition to the application; and

WHEREAS, the site was the subject of an appeal concerning the interpretation of ZR § 23-49 (Special Provisions for Party or Side Lot Line Walls) related to the non-complying side yard, which the Board denied on October 16, 2007, under BSA Cal. No. 320-06-A (the “2007 Appeal”); and

WHEREAS, DOB appeared and made submissions during the course of the 2007 Appeal, in opposition to the property owner’s interpretation of the side yard regulations and maintains that position in the course of the subject variance application; and

WHEREAS, the site is located on the east side of Furman Avenue, 224 feet south of Nereid Avenue, within an R5 zoning district; and

WHEREAS, the zoning lot has a width of 55’-9”, a depth of 97’-6”, and a total lot area of approximately 4,763 sq. ft.; and

WHEREAS, the zoning lot is divided into two tax lots, Lot 11 and Lot 12 (the subject lot), each occupied by a three-story semi-detached three-family home; and

WHEREAS, each home has a width of 19’-0”, a depth of 49’-6”, and a floor area of 2,935.5 sq. ft.; and

WHEREAS, the applicant represents that the home on Lot 11 complies with all relevant zoning regulations and, thus is not included in the subject variance application; DOB issued a certificate of occupancy for the home on Lot 11 on December 1, 2006; and

WHEREAS, the applicant represents that the home on Lot 12 (the “Subject Building”) complies with all relevant zoning regulations, except the side yard on the northern lot line; the applicant has not provided any side yard along the northern lot line and has provided a side yard with a width of 8’-0” along the southern lot line, adjacent to Lot 11 (side yards with minimum widths of 8’-0” are required at each side lot line, pursuant to ZR § 23-462); and

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WHEREAS, the applicant now seeks a variance of the side yard requirement based on the practical difficulty and unnecessary hardship, which it represents result from reliance in good faith on DOB's approval of its plans and subsequent issuance of building permits under which it completed construction of the Subject Building, absent the required side yard along the northern lot line; and

WHEREAS, the applicant claims that (1) the architect followed established procedures for the approval of building plans; (2) DOB has testified to the ambiguity of the statute; (3) completed work was based on a valid and viable interpretation of ZR § 23-49, which DOB applied; (4) a change in interpretation has created unique conditions specific to the subject site; and (5) as of right construction would require the demolition of 8'-0" of the width of the Subject Building; and

WHEREAS, the applicant sets forth the following timeline for the approval and construction process: (1) on October 24, 2003, the applicant filed an application for the construction of the Subject Building with DOB; (2) on December 12, 2003, DOB approved the plans; (3) on February 20, 2004, DOB issued permits and construction commenced thereafter; and (4) in May 2005, in response to a complaint, DOB audited the plans and issued a stop work order based on non-compliance with side yard regulations; construction of the Subject Building has been completed; and

WHEREAS, ZR § 23-462(a) provides, in pertinent part, that in R5 zoning districts, "two *side yards*, each with a minimum required width of eight feet, shall be provided"; and

WHEREAS, ZR § 23-49 provides, in pertinent part that: "a *residence* may be constructed so as to: (a) utilize a party wall or party walls, or abut an independent wall or walls along a *side lot line*, existing on December 15, 1961"; and

WHEREAS, the adjacent lot to the north is occupied by a multiple dwelling (the "Adjacent Building") with a portion of its southern wall built along a portion of the lot line it shares with the Subject Building; and

WHEREAS, the entire depth of the Subject Building's northern wall is built along the shared lot line; and

WHEREAS, as noted, the applicant appealed DOB's determination that the Subject Building does not meet the criteria of the side yard exception and, the Board denied the appeal; and

WHEREAS, the applicant maintains its position that the Subject Building was constructed so as to utilize the existing adjacent lot line wall of the Adjacent Building in a manner consistent with its interpretation of ZR § 23-49 and thus consistent with the exception to the side yard requirement of ZR § 23-462(a); and

The Interpretations of ZR § 23-49

WHEREAS, various interpretations of ZR § 23-49 and their origins were discussed in detail during the course of the 2007 Appeal, which the applicant and DOB reference during the subject variance application process; and

WHEREAS, the discussion of the various interpretations is limited in the subject variance application and is summarized below; and

WHEREAS, the applicant maintains the following interpretation: ZR § 23-49 enables the waiver of the side yard

requirement when a proposed lot line wall overlaps at least 50 percent of an existing (as of December 15, 1961) lot line wall on an adjacent lot (the "Applicant's Interpretation"); and

WHEREAS, DOB maintains the following interpretation: the application of ZR § 23-49 is limited to cases where the depth of the portion of the adjacent building's lot line wall is at least 50 percent of the entire depth of the adjacent building ("DOB's Interpretation"); and

WHEREAS, the applicant asserts that DOB, in finding that the side yard exception under ZR § 23-49 did not apply to the Subject Building because the Adjacent Building's lot line wall does not have a depth that is at least 50 percent of the entire depth of the Adjacent Building, changed its interpretation of the section from the Applicant's Interpretation to DOB's Interpretation, since the time of the 2003 plan approval; and

WHEREAS, the applicant cites to a September 2, 1986 DOB memorandum (Special Provision for Party Side Lot Line Walls Section 23-49 Zoning Resolution) (the "1986 Memo") which states that "[t]he special provisions of Section 23-49(a) & (c) are applicable when the party walls are utilized or shared for 50% or more of the depth of the building"; and

WHEREAS, the applicant also relies on a letter dated July 10, 2007 and other testimony from DOB, in which DOB acknowledged that its interpretation of ZR § 23-49 may not have been consistent and/or has changed; and

WHEREAS, the applicant asserts, however, that DOB's change in interpretation did not develop until a meeting held on April 28, 2005, or later, after DOB issued permits for the Subject Building; and

WHEREAS, the applicant's architect provided an affidavit, dated July 2007, which says that the issue of the lot line wall arose during the review process and that he had argued that the side yard waiver in ZR § 23-49 applied because the proposed building (1) abutted an independent lot line wall existing on December 15, 1961 and (2) the proposed "party wall" was utilized for more than 50 percent of the depth of the portion of the building on the lot line, as required by the 1986 Memo; and

WHEREAS, the architect further stated that "depth of the building" as found in the 1986 Memo is interpreted to apply to the depth of the portion of the building along the lot line, which is the customary interpretation applied by DOB; and

WHEREAS, the architect further stated that there was never any discussion about interpreting the 1986 Memo to require that the lot line wall abut more than 50 percent of the total depth of the building on the adjacent property; and

WHEREAS, the architect finds such interpretation to be contrary to the 1986 Memo and DOB's practice; and

WHEREAS, the architect stated that the marked-up plans referred to in the initial objection sheet were discarded upon approval and that no documentation, other than the objection, exists to support the claim that DOB reviewed and approved the side yard condition and upon which interpretation it may have relied; and

WHEREAS, the applicant relies on a stamp on the DOB Plans, from a DOB plan examiner, which states "EXAMINED FOR ZONING, EGRESS AND FIRE PREVENTION" as the

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basis that the side yard question was reviewed and agreed upon under its interpretation; and

WHEREAS, however, the applicant was not able to resolve the side yard objection, which led to the stop work order, subsequent to DOB's 2005 audit, and filed an appeal at the Board in December 2006 for the reinstatement of the permit; and

WHEREAS, during the 2007 Appeal, the Board determined that the subject building did not comply with DOB's Interpretation, and thus the exemption pursuant to ZR § 23-49 did not apply; and

WHEREAS, the Board also rejected the applicant's argument that the Subject Building could vest under a prior (alternate) interpretation of ZR § 23-49; and

The Relevant Building Plans

WHEREAS, during the course of the 2007 Appeal and the subject variance application, the applicant presented several sets of plans and illustrations to support its position that its plans for the Subject Building, as reviewed by DOB, comport with the Applicant's Interpretation; and

WHEREAS, the relevant plans include the following: (1) plans reviewed and approved by DOB on December 12, 2003 (the "DOB Plans") and (2) plans submitted with the subject variance application, stamped December 8, 2009 (the "BSA Plans"); and

WHEREAS, the applicant maintains its position that the DOB Plans underwent full plan review and were approved pursuant to the Applicant's Interpretation; and

WHEREAS, the Board notes that the DOB Plans and the BSA Plans are not consistent with each other; and

WHEREAS, specifically, the Board notes that the portion of the Subject Building's wall along the northern lot line is greater in the BSA Plans than in the DOB Plans; and

WHEREAS, further, the Board notes that the first floor plan in the BSA Plans provides a dimension for the portion of the Adjacent Building's wall along the shared lot line of 24'-2" and the dimension of the overlap as 13'-2", which includes the depth of a balcony and overhang (with a total depth of approximately 8'-0") – both generally understood to be permitted obstructions and not building walls; the Board notes that the required front yard is 18'-0", which, if provided, would only leave 6'-2" of overlap; and

WHEREAS, however, the Board notes that the DOB Plans do not reflect the dimension of the depth of the portion of the adjacent wall along the shared lot line, a condition that would have had to have been known in order to apply the Applicant's Interpretation; and

WHEREAS, further, on both sets of plans, the overhang and balcony conditions, which are reflected inconsistently even within each set of plans, obscure the critical dimension of the portion of the Subject Building's lot line wall that overlaps the Adjacent Building's lot line wall; and

WHEREAS, the applicant also provided an illustration into the record in an effort to demonstrate how the north wall of the subject building complies with the interpretation of ZR § 23-49 and the 1986 Memo as set forth by the architect in his 2007 affidavit; and

WHEREAS, the Board notes that the illustration is not

consistent with either the DOB Plans or the BSA Plans; and

WHEREAS, specifically, the illustration shows that the portion of the Adjacent Building along the lot line has a depth of 30'-0", and the Subject Building's lot line wall overlaps the Adjacent Building's lot line wall for a distance of 15'-2" (20'-2" including balcony); the applicant's conclusion is that since the overlap on the illustration exceeds 50 percent of the Adjacent Building's depth along the lot line, it meets the Applicant's Interpretation, which it claims was understood by DOB; and

WHEREAS, because of the unexplained inconsistent measurements between the different sets of plans and illustrations, at the Board's request, the applicant provided a survey of the site conditions, which reflects that the portion of the Adjacent Building on the lot line is actually 27.4 feet (rather than 30'-0" or 24'-2") and the portion of the Subject Building that overlaps the Adjacent Building's wall has a depth of 12.4 feet, including the overhang, but not the balcony (rather than 15'-2" or 13'-2"); this overlap is 45 percent; and

WHEREAS, the Board notes that a proposed wall that overlaps 45 percent of the depth of an existing adjacent wall that is on the lot line for a depth that is less than 50 percent of the entire depth of the existing building fails to meet the Applicant's Interpretation or DOB's Interpretation; and The Good Faith Reliance Principle

WHEREAS, the Board notes that New York State courts have recognized that property owners may invoke the good faith reliance principle when they have made expenditures towards construction that was performed pursuant to a building permit, which is later revoked due to non-compliance that existed at the time of the permit issuance; the principle is raised within the variance context when applicants assert that the reliance creates a unique hardship and seek to substitute it for the customary uniqueness finding under ZR § 72-21(a); and

WHEREAS, in *Jayne Estates, Inc. v. Raynor*, 22 N.Y.2d 417 (1968), the Court of Appeals determined that the expenditures the property owner made in reliance on the invalid permit should be considered in the variance application because: (1) the property owner acted in good faith, (2) there was no reasonable basis with which to charge the property owner with constructive notice that it was building contrary to zoning, and (3) the municipal officials charged with carrying out the zoning resolution had granted repeated assurances to the property owner; and

WHEREAS, more recently, in *Pantelidis v. Board of Standards and Appeals*, 10 N.Y.3d 846, 889 N.E.2d 474, 859 N.Y.S.2d 597 (2008), the Court of Appeals, in a limited opinion, held that it was appropriate that the state Supreme Court had conducted a good faith reliance hearing, to determine whether the property owner could claim reliance, rather than remanding the case to the Board to do so in the context of an Article 78 proceeding to overturn the Board's denial of a variance application; the Court established that the Board should conduct such a hearing and that good faith reliance is relevant to the variance analysis; and

WHEREAS, the Board notes, however, that the body of cases, which address the good faith reliance principle and a property owner's ability to establish detrimental reliance which

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can be introduced into a variance application, is limited to those where there is a unique history of approvals from high-level municipal officials (including the Village Board of Trustees in Jayne and DOB's Borough Commissioner in Pantelidis) after a series of meetings on the precise matter at issue, rather than merely a review and approval by one DOB examiner; and

WHEREAS, the Board identifies the key questions that have emerged in the good faith reliance inquiry are: (1) was the permit void on its face, (2) was there any way the applicant could have known about the invalidity of the permit, and (3) were there multiple municipal assurances of validity?; and

WHEREAS, the record of a good faith reliance hearing should include the applicant's explanation of: (1) whether there was any way to know that the permit was not valid because the non-compliance could not have been discovered at the time of permitting, (2) the basis for the interpretation or analysis the applicant relied on, and (3) the basis for the reliance on the approval, including all communication with DOB with specific reference to the zoning matter at issue; and

WHEREAS, the Board also acknowledges the principle that government agencies, like DOB, maintain the ability to correct mistakes, such as the erroneous issuance of permits (see Charles Field Delivery v. Roberts, 66 N.Y.2d 516 (N.Y. 1985) in which the court states that agencies are permitted to correct mistakes as long as such changes are rational and are explained), and that DOB may not be estopped from correcting an erroneous approval of a building permit or issuance of a CO (see Parkview Assoc. v. City of New York, 71 N.Y.2d 274, 282, cert. den., 488 U.S. 801 (1988)); and

The Applicant's Good Faith Reliance Claim

WHEREAS, the applicant states that it relied in good faith upon DOB's approval of the side yard condition, which was purportedly based on the Applicant's Interpretation, to substantially complete the Subject Building without knowledge of or expectation of a change in interpretation; and

WHEREAS, the applicant sets forth the following criteria in its reliance claim: (1) the project was not approved pursuant to DOB's self-certification process, but rather DOB reviewed and approved the DOB Plans; (2) the applicant and architect followed established procedures in the review and approval process; (3) the side yard issue is one that was reviewed as part of initial zoning review and not an obscure condition that might have been overlooked; (4) as discussed during the 2007 Appeal, the project architect stated that the application of ZR § 23-49 was discussed during the initial plan review and the plans were determined to be in compliance; and (5) the 1986 Memo's drafter testified that the architect and DOB's interpretation at the time of the application at DOB was consistent with his intended interpretation of the 1986 Memo and consistent with the Applicant's Interpretation; and

WHEREAS, additionally, the applicant makes the following arguments: (1) case law supports the assertion that good faith reliance on a permit can lead to practical difficulties and unnecessary hardship in complying with zoning law and regulations (see Pantelidis); and (2) DOB has established a precedent of accepting the Applicant's Interpretation; and

WHEREAS, as to case law, the applicant states that in

Pantelidis, the Court of Appeals affirmed the ruling that the property owner had relied in good faith upon a permit issued by DOB and, thus, satisfied the criteria set forth in the ZR and directed the Board to grant a variance based on good faith reliance in lieu of the traditional uniqueness finding; and

WHEREAS, the applicant draws a comparison to Pantelidis by noting that, in both instances, a DOB representative was present at plan review and did not offer opposition to the plans that reflected the later-disputed condition and that the interpretation upon which the approval was based was rational, not clearly incorrect, and, thus reliance in good faith on the approval of the plans was reasonable; and

WHEREAS, the applicant also cites to Village Green Condominium Corp. v. Nardecchia, 85 A.D.2d 692, 445 N.Y.S.2d 494 (2d Dept. 1981) as an example of when a city's department of buildings changed its interpretation of a statute and later sought to revoke permits, issued under a prior interpretation, and the court held in favor of the property owner; and

WHEREAS, the applicant also cites to Kennedy v. Zoning Board of Appeals, 205 A.D.2d 629, 613 N.Y.S.2d 264 (1994) where a property owner relied upon multiple notices from the town building inspector that a certificate of occupancy was not required, a position that was later vacated, but the court determined that the original interpretation had a rational basis and the zoning board could not subsequently change its position to the property owner's detriment; and

WHEREAS, finally, the applicant cites to Friend v. Feriolo, 230 N.Y.S.2d 783 (1962), *aff'd* 258 N.Y.S.2d 807 (2d Dept. 1965) in which the decision of a zoning board was annulled and the issue of a certificate of occupancy ordered where construction of a one-family home was virtually completed, the court cited to the unnecessary hardship associated with a revocation of the building permit; and

WHEREAS, the Board can distinguish all of the cited cases from the subject facts; and

WHEREAS, first, as to Pantelidis, the Board notes that the specific question of whether the disputed construction could be classified as a greenhouse was (1) established as having been specifically reviewed, pursuant to the plans before DOB, and (2) approved by a DOB Borough Commissioner, after several rounds of examination at DOB; and

WHEREAS, on the contrary, the Board notes that, in the subject case, (1) the applicant is unable to establish that the specific question about a waiver of side yard requirements was even addressed and (2) there was not a series of review, which vetted the side yard issue and confirmed that the rare exception, pursuant to ZR § 23-49 was applicable; and

WHEREAS, the Board can, similarly, distinguish the subject case from Village Green in that the court in Village Green held that the precise issue later debated was discussed at an administrative hearing and no city representative offered opposition to the property owner's associated proposal; and

WHEREAS, the Board does not find the applicant's assertion that the DOB examiner's interpretation was "a rational one and not clearly incorrect" as dispositive that the applicant should rely on it, particularly since the applicant has been unable to establish what interpretation was applied; and

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WHEREAS, specifically, the applicant, nor DOB has been able to establish what interpretation was applied at the time of permit issuance so reliance on a specific, even renounced interpretation, as is the basis for the case law examples, cannot be established; and

WHEREAS, the Board can distinguish the subject case from Kennedy in that in Kennedy, as in Pantelidis and Village Green, there were multiple governmental assurances of the specific question at issue, which has not been established in the subject variance case; and

WHEREAS, as to Friend, the Board notes that, unlike in Friend, there is clear evidence that the proposal is in violation of the relevant zoning provision and DOB's Interpretation is not strained; and

WHEREAS, as to precedent, the applicant claims that DOB has routinely applied the Applicant's Interpretation; and

WHEREAS, however, the applicant has failed to produce examples of DOB approvals of building plans which follow the Applicant's Interpretation and has used the defense that it does not have the resources to find such examples; and
The Board's Determination

WHEREAS, the Board has determined that the applicant could not have relied in good faith upon an interpretation that a 50 percent overlap of the Adjacent Building on the lot line was sufficient to allow for the application of ZR § 23-49 and also built a building that only provided a 45 percent overlap; and

WHEREAS, the Board notes that although the permit may not have been void on its face, the applicant could have known about its invalidity because side yards are required as a rule and the absence of the subject side yard did not fit within any exception, as a basic survey of the property or even an accurate site plan at the time of permitting would have shown; further, the applicant has been unable to provide evidence that there were multiple DOB assurances of validity, based on communication related to the specific side yard issue; and

WHEREAS, specifically, the Board notes that contrary to the architect's affidavit, he stated at hearing that DOB had not discussed nor reviewed the side yard requirement as it related to the interpretation of the 1986 Memo; and

WHEREAS, the applicant also fails to establish its good faith reliance claim in that it has never been able to provide evidence of the basis for the interpretation or analysis relied on, or associated communication with DOB with specific reference to the side yard issue; and

WHEREAS, the applicant asserts that a stop work order was in effect before construction could be completed on an extension of the front wall of the Subject Building to increase the degree of overlap with the wall of the Adjacent Building; and

WHEREAS, the Board finds this argument to actually weaken the applicant's position since the DOB Plans do not reflect the wall extension and, thus, they could not have been the basis for the applicant's reliance, absent revised approved plans which reflect DOB's approval of such conditions; and

WHEREAS, further, the Subject Building's lot line wall has been constructed and any extension of the wall would at best be a permitted obstruction, constructed solely for the purpose of achieving an overlap, and not an actual building

wall; the Board has doubts that DOB would consider such an extension to satisfy the requirement of the wall overlap if it had been presented at any point of the review process; and

WHEREAS, accordingly, the Board has determined that the applicant could not have relied in good faith on DOB's approval of the Applicant's Interpretation when the applicant has been unable to establish (1) which interpretation DOB applied that would allow for a side yard exception or (2) that it constructed the Subject Building pursuant to plans and otherwise in conformance with the Applicant's Interpretation, when the survey clearly reflects that the minimum standard of the Applicant's Interpretation – an overlap of 50 percent of the existing wall – is not met; and

WHEREAS, the Board adds that there is not any evidence that the Applicant's Interpretation or any other was applied during the approval process and that the applicant's claim that DOB concedes to multiple interpretations reinforces that there was not any good faith reliance because they had no way of knowing at the time of construction that multiple interpretations existed because DOB first admitted to that there may have been multiple interpretations approximately two years after the permit's issuance; and

WHEREAS, the project architect also made claims that the Applicant's Interpretation was within DOB's accepted practice, but failed to provide a single example where such interpretation had been accepted; the Board has distinguished the two examples provided during the 2007 Appeal from the subject case; and

WHEREAS, the Board notes that DOB maintains its position that the Applicant's Interpretation is not DOB's current accepted interpretation of ZR § 23-49, but, even if the Board defers to the applicant's assertion that DOB applied the Applicant's Interpretation in the past, namely at the time of the 2003 plan approval, the applicant's argument still fails since plans and the constructed building do not comply with the interpretation; and

WHEREAS, the Board does not find that the cited case law or any other arguments set forth by the applicant support the conclusion that good faith reliance on a DOB approval can be established in the absence of evidence that there was an approval of the side yard condition, rather than an oversight or confusion due to inconsistent site plans and architectural renderings; and

WHEREAS, the Board distinguishes the erroneous approval in the subject case, an unexplained, undocumented approval of a non-complying yard condition, which may not have ever been discussed and was certainly not clearly reflected on plans subject to DOB review, from policy change in certain of the cited case law in which a city's department of buildings or zoning board may have reconsidered an earlier position and determined it to be erroneous; and

WHEREAS, the Board is not persuaded that the Applicant's Interpretation was applied and, secondly, even if DOB formerly accepted the Applicant's Interpretation, the applicant could not have relied on it because it is inconsistent with its building plans; and

WHEREAS, accordingly, the Board rejects the applicant's claim that it relied in good faith on DOB's approval

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of the DOB Plans under the Applicant's Interpretation; and
WHEREAS, because the applicant has failed to establish a good faith reliance claim, a threshold finding in the subject variance application, the Board has determined that it is not necessary to analyze the remainder of the variance findings, which are implicated by the threshold finding; and

WHEREAS, additionally, the Board denies the applicant's request to subpoena DOB records because, in light of the information on the survey, which reflects that the applicant did not comply with its own interpretation of ZR § 23-49, the question of whether DOB has accepted the Applicant's Interpretation is irrelevant; and

WHEREAS, the Applicant's Interpretation sets a higher standard, which has not been met by the Subject Building, regardless of whether DOB has ever based its approach on it; and

WHEREAS, the applicant has never argued that a 45 percent overlap, as reflected on the survey, is the basis for any interpretation or would be sufficient to meet the ZR § 23-49 standard and, thus, DOB precedent would only be relevant, if at all, if the applicant actually complied with the Applicant's Interpretation; and

WHEREAS, the applicant does not assert that DOB has accepted or would accept a waiver of the side yard requirement for an even lower standard than that set forth in the Applicant's Interpretation, therefore, evidence that DOB has accepted the Applicant's Interpretation does not support its case; and

WHEREAS, for all of the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(a); and

WHEREAS, since the application fails to meet the findings set forth at ZR § 72-21 (a) its variance request must be denied; and

WHEREAS, because the Board finds that the application fails to meet the findings set forth at ZR § 72-21(a), as modified by the good faith reliance doctrine, which is a threshold finding that must be met for a grant of a variance, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Bronx Borough Commissioner, dated November 7, 2008, acting on Department of Buildings Application No. 200811407, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, July 13, 2010.

29-09-BZ

CEQR #09-BSA-076R

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to legalize and enlarge a synagogue (*Chabad Israeli Center*), contrary to lot coverage, front yards, side yards, and parking regulations. R3X zoning district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 29, 2010, acting on Department of Buildings Application No. 520038673, reads in pertinent part:

“ZR 24-34. Front yards should be 15 feet min. Front yard measured from street widening line to the front building wall.

ZR 24-35. If building is used for community facility use has an aggregate width of street walls equal to 80 feet or less, two side yards shall be provided, each with a minimum required width of eight feet;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R3X zoning district, the conversion of the existing two-story home to a community facility building occupied by a synagogue (Use Group 4) and accessory rabbi's residence, and the enlargement of the existing detached garage for use as an accessory mikvah, which does not comply with front yard and side yard requirements for community facilities, contrary to ZR §§ 24-34 and 24-35 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 January 12, 2010 and February 23, 2010, and then to decision on July 13, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of the application; and

WHEREAS, an adjacent property owner provided testimony in opposition to the proposal, raising concerns about the condition of the site and the noise generated by the synagogue use; and

WHEREAS, this application is brought on behalf of the Chabad Israeli Center, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject site is located on the northwest corner of Brunswick Street and Richmond Hill Road, within an R3X zoning district; and

WHEREAS, the site has approximately 54 feet of frontage on Brunswick Street, 100 feet of frontage on Richmond Hill Road, and a lot area of 5,603.5 sq. ft.; and

WHEREAS, the subject site consists of a two-story home with a detached garage, which is currently occupied by the Synagogue and accessory Rabbi's residence; and

WHEREAS, the applicant now seeks to legalize the conversion of the two-story home into a synagogue and

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accessory Rabbi's residence, and to enlarge the existing detached garage and permit its conversion to a mikvah; and

WHEREAS, the proposal provides for a building occupied by a synagogue and accessory Rabbi's residence, and a detached building to be occupied by a mikvah, with the following parameters: 3,376 sq. ft. of floor area (.60 FAR); a front yard with a depth of 3'-11" along the southern lot line and a front yard with a depth of 14'-9" along the eastern lot line (two front yards with a minimum depth of 15'-0" each are required); a side yard of 5'-4" along the northern lot line and no side yard along the western lot line (two side yards with a minimum width of 8'-0" each are required); and

WHEREAS, the proposal provides for the following uses: (1) a synagogue, Rabbi's office, multi-function room, and kitchenette on the first floor; (2) an accessory Rabbi's residence on the second floor; and (3) a mikvah in the detached garage; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested waivers: (1) to accommodate the current congregation of approximately 20 families; (2) to provide separate space for the women's mikvah; and (3) to provide a residence for the Synagogue's Rabbi; and

WHEREAS, the applicant represents that the proposed amount of space would accommodate the congregation of approximately 20 families, which previously worshipped in a nearby rented space but was unable to remain at that location and moved to the subject site in order to continue to worship; and

WHEREAS, the applicant further represents that the location of the subject site is essential to the operation of the Synagogue within the community, as the proximity of the site enables the members of the congregation to walk to the Synagogue, which is a requirement for attendance on the Sabbath and holidays when travel by vehicle is otherwise prohibited; and

WHEREAS, the applicant states that conversion of the existing detached garage into a mikvah is necessary in order to provide this essential service for the women of the congregation; and

WHEREAS, the applicant notes that the existing garage is a permitted obstruction in a side yard for a residential use, but that the proposed conversion to a mikvah creates a side yard non-compliance because it is not a permitted obstruction for a community facility use; and

WHEREAS, the applicant represents that the subject building can accommodate the religious services and programs of the Synagogue and will better accommodate the size of its congregation; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or

welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under well-established precedents of the courts, a Rabbi's residence on the site of a religious institution is construed to be a religious use entitled to deference by a zoning board (see Jewish Recon. Syn. v. Vill. of Roslyn, 38 N.Y.2d 283 (1975)); and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposal 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 uses and floor area are permitted in the subject zoning district; and

WHEREAS, the applicant submitted a 400-foot radius diagram establishing that the bulk and height of the subject building are consistent with the bulk and height of the homes in the surrounding neighborhood, which are predominantly two stories; and

WHEREAS, the applicant notes that Richmond Hill Road is sloped alongside the site, such that the garage/mikvah is located above grade but at the equivalent of the cellar level of the synagogue, therefore while it is not a permitted obstruction under the Zoning Resolution, its bulk is not visible from the remainder of the site, and it would be permitted as-of-right if it remained a residential garage; and

WHEREAS, the applicant further notes that the Synagogue is located in an R3X zoning district, and a waiver pursuant to ZR § 25-33 is permitted if fewer than ten parking spaces are required; and

WHEREAS, the applicant represents, and the Board agrees, that based on the applicable formula and the rated capacity of the largest room of assembly, four parking spaces would be required, thereby qualifying the Synagogue for a waiver under ZR § 25-33; thus, the Synagogue is not required to provide any off-street parking; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet

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the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board notes that the development of the proposed Synagogue is entirely as-of-right, with the exception of the non-compliant front yards and side yards; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.12 (aj) and 617.5; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.09BSA076R, dated February 20, 2009; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, 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 R3X zoning district, the conversion of the existing two-story home to a community facility building occupied by a synagogue (Use Group 4) and accessory Rabbi's residence, and the enlargement of the existing detached garage for use as an accessory mikvah, which does not comply with front yard and side yard requirements for community facilities, contrary to ZR §§ 24-34 and 24-35, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 30, 2010"– (8) sheets; and *on further condition*:

THAT the parameters of the site shall be: a floor area of 3,376 sq. ft.; an FAR of 0.60; a front yard with a minimum depth of 3'-11" along the southern lot line; a front yard with a minimum depth of 14'-9" along the eastern lot line; a side yard with a minimum width of 5'-4" along the northern lot line; no side yard along the western lot line; a lot coverage of 34 percent; a wall height of 17'-8"; and a total height of 24'-4"; as indicated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship, an accessory Rabbi's residence, and an accessory mikvah (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2010.

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 12th Street and Homecrest Avenue, eastside of Avenue S, Block 7291, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 2, 2009, acting on Department of Buildings Application No. 320050500, reads in pertinent part:

“Proposed one-family home within an R4-1 zoning

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district:

1. Exceeds the maximum permitted floor area and floor area ratio as set forth in ZR Section 23-141;
2. Provides less than minimum required front yards as set forth in ZR Section 23-45; and
3. Provides less than the minimum required side yards as set forth in ZR Section 23-461;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R4-1 zoning district, the proposed construction of a two-story single-family home that does not provide the required floor area, floor area ratio (“FAR”), front yard, and side yards, contrary to ZR §§ 23-141, 23-45 and 23-461; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in *The City Record*, with continued hearings on March 16, 2010, April 27, 2010, May 11, 2010, June 8, 2010 and June 22, 2010, and then to decision on July 13, 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 15, Brooklyn, recommends approval of the application; and

WHEREAS, the site is located on a corner through lot bounded by Homecrest Avenue to the east, Avenue S to the north, and East 12th Street to the west, within an R4-1 zoning district; and

WHEREAS, the site has a width of approximately 28 feet, a depth of approximately 80 feet, and a total lot area of 2,264.5 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home on the site; and

WHEREAS, the applicant proposes a floor area of 2,567 sq. ft. (the maximum permitted floor area is 1,698 sq. ft.); an FAR of 1.13 (0.75 FAR is the maximum permitted); a front yard with a depth of 3’-8” along the northern lot line (a front yard with a minimum depth of 10’-0” is required); and no side yard along the southern lot line (a side yard with a minimum width of 8’-0” is required); and

WHEREAS, the applicant originally proposed to construct a single-family home with a floor area of 3,066 sq. ft. (1.35 FAR) and a front yard with a depth of 2’-8” along the northern lot line; and

WHEREAS, the Board directed the applicant to reduce the FAR and to increase the depth of the front yard along the northern lot line; and

WHEREAS, accordingly, the applicant revised its application to reflect the current proposal, thereby reducing the floor area and front yard waivers; and

WHEREAS, the applicant notes that the subject lot is undersized as defined by ZR § 23-32; and

WHEREAS, the applicant represents that it satisfies the requirements of ZR § 23-33, which permits the construction of a single-family home on an undersized lot provided that the lot was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit; and

WHEREAS, in support of this, the applicant submitted deeds reflecting that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the adjoining lot; and

WHEREAS, the applicant represents that the requested relief is necessary for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site’s shallow depth; and

WHEREAS, the applicant represents that the site’s pre-existing depth of approximately 80’-0”, combined with a lot width of 28’-0” cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the site is a vacant lot and is the only site in the surrounding area with frontages on three streets, and that the requested waivers are necessary to develop the site with a viable home; and

WHEREAS, specifically, the applicant states that the subject site is a corner lot bounded by three streets, and therefore has three front yards and only one side yard; and

WHEREAS, the applicant notes that in the subject R4-1 zoning district, a zero lot line building is permitted along one side yard provided that the second side yard has a width of at least 8’-0”; and

WHEREAS, the applicant states that if the subject site were a regular corner lot with only two frontages, it could maintain the zero lot line building along the southern lot line because the proposed yards along the eastern lot line and western lot line have widths of 10’-0” and 17’-0”, respectively; and

WHEREAS, however, the applicant states that because the subject site has three front yards and only one side yard, the side yard along the southern lot line must have a width of at least 8’-0” in order to comply with the underlying district regulations; and

WHEREAS, therefore, the applicant represents that compliance with the applicable bulk regulations would result in an undersized home with a width of ten feet and a depth of 47 feet; and

WHEREAS, the applicant asserts that a complying home would therefore result in constrained floor plates with small and narrow rooms; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 400-ft. radius diagram reflecting that there are only two other lots in the surrounding neighborhood with a depth as shallow as the subject site; and

WHEREAS, the applicant also submitted a floor area analysis for all single- and two-family homes on corner lots within a 400-ft. radius of the subject site, which reflected a median floor area of 2,520 sq. ft. (1.08 FAR) on corner lots in the surrounding neighborhood; and

WHEREAS, the applicant represents that the proposed floor area of 2,567 sq. ft. (1.13 FAR) is comparable to the median floor area of corner lots in the surrounding area; and

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WHEREAS, the applicant states that the site was formerly developed with a single-family home, but that it had to be demolished due to fire damage; and

WHEREAS, the applicant notes that the subject site is located in Community Board 15, one of the community districts eligible for a special permit to enlarge an existing single-family home pursuant to ZR § 73-622; and

WHEREAS, the applicant represents that the proposed home is similar in context to other homes in the area that have been enlarged pursuant to ZR § 73-622; and

WHEREAS, however, the subject site is vacant because the former home was destroyed by fire, therefore the proposed home must be built anew and the applicant is unable to utilize the special permit pursuant to ZR § 73-622; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized by single-family detached homes; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development; and

WHEREAS, specifically, as noted above, the applicant submitted a floor area survey for corner lots within a 400-ft. radius of the subject site, reflecting that four of the seven corner lots surveyed have a larger floor area than the subject site, and three of the seven homes have a higher FAR than the subject site; and

WHEREAS, the applicant states that the site has a side yard with a width of 10'-0" along Homecrest Avenue and a front yard with a depth of 17'-0" along the East 12th Street frontage, both of which comply with the underlying zoning regulations; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a result of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed to construct a two-story single-family home with a floor area of 3,066 sq. ft. (1.35 FAR) and a front yard with a depth of 2'-8" at the northern lot line; and

WHEREAS, at the Board's direction, the applicant revised the proposal to reflect a single-family home with a floor area of 2,567 sq. ft. (1.13 FAR) and a front yard with a depth of 3'-8", thereby reducing the requested floor area and front yard waivers; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, in an R4-1 zoning district, the proposed construction of a two-story single-family home that does not provide the required floor area, FAR, front yard and side yards, contrary to ZR §§ 23-141, 23-45 and 23-461; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 1, 2010"–(16) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: approximately 2,567 sq. ft. of floor area (1.13 FAR); lot coverage of approximately 54 percent; a perimeter wall height of 25'-0"; a total height of 34'-6"; a front yard with a depth of 3'-8" along the northern lot line; a front yard with a depth of 17'-0" along the western lot line; a front yard with a depth of 10'-0" along the eastern lot line; no side yard along the southern lot line; and one parking space, as per the BSA-approved plans;

THAT the floor area in the attic shall be limited to 95 sq. ft., as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT significant construction shall proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2010.

271-09-BZ
CEQR #10-BSA-003Q

APPLICANT – Sheldon Lobel, P.C., for 132-40 Metropolitan Realty, LLC, owner; Jamaica Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 21, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Planet Fitness*) on the first, second, and third floors of an existing three-story building. C2-3 zoning district.

PREMISES AFFECTED – 132-40 Metropolitan Avenue,

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between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street. Block 9284, Lot 19, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated August 20, 2009, acting on Department of Buildings Application No. 410123441, reads in pertinent part:

“[R]equest to change “use” at first, second and third floors to a physical culture establishment, contrary to ZR 32-10 and referral to the Board of Standards and Appeals pursuant to ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-3 zoning district, the legalization of a physical culture establishment (“PCE”) on the first, second and third floors of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 12, 2010 after due notice by publication in *The City Record*, with continued hearings on March 16, 2010, April 20, 2010 and May 25, 2010, and then to decision on July 13, 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 9, Queens, recommends disapproval of this application, citing concerns with the lack of parking at the site; and

WHEREAS, the subject site is located on a triangular-shaped through lot bounded by Metropolitan Avenue to the north and Jamaica Avenue to the south, within a C2-3 zoning district; and

WHEREAS, the site is occupied by a three-story commercial building; and

WHEREAS, the PCE occupies a total floor area of 16,980 sq. ft. on a portion of the first and second floors and the entire third floor; and

WHEREAS, the PCE is operated as Planet Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 24 hours per day; Friday, from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, at hearing, in response to the Community Board’s concerns, the Board inquired about the parking at

the site; and

WHEREAS, in response, the applicant states that pursuant to ZR § 36-21, the site is exempt from the parking requirement because the subject building was constructed and a certificate of occupancy was issued prior to December 15, 1961, nevertheless, the applicant submitted a revised site plan reflecting that 27 parking spaces will be provided at the site, which will be available for patron parking, and provided information regarding a public parking garage located at Jamaica Hospital Medical Center within one block from the site; and

WHEREAS, further, the applicant provided a traffic and parking analysis which indicates that only 32 percent of patrons drive to the PCE, and that there is frequent turnover and availability of street spaces, as well as additional off-street parking located at the Jamaica Hospital Medical Center parking garage; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since January 17, 2009, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between January 17, 2009 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA003Q, dated September 18, 2009; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and

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Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-3 zoning district, the legalization of a physical culture establishment on the first, second and third floors of an existing three-story commercial building, contrary to ZR § 32-10; on condition that all work shall substantially conform to drawings filed with this application marked "Received December 30, 2009"- Four (4) sheets, and "Received March 11, 2010"- One (1) sheet; and on further condition:

THAT the term of this grant shall expire on January 17, 2019;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all signage shall comply with C2 district regulations;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2010.

333-09-BZ

CEQR #10-BSA-037K

APPLICANT – Moshe M. Friedman, for Cong Yeshiva Beis Chaya Mushka, Inc., owner.

SUBJECT – Application December 23, 2009 – Variance (§72-21) to permit the vertical extension of an existing religious school (*Congregation Yeshiva Beis Chaya*

Mushka), contrary to floor area, lot coverage, height, sky exposure plane, front yard, and side yard regulations (§§24-11, 24-521, 24-34, and 24-35). R4 zoning district.

PREMISES AFFECTED –360 Troy Avenue aka 348-350 Troy Avenue aka 1505-1513 Carroll Street, northwest corner of Troy Avenue and Carroll Street, Block 1406, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD # 9BK

APPEARANCES –

For Applicant: Yosef S. Gottdiener.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated December 15, 2009, acting on Department of Buildings Application No. 320065503, reads, in pertinent part:

“Proposed extension to an existing school (UG 3) in an R4 district is contrary to:

ZR 24-11 Floor area & lot coverage

ZR 24-521 Height

ZR 24-34 Front yard

ZR 24-35 Side yard

ZR 24-521 Sky exposure plane;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R4 zoning district, the enlargement of an existing one- and two-story educational facility (Use Group 3), which does not comply with zoning regulations for floor area, lot coverage, height, front yards, side yards, and sky exposure plane, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-521; and

WHEREAS, the applicant proposes to enlarge and maintain the use of an existing school; and

WHEREAS, a public hearing was held on this application on May 25, 2010, after due notice by publication in the *City Record*, and then to decision on July 13, 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 9, Brooklyn, recommends approval of the application; and

WHEREAS, this application is brought on behalf of Congregation Yeshiva Beis Chaya Mushka Inc. (the “School”), a nonprofit religious school; and

WHEREAS, the site is located on the northwest corner of Troy Avenue and Carroll Street, within an R4 zoning district; and

WHEREAS, the site has 100 feet of frontage on Carroll Street, 100 feet of frontage on Troy Avenue, and a lot area of 10,000 sq. ft.; and

WHEREAS, the subject site is currently occupied by a one- and two-story school building with a floor area of

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approximately 12,333 sq. ft. (1.23 FAR); and

WHEREAS, the footprint of the existing building occupies the entire zoning lot; and

WHEREAS, the School now proposes to expand the second floor of the building to match the first floor footprint and to add a one-story enlargement to create a three-story building with uniform floor plates; and

WHEREAS, the proposed enlargement will result in the following non-compliances: a floor area of 30,000 sq. ft. (3.0 FAR) (the maximum floor area permitted is 20,000 sq. ft. (2.0 FAR)); lot coverage of 100 percent (60 percent is the maximum permitted); a front wall height of 38'-10" (35'-0" is the maximum permitted); no front yards (two front yards with minimum depths of 15'-0" each are required); no side yards (two side yards with minimum widths of 10'-0" each are required); and encroachment into the sky exposure plane; and

WHEREAS, the enlargement will be occupied by (1) a multi-purpose room, computer room, dance room, lounge, offices, and seven additional classrooms on the second floor; and (2) a multi-purpose room, computer room, science lab, lounge, offices, and 11 classrooms on the third floor; and

WHEREAS, the applicant states that the following are the programmatic needs of the School: (1) relieving overcrowded classroom conditions; (2) accommodating current enrollment while allowing for future growth; (3) expanding the available extracurricular activities; and (4) maintaining the pre-school, elementary school, and high school divisions in one location; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant represents that the requested waivers are necessary to provide the program space necessary to adequately serve its growing student body; and

WHEREAS, the applicant states that there are currently 230 students enrolled at the School, they have outgrown their current facilities as they are forced to turn away new applicants due to lack of space, and there is currently a waiting list; and

WHEREAS, the applicant represents that the proposed waivers will allow the School to accommodate its anticipated total enrollment of 480 students ranging from pre-school through high-school; and

WHEREAS, the applicant represents that the proposed waivers will also enable the school to provide a science lab, computer rooms, art and dance space, as well as other auxiliary spaces that will accommodate much needed extracurricular programs related to music, dance, art and other cultural activities; and

WHEREAS, the applicant further represents that the proposed enlargement will allow the School to remain in its existing location to serve the local Crown Heights Jewish community, and to maintain the pre-school, elementary school and high school divisions in one location, so as to provide proper supervision of the students as well as to engender moral and religious support; and

WHEREAS, the Board acknowledges that the Yeshiva, as a religious and educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs

in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is entitled to deference unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, however, the applicant represents that the configuration of the existing site creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the applicant states that the existing building cannot accommodate the existing or anticipated school enrollment, which has led to over-crowding and an inability to accept new students; and

WHEREAS, the applicant states that the existing building occupies the entire lot, and the need to enlarge the School requires a vertical enlargement that follows the floor plates of the existing building; and

WHEREAS, as to the configuration of the existing site, the applicant states that the existing school is currently non-compliant with respect to lot coverage, front yards, and side yards; and

WHEREAS, the applicant states that the lot coverage, front yard and side yard waivers are necessary because the enlargement is being constructed to match the existing lot coverage, front yard, and side yard non-compliances, thereby squaring off the floor plates, which will allow the most efficient and beneficial interior configuration for classroom space; and

WHEREAS, the applicant states that the requested waivers are necessary to accommodate a building large enough for an efficient interior layout, suitable to address the above-mentioned programmatic needs; and

WHEREAS, the Board finds that the School's programmatic needs are legitimate, and agrees that the proposed enlargement is necessary to address its needs, given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the current site, when considered in conjunction with the programmatic needs of the School, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding area is characterized predominately by residential uses; and

WHEREAS, the applicant states that the proposed enlargement has been designed to maintain a height that is

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consistent with that found within the surrounding neighborhood; and

WHEREAS, in support of this statement, the applicant submitted a 400-ft. radius diagram reflecting that there are 12 buildings in the surrounding area with a height between four and six stories; therefore, the applicant represents that the height of the proposed three-story school building is consistent with the surrounding neighborhood; and

WHEREAS, specifically, the applicant states that the adjacent building to the west is a six-story multiple dwelling and the adjacent building to the north is a four-story multiple dwelling; thus, the proposed building will be lower in height than the adjacent buildings; and

WHEREAS, the applicant further states that the adjacent building to the west has no lot line windows facing the subject building, and there is a large alley separating the subject building from the adjacent building to the north; therefore the proposed side yard waiver will not have a negative impact on the adjacent buildings; and

WHEREAS, the Board notes that there is a vacant lot immediately to the north of the subject site, and that it received a letter of consent for the proposal from the owner of the vacant lot; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation (“DOT”); and

WHEREAS, by letter dated March 17, 2010, DOT states that it has no objection to the proposed enlargement, and states that it will prepare a school safety map with signs and markings upon the approval and completion of the enlargement; and

WHEREAS, the Board inquired about the hours and use of the rooftop play area; and

WHEREAS, in response, the applicant states that the rooftop will only be used for School purposes, and that the hours of operation of the rooftop are limited to: Sunday, from 9:00 a.m. to 12:00 p.m.; Monday through Thursday, from 9:00 a.m. to 5:00 p.m.; Friday, from 9:00 a.m. to 1:00 p.m.; and closed on Saturday; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the School’s current and projected programmatic needs; and

WHEREAS, the applicant provided a lesser variance scenario with a compliant 2.0 FAR which was found to be unable to accommodate the School’s programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its

programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 ak); and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10BSA037K, dated September 30, 2009; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R4 zoning district, the enlargement of an existing two-story educational facility (Use Group 3) which does not comply with zoning regulations for floor area, lot coverage, height, front yards, side yards, and sky exposure plane, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-521, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received April 20, 2010,” – (10) sheets and “June 8, 2010”- (1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: three stories, a maximum floor area of 30,000 sq. ft. (3.0 FAR); and a height of 38’-10”, as shown on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

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compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2010.

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 4th Street) southeast corner of intersection of Broadway and East 4th Street, Block 531, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated March 16, 2010, acting on Department of Buildings Application No. 120262651, reads in pertinent part:

“Proposed physical cultural establishment at the 1st and 2nd floors is not permitted as-of-right in M1-5B zoning district and it is contrary to ZR 42-10; BSA special permit is required for approval pursuant to ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the NoHo Historic District, a physical culture establishment (PCE) on portions of the first and second floors of a 12-story mixed-use commercial/residential/manufacturing building, contrary to ZR § 42-10; 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 22, 2010, and then to decision on July 13, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is a through lot bounded by Broadway to the west, East 4th Street to the north, and Lafayette Street to the east, in an M1-5B zoning district within the NoHo Historic District; and

WHEREAS, the site is occupied by a 12-story mixed-use commercial/residential/ manufacturing building; and

WHEREAS, the PCE will occupy a total floor area of 16,773 sq. ft., with 1,508 sq. ft. of floor area located on the first floor and 15,265 sq. ft. of floor area located on the second floor; and

WHEREAS, the PCE will be operated as Broadway Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Saturday, from 5:30 a.m. to 11:00 p.m.; and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission approving the proposed alterations to the subject building, dated June 4, 2010; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA052M, dated May 4, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact

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Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the NoHo Historic District, a physical culture establishment on portions of the first and second floors of a 12-story mixed-use commercial/residential/manufacturing building, contrary to ZR § 42-10; on condition that all work shall substantially conform to drawings filed with this application marked "Received March 8, 2010"- (4) sheets; and on further condition:

THAT the term of this grant shall expire on July 13, 2020;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2010.

34-10-BZ

CEQR #10-BSA-053M

APPLICANT – James Chin & Associates, LLC, for Harry Tran, owner; Shu Ying Zhao, lessee.

SUBJECT – Application March 18, 2010 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*York Spa Beauty Care*) in the cellar and first floor of an existing five-story building, M1-5B zoning district.

PREMISES AFFECTED – 429 Broome Street, south side of Broome Street, from the corner formed by Broome and

Crosby Street, Block 473, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated March 15, 2010, acting on Department of Buildings Application No. 120220992, reads in pertinent part:

"Proposed physical cultural or health establishment at cellar and 1st floors is not permitted as-of-right in M1-5B zoning district and it is contrary to ZR 42-10. BSA special permit is required as per ZR 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the SoHo Cast Iron Historic District, a physical culture establishment (PCE) at the cellar and first floor of a five-story mixed-use building with Joint Living Work Quarters for Artists ("JLWQA") on the upper floors, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 27, 2010 after due notice by publication in *The City Record*, with a continued hearing on June 8, 2010, and then to decision on July 13, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application with the condition that the term of the grant be limited to ten years; and

WHEREAS, an adjacent building owner, represented by counsel, provided written and oral testimony in opposition to this application (the "Opposition"), citing the following primary concerns: (1) the proposed facility is a Use Group 6 nail salon, which would not be permitted in the subject zoning district, rather than a PCE; (2) the applicant has not provided evidence of a massage therapist's license; and (3) the proposed facility will impair the essential character and future use and development of the surrounding area; and

WHEREAS, the Opposition ultimately did not pursue its objections to the proposal; and

WHEREAS, the subject site is located on the northeast corner of Broome Street and Crosby Street, in an M1-5B zoning district within the SoHo Cast Iron Historic District; and

WHEREAS, the site is occupied by a five-story mixed-use building with JLWQA on the upper floors; and

WHEREAS, the PCE will occupy 2,608 sq. ft. of floor area located on the first floor, with an additional 2,608 sq. ft. of

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floor space located in the cellar; and

WHEREAS, the PCE will be operated as York Spa Beauty Care, Inc.; and

WHEREAS, the proposed hours of operation are: Monday through Saturday, from 8:00 a.m. to 12:00 a.m.; and Sunday, from 9:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for the practice of massage by New York State licensed massage therapists; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission approving the proposed alterations to the subject building, dated June 24, 2010; and

WHEREAS, although the Opposition did not pursue its objections, the applicant provided the following responses: (1) massage is not merely an accessory use at the proposed PCE, as the vast majority of the floor space is designated to massage rooms, with only 380 sq. ft. dedicated to the practice of manicures and pedicures; (2) the proposed PCE is not yet in operation, and licensed massage therapists will be hired before the PCE opens for business; and (3) the proposed PCE is a full service spa, which fits within the character of the surrounding neighborhood, as evidenced by the existence of similar facilities in the surrounding area; and

WHEREAS, in response to concerns about the length of the term, the Board notes that ZR § 73-36 limits the term of the subject special permit to a maximum of ten years; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA053M, dated April 18, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land

Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the SoHo Cast Iron Historic District, a physical culture establishment at the cellar and first floor of a five-story mixed-use building with JLWQA on the upper floors, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 19, 2010"- (7) sheets ; and *on further condition*:

THAT the term of this grant shall expire on July 13, 2020;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2010.

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41-10-BZ

CEQR #10-BSA-055M

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, 22-331, 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 –

For Applicant: Elise Wagner.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated March 22, 2010, acting on Department of Buildings Application No. 120229519, reads in pertinent part:

“ZR 24-36. Proposed enlargement does not comply with the minimum rear yard requirements of the Zoning Resolution.

ZR 22-331 Proposed signage does not comply with regulations for permitted

ZR 22-342 illuminated accessory signs for hospitals or the height of signs;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8 zoning district, the enlargement of an existing community facility (New York University Langone Medical Center) that does not comply with zoning regulations for rear yard or signage, contrary to ZR §§ 24-36, 22-331 and 22-342; and

WHEREAS, a public hearing was held on this application on May 25, 2010, after due notice by publication in the *City Record*, and then to decision on July 13, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application, subject to the condition that certain signs (noted as Signs 4, 6, and 13 on the plans) be eliminated, and another sign (Sign 7) be reduced in size; and

WHEREAS, the application is brought on behalf of the New York University Langone Medical Center (the “Medical Center”), a non-profit educational institution and hospital; and

WHEREAS, the subject zoning lot is located on the superblock bounded by East 34th Street to the north, the

Franklin D. Roosevelt Drive (the “FDR Drive”) to the east, East 30th Street to the south, and First Avenue to the west, within an R8 zoning district; and

WHEREAS, the zoning lot has a lot area of 408,511 sq. ft.; and

WHEREAS, the proposed enlargement will be located on an approximately 11,400 sq. ft. vacant parcel on the northwest portion of the zoning lot, bounded by First Avenue to the west, the Medical Center’s Perelman Building to the north, an Amtrak ventilation tower to the east (the “Amtrak Site”) and the Medical Center’s Tisch Hospital to the south (the “Development Site”); and

WHEREAS, the Development Site is an irregular “L”-shaped parcel with approximately 138’-0” of frontage on First Avenue and a depth that varies from 50’-0” to 125’-6”; and

WHEREAS, the Amtrak Site which adjoins the rear lot line of the Development Site is located on a separate zoning lot within the subject superblock, with access to First Avenue by means of an access easement over the northern portion of the Development Site; and

WHEREAS, the applicant states that the Amtrak Site’s building is occupied by a ventilation shaft for, and emergency exit stair from, the LIRR train tunnels which are owned by Amtrak; and

WHEREAS, the Development Site is currently occupied by the existing Emergency Department, a portion of the Tisch Hospital building, an air intake shaft serving the mechanical equipment in the cellar of Tisch Hospital, a paved area for ambulance unloading and pedestrian access, and a portion of the bed of former East 33rd Street (subject to an access easement for Amtrak); and

WHEREAS, the applicant proposes to reconfigure and renovate the existing Emergency Department space, expand it within a portion of the Tisch Hospital building, and construct a 3,780 sq. ft. (12,380 gross sq. ft.) enlargement at the first floor and cellar (the “Proposed Enlargement”) to increase the total floor area on the zoning lot to 2,064,562 sq. ft. (5.1 FAR); and

WHEREAS, the maximum permitted FAR for a community facility in the subject zoning district is 6.5; and

WHEREAS, a portion of the Proposed Enlargement would be located within the required 30’-0” rear yard; and

WHEREAS, the applicant notes that ZR § 24-33 provides a rear yard exemption for a community facility building located within a residence district, allowing the first floor, or up to a height of 23’-0” of the building, to encroach into the rear yard as a permitted obstruction; and

WHEREAS, the applicant states that although the portion of the Proposed Enlargement located in the required rear yard is only one story, the rear yard exemption does not apply because the height of the rooftop mechanicals and parapet wall located within the required rear yard exceed 23 feet in height; and

WHEREAS, the applicant also proposes to provide 354 sq. ft. of signage at the entrances and on the façade of the Proposed Enlargement (25 sq. ft. is the maximum signage permitted), with a vertical panel sign integrated into the south façade of the Proposed Enlargement extending above the height of the ground floor ceiling (signs are not permitted to

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extend above the ground floor ceiling); and

WHEREAS, the applicant represents that the proposed building will not create any new non-compliances or increase any existing non-compliances except for the rear yard and signage requirements; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the constraints of the existing site, including the irregular, shallow configuration of the Development Site, and the existing improvements on and surrounding conditions of the zoning lot; and (2) the programmatic needs of the Medical Center; and

WHEREAS, as to the configuration of the Development Site, the applicant states that it is an irregular "L"-shaped site with approximately 138'-0" of frontage on First Avenue and a depth that varies from approximately 50'-0" to 125'-6"; and

WHEREAS, the applicant further states that the northernmost portion of the Development Site on which construction is permitted is made even shallower by an existing air intake shaft located on the eastern portion of the site; and

WHEREAS, the applicant notes that the northern portion of the Development Site, from First Avenue to the Amtrak Site, is subject to an access easement in favor of Amtrak, and permanent obstructions are not permitted within the easement area, thereby preventing the expansion of the Emergency Department into that portion of the Development Site; and

WHEREAS, the applicant states that the Development Site is bounded by the Medical Center's Perelman Building to the north, the Amtrak ventilation tower to the east, and the Tisch Hospital building to the south, and the inability to demolish these existing buildings, which are either necessary to meet the programmatic needs of the Medical Center, or are owned by Amtrak, further constrain the Development Site; and

WHEREAS, the applicant represents that, given the irregular shape of the Development Site and the surrounding conditions on the zoning lot, the Proposed Enlargement is necessary in order to meet the programmatic needs of the Medical Center, which include: (1) providing a sufficient number of exam/treatment rooms, triage/treatment rooms, and disposition seats to handle current and projected patient volumes; (2) improving patient flow and enhancing visual and acoustic privacy; (3) separating pediatric patients from adult patients, and walk-in patients from ambulance patients; (4) improving staff travel distances and patient waiting times; and (5) providing adequate way-finding and identification signage for visitors approaching the Emergency Department from First Avenue; and

WHEREAS, the applicant represents that the Emergency Department is experiencing increased patient loads, with approximately 39,000 visitors per year; and

WHEREAS, the applicant states that visits to the Emergency Department have increased in recent years by between three and five percent per year, and are projected to continue to increase at such a rate; and

WHEREAS, the applicant further states that patient loads are especially high at the Emergency Department due to the closing of Cabrini Hospital; and

WHEREAS, the applicant represents that the existing Emergency Department is undersized and inefficiently organized, as it contains only approximately 9,250 gross sq. ft., with 18 exam/treatment rooms, one triage/treatment room, and no disposition seats; and

WHEREAS, the applicant states that currently, all patients for the Emergency Department enter at the same location off First Avenue, resulting in an undesirable mixing of walk-in patients with patients arriving by ambulance, as well as pediatric patients with adult patients; and

WHEREAS, the applicant further states that space constraints result in poor patient flow and minimal acoustic and visual privacy; and

WHEREAS, the applicant represents that the existing mechanical and electrical systems serving the Emergency Department are also inadequate; and

WHEREAS, the applicant states that the Proposed Enlargement would provide an Emergency Department with 33,290 gross sq. ft., 29 exam/treatment rooms, three triage/treatment rooms, and an eight-seat disposition lounge; and

WHEREAS, the applicant represents that the increased size and number of rooms, as well as the improved layout of the Proposed Enlargement will improve patient flow, enhance visual and acoustic privacy, and decrease staff travel distances and patient waiting times; and

WHEREAS, the applicant states that the Proposed Enlargement would provide separation of walk-in patients from ambulance patients by creating a visually distinguishable access point for walk-in patients and a separate entrance corridor for ambulance patients, and would provide separation of pediatrics patients from adult patients by creating a dedicated space for pediatrics; and

WHEREAS, the applicant notes that existing mechanical equipment in the Tisch Hospital building distributes air throughout the west portion of Tisch Hospital through a vertical shaft on that end of the building, which leads to an air handling unit located within the cellar of Tisch Hospital and to the existing air shaft on the Development Site; and

WHEREAS, the applicant states that the programmatic needs of the Medical Center require the elimination of the air intake shaft located on the eastern portion of the Development Site and the air handling unit located in the cellar of the Tisch Hospital building, in order to allow more appropriate dimensions and an improved layout of the proposed Emergency Department; and

WHEREAS, specifically, the applicant states that the removal of the on-site air intake shaft allows for significant increases in plan efficiency by providing a larger floor plate and entrance area; and

WHEREAS, the applicant states that following the removal of the air intake shaft and air handling unit, air handling would be accomplished by two HVAC units located on the roof of the portion of the Proposed

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Enlargement located within the required rear yard, which would extend above the allowable height of 23 feet; and

WHEREAS, the applicant represents that the new equipment replacing the air handling unit and air shaft must be located as close as possible to the existing vertical shaft within the Tisch Hospital building so that it can continue to serve Tisch Hospital efficiently; and

WHEREAS, the applicant further represents that the roof of the Proposed Enlargement is the only feasible location for the mechanical equipment that is within a reasonable distance of the existing ventilation shaft; and

WHEREAS, the applicant states that the rooftop mechanical equipment, including the equipment encroaching within the required rear yard, would be surrounded by a parapet wall reaching a height of 40'-2" above mean curb level, which serves to screen the mechanical equipment when the building is viewed at street level; and

WHEREAS, the applicant represents that the requested rear yard waiver is necessary in order to provide the necessary floor plates and building layout to satisfy the programmatic needs of the Medical Center, by locating the proposed mechanical equipment and accompanying parapet wall on the roof of the Proposed Enlargement; and

WHEREAS, as to the requested signage, the applicant states that it is necessary in order to provide adequate way-finding and identification signage for visitors approaching the Emergency Department from First Avenue; and

WHEREAS, the applicant submitted a signage analysis stating that the signage must be visible to northbound traffic on First Avenue, since all vehicles ultimately approach the Emergency Department from this direction; and

WHEREAS, the applicant notes that First Avenue is a five-lane, heavily traveled roadway, and that traffic often backs up at the traffic signal at East 33rd Street, restricting visibility of the Emergency Department; and

WHEREAS, the applicant states that the Emergency Department is one of three emergency departments located along the First Avenue medical corridor, and the close proximity of both the Bellevue Hospital and the Veterans Affairs Hospital emergency departments, and the lack of signage identifying each facility results in confusion for visitors; and

WHEREAS, the applicant further states that there are multiple entrances to the Medical Center campus along First Avenue, and most of them are seen by approaching First Avenue traffic before the Emergency Department; as a result, visitors to the Emergency Department are often drawn instead into the Medical Center's main entrance, which is more visually significant than the other entrances, thereby losing critical time in urgent situations; and

WHEREAS, the applicant represents that the Emergency Department entrances must therefore be clearly identified as part of the Medical Center, rather than other hospitals along First Avenue, and must be clearly distinguished from other Medical Center entrances; and

WHEREAS, the applicant states that the Medical Center has established an emergency drop-off lane separated

from First Avenue traffic flow by a temporary curb to allow patients to be safely dropped off at the Emergency Department's walk-in entrance, but notes that traffic congestion often blocks the view of the lane divider for vehicles that are not in the far right lanes; and

WHEREAS, the applicant further states that if vehicles miss the drop-off lane, they must take a long route to loop back around to First Avenue via FDR Drive and East 25th Street; therefore, the Emergency Department signage must be visible and legible to vehicles well before they encounter the emergency drop-off lane; and

WHEREAS, the applicant represents that facilities within the Medical Center campus have historically been referenced and known by the building name, therefore the building name for the Emergency Department must be located on the exterior façade; and

WHEREAS, the applicant further represents that the confusion caused by the close proximity of the other hospitals and lack of clear signage for the subject Emergency Department is increased in the nighttime hours; therefore, the Emergency Department signage must be sufficiently illuminated in order to ensure legibility after dark; and

WHEREAS, the applicant notes, however, that only one sign (Sign 7 on the plan sheets) is proposed to be illuminated; and

WHEREAS, the signage analysis reflects that in order to improve visibility, signage must be located within the cone of vision for approaching traffic and must account for impediments to visibility; therefore, the signage should be visible from a distance of approximately 650 feet from the south along First Avenue, and should be legible from a distance of 300 feet; and

WHEREAS, the applicant states that signs above street level are primarily viewable from a distance, and signs at street level are primarily viewable within a close range, and therefore signage at the site needs to be located both above street level and at street level; and

WHEREAS, the applicant further states that because much of the heavy traffic on First Avenue consists of buses, which have heights of approximately 11'-0", signage must be located at a height above 12'-0" in order to be viewable over buses and from a distance; thus, duplicate signage must be provided above a height of 12'-0" and at street level in order to be visible for both vehicular and pedestrian traffic; and

WHEREAS, in response to the Community Board's recommendation for the elimination of redundant signage and the reduction in size of certain signage, the applicant explained that all of the requested signage is necessary in order for the entrances of the Emergency Department to be visible for both vehicular and pedestrian traffic, and to identify the Emergency Department as part of the Medical Center and separate from the other emergency departments in close proximity; and

WHEREAS, the applicant represents that the requested waivers related to the height and square footage of the proposed signage are necessary in order to satisfy the

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Medical Center's programmatic needs of providing adequate way-finding and identification signage for visitors approaching the Emergency Department from First Avenue; and

WHEREAS, the Board finds that the stated programmatic needs are legitimate, and agrees that the proposed enlargement and signage are necessary to address the Medical Center's programmatic needs, given the limitations of the site; and

WHEREAS, the applicant represents that it is unable to feasibly accommodate the programmatic needs within an as-of-right building envelope, or with complying signage; and

WHEREAS, the applicant submitted building plans for a complying building, which would incorporate the existing air intake shaft that serves the air handlers in the cellar of the Tisch Hospital building, and would provide only two signs on the canopy over the entrance, and a small business address sign over the entrance; and

WHEREAS, the applicant represents that, due to the inability to remove the air intake shaft, (1) the complying development would lose approximately 3,000 gross sq. ft., one exam/treatment room and four disposition seats as compared to the Proposed Enlargement; (2) the footprint and entrance area of the complying development would be limited; (3) plan efficiency would be reduced; (4) there would be no separation of walk-in patients from ambulance patients or pediatrics patients from adult patients; (5) staff travel distances and patient waiting times would be increased; and (6) upgrades to the Emergency Department's mechanical and electrical systems would not be possible; and

WHEREAS, additionally, the minimal signage provided for the complying development would be inadequate to provide sufficient way-finding for pedestrians and drivers approaching the Emergency Department along First Avenue; and

WHEREAS, the Board acknowledges that the Medical Center, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the site, when considered in conjunction with the programmatic needs of the Medical Center, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Medical Center is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the Proposed Enlargement would be in keeping with the character of the surrounding neighborhood, which is defined by numerous medical and other institutional uses; and

WHEREAS, specifically, the applicant notes that the Proposed Enlargement would be located among a multitude of medical institutions comprising the First Avenue "medical corridor," including other buildings within the Medical Center, the Bellevue Hospital Center, the Veterans Affairs Medical Center, and the Hunter College School of Medical Professions; and

WHEREAS, the applicant further notes that the 197-a Plan for the Eastern Section of Community District 6 recommended that the area including the Medical Center be rezoned from residential to a Special Hospital Use District, indicating that the community recognizes this area as an appropriate location for specialized hospital uses; and

WHEREAS, the applicant states that First Avenue is a wide, heavily-trafficked northbound thoroughfare which divides the major health care facilities on the east side of the avenue from the neighborhood to the west, which has a mix of residential and institutional uses; and

WHEREAS, the applicant further states that the Development Site is located on a superblock largely occupied by the many mid-rise and high-rise buildings of the Medical Center, as well as two unoccupied Amtrak ventilation buildings on the northwest portion of the superblock and the Office of the New York City Medical Examiner on the southwest portion of the superblock; as such, there are no uses adjacent to the Development Site or on the superblock that would be affected by the requested rear yard waiver; and

WHEREAS, specifically, the applicant represents that the rear yard waiver would not impact the Amtrak ventilation tower located to the east of the Development Site, because the Amtrak building contains only mechanical equipment, is only occupied as needed by maintenance workers, and does not have windows; and

WHEREAS, the applicant states that the exhaust louvers at the top of the shaft of the Amtrak building extend from a height of 86'-0" to the top of the building at approximately 104'-0", which is well above the top of the Proposed Enlargement's parapet wall, which has a height of 40'-2"; and

WHEREAS, the applicant further states that the Proposed Enlargement would not limit access to, or egress from, any of the Amtrak building's doors, including the emergency exit on the east side of the building; and

WHEREAS, the applicant represents that the signage associated with the Proposed Enlargement would not obstruct any views to any visual resources and would not detract from the visual quality of the Development Site or the surrounding neighborhood; and

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WHEREAS, the applicant represents that the Proposed Enlargement would actually improve the visual quality of the Development Site by replacing a paved parking area, ramp and entryway to the existing Emergency Department with a contemporary steel and glass curtain wall design; and

WHEREAS, the applicant states that the proposed signage would not adversely impact the surrounding neighborhood because First Avenue in the vicinity of the Medical Center campus does not have a residential character, as the closest residential use to the Development Site is located diagonally across First Avenue, at least 150 feet away; and

WHEREAS, additionally, the applicant notes that the Proposed Enlargement complies with all other bulk parameters and the use is permitted as-of-right; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Medical Center could occur on the existing site; 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 and signage waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the rear yard and signage relief are the minimum necessary to allow the Medical Center to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 10BSA055M, dated July 7, 2010; 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 Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS the applicant submitted the May 2010 Phase II Sampling Protocol and Health and Safety Plan to DEP for review and approval; and

WHEREAS, in its June 23, 2010 letter, DEP finds the Phase II Sampling Protocol and Health and Safety Plan acceptable and requested Phase II testing; and

WHEREAS, the applicant proposes to test and identify any potential hazardous materials pursuant to the approved Sampling Protocol and, if such hazardous materials are found, to submit a hazardous materials remediation plan, including a health and safety plan, (as approved by DEP, the "Remediation Plan") for approval by DEP prior to the commencement of any construction or demolition activities at the site; and

WHEREAS, prior to the issuance of any building permit by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or other permit which permits soil disturbance, the applicant proposes to obtain from DEP either: (A) a Notice of No Objection ("Notice of No Objection") upon the occurrence of the following: (i) the applicant has completed the project-specific DEP approved Sampling Protocol to the satisfaction of DEP; and (ii) DEP has determined in writing that the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project; or (B) a Notice to Proceed ("Notice to Proceed") in the event that DEP has determined in writing that: (i) the project-specific Remediation Plan has been approved by DEP and (ii) the permit(s) for grading, excavation, foundation, alteration, building or other permit which permits soil disturbance or construction of the superstructure for the project facilitate the implementation of the DEP approved Remediation Plan; and

WHEREAS, prior to the issuance of any temporary or permanent Certificate of Occupancy by DOB, applicant proposes to obtain from DEP either: (A) a Notice of Satisfaction ("Notice of Satisfaction") in the event that DEP determines in writing that the DEP approved project-specific Remediation Plan has been completed to the satisfaction of DEP, or (B) a Notice of No Objection in the event that DEP determines in writing that the work has been completed as set forth in the project-specific DEP approved Sampling Protocol and the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project; and

WHEREAS, based on the results of noise monitoring, the applicant proposes window-wall noise attenuation of 30 dBA on the west (First Avenue) facade of the subject building; and

WHEREAS, the proposed building design shall include central air-conditioning (as an alternate means of ventilation) to ensure that an interior noise level of 45 dBA is achieved; 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

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on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R8 zoning district, the enlargement of an existing community facility (New York University Langone Medical Center) that does not comply with zoning regulations for rear yard or signage, contrary to ZR §§ 24-36, 22-331 and 22-342, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 30, 2010" – eleven (11) sheets; and *on further condition*:

THAT the parameters of the Proposed Enlargement and signage shall be in accordance with the approved plans;

THAT prior to the issuance of any building permit by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or other permit which permits soil disturbance, the applicant or successor shall obtain from DEP, as applicable, either a Notice of No Objection or a Notice to Proceed, and in the event a Notice to Proceed is obtained, a Notice of Satisfaction, and shall comply with all DEP requirements to obtain such notices;

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 No Objection, or Notice of Satisfaction;

THAT 30 dBA of window-wall noise attenuation shall be provided on the west facade of the subject building and central air-conditioning shall be maintained as an alternate means of ventilation;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2010.

48-10-BZ
CEQR #10-BSA-060R

APPLICANT – Rampulla Associates Architects, for Outerbridge Commons, LP, owner; 2965 Veterans Road West, owners.

SUBJECT – Application April 9, 2010 – Special Permit (§73-36) to allow a physical culture establishment (*Retro*

Fitness). M1-1 zoning district/Special South Richmond District.

PREMISES AFFECTED – 2965 Veterans Road West, Veterans Road West and Tyrellan Avenue, Block 7511, Lots 1, 75 & 150, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phillip Rampulla.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 17, 2010, acting on Department of Buildings Application No. 500834485, reads in pertinent part:

“Under Section 73-36 of the Zoning Resolution...in a (M-1) district, within an existing shopping center, the change in use of the cellar floor as a physical culture health establishment is not permitted, and therefore is referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-1 zoning district within the Special South Richmond Development District, a physical culture establishment (PCE) in the cellar of a one-story commercial building, contrary to ZR § 42-10; 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 July 13, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Ottley-Brown and Commissioner Montanez; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located at the corner of Veterans Road West and the West Shore Expressway, in an M1-1 zoning district within the Special South Richmond Development District; and

WHEREAS, the site is occupied by a one-story commercial building; and

WHEREAS, the PCE will occupy 12,136 sq. ft. of floor space in the cellar, with an entrance on the first floor; and

WHEREAS, the PCE will be operated as Retro Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding

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neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA060R, dated May 20, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-1 zoning district within the Special South Richmond Development District, a physical culture establishment in the cellar of a one-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 12, 2010"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 13, 2020;

THAT there shall be no change in ownership or operating control of the physical culture establishment

without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2010.

87-10-BZ

APPLICANT – Dennis D. Dell’Angelo, for David Gluck, owner.

SUBJECT – Application May 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141), side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1333 East 24th Street, east side of East 24th Street, 260’ south of Avenue M, Block 7660, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Marc Dell’Angelo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 26, 2010, acting on Department of Buildings Application No. 320149870, reads:

- “1. Proposed FAR and OSR constitutes an increase in the degree of existing non-compliance contrary to Sec. 23-141 of the NYC Zoning Resolution.
2. Proposed horizontal enlargement provides less than the required side yard contrary to Sec. 23-46 ZR and less than the required rear yard contrary to Sec. 23-47 ZR;” and

WHEREAS, this is an application under ZR §§ 73-622

MINUTES

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 yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on June 15, 2010 after due notice by publication in *The City Record*, and then to decision on July 13, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 24th Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 1,947 sq. ft. (0.49 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,947 sq. ft. (0.49 FAR) to 3,662 sq. ft. (0.92 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 64 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 2'-11" along the northern lot line (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental

Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 13, 2010"-(13) sheets and "June 1, 2010"-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,662 sq. ft. (0.92 FAR); an open space ratio of 64 percent; a front yard with a depth of 15'-8"; a side yard with a minimum width of 10'-7" along the southern lot line; a side yard with a minimum width of 2'-11" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, July 13, 2010.

210-07-BZ

APPLICANT – Eric Palatnik, P.C., for Gasper Nogara, owner.

SUBJECT – Application August 30, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Luquer Street, Northern side of Luquer Street between Columbia and Hicks Streets, Block 513, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik and Barbara Cohen.

ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for continued hearing.

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14-09-BZ

APPLICANT – Eric Palatnik, P.C., for Orenstein Brothers, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application January 26, 2009 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store and automotive laundry (UG 16B). C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2294 Forest Avenue, Southeast intersection of Forest Avenue and South Avenue, Block 1685, Lot 15, 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for decision, hearing closed.

44-09-BZ

APPLICANT – Philip L. Rampulla, for Tony Chrampanis, owner.

SUBJECT – Application March 11, 2009 – Variance (§72-21) to allow for a two-story commercial building (UG 6) with accessory parking, contrary to use regulations (§22-00). R3-1 district.

PREMISES AFFECTED – 2175 Richmond Avenue, Eastside of Richmond Avenue 39.80' south of Saxon Avenue, Block 2361, Lot 12(tent), 14, 17, 22, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phillip Rampulla.

ACTION OF THE BOARD – Off Calendar.

189-09-BZ

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for continued hearing.

190-09-A

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for continued hearing.

192-09-BZ

APPLICANT – Richard Lobel, for Leon Mann, owner.

SUBJECT – Application June 16, 2009 – Variance (§72-21) to allow for the construction of a department store (UG10), contrary to use regulations (§§22-00, 32-00). R6 and R6/C2-3 zoning districts.

PREMISES AFFECTED – 912 Broadway, northeast corner of the intersection of Broadway and Stockton Street, Block 1584, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for adjourned hearing.

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radonicic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 1:30 P.M., for continued hearing.

254-09-BZ thru 256-09-BZ

APPLICANT – Ivan F. Khoury, for Kearney Realty Corporation, owner.

SUBJECT – Application September 4, 2009 – Variance (§72-21) to legalize three existing homes, contrary to front yard (§23-45) and rear yard (§23-47) regulations. R3-2 zoning district.

MINUTES

PREMISES AFFECTED – 101-03/05/07 Astoria Boulevard
aka 27-31 Kearney Street, north side of Astoria Boulevard
& northeasterly side of Kearney Street, Block 1659, Lot 51,
53, 56, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Ivan F. Khoury.

THE VOTE TO CLOSE HEARING –

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
17, 2010, at 1:30 P.M., for decision, hearing closed.

13-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yakov Platnikov,
owner.

SUBJECT – Application January 27, 2010 – Special Permit
 (§73-622) for the enlargement of an existing two -family
home to be converted to a single family home, contrary to
lot coverage and floor area (§23-141); side yards (§23-461)
and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 79 Amherst Street, east side of
Amherst Street, north Hampton Avenue, Block 8727, Lot
24, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 3,
2010, at 1:30 P.M., for decision, hearing closed.

22-10-BZ

APPLICANT – Harold Weinberg, P.E., for RP Canarsie,
LLC, owner; Sunshine Childrens Day Care, lessee.

SUBJECT – Application February 17, 2010 – Special
Permit (§73-19) to allow the proposed one-story day care
center (*Sunshine Day Care*). C8 zoning district.

PREMISES AFFECTED – 620 East 102nd Street, west side
between Farragut Road and Glenwood Road, Block 8170,
Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 27,
2010, at 1:30 P.M., for decision, hearing closed.

24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park
Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to
allow the enlargement of a community facility (*Meadow
Park Rehabilitation and Health Care Center*), contrary to
floor area, lot coverage (§24-11), front yard (§24-34), height
 (§24-521) and rear yard (§24-382) regulations. R3-2
district.

PREMISES AFFECTED – 78-10 164th Street, Located on
the western side of 164th Street between 78th Avenue and
78th Road, Block 6851, Lot 9,11,12,23,24, Borough of
Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most and Saul Greenberger.

For Opposition: Peter Sell, Gino Altamirano, Delwin Davis
and Shebi Palathinkal.

ACTION OF THE BOARD – Laid over to August
24, 2010, at 1:30 P.M., for continued hearing.

39-10-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi,
owner.

SUBJECT – Application March 22, 2010 – Variance (§72-
21) for the legalization of a single-family home, contrary to
side yards (§23-461). R-5 zoning district.

PREMISES AFFECTED – 2032 East 17th Street, East 17th
Street and Avenue T, Block 7321, Lot 20, Borough of
Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Bonsignore Joseph.

ACTION OF THE BOARD – Laid over to August
24, 2010, at 1:30 P.M., for continued hearing.

40-10-BZ

APPLICANT – Sheldon Lobel, PC, for Campworth LLC,
owner.

SUBJECT – Application March 22, 2010 – Variance (§72-
21) to allow for an existing building to be converted for
commercial use, contrary to §22-10. C4-4A/R5B zoning
district.

PREMISES AFFECTED – 150 Kenilworth Place, through-
lot between Campus Road and Kenilworth Place, Block
7556, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

MINUTES

Negative:.....0

ACTION OF THE BOARD – Laid over to August 3, 2010, at 1:30 P.M., for decision, hearing closed.

58-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner.

SUBJECT – Application April 22, 2010 – Special Permit (§73-36) to allow a physical culture establishment (*Barones Health Club*) in the existing one-story building. M1-2/R6A zoning district/MX8 special district.

PREMISES AFFECTED – 16 Eckford Street, east side of Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, 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.

66-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yury, Aleksandr, Tatyana Dreysler

SUBJECT – Application May 3, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141) and side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 1618 Shore Boulevard, South side of Shore Boulevard between Oxford and Norfolk Streets. Block 8757, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Judy Bercon.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

*CORRECTION

This resolution adopted on July 25, 2000, under Calendar No. 93-00-BZ and printed in Volume 85, Bulletin No. 31, is hereby corrected to read as follows:

93-00-BZ

CEQR No. 00-BSA-108M

APPLICANT – Fredrick A. Becker, Esq., for Polester Forty-Fourth Property Associates LLC, owner; TSI West 44th Street, Inc. dba NY Sports Club, lessee.

SUBJECT – Application March 28, 2000 – under Z.R. §73-36, to permit the operation of a physical culture establishment (Use Group 9) located in portions of the cellar, first floor and second floor of a 20-story commercial office building, in a C6-4.5(Mid) zoning district contrary to Z.R. §32-00.

PREMISES AFFECTED - 19 West 44th Street, north side, 250' west of Fifth Avenue, Block 1260, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: John Scrofani, Fire Department.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chairman Chin, Vice-Chair Bonfilio, Commissioner Korbey and Commissioner Caliendo.....4

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner dated March 17, 2000, acting on application number 102845735 reads;

“PROPOSED HEALTH CLUB PHYSICAL CULTURE ESTABLISHMENTS REQUIRE APPROVAL BY THE BOARD OF STANDARDS AND APPROVALS AS PER Z.R. 32-31”; and

WHEREAS, a public hearing was held on this application on June 27, 2000 after due notice by publication in the *City Record*, and laid over to July 25, 2000 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chairman James Chin, Vice-Chair Paul Bonfilio, R.A., Commissioner Mitchell Korbey, and Commissioner Peter Caliendo; and

WHEREAS, Community Board 5, Manhattan, has recommended approval of this application; and

WHEREAS, the applicant seeks a special permit pursuant to Z.R. §73-36 for the operation of a physical culture establishment, located in portions of the basement, first floor and second floor of a 20-story commercial office building, in a C6-4.5(Mid) zoning district requiring a special permit from the Board as per §32-00; and

WHEREAS, the total floor area of the health club is approximately 21,963 square feet, housing facilities for

classes, instruction, programs for physical improvement, body building, weight reduction, aerobics or martial arts, men’s and women’s locker rooms, reception area, and offices; and

WHEREAS, massage services will be provided by New York State licensed masseurs and masseuses; and

WHEREAS, the subject site is located in a mixed-use area of Manhattan, characterized by commercial and residential uses; and

WHEREAS, the physical culture establishment is completely enclosed within an existing building; and

WHEREAS, the record indicates that the proposed use will not contain any potential hazards that impact on the privacy, quiet, light, and air to residential uses; and

WHEREAS, therefore, the Board finds that the continuation of the physical culture establishment use will not alter the essential character of the surrounding neighborhood nor impair its future development; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals of the owner and operator of such facility and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Board finds that the applicant’s proposal complies with the requirements of the Special Midtown District; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §73-36; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement; and

WHEREAS, therefore, the Board has determined that the proposed action will not result in any significant environmental effects.

Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental quality Review and makes the required findings under Z.R. §73-36 and grants a special permit allowing the operation of a physical culture establishment, Use Group 9, located in portions of the basement, first floor and second floor of a 20-story commercial office building, in a C6-4.5(Mid) zoning district contrary to Z.R. §32-00, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application marked “Received March 28, 2000”-(5) sheets; and on further condition;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all individuals practicing massage at the premises shall possess valid New York State licenses for such practice which licenses shall be prominently displayed at the premises;

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THAT, fire protection measures, including an automatic wet sprinkler system connected to a Fire Department-approved central station, shall be provided and maintained in accordance with the BSA-approved plans,

THAT this special permit shall be limited to a term of ten years from the date of this grant, to expire on July 25, 2010;

THAT the above conditions shall appear on the certificate of occupancy;

THAT the development, as approved, is subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and

THAT a new certificate of occupancy shall be obtained within one year of this grant.

Adopted by the Board of Standards and Appeals, July 25, 2000.

***The resolution has been corrected to replace “..cellar” now reads: “basement...”. Corrected in Bulletin Nos. 27-29 Vol. 95, dated July 22, 2010.**

*CORRECTION

This resolution adopted on May 19, 2009, under Calendar No. 304-08-BZ and printed in Volume 94, Bulletin No. 20, is hereby corrected to read as follows:

304-08-BZ

CEQR #09-BSA-050M

APPLICANT – Bryan Cave LLP, for TDS Acquisition LLC d/b/a Trevor Day School, owner.

SUBJECT – Application December 11, 2008 – Variance (§72-21) and Special Permit (§73-19) to allow a school in a C8-4 district contrary to bulk regulations (§33-123, §33-451, §33-453, §33-454, §33-26). C8-4 District.

PREMISES AFFECTED – 312-318 East 95th Street, south side of 95th Street, 215 east of Second Avenue, 350’ feet west of First Avenue, Block 1557, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Judy Gallent.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 19, 2008, acting on Department of Buildings Application No. 110347250, reads, in pertinent part:

“Proposed FAR does not comply with ZR Section 33-123 (Maximum Floor Area –Community Facility Buildings). Maximum Community Facility FAR permitted in C8-4 is 6.5. Proposed FAR is 8.57.

Proposed tower lot coverage does not comply with ZR Section 33-454 (Towers on Small Lots). Maximum tower lot coverage permitted is 50% for a lot less than 10,500 sq. ft. in area. Proposed tower lot coverage is 59.4%.

Proposed aggregate tower area within 50 feet of a narrow street does not comply with ZR Sections 33-451 and 33-453. Maximum aggregate tower area permitted within 50 feet of a narrow street is 1,875 sq. ft. Proposed tower occupies an aggregate area of 3,288.25 sq. ft. within 50 feet of a narrow street.

Proposed rear yard does not comply with ZR Section 33-26 at the first, second and third floors. A minimum 20 foot rear yard is required. Proposed rear yard at 1st, 2nd and 3rd floors is less than 20 feet.

MINUTES

School in a C8-4 zoning district requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-19"; and

WHEREAS, this is an application for a special permit under ZR §§ 73-19 and 73-03, to permit a combined 12-story middle school and high school (Use Group 3) on a site within a C8-4 zoning district, and an application under ZR § 72-21 to permit the a school building contrary to ZR §§ 33-123 (maximum floor area ratio), 33-26 (required rear yard), 33-454 (tower lot coverage), 33-451 and 33-453 (maximum aggregate tower area); and

WHEREAS, the application is brought on behalf of Trevor Day School, a nonprofit corporation ("Trevor Day"); and

WHEREAS, a public hearing was held on this application February 24, 2009, after due notice by publication in the *City Record*, and then to decision on May 12, 2009; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, a number of neighborhood residents testified in favor of the application; and

WHEREAS, an adjacent owner testified in opposition to the application, citing concerns with the impact of the proposed school on his property; and

WHEREAS, the site is located in the mid-block area of the south side of East 95th Street between First Avenue and Second Avenue; and

WHEREAS, the site is located in a C8-4 zoning district and has a lot area of 10,453 sq. ft.; and

WHEREAS, the subject site is occupied by a five-story furniture factory and an adjacent two-story building which are proposed to be demolished; and

WHEREAS, the proposed 12-story combined middle school/high school (U.G. 3) (the "School") has a four-story 84-foot high base and an eight-story tower rising to a total height of 204 feet; each base floor has a floor plate of approximately 10,300 sq. ft. and each tower story has a floor plate of approximately 6,200 sq. ft.; and

WHEREAS, a cellar level houses a lower lobby, student lockers, administrative space and mechanical space; the first floor and first floor mezzanine are occupied by the auditorium; the second floor is occupied by music and band rooms; the third floor and third floor mezzanine are occupied by a double height gymnasium; the fourth floor is occupied by the cafeteria and kitchen; the fifth through eighth floors contain core classrooms and common rooms, with some offices on the sixth floor; the ninth and tenth floors contain science and fine arts classrooms and laboratories; the eleventh floor contains administrative offices and a dance studio; the twelfth floor contains a half-gymnasium; and an outdoor play area of approximately 4,839 sq. ft. is located on the roof; and

WHEREAS, the applicant seeks a variance to permit: a floor area of 101,243 sq. ft. (67,944 sq. ft. is the maximum

community facility floor area permitted in a C8-4 district); an FAR of 8.57 (an FAR of 6.5 is the maximum permitted); a tower lot coverage of 59.4 percent (50 percent is the maximum permitted); an aggregate tower area within 50 feet of a narrow street of approximately 3,288 sq. ft. (1,875 sq. ft. is the maximum permitted; and a rear yard of 0'-8" (20'-0" is the minimum required); and

WHEREAS, the applicant additionally seeks a special permit because the subject site is located within a C8-4 zoning district, where Use Group 3 school use is not permitted as-of-right; and

WHEREAS, the applicant represents that the special permit and variance requests are necessitated by (i) the need to replace its existing elementary school; (ii) the need for additional space based on past and projected growth in the school's enrollment; and (iii) the need for classrooms, gymnasiums, auditorium and meeting spaces adequate in size to serve its student body; and

WHEREAS, the applicant further states that the student body is currently distributed among four buildings on the Upper East Side and Upper West Side of Manhattan: (a) a pre-school/ kindergarten located at East 89th Street; (b) an elementary school in space rented from the Church of the Heavenly Rest (the "Church"); and a middle school/ high school located at (c) 1 West 88th Street and (d) 279 Central Park West; and

WHEREAS, applicant further states that the Church has indicated an intention to recapture the space occupied by Trevor Day's elementary school in 2013 and the elementary school must therefore be relocated to an alternative space; and

WHEREAS, the applicant represents that its existing middle school/high school facilities are overcrowded and outdated with classrooms, studios, labs, physical education and common areas that are inadequate in size and oddly shaped and which are insufficient to accommodate projected enrollment growth; and

WHEREAS, the applicant further represents that its existing facility cannot accommodate its entire middle school or high school student body for assemblies, concerts, or school-wide meetings; and

WHEREAS, the applicant represents that the impending loss of its pre-school/kindergarten and the overcrowded, antiquated and inadequate space of its middle school/ high school render it impossible for Trevor Day to meet its programmatic needs; and

WHEREAS, development of the School will allow Trevor Day to relocate its elementary school to its building at 1 West 88th Street and to provide an auditorium, and modern and adequately-sized classrooms, gymnasiums, studios and labs to its middle/high school students; and

WHEREAS, the applicant represents that the School meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an C8-4 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate difficulty in obtaining land for the development of a school within the neighborhood to be served and with an adequate size, sufficient to meet the programmatic needs

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of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that a building with a floor area of least 100,000 sq. ft. is necessary to accommodate Trevor Day's program; and

WHEREAS, the applicant states that the majority of its students reside on the Upper West Side and Upper East Side neighborhoods of Manhattan; and

WHEREAS, the applicant further states that Trevor Day conducted a nearly four-year site search for existing buildings or development sites within those communities for a combined middle and high school facility of adequate size to serve the School's programmatic needs; and

WHEREAS, the applicant represents that nine potential sites, including the subject site, were seriously evaluated and that additional sites were investigated and determined to be inappropriate based on their location, size, limited access to public transportation and/or purchase price; and

WHEREAS, the applicant further represents that the sites evaluated include: (i) 165 West 86th Street (West-Park Presbyterian Church); (ii) 517-523 East 73rd Street and 512-522 East 74th Street; (iii) Amsterdam Avenue between West 99th and West 100th Streets (St. Michael's Episcopal Church); (iv) West 57 Street, mid-block between 12th Avenue and 11th Avenue; (v) Amsterdam Avenue at West 69th Street (Lincoln Square Synagogue); (vi) 23 East 91st Street (Our Lady of Good Counsel School); (vii) 515 West 57th Street; and (viii) Lexington Avenue between East 97th and East 98th Streets; and

WHEREAS; the applicant states that the potential floor area of sites at Amsterdam Avenue between West 99th and West 100th Streets, Amsterdam Avenue at West 69th Street (Lincoln Square Synagogue), 23 East 91st Street; and Lexington Avenue between East 97th and East 98th Streets was deemed inadequate to accommodate the School; and

WHEREAS, the applicant further states that the respective locations of a Con Edison substation and Department of Sanitation garage adjacent to and across from 517-523 East 73rd Street/ 512-522 East 74th Street rendered that site unacceptable for the School; and

WHEREAS, the applicant additionally states that the owners of 515 West 57th Street and 165 West 86th Street were unwilling to transfer their properties to the School; and

WHEREAS, the applicant maintains that the results of the site search show that there is no practical possibility of obtaining a site of adequate size for the School in a district where it is permitted as of right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the School is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, evidence in the record indicates that the front lot line of the site directly abuts an R8 district in which a school would be permitted as of right; and

WHEREAS, therefore, Board finds that the

requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that the School fronts on East 95th Street, directly south of an R8 zoning district, and that only the sides and rear of the School will face the surrounding non-residential zoning district; and

WHEREAS, the applicant further states that adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district is provided through the use of sound-attenuating window and wall construction; and

WHEREAS, the applicant represents that the School's design would include double-glazed windows in the front and rear walls and an alternate means of ventilation, and that the side walls would have no windows and be constructed of sound-attenuating masonry; and

WHEREAS the applicant further represents that window/wall attenuation would provide 35 dBA for all facades of the building and would therefore result in interior noise levels of less than 45 dBA within the School; and

WHEREAS, the Board accepts that the use of sound attenuating window and wall construction will adequately separate the school from noise, traffic and other adverse effects of the surrounding non-residential district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that East 95th Street is a narrow one-way street characterized by light traffic, and that children traveling and from the School would be protected by the diversion of most east-west through traffic to East 96th Street, one block to the north, which is a major cross street having two travel lanes in both directions; and

WHEREAS, the Board finds that the movement of the traffic through the street on which the School is located can be controlled so as the protect children traveling to and from the School; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the applicant states that the School is not anticipated to have a substantial adverse impact with respect to urban design and visual resources or neighborhood character; and

WHEREAS, the applicant further states that the proposed use of the building as a school is permitted as-of-right in the C1, C2 and residential zoning districts surrounding the subject site, and is consistent with the predominant residential character of the surrounding neighborhood; and

WHEREAS, the applicant additionally states that the

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Life Sciences High School is located on East 95th Street directly north of the subject site in an R8 zoning district within which schools are permitted as-of-right; and

WHEREAS, the applicant represents that the height of the School is permitted by the tower regulations of the underlying C8-4 zoning district and that a number of buildings in the surrounding area are taller than the School, including: a 28-story residential tower to its east at East 94th Street and First Avenue; a 31-story residential tower to its west at East 94th Street and Second Avenue; a 16-story residential building on East 96th Street directly north of the School; the 24-story and 25-story Isaacs Houses and Holmes Towers developments of the NYC Housing Authority on First Avenue to the east and southeast of the subject block; and the 32- and 30-story residential high rises on the west side of First Avenue between East 94th Street and East 92nd Street; and

WHEREAS, the applicant further represents that the School's streetfront is consistent with those of the buildings on East 95th Street on either side of the subject site; and

WHEREAS, the applicant states that the School will benefit the surrounding community by replacing a legally conforming industrial use with a school use that is more consistent with the predominant residential character of the area and which expands educational opportunities for neighborhood residents; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant states that preparation work is under way for the Second Avenue Subway in a portion of Second Avenue from East 91st Street to East 95th Street, and that its construction over the next eight years is expected to cause street closings and other impacts that could potentially affect the School; and

WHEREAS, the applicant states, however, that because the School is located 200 feet east of Second Avenue, the requested modifications of the applicable use and bulk regulations will not interfere with the Second Avenue subway project or with any other pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR §73-03; and

WHEREAS, the applicants states that the requested variance of the maximum allowable floor area (and FAR), maximum tower coverage, maximum aggregate tower coverage and minimum rear yard are necessary based on the programmatic needs of Trevor Day and the site's unique subsurface conditions including groundwater level, soil and bedrock conditions;

WHEREAS, as to the programmatic needs of the School, the applicant states that they are the following: (1) relieving overcrowded and suboptimal classroom conditions; (2) accommodating current enrollment while allowing for future growth; (3) offering a varied and expanded curriculum to

its students; and (4) providing gymnasium and auditorium space; and

WHEREAS, as discussed above, the applicant states that its existing middle school/ high school facilities are overcrowded and outdated with classrooms, studios, labs, physical education and common areas that are inadequate in size and oddly shaped; and

WHEREAS, Trevor Day has determined that additional space is needed to better serve the 365 students currently enrolled in grades 7 through 12, and also to increase its Upper School enrollment by approximately 25 percent; and

WHEREAS, the applicant states that a planning study commissioned by Trevor Day found that the school provides an average classroom area of 115 sq. ft. per student, far less than the 162 sq. ft. per student average of comparable New York City independent schools; and

WHEREAS, the applicant represents that the paucity of adequate classroom space also limits the number of elective classes it can offer its middle and high school students as well as the extracurricular functions that are an integral part of a balanced high school program; and

WHEREAS, to accommodate the projected enrollment, the applicant states that the School must have a total of 20 core classrooms and 10 special classrooms, each with a minimum size of approximately 450 sq. ft., as well as three common rooms: one for the middle school and two for the high school, each with a minimum size of approximately 2,100 sq. ft.; and

WHEREAS, to comply with New York State Department of Health regulations which mandate three physical education classes per week, the applicant further states that the School also requires two gymnasiums – a full-size gymnasium and a 4,000 sq. ft. half-gymnasium; and

WHEREAS, the applicant further states that a minimum gymnasium ceiling height of 24 feet is required to host inter-scholastic basketball games and that the School must also have a double-height auditorium to present school-wide assemblies, as well as musical and theatrical productions; and

WHEREAS, the applicant represents that, the tower coverage, aggregate tower area and rear yard waivers are necessary to provide the program space necessary to adequately serve its current student body and to prepare for a projected 25 percent increase in enrollment; and

WHEREAS, the applicant represents that without the waivers, the floor area of the School would be reduced by 21,633 sq. ft., and that the proposed auditorium, library/media center, half-gymnasium, and common room for science classrooms would consequently be eliminated and less space would be available for the cafeteria, kitchen and lobby, faculty and administrative office space, storage, and bathrooms; and

WHEREAS, the applicant represents that the tower floor plates of a complying development would be approximately 1,000 sq. ft. smaller than those in the School and, consequently, that core classrooms and common rooms would have to be moved from the tower to the base portion

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of the building and be enlarged beyond what is programmatically necessary, resulting in an inefficient waste of much-needed floor area; and

WHEREAS, the applicant further states that compliance with the 23-foot height restriction for rear yard obstructions in the subject zoning district would necessitate reduction of the height of the main gymnasium below regulation size, because the rear 20 feet could have a ceiling height of only 12'-4" – too low to accommodate a backboard and rim; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the applicant represents, however, that its programmatic needs could be met on the subject site in an as-of-right building, were it not for the unique groundwater, soil and bedrock conditions that create practical difficulties and unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, a geotechnical engineering study submitted by the applicant found that: (a) subsurface water course traverses the subject site and groundwater is found at approximately nine feet below the existing sidewalk grade; and (b) the subject site is located in a former marsh area and subsurface soil consists of layers of sand, clay, peat and fine silt to depths beyond 170 feet; and

WHEREAS, the geotechnical study additionally found that, as a result of these conditions, below-grade construction would require dewatering approximately 25 to 30 feet below-grade and underpinning of adjacent buildings, and that such below-grade construction could cause damage to facades, interior finishes and structural elements and be costly; and

WHEREAS, the applicant states that three major construction firms estimated the cost of dewatering, underpinning and below-grade construction at between \$9 and \$17.4 million; and

WHEREAS, because of the site's soil, bedrock and groundwater conditions, the applicant states that Trevor Day is unable to locate essential educational spaces more than approximately six feet below-grade and therefore has instead located all required floor area above-grade, with the exception of one cellar floor; and

WHEREAS, because of the subject-site's unique below-grade conditions, the School must locate two of the three potential below grade levels, containing approximately 20,900 sq. ft., above grade, thereby exceeding the maximum allowable floor area; and

WHEREAS, the applicant represents that the need to

construct almost all of the School's programmatically required floor area above-grade necessitates the requested variances of regulations relating to rear yard, tower lot coverage and aggregate tower area; and

WHEREAS, the applicant further represents that the requested floor area variance is required to recapture the as-of-right floor area that is lost due to the inability to construct below-grade space; and

WHEREAS, the applicant states that if the site were not burdened with its unique soil and groundwater conditions, the auditorium and gymnasium could have been located below-grade, rather than on the ground and third floors, respectively, and that a school building with a floor area virtually identical to that of the School could be built on the subject site as-of-right; and

WHEREAS, the proposed floor area of the School is 101,243 sq. ft.; and

WHEREAS, the applicant submitted plans indicating that approximately 31,360 sq. ft. of space could otherwise be developed in three additional below-grade levels, which would not be included in floor area, in addition to 67,944 sq. ft. of floor area that could be developed at the maximum allowable community facility FAR of 6.5, for a total floor area of 99,304 sq. ft.; and

WHEREAS, the applicant concludes that, as a result, Trevor Day is unable to fulfill its programmatic needs by developing the subject site with an as-of-right middle and high school building while complying with all underlying district regulations; and

WHEREAS, the Board finds that Trevor Day's programmatic needs are legitimate, and agrees that the proposed School is necessary to address its needs, given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the unique conditions of the site, when considered in conjunction with the programmatic needs of the School, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that although the School is located on the site of a former industrial building, it is compatible with other residential and institutional uses in the surrounding neighborhood; and

WHEREAS, the applicant states that the land uses surrounding the site are characterized by a mix of residential, commercial, and institutional uses; and

WHEREAS, the applicant states that East 95th Street to the west and east of the subject site contains a variety of

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uses including residential uses, automotive related uses, retail and manufacturing uses and that a five-story office building is located immediately to the south of the subject site; and

WHEREAS, the applicant further states that north of the subject site on East 95th Street are several residential uses, including a 16-story residential building on East 96th Street in the mid-block portion of the block ; and

WHEREAS, the applicant further states that the proposed use of the building as a school is permitted as-of-right in the residential and C1 and C2 zoning districts surrounding the subject site, and is consistent with the predominant residential character of the surrounding neighborhood; and

WHEREAS, the applicant further states that the Life Sciences High School is located directly across East 95th Street from the subject site in an R8 zoning district within which schools are permitted as-of-right; and

WHEREAS, the applicant represents that the height and bulk of the School are compatible with the surrounding area, which is characterized by a number of additional large residential, commercial and mixed-use buildings; and

WHEREAS, the height of the School is permitted as-of-right by the tower regulations of the underlying C8-4 zoning district and a number of buildings in the surrounding area are taller than the School, including a 28-story residential tower to its east at East 94th Street and First Avenue, a 31-story residential tower to its west at East 94th Street and Second Avenue, a 16-story residential building on East 96th Street directly north of the School, the 24-story and 25-story Isaacs Houses and Holmes Towers developments of the NYC Housing Authority on First Avenue to the east and southeast of the subject block, and the 32-story and 30-story residential high rises occupying the block fronts on the west side of First Avenue between East 94th Street and East 92nd Street and the 38-story Normandy Court residential development located on the corner of Second Avenue and East 96th Street; and

WHEREAS, the applicant states that the requested variance of the tower lot coverage requirement allows for a tower with a slightly larger floor plate than would otherwise be permitted, thereby providing a somewhat shorter building than would be required absent the variance limiting the resulting shadows of the School on the surrounding area; and

WHEREAS, the applicant further states that a conforming community facility use could build at the subject site to a height of approximately 15 stories as-of-right under the tower bulk regulations of the subject zoning district; and

WHEREAS, the applicant states that the street wall of the School complies with the height restrictions of the C8-4 district and is consistent with the street walls of other mid-block buildings fronting on East 95th Street; and

WHEREAS, an environmental assessment indicates that the shadows cast by the School are only marginally greater than the shadows cast by a complying development, and that none of the incremental increase in shadows falls

on any light sensitive elements; and

WHEREAS, a playground is located on the western half of the block directly north of the subject site between East 96th Street and East 97th Street, the shadow study demonstrates that the shadows cast by the School are blocked from falling on the playground by a 16-story building on East 96th Street located directly north of the School; and

WHEREAS, in a submission to the Board, an adjacent property owner argues that the School will block its light and air; and

WHEREAS, a submission by the applicant notes that during seven of 12 analysis periods studied, the School had no incremental shadow impacts on the adjacent property as compared to existing conditions; in two of the periods studied, the School cast the same amount of shadow as an as-of-right building; in two of the analysis periods, the School cast less shadow than an as-of-right building; and that during only one period was a small incremental shadow cast --on the northwest corner of the entrance of the adjacent building; and

WHEREAS, the adjacent owner additionally contends that as-of-right development of his property would block light from the School's classrooms; and

WHEREAS, in response, the applicant states that the School has been built without windows on its western façade abutting the lot line of the adjacent owner and that all classrooms are designed to receive light from windows located in the north and south facades of the building; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions; and

WHEREAS, a submission by a neighboring owner argues that the hardship is self-imposed and urges the Board to deny the subject application; and

WHEREAS, a response by the applicant points out that, pursuant to ZR § 72-21, the purchase of a property subject to the restrictions sought to be varied does not, in and of itself, constitute a self-created hardship and is not a ground to deny the application; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers for floor area, tower lot coverage, aggregate tower area and rear yard are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the applicant further represents that without the requested variances of the maximum tower lot coverage requirement from 50 percent to 59.4 percent and the maximum allowable aggregate tower area by approximately 1,413 sq. ft., an additional four stories would be required to accommodate the School's program,

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increasing the height of the building by approximately 53 feet to an as-of-right height of 279 feet; and

WHEREAS, the applicant states that development using sky exposure plane bulk regulations as an alternative to a tower would require a variance of the rear yard requirement for the full height of the building, as well as a variance to allow penetration of the sky exposure plane by four of the seven stories above the maximum street wall, in addition to a floor area variance; and

WHEREAS, the applicant states that a sky exposure plane development would be bulkier and would cast larger shadows than a more slender tower and that having atypical floors of varying depths as the building set back under the sky exposure plane would make it more difficult for Trevor Day to program the resulting space so as to meet its programmatic needs; and

WHEREAS, the applicant represents that the rear wall is angled inward instead of being extended straight up to the top of the fourth floor in order to minimize the variance requested; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA050M, dated March 2009; and

WHEREAS, the EAS documents that the School would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection (“DEP”) Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a January 2007 Phase I Environmental Site Assessment; (2) a January 2007 Phase II Investigation Report; (3) a March 2009 Environmental Assessment Statement (“EAS”); (4) a March 2009 Revised Remedial Action Plan (the “Revised RAP”) and Construction Health & Safety Plan (CHASP); and (5) Revised March 2009 Air Quality and Noise chapters; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials, Air Quality; and Noise; and

WHEREAS, to mitigate soil vapor intrusion pursuant to the Revised RAP, a Grace Florprufe 120 vapor barrier

will be applied to the underside of the foundation slabs in accordance with manufacturer specifications; and

WHEREAS, a Remedial Closure Report certified by a professional engineer must be submitted to DEP at the completion of construction to confirm the effectiveness of the vapor barrier; and

WHEREAS, the proposed project is projected to generate fewer than 100 peak hour vehicle trips and therefore would not require a mobile source air quality analysis; and

WHEREAS, no nearby emission sources were identified which would have potential impacts to the School; and

WHEREAS, a screening analysis of the School’s emissions, assuming the use of No. 4 fuel oil, indicate that the proposed project would not significantly impact adjacent structures of equal or greater height; and

WHEREAS, the proposed project is not anticipated to result in significant adverse air quality impacts; and

WHEREAS, DEP has determined that sound-attenuating masonry and double-glazed windows achieving a composite window/wall noise attenuation of 35 dBA for all building facades are necessary to achieve an interior noise level of 45 dBA; and

WHEREAS, with the aforementioned measures, the proposed project would not result in a significant adverse noise impact; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and grants a special permit to allow, within a C8-4 zoning district, a combined middle school and high school (Use Group 3) and makes each and every one of the required findings under ZR §§ 73-19 and 72-21 and grants a variance to allow the school building, which does not comply with ZR §§ 33-123, 33-26, 33-454, 33-451 and 33-453; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received May 14, 2009” – (26) sheets; and *on further condition*:

THAT the parameters shall be: a floor area of 101,243 sq. ft. (FAR of 8.57); a tower lot coverage of 59.4 percent; an aggregate tower area within 50 feet of a narrow street of approximately 3,288 sq. ft.; and a rear yard of 0’-8”;

THAT the premises shall comply with all applicable fire safety measures, as required and as illustrated on the BSA-approved plans;

THAT the issuance of building permits shall be conditioned on the issuance of a DEP Notice to Proceed;

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THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT sound-attenuating masonry and double-glazed windows achieving a composite window/wall noise attenuation of 35 dBA shall be installed on all exposed facades of the proposed building;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT construction shall proceed in accordance with ZR §§ 72-23 and 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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 19, 2009.

The resolution has been corrected to remove “*THAT the certificate of occupancy shall state that the number of students shall be limited to 500;*”. Corrected in Bulletin Nos. 27-29, Vol. 95, dated July 22, 2010.

BULLETIN

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Tuesday, July 27, 2010**

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189-96-BZ	85-12 Roosevelt Avenue, Queens
395-60-BZ	2557-2577 Linden Boulevard, Brooklyn
16-92-BZ	72/84 Sullivan Street, aka 115 King Street, Brooklyn
11-93-BZ	46-45 Kissena Boulevard, aka 140-01 Laburnum Avenue, Queens
200-98-BZ	633 Third Avenue, Manhattan
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315-08-A	246 Spring Street, Manhattan
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64-10-BZ	1253 East 29 th Street, Brooklyn
85-10-BZ	309-311 East Fordham Road, Bronx
88-10-BZ	1327 East 21 st Street, Brooklyn

DOCKET

New Case Filed Up to July 27, 2010

129-10-BZ

98-18 103rd Avenue, At the cross street of 103rd Avenue and 99th Street., Block 9121, Lot(s) 9, Borough of **Queens, Community Board: .** Special Permit (73-36) to legalize the operation of a physical culture establishment. M1-2 district.

130-10-BZ

1153 85th Street, North side of 85th Street between 11th and 12th Avenue., Block 6320, Lot(s) 56, Borough of **Brooklyn, Community Board: 10.** Special Permit (73-622) for the enlargement of a single family home. R3X district.

131-10-BZ

841 Broadway, Northwest corner of Broadway and East 13th Street., Block 565, Lot(s) 15, Borough of **Manhattan, Community Board: 2.** Special Permit (73-36) to allow legalization of a physical culture establishment. C6-4(US)/C6-1 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

AUGUST 17, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 17, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

637-74-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 56th Realty LLC c/o Glenwood Management Corporation, owner.

SUBJECT – Application July 1, 2010 – Extension of Term for transient parking in a garage accessory to a multiple dwelling which expired on May 6, 2010; Waiver of the Rules. C1-9(TA)/R8 zoning district.

PREMISES AFFECTED – 1048-62 Second Avenue, East 55th Street, East 56th Street, First Avenue and Second Avenue, Block 1348, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #6M

221-97-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for DFD Development Limited Partnership, owner; Crunch Kips Bay LLC, lessee.

SUBJECT – Application April 29, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a PCE which expired on June 16, 2008; Amendment for a change in ownership from Bally Total Fitness to Crunch Fitness; Waiver of the Rules. C2-5/R-8 zoning district.

PREMISES AFFECTED – 550 Second Avenue, east side of Second Avenue at southeast corner of East 30th Street, Block 936, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

136-01-BZ

APPLICANT –Eric Palatnik, P.C., for Cel Net Holdings Corporation, owners.

SUBJECT – Application June 23, 2010 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy for a Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements which expired on July 12, 2010. M1-4/R7A(LIC) zoning district.

PREMISES AFFECTED – 11-11 44th Drive, east of 11th Street, Block 447, Lot 13, Borough of Queens.

COMMUNITY BOARD #1Q

APPEALS CALENDAR

110-10-BZY

APPLICANT – Cozen O’Connor, for Landmark Developers of Rockaway, owners.

SUBJECT – Application June 18, 2010 – Extension of time (11-332) to complete construction of a minor development commenced under the prior R6 zoning. R5A zoning district
PREMISES AFFECTED – 93-06 Shore Front Parkway, north side of Shore Front Parkway from B.94th to B.93rd Street, Block 16130, Lot 11, Borough of Queens.

COMMUNITY BOARD #14Q

123-10-A

APPLICANT – Fire Department of the city of New York

OWNER – DiLorenzo Realty Corporation

LESSESS – Flair Display Incorporated

SUBJECT – Application July 6, 2010 – Modification of existing certificate of occupancy for installation of automatic sprinkler system.

PREMISES AFFECTED – 3931 Mulvey Avenue, 301.75’ north of East 233rd Street. Block 4972, Lot 60, Borough of the Bronx.

COMMUNITY BOARD #12BX

124-10-A

APPLICANT – Fire Department of the city of New York

OWNER – DiLorenzo Realty Corporation

LESSESS – Flair Display Incorporated

SUBJECT – Application July 6, 2010 – Modification of existing certificate of occupancy for installation of automatic sprinkler system.

PREMISES AFFECTED – 3927 Mulvey Avenue, 301.75’ north of East 233rd Street. Block 4972, Lot 162, Borough of the Bronx.

COMMUNITY BOARD #12BX

CALENDAR

AUGUST 17, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 17, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

277-07-BZ

APPLICANT – Miele Associates, LLP, for Barnik Associates LLC & Lama Holdings, LLC, owner.

SUBJECT – Application December 3, 2007 – Variance (§72-21) proposed to erect a one story Automotive Service Station with accessory convenience store and metal canopy over pump islands on a lot located in a R3-1 zoning district contrary to §22-10 of the Zoning Resolution.

PREMISES AFFECTED – 165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R, Brewer Boulevard. Block 12318, Lot 10, Borough of Queens.

COMMUNITY BOARD #12Q

60-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Soho Thompson Realty, LLC, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-21) to allow for a commercial use below the floor level of the second story, contrary to ZR 42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 54 Thompson Street, northeast corner of Thompson Street and Broome Street, Block 488, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

99-10-BZ

APPLICANT – Fridman Saks, LLP for Dora Weiss, owner.

SUBJECT – Application June 2, 2010 – Special Permit (§73-622) for the In-Part Legalization of prior construction into the side yard on a corner lot and proposed enlargement to an existing single family home contrary to open space, lot coverage and floor area (§23-141) and side yards (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 2302 Avenue S, Located on the southeast corner of Avenue S and East 23rd Street. Block 7302, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

106-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Ka Won Realty Corporation, owner; Harmony Spa, lessee.

SUBJECT – Application June 9, 2010 – Special Permit (73-36) to legalize the operation of a physical culture establishment on the third floor of an existing four-story commercial building. M1-6 zoning district.

PREMISES AFFECTED – 240 West 38th Street, 3rd Floor, Located on south side of West 38th Street between 7th and 8th Avenue. Block 787, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JULY 27, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

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.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for the continued use of an automobile service station, which expires November 14, 2011; and

WHEREAS, a public hearing was held on this application on April 27, 2010, after due notice by publication in *The City Record*, with continued hearings on May 25, 2010 and June 22, 2010, and then to decision on July 27, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of Reid Avenue and Hylan Boulevard, within a C2-1 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 14, 1961 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station, lubricatorium, car washing, minor motor vehicle repairs with hand tools only, sale of accessories, and the

parking of more than five motor vehicles, for a term of 20 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, on June 9, 1992, the Board granted an extension of term for ten years from the expiration of the prior grant, and permitted the replacement of the existing gasoline pumps and canopy, an enlargement to the existing building to accommodate an attendant's booth, and the rearrangement of the curb cut along Reid Avenue; and

WHEREAS, most recently, on December 9, 2003, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire November 14, 2011; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, at hearing, the Board requested that the applicant confirm that the signage on the site is compliant with C2 district regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that excess signage has been removed, and states that the signage complies with C2 district regulations; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 14, 1961, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the date of this grant, to expire on July 27, 2020; *on condition* that all use and operations shall substantially conform to plans filed with this application marked 'Received April 12, 2010' – (3) sheets and 'June 30, 2010'-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on July 27, 2020;

THAT the above condition shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by July 27, 2011;

THAT signage shall comply with C2 zoning district regulations;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the Department of Buildings must ensure compliance 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. 520026971)

Adopted by the Board of Standards and Appeals July 27, 2010.

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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.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an extension of term of a previously granted variance for a Use Group 9 catering establishment, which expires on December 9, 2010, an amendment to the previously-approved plans, and an extension of time to complete construction and obtain a certificate of occupancy, which expired on March 14, 2010; and

WHEREAS, a public hearing was held on this application on March 9, 2010, after due notice by publication in *The City Record*, with continued hearings on April 13, 2010, May 18, 2010, and June 22, 2010, and then to decision on July 27, 2010; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is located on the west side of McDonald Avenue between Ditmas Avenue and Avenue F, within an M1-1 zoning district; and

WHEREAS, the site is occupied by a catering establishment building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 9, 1980 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to legalize the enlargement of an existing building used by a catering establishment, which exceeded the permitted floor area ratio, encroached into the rear yard, and had less than the required accessory parking, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, on July 24, 2001, the Board granted an

extension of term and approved an amendment to the plans to permit certain modifications including a height increase of 5'-0" to accommodate an air conditioning system and the addition of an elevator, which expires on December 9, 2010; and

WHEREAS, subsequent grants limited the amount of time to complete construction and obtain a certificate of occupancy to terms of two years; and

WHEREAS, most recently, on April 8, 2008, the Board permitted a two-year extension of time to complete construction and obtain a certificate of occupancy, which expired on March 14, 2010; and

WHEREAS, the applicant now requests an extension of term and an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant represents that all previously approved construction at the site has been completed, but that an extension of time is necessary because a certificate of occupancy has not been obtained; and

WHEREAS, the applicant also requests an amendment to permit the installation of a wrought iron fence and planting area at the front of the site along McDonald Avenue, as well as minor changes to the interior layout of the building and the design of the façade, and to remove the condition from the resolution requiring that valet parking be provided on Block 5384, Lot 51; and

WHEREAS, at hearing, the Board raised concerns that the proposed fence at the front of the site was located on the public sidewalk; and

WHEREAS, in response, the applicant acknowledges that the fence is located on the public sidewalk, rather than the subject zoning lot, and submitted a copy of its petition for a revocable consent made to the Department of Transportation ("DOT") to approve the subject fence which encroaches onto City property; and

WHEREAS, the Board does not have the authority to approve the fence encroachment and directed the applicant to remove the fence and planting area from its plans pending the outcome of its petition to DOT for a revocable consent; and

WHEREAS, in response, the applicant submitted revised plans reflecting the removal of the fence and planting area along McDonald Avenue; and

WHEREAS, the Board notes that previous resolutions required the applicant to provide valet parking at 487 Dahill Road (Block 5384, Lot 51), and questioned the applicant's request to remove the condition related to valet parking; and

WHEREAS, in response, the applicant states that it still maintains the separate parking lot located at 487 Dahill Road, but states that valet parking is no longer necessary as the majority of patrons drive to the parking lot and walk from the lot to the subject site, which is approximately one block away; and

WHEREAS, further, the Board questioned whether the applicant was providing sufficient parking in the surrounding area; and

WHEREAS, in response, the applicant submitted a plot plan reflecting that it will continue to maintain the separate parking lot approximately one block from the site, at 487 Dahill Road, which has the capacity to hold 21 vehicles; the

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applicant represents that an on-site attendant will be provided to maneuver the vehicles in and out of the lot as needed; and

WHEREAS, the applicant notes that the site is a religious-themed, community-centered catering hall, and the vast majority of attendants to events arrive on foot, which limits the parking needs at the site; and

WHEREAS, the applicant states that all of the catering hall's events occur during the evening hours with the exception of Bris events, which occur in the morning from 6:00 a.m. to 9:00 a.m. and are easily accommodated either in the off-site parking lot or on the numerous on-street parking spaces that are available at that hour, and that although the facility opens for evening events at 4:00 p.m. Monday through Thursday, the events themselves do not typically begin until 8:00 p.m., with guests arriving at 6:00 p.m. or later; and

WHEREAS, the applicant submitted a parking study which reflects that during the peak evening hours after 7:00 p.m., approximately 243 parking spaces become available to patrons of the catering hall, and that an estimated 198 on-street spaces are available during the evening in close proximity to the site; and

WHEREAS, the applicant concludes that between the 21 off-site accessory parking spaces provided for its patrons at 487 Dahill Road and the availability of numerous on-street parking spaces during the catering hall's evening peak hours, sufficient parking is provided at the subject site; and

WHEREAS, at hearing, the Board raised concerns about violations issued for the roll-down gate located at the back loading area of the site; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the roll-down gate has been removed; and

WHEREAS, based upon the above, the Board finds the requested extensions and amendments appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on September 9, 1980, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from the date of this grant, to expire on July 27, 2020, to extend the time to complete construction and obtain a certificate of occupancy for one year from the date of this grant, to expire on July 27, 2011, and to permit the noted amendments to the previously-approved plans; *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received June 8, 2010'-(7) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 27, 2020;

THAT the above condition shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by July 27, 2011;

THAT all *conditions from prior resolutions not specifically waived* by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT 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. 300540029)

Adopted by the Board of Standards and Appeals, July 27, 2010.

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.

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 re-opening and an extension of term of a previously granted special permit for an eating and drinking establishment without restrictions on entertainment (UG 12A), which expired on May 19, 2010, and an amendment to permit minor changes to the first floor layout and the installation of employee lockers in the cellar; 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 22, 2010, and then to decision on July 27, 2010; and

WHEREAS, Community Board 4, Queens, recommends disapproval of this application, citing the following concerns: (1) the potential capacity at the site is too high; (2) the use of the site does not fit within the residential character of the surrounding area; (3) parking is inadequate; and (4) the site is not being used as an eating and drinking establishment; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the northwest corner of Roosevelt Avenue and Forley Street, with 40 feet of frontage along Roosevelt Avenue and 50 feet of frontage along Forley Street; and

WHEREAS, the site is occupied by an eating and drinking establishment with entertainment, operated as

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Flamingos; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 19, 1999, when, under the subject calendar number, the Board granted a special permit under ZR § 73-244 to permit the legalization of an existing eating and drinking establishment with entertainment and dancing; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, on July 17, 2007, the Board granted an additional three-year term and amended the grant to permit an increase in the occupancy from 190 to 200 persons, the conversion of the second floor space from a catering establishment to offices, and minor changes to the interior layout of the site, which expired on May 19, 2010; and

WHEREAS, the applicant now requests an extension of term; and

WHEREAS, the applicant also seeks to amend the grant to permit an adjustment to the first floor dancing space and the installation of employee lockers in the cellar; and

WHEREAS, although the Community Board expressed concerns about the total occupancy of 400 persons in the premises (200 in the eating and drinking establishment and an additional 200 in the cellar waiting area), the Board notes that the special permit requires that “a minimum of four square feet of waiting area within the zoning lot shall be provided for each person permitted under the occupant capacity” and that therefore the provision of a waiting area for 200 persons is required in order to meet the findings for the special permit; and

WHEREAS, at hearing, the Board questioned whether the applicant was in compliance with a condition of the original grant requiring the applicant to reserve parking for a minimum of 35 cars for patron parking at the parking garage located at 86-10 Roosevelt Avenue; and

WHEREAS, in response to the parking concerns raised by the Board and the Community Board, the applicant submitted an affidavit from the owner of the parking garage at 86-10 Roosevelt Avenue, stating that the garage had 50 parking spaces reserved for patrons of the subject establishment during its hours of operation; and

WHEREAS, at hearing, the Board directed the applicant to remove graffiti located on the top of the roof parapet facing Roosevelt Avenue; and

WHEREAS, in response, the applicant submitted a photograph reflecting that the graffiti has been removed; and

WHEREAS, in response to the Community Board’s concerns about noise at the site, the applicant submitted a contract reflecting that soundproof windows and doors have been installed on the first floor of the site; and

WHEREAS, based upon the above, the Board finds the requested extension and amendment appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on May 19, 1999, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for a period of three years from May 19, 2010, to expire on May 19, 2013, *on condition* that the use shall

substantially conform to drawings as filed with this application, marked ‘Received March 15, 2010’–(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 19, 2013;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 401982075)

Adopted by the Board of Standards and Appeals, July 27, 2010.

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

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Laid over to August 24, 2010, at 10 A.M., for continued hearing.

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 portion of the lot fronting on King Street to allow a warehouse and storage use (UG 16) and to facilitate a tax lot subdivision; Extension of Term. 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: Sheldon Lobel.

For Opposition: Molly Rouzie, Jozsef Keinal, Risha Gorig, Michael C. Cox, Harriet Zucker and other.

THE VOTE TO CLOSE HEARING –

MINUTES

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 24, 2010, at 10 A.M., for decision, hearing closed.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Joykiss Management, LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Term (§§11-411 & §11-412) to allow the continued operation of an Eating and Drinking establishment (UG 6) which expired on March 15, 2004; Amendment to legalize alterations to the structure; Waiver of the Rules. C2-2 and R3-2 zoning districts.

PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, Northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safien.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for decision, hearing closed.

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 40th and East 41st Streets, Block 1312, Lots 1401, 1456, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Lyra Atman.

ACTION OF THE BOARD – Laid over to August 17, 2010, at 10 A.M., for continued hearing.

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.

THE VOTE TO CLOSE HEARING –

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 17, 2010, at 10 A.M., for decision, hearing closed.

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*) 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 12th Street, Block 615, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to August 17, 2010, at 10 A.M., for continued hearing.

APPEALS CALENDAR

315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC, owner.

SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for a condominium hotel on the basis that the approved plans allow for exceeding of maximum permitted floor area. M1-6 zoning.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Abiguil Patterson.

For Opposition: Paul Selver and John Banks.

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For Administration: Mark Davis, Department of Buildings.
THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to
September 14, 2010, at 10 A.M., for decision, hearing
closed.

217-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 514-516 East
6th Street, owner.

SUBJECT – Application July 7, 2009 – An appeal seeking
to vary the applicable provisions under the Multiple
Dwelling Law as it applies to the enlargement of non-
fireproof tenement buildings. R7-2 zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south
side of East 6th Street, between Avenue A and B, Block 401,
Lots 17 and 18, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 3,
2010, at 10 A.M., for decision, hearing closed.

237-09-A & 238-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP for
Safet Dzemovski, owner.

SUBJECT – Application July 31, 2009 – Proposed
construction in the bed of a mapped street, contrary to
General City Law Section 35. R3X zoning district.

PREMISES AFFECTED – 81 & 85 Archwood Avenue, aka
5219 Amboy Road, east side of Archwood Avenue, 198.25'
north of Amboy Road, Block 6321, Lot 152 & 151, Borough
of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to
September 14, 2010, at 10 A.M., for continued hearing.

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for
Joseph Durzieh, owner.

SUBJECT – Application January 25, 2010 – Appeal seeking
a determination that the owner has acquired a common law
vested right to continue development commenced under the
prior zoning district. R6 zoning district.

PREMISES AFFECTED – 1882 East 12th Street, west side,
of East 12th Street, 75' north of Avenue S, Block 6817, Lot
41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to August
24, 2010, at 10 A.M., for deferred decision.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, JULY 27, 2010 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

ZONING CALENDAR

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: Judith Gallent.

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 Montanez5
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough

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Commissioner, dated November 12, 2009, acting on Department of Buildings Application No. 410186427, reads in pertinent part:

“Proposed height of building exceeds maximum allowable height as per Section 61-21 of the NYC Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-66 and 73-03, to permit, within a C4-3 zoning district, the construction of four buildings which exceed the maximum height limits around airports, contrary to ZR § 61-21; and

WHEREAS, a public hearing was held on this application on June 22, 2010, after due notice by publication in *The City Record*, and then to decision on July 27, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the applicant proposes to construct a mixed-use residential/commercial/ community facility development in Downtown Flushing, known as the Flushing Commons, with four buildings that exceed the height limits established under ZR § 73-66, including: (1) a 17-story mixed-use L-shaped building located at the northwest corner of the site with frontage on both 38th Avenue and 138th Street (“Building A”); (2) a 17-story mixed-use building constructed on the same base as Building A (“Building B”); (3) a 16-story mixed-use building located on the southeastern corner of the site with frontage on 39th Avenue near Union Street (“Building C”); and (4) a 13-story office or hotel building located adjacent to Building C and sharing the same base (“Building D”) 1; and

WHEREAS, the applicant notes that the proposed buildings are part of the City’s larger redevelopment plan for Municipal Lot 1, and are the subject of several Uniform Land Use Review Procedure applications seeking, among other things: (1) the disposition of the City-owned site to the New York City Economic Development Corporation for eventual disposition to Flushing Commons LLC; (2) the rezoning of the entire site from a C4-3 zoning district to a C4-4 zoning district; (3) special permits pursuant to ZR §§ 74-743 and 74-744 for waivers of regulations governing height and setback, rear yard equivalent, rear yard setback, location of uses within buildings, minimum distance between buildings, and open space; and (4) a special permit pursuant to ZR § 74-52 for a public parking garage; and

WHEREAS, Community Board 7, Queens, recommends approval of this application, in conjunction

with applications before the City Planning Commission and the City Council, with the condition that the Board follow the Committee Report and the Letter of Agreement from Deputy Mayor Robert Lieber dated April 5, 2010; and

WHEREAS, the Queens Borough President Helen Marshall recommends approval of this application, with conditions related to the overall development of the site; and

WHEREAS, the subject site is located on the majority of the block bounded by 138th Street to the west, 37th Avenue to the north, 39th Avenue to the south and Union Street to the east, within a C4-3 zoning district; and

WHEREAS, the site is currently occupied by a 5.5-acre City-owned parking lot known as Municipal Lot 1; and

WHEREAS, the Board notes that ZR § 61-21 (Restriction on Highest Projection of Building or Structure) restricts the height of buildings or structures within designated flight obstruction areas; and

WHEREAS, specifically, the provision sets forth that the highest projection of any building or structure may not penetrate the most restrictive of either approach surfaces, transitional surfaces, horizontal surfaces, or conical surfaces, within an Airport Approach District of a flight obstruction area; and it may not penetrate the horizontal surface or conical surface within the Airport Circling District of the flight obstruction area; and

WHEREAS, however, pursuant to ZR § 73-66 (Height Regulations around Airports) the Board may grant a special permit to permit construction in excess of the height limits established under ZR §§ 61-21 (Restriction on Highest Projection of Building or Structure) or 61-22 (Permitted Projection within any Flight Obstruction Area), only (1) subsequent to the applicant submitting a site plan, with elevations, reflecting the proposed construction in relation to such maximum height limits, and (2) if the Board finds that the proposed would not create danger and would not disrupt established airways; and

WHEREAS, the provision also provides that, in its review, the Board shall refer the application to the Federal Aeronautics Administration (FAA) for a report as to whether such construction will constitute a danger or disrupt established airways; and

WHEREAS, as to the information submitted by the applicant, the Board notes that the applicant submitted a site plan with elevations reflecting the proposed construction, which includes information about the maximum as-of-right height and the maximum height approved by the FAA for each building; and

WHEREAS, as to the Board’s determination about the safety of the proposed construction with regard to the proximity to the airport, the Board notes that the FAA regulates the heights of buildings within proximity to airports and that since the subject site is located within the flight obstruction area for LaGuardia Airport, it falls within the area regulated by the FAA; and

WHEREAS, the applicant represents that it filed applications with the FAA for review and approval of the four buildings, and the FAA issued a Determination of No Hazard to Air Navigation, approving the proposed buildings

1 For zoning purposes, the proposal consists of three separate buildings that contain five building segments: (1) Building A and Building B, which share a podium and therefore constitute a single building for zoning purposes; (2) Building C and Building D, which also share a podium and therefore constitute a single building for zoning purposes; and (3) Building E, which does not exceed the height limits of ZR § 73-66 and therefore is not a part of this application.

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on August 13, 2009; and

WHEREAS, the applicant notes that each of the buildings were assigned separate latitude and longitude coordinates for the highest points on each building, and that Building C received two separate latitude and longitude coordinates due to its varying height and multiple elevation points; therefore, Building C is identified by the FAA as Building C and D, and Building D is identified by the FAA as Building E; and

WHEREAS, the proposed heights for the buildings are: 204 feet Above Ground Level (“AGL”) and 241 feet Above Mean Sea Level (“AMSL”) for Building A (FAA Building A); 196 feet AGL and 246 feet AMSL for Building B (FAA Building B); 200 feet AGL and 251 feet to 253 feet AMSL for Building C (FAA Building C and D); and 199 feet AGL and 254 feet AMSL for Building D (FAA Building E); and

WHEREAS, the maximum heights approved by the FAA are: 204 feet AGL and 241 feet AMSL for Building A (FAA Building A); 196 feet AGL and 246 feet AMSL for Building B (FAA Building B); 200 feet AGL and 251 feet to 253 feet AMSL for Building C (FAA Building C and D); and 199 feet AGL and 254 feet AMSL for Building D (FAA Building E); and

WHEREAS, the Board notes that the FAA-approved height includes all appurtenances to the building; and

WHEREAS, accordingly, the Board notes that the proposed building heights are equal to those approved by the FAA; and

WHEREAS, the Board notes that the FAA regulations are similar to those found in the ZR but differ slightly based on updated reference points and runway elevations; and

WHEREAS, the applicant has also submitted requests for approval to the Port Authority of New York/New Jersey (PA), which operates LaGuardia Airport; and

WHEREAS, as reflected in a no objection letter dated February 22, 2010, the PA approves of the project and references the FAA reports; and

WHEREAS, the Board notes that its review was limited to the request for an increase in height above that permitted as-of-right, pursuant to the special permit; and

WHEREAS, based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-66 and 73-03; and

WHEREAS, the Board notes that the FAA report states that there is a requirement that the FAA be notified ten days prior to the start of construction (Part I) and five days after construction reaches its greatest height (Part II); and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Office of the Deputy Mayor for Economic Development, as Lead Agency, has conducted an

environmental review of the proposed action before the Board, and of the related actions noted above, and has documented relevant information about the project in the Final Environmental Impact Statement (FEIS) CEQR No. 06DME010Q, dated June 11, 2010; and

WHEREAS, the FEIS documents that the project as proposed would have adverse impacts on Open Space, Historic Resources, Shadows, Traffic and Parking, and Transit and Pedestrians, and identifies measures to mitigate the impacts;; and

WHEREAS, the FEIS concludes that the proposed measures are sufficient to mitigate the majority of the adverse impacts of the project.

Therefore it is Resolved, that the Board of Standards and Appeals adopts the CEQR determination of the Office of the Deputy Mayor for Economic Development and makes each and every one of the required findings under ZR §§ 73-66 and 73-03, to permit, within a C4-3 zoning district, the construction of four buildings in a mixed-use residential/commercial/community facility development which exceed the maximum height limits around airports contrary to ZR § 61-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received July 8, 2010”- twenty one (21) sheets and *on further condition*:

THAT the maximum height of the buildings, including all appurtenances, shall be as follows: Building A (FAA Building A) - 204 feet AGL and 241 feet AMSL; Building B (FAA Building B) - 196 feet AGL and 246 feet AMSL; Building C (FAA Building C and D) - 200 feet AGL and 251 feet to 253 feet AMSL; and Building D (FAA Building E) - 199 feet AGL and 254 feet AMSL;

THAT the relief granted is only that associated with ZR § 73-66 and all construction at the site shall be as approved by DOB and must comply with all relevant Building Code and zoning district regulations;

THAT the applicant must comply with all FAA notification requirements associated with the construction at the site;

THAT substantial construction be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 27, 2010.

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22-10-BZ

CEQR #10-BSA-048K

APPLICANT – Harold Weinberg, P.E., for RP Canarsie, LLC, owner; Sunshine Childrens Day Care, lessee.

SUBJECT – Application February 17, 2010 – Special Permit (§73-19) to allow the proposed one-story day care center (*Sunshine Day Care*). C8 zoning district.

PREMISES AFFECTED – 620 East 102nd Street, west side between Farragut Road and Glenwood Road, Block 8170, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Frank Sellitto.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 16, 2010, acting on Department of Buildings Application No. 301887929 reads in pertinent part:

“The proposed change in use to a day care center-school in Use Group 3 in a C8-1 zoning district is contrary to Section 32-00 of the Zoning Resolution;”
and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site within a C8-1 zoning district, the proposed operation of a daycare center (Use Group 3), contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 15, 2010, after due notice by publication in the *City Record*, with a continued hearing on July 13, 2010, and then to decision on July 27, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the application is brought on behalf of Sunshine Children’s Day Care, a private daycare operator; and

WHEREAS, the site is located on the south side of East 102nd Street, between Farragut Road and Glenwood Road, within a C8-1 zoning district; and

WHEREAS, the site has a lot area of 9,657 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story commercial building with a floor area of approximately 6,343 sq. ft.; and

WHEREAS, the proposed day care center will occupy the entire building, with an accessory parking lot with nine spaces along the western side of the site and open space occupied by a play area at the eastern side of the site; and

WHEREAS, the applicant states that the proposed building will be occupied by an estimated 156 people, including students from three months to five years old, and employees; and

WHEREAS, the applicant states that the proposed daycare use meets the ZR § 12-10 definition of a school, as it is will operate “under a permit issued pursuant to Section 47.03 of the New York City Health Code;” and

WHEREAS, the applicant represents that the proposed school meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in a C8 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that the School’s program requires a minimum lot area of 8,000 sq. ft. and a building with a floor area of at least 6,000 sq. ft.; and

WHEREAS, the applicant further states that the proposed daycare center has an additional programmatic need of being located within the Canarsie neighborhood of Brooklyn, as there are currently no similar uses in the surrounding area; and

WHEREAS, the applicant represents that it conducted a site search, during which it specifically evaluated the feasibility of two Brooklyn buildings located in zoning districts where the proposed daycare center would be permitted as-of-right: 849 East 59th Street and 867 East 98th Street; and

WHEREAS, the applicant states that 849 East 59th Street was found to be structurally unsound, as the building was in poor and unsafe physical condition, and 867 East 98th Street had a lot area of 6,000 sq. ft., which was found to be an insufficient size to accommodate the daycare center’s programmatic needs; and

WHEREAS, the applicant also provided a land use map showing the vacant lots within the catchment area of the daycare center, and found six vacant lots located within a residential zoning district, between the area bounded by Avenue D, East 108th Street, Avenue M, East 96th Street and Farragut Road; and

WHEREAS, however, the applicant states that five of the vacant lots had a lot area below 8,000 sq. ft. and were therefore insufficient in size for the daycare center’s programmatic needs, and the sixth site is occupied by a community garden owned by the Department of Parks and Recreation; and

WHEREAS, the applicant maintains that the results of the site search reflect that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19 (a) are met; and

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WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant submitted a land use map which reflects that an R5 zoning district is located directly across the street from the subject premises on East 102nd Street; therefore the site is within 400 feet of an R5 zoning district where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that the subject block, directly to the south of the site, consists of an open area occupied by a car storage yard for the NYC Transit Authority, but represents that the noise produced at this site is intermittent and is mitigated by the fact that the Transit Authority site is located approximately ten feet below grade, creating a disparity in elevations with the subject site; and

WHEREAS, the applicant further states that Block 8171, located immediately to the north of the site across East 102nd Street, is within an R5 zoning district and consists entirely of one- and two-family homes which are compatible with the proposed daycare center use; and

WHEREAS, the applicant states that adequate separation from noise, traffic and other adverse effects of the surrounding C8-1 zoning district will be provided through the building's existing masonry walls and double-glazed windows; and

WHEREAS, the applicant represents that any adverse effects of the C8-1 zoning district will be further attenuated through the addition of a vestibule at each entrance along East 102nd Street, to better ensure safety and the reduction of street noise at the proposed daycare center; and

WHEREAS, the Board finds that the conditions surrounding the site and the construction of the building will adequately separate the daycare center from noise, traffic and other adverse effects of any of the uses within the surrounding C8-1 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant represents that East 102nd Street is a lightly traveled one-way street which ends at Farragut Road, such that it is not subject to significant amounts of traffic traveling through the neighborhood; and

WHEREAS, the applicant states that all of the children at the proposed daycare center will be five years old or younger, and therefore most, if not all, are expected to be dropped off by their parents via automobile; and

WHEREAS, the applicant notes that the proposed daycare center will provide an on-site parking lot so that vehicular traffic can off-load on the site and not block traffic; and

WHEREAS, the applicant represents that it will seek to have the street in front of the daycare center approved by the Department of Transportation for a no parking zone during the daycare center's hours of operation; however, the applicant states that even if this is not possible, the 60-ft. width of East 102nd Street is sufficient to accommodate both a travel lane and space for cars arriving at the daycare center to drop off children; and

WHEREAS, the Board finds that the above-mentioned measures maintain safe conditions for children going to and from the School; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 10BSA048K, dated June 15, 2010; 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, based on the results of noise monitoring, a minimum of 20 dBA window-wall attenuation shall be maintained in order to achieve an interior noise level of 45 dBA; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a daycare center (Use Group 3), on a site within a

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C8-1 zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 12, 2010"-(5) sheets; and *on further condition*:

THAT substantial construction be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT a minimum of 20 dBA window-wall attenuation shall be maintained in order to achieve an interior noise level of 45 dBA;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 27, 2010.

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 27th Street, south of Avenue L, Block 7644, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Hiram Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 15, 2010, acting on Department of Buildings Application No. 320123978, reads:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed Open Space Ratio (OSR) is less than the required 150%.
3. Plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0".

4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-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 yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on May 18, 2010 after due notice by publication in *The City Record*, with a continued hearing on June 22, 2010, and then to decision on July 27, 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, with the condition that the FAR not exceed 1.0; and

WHEREAS, the subject site is located on the west side of East 27th Street, between Avenue L and Avenue M, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 1,753 sq. ft. (0.70 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,753 sq. ft. (0.70 FAR) to 2,555 sq. ft. (1.02 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 40 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 3'-3" along the southern lot line (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 28'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, at hearing the Board questioned whether the proposed dormer on the northern side of the home fit within the permitted bulk envelope and whether the proposed home complied with the sky exposure plane requirements of the underlying zoning district; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the dormer has been eliminated and that the proposed home complies with sky exposure plane requirements; 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

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will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 3, 2010"-(2) sheets and "June 8, 2010"-(9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,555 sq. ft. (1.02 FAR); an open space ratio of 40 percent; a front yard with a depth of 12'-7"; a side yard with a minimum width of 5'-6" along the northern lot line; a side yard with a minimum width of 3'-3" along the southern lot line; and a rear yard with a minimum depth of 28'-0", as illustrated on the BSA-approved plans;

THAT the floor area in the attic shall be limited to 688 sq. ft.;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, July 27, 2010.

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 – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 16, 2010, acting on Department of Buildings Application No. 420125304, reads in pertinent part:

“Proposed height of building exceeds maximum allowable height as per ZR 61-21;” and

WHEREAS, this is an application under ZR §§ 73-66 and 73-03, to permit, within a C4-3 zoning district, the construction of a 14-story mixed-use residential / commercial / community facility building which exceeds the maximum height limits around airports, contrary to ZR § 61-21; and

WHEREAS, a public hearing was held on this application on June 22, 2010, after due notice by publication in *The City Record*, and then to decision on July 27, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the proposed building is part of the City’s larger redevelopment plan for Municipal Lot 1, a 5.5-acre City-owned parking lot; the proposed building is part of an affordable housing project located on a portion of Municipal Lot 1 and involves the disposition of City-owned property first to the Department of Housing Preservation and Development, and then to the Macedonia Community Development Corporation, which will develop the proposed 14-story mixed-use building; and

WHEREAS, the applicant states that the redevelopment of Municipal Lot 1 involves several Uniform Land Use Review Procedure actions including the rezoning of the entire property (Lots 25 and 46) from a C4-3 zoning district to a C4-4 zoning district; and

WHEREAS, Community Board 7, Queens, states that it took no action on the subject proposal; and

WHEREAS, the Queens Borough President Helen

MINUTES

Marshall recommends approval of this application, with conditions related to the overall development of the site; and

WHEREAS, the subject site is located on the northwest corner of Union Street and 37th Avenue, within a C4-3 zoning district; and

WHEREAS, the site is currently occupied by a church and a portion of a City-owned parking lot known as Municipal Lot 1; and

WHEREAS, the applicant proposes to enlarge the church and construct a 14-story mixed-use residential/commercial/community facility building, known as Macedonia Plaza; and

WHEREAS, the applicant states that the subject special permit application under ZR § 73-66 applies only to the new 14-story mixed-use building at the site, as the proposed enlargement of the existing church building complies with the height limitations of ZR § 61-21; and

WHEREAS, the Board notes that ZR § 61-21 (Restriction on Highest Projection of Building or Structure) restricts the height of buildings or structures within designated flight obstruction areas; and

WHEREAS, specifically, the provision sets forth that the highest projection of any building or structure may not penetrate the most restrictive of either approach surfaces, transitional surfaces, horizontal surfaces, or conical surfaces, within an Airport Approach District of a flight obstruction area; and it may not penetrate the horizontal surface or conical surface within the Airport Circling District of the flight obstruction area; and

WHEREAS, however, pursuant to ZR § 73-66 (Height Regulations around Airports) the Board may grant a special permit to permit construction in excess of the height limits established under ZR §§ 61-21 (Restriction on Highest Projection of Building or Structure) or 61-22 (Permitted Projection within any Flight Obstruction Area), only (1) subsequent to the applicant submitting a site plan, with elevations, reflecting the proposed construction in relation to such maximum height limits, and (2) if the Board finds that the proposed would not create danger and would not disrupt established airways; and

WHEREAS, the provision also provides that, in its review, the Board shall refer the application to the Federal Aeronautics Administration (FAA) for a report as to whether such construction will constitute a danger or disrupt established airways; and

WHEREAS, as to the information submitted by the applicant, the Board notes that the applicant submitted a site plan with elevations reflecting the proposed construction, which includes information about the maximum as-of-right height and the maximum height approved by the FAA for the subject building; and

WHEREAS, as to the Board's determination about the safety of the proposed construction with regard to the proximity to the airport, the Board notes that the FAA regulates the heights of buildings within proximity to airports and that since the subject site is located within the flight obstruction area for LaGuardia Airport, it falls within the area regulated by the FAA; and

WHEREAS, the applicant represents that it filed an application with the FAA for review and approval of the subject building, and the FAA issued a Determination of No Hazard to Air Navigation, approving the proposed building on February 25, 2009, with the condition that FAA-required lighting and/or markings are installed on the rooftop of the building; and

WHEREAS, the proposed height for the building is 148 feet Above Ground Level ("AGL") and 201'-9" Above Mean Sea Level ("AMSL"); and

WHEREAS, the maximum height approved by the FAA is 170 feet AGL (224 feet AMSL), which includes the FAA-required lighting on the building's rooftop; and

WHEREAS, the Board notes that the FAA-approved height includes all appurtenances to the building; and

WHEREAS, accordingly, the Board notes that the proposed building height is within that approved by the FAA; and

WHEREAS, the Board notes that the FAA regulations are similar to those found in the ZR but differ slightly based on updated reference points and runway elevations; and

WHEREAS, the applicant states that it is requesting Mayoral Overrides for non-compliance with parking, open space, and sky exposure plane regulations, but that the subject application relates solely to the non-compliance with height regulations pursuant to ZR § 61-21; and

WHEREAS, the applicant has also submitted requests for approval to the Port Authority of New York/New Jersey (PA), which operates LaGuardia Airport; and

WHEREAS, as reflected in a no objection letter dated June 22, 2010, the PA approves of the project and references the FAA reports; and

WHEREAS, the Board notes that its review was limited to the request for an increase in height above that permitted as-of-right, pursuant to the special permit; and

WHEREAS, based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-66 and 73-03; and

WHEREAS, the Board notes that the FAA report states that there is a requirement that the FAA be notified ten days prior to the start of construction (Part I) and five days after construction reaches its greatest height (Part II); and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Office of the Deputy Mayor for Economic Development, as Lead Agency, has conducted an environmental review of the proposed action before the Board, and of the related actions noted above, and has documented relevant information about the project in the Final Environmental Impact Statement (FEIS) CEQR No. 06DME010Q, dated June 11, 2010; and

WHEREAS, the FEIS documents that the project as

MINUTES

proposed would have adverse impacts on Open Space, Historic Resources, Shadows, Traffic and Parking, and Transit and Pedestrians, and identifies measures to mitigate the impacts; and

WHEREAS, the FEIS concludes that the proposed measures are sufficient to mitigate the majority of the adverse impacts of the project.

Therefore it is Resolved, that the Board of Standards and Appeals adopts the CEQR determination of the Office of the Deputy Mayor for Economic Development and makes each and every one of the required findings under ZR §§ 73-66 and 73-03, to permit, within a C4-3 zoning district, the construction of a 14-story mixed-use residential / commercial / community facility building which exceeds the maximum height limits around airports, contrary to ZR § 61-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received June 8, 2010"-fifteen (15) sheets and *on further condition*:

THAT the maximum height of the building, including all appurtenances, is 170 feet AGL and 224 feet AMSL;

THAT the relief granted is only that associated with ZR § 73-66 and all construction at the site shall be as approved by DOB and must comply with all relevant Building Code and zoning district regulations;

THAT the applicant must comply with all FAA notification requirements associated with the construction at the site;

THAT substantial construction be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 27, 2010.

92-08-BZ

APPLICANT – Riker Danzig, for Boquen Realty, LLC, owner.

SUBJECT – Application April 14, 2008 – Variance (§72-21) to allow for Use Group 6 below the floor level of the second story in an existing building, contrary to use, rear yard and floor area regulations (§42-14, 43-12 and 43-26). M1-5B zoning district.

PREMISES AFFECTED –13 Crosby Street, east side of Crosby Street between Grand and Howard Street, Block 233, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Juan D. Reyes and Jack Freeman.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for continued hearing.

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

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for continued hearing.

304-09-BZ

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – Variance (§72-21) to allow the erection of a ten-story, mixed-use community facility (*Women In Need*) and commercial building, contrary to floor area (§42-00, 43-12 and 43-122), height and sky exposure plane (§43-43), and parking (§44-21). M1-4 zoning district.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Jay Goldstein.

For Opposition: Bill Wilkins, Devon Prioleau and Joe Costanzo.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 1:30 P.M., for continued hearing.

305-09-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, for South Queens Boys & Girls Club, Inc., owner.

SUBJECT – Application November 5, 2009 – Variance (§72-21) to permit the enlargement of an existing community facility building (*South Queens Boys & Girls Club*) contrary to floor area (§33-121) and height (§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

APPEARANCES –

For Applicant: Ron Mindell, Leo Compton, Bart Huggerty, Jeff Gottlieb and Lisa Atkins.

MINUTES

ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for continued hearing.

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, and Ethan Elden.

THE VOTE TO CLOSE HEARING –

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 17, 2010, at 1:30 P.M., for decision, hearing closed.

6-10-BZ

APPLICANT – Sheldon Lobel, P.C. for 2147 Mill Avenue, LLC, owner.

SUBJECT – Application January 8, 2010 – Variance (§72-21) to allow for legalization of an enlargement of a commercial building, contrary to §22-00. R2 zoning 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

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 1:30 P.M., for continued hearing.

21-10-BZ

APPLICANT – Richard Lobel, P.C., for Aquila Realty Company, Incorporated, owner.

SUBJECT – Application February 12, 2010 – Special Permit (§73-243) to legalize an eating and drinking establishment with a drive-through. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roelbling Avenue aka 1590 Hutchison River Parkway, southeast corner of Roebing Avenue and Hutchinson River Parkway, Block 5386, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for continued hearing.

59-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Kaufman 8th Avenue Associates, owner; Bension Salon Inc., lessee.

SUBJECT – Application April 23, 2010 – Special Permit (73-36) to allow a physical culture establishment (*Luxe Den Salon & Spa*). M1-6/C6-4M zoning district.

PREMISES AFFECTED – 519 Eighth Avenue, southwest corner of West 36th Street and Eighth Avenue, Block 759, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 17, 2010, at 1:30 P.M., for decision, hearing closed.

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

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to August 17, 2010, at 1:30 P.M., for continued hearing.

64-10-BZ

APPLICANT – Law Office Fredrick A. Becker, for Nechama Sonnenschine and Harry Sonnenschine, owners.

SUBJECT – Application April 29, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yards (§23-461 & 23-48) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1253 East 29th Street, east side of East 29th Street, between Avenue L and Avenue M, Block 7647, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

MINUTES

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to August
17, 2010, at 1:30 P.M., for decision, hearing closed.

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 (*Planet Fitness*) 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

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Laid over to August
17, 2010, at 1:30 P.M., for continued hearing.

88-10-BZ

APPLICANT – Dennis D. Dell’Angelo, for Sarah Weiss,
owner.

SUBJECT – Application May 13, 2010 – Special Permit
(\$73-622) for the enlargement of an existing single family
residence contrary to floor area and open space (§23-141)
and side yards (§23-461). R-2 zoning district.

PREMISES AFFECTED – 1327 East 21st Street, south east
corner of East 21st Street and Avenue L, Block 7639, Lot 41,
Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis D. Dell’Angelo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August
24, 2010, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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AND APPEALS

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August 11, 2010

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DOCKET

New Case Filed Up to August 3, 2010

132-10-A

105 West 72nd Street, 68 feet west of corner formed by Columbus Avenue and West 72nd Street., Block 1144, Lot(s) 7501, Borough of **Manhattan, Community Board: 6**. Appeal of revocation. C4-6A district.

133-10-A

20 Suffolk Walk, West side of Suffolk Walk, 65.10 feet south of West End Avenue., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction not fronting a mapped street, contrary to General City Law. R4 district.

134-10-BZ

107 Union Street, North side of Union Street, between Van Brunt and Columbia Streets, Block 335, Lot(s) 42, Borough of **Brooklyn, Community Board: 6**. Variance to allow a four-story residential building, contrary to use regulations. M1-1 district.

135-10-A

107 Beach 216 Street, East side of Beach 216 Street 120' south of Breezy Point Boulevard., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction not fronting a mapped street, contrary to General City Law. R4 district.

136-10-A

26 Park End Terrace, East side of Rockaway Point 20.21 south of mapped Bayside Drive., Block 16340, Lot(s) 50, Borough of **Queens, Community Board: 14**. Construction within mapped street, contrary to General City Law Section 35 R4 district.

137-10-A

103 Beach 217th Street, Eastside of Beach 217th Street 40'0 south of Breezy Point Boulevard., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction not fronting a mapped street, contrary to General City Law 36. R4 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

AUGUST 24, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 24, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

752-29-BZ

APPLICANT – Jack Gamill, P.E. for Marial Associates of New Jersey, L.P., owner; Bay Ridge Honda, lessee.
SUBJECT – Application May 21, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of Automotive Repair and Dealership (Honda) which expired on April 22, 2010. C4-2 zoning district.
PREMISES AFFECTED – 8801-8809 4th Avenue, Block 6065, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #6BK

214-00-BZ

APPLICANT – Harold Weinberg, for Caliv LLC, owner.
SUBJECT – Application October 10, 2008 – Application requesting an Extension of Time to Obtain a Certificate of Occupancy of a previously granted Special Permit (§73-242) allowing an Eating and Drinking Establishment within a C3 zoning district. The application seeks a waiver of the Board's Rules of Practice and Procedure because the time to obtain the Certificate of Occupancy expired on April 10, 2008; an Extension of Term which expired on March 26, 2010 and an amendment to the site plan.
PREMISES AFFECTED – 2777 Plumb 2nd Street, northeast corner of Harkness Avenue, Block 8841, Lot 500, Borough of Brooklyn.

COMMUNITY BOARD #15BK

124-05-BZ

APPLICANT – Deirdre A. Carson, for The Estate of Armand P. Arman c/o 482 Greenwich, LLC, owner; 482 Greenwich, LLC (Joint Venture Partner), lessee.
SUBJECT – Application June 15, 2010 – Amendment to a previously granted Variance (§72-21) for the construction of a mixed-use building to allow an increase in dwelling units, increase in street wall height and reduction of overall building height; Extension of Time to Complete Construction which expires on September 12, 2010. C6-2A zoning district.
PREMISES AFFECTED – 382 Greenwich Street, northwest intersection of Greenwich and Canal Streets, Block 595, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDAR

120-10-A

APPLICANT – Gary D. Lenhart, RA, for The Breezy Point Cooperative, Inc., owner; Kevin Kennedy, lessee.
SUBJECT – Application June 30, 2010 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street, contrary to General City Law Section 36 and the upgrade of an existing non complying private disposal system contrary to Department of Buildings policy. R4 zoning district.

PREMISES AFFECTED – 5 Devon Walk, east side of Devon Walk 21.06' south of mapped Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

AUGUST 24, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 24, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

129-07-BZ

APPLICANT – Gerald J. Caliendo, R.A., for Angel Gerasimou, owner.

SUBJECT – Application May 21, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to ZR §42-00. 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

130-07-BZ thru 134-07-BZ

APPLICANT – Gerald J. Caliendo, P.A., Angelo Gerasimou, owner.

SUBJECT – Application May 21, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to ZR §42-00. M1-4 zoning district.

PREMISES AFFECTED – 1501, 1503, 1505, 1507 Cooper Avenue, corner formed by west side of Cooper Avenue and Irving Avenue, Block 3542, Lots 1, 95, 94, 93, 92, Borough of Queens.

COMMUNITY BOARD #5Q

CALENDAR

35-10-BZ

APPLICATION – Sheldon Lobel, PC for Yuriy Pirov, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to permit the legalization of an existing synagogue. The proposal is contrary to front yard (§24-34), side yard (§24-35) and rear yard (§24-36). R4 zoning district.

PREMISES AFFECTED – 144-11 77th Avenue, approximately 65 feet east of the northeast corner of Main Street and 77th Avenue. Block 6667, Lot 45, Borough of Queens.

COMMUNITY BOARD #8Q

47-10-BZ

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Coprporation, owner; Airgas-East, Incorporated, lessee.

SUBJECT – Application April 8, 2010 – Variance (§72-21) to allow for a manufacturing use in a residential district, contrary to ZR §22-00. M1-1/R3-2 zoning district.

PREMISES AFFECTED – 895 Zerega Avenue, aka 2352 Story Avenue, Block 3698, Lot 36, Borough of The Bronx.

COMMUNITY BOARD #9BX

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, AUGUST 3, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

159-99-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Beis Meir, Incorporation, owner.

SUBJECT – Application March 25, 2010 – Amendment to legalize modification to a previously granted Variance (§72-21) of a one-story UG4 Synagogue and Yeshiva (*Congregation Beis Meir*). M2-1 zoning district.

PREMISES AFFECTED – 1347-1357 38th Street, north side of 38th Street, between 13th Avenue and 14th Avenue, Block 5300, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #12BK

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, in an M2-1 zoning district, the conversion of an existing one-story building to a school (Use Group 3), which did not conform with the underlying use regulations, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 13, 2010, after due notice by publication in *The City Record*, and then to decision on August 3, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, this application was brought on behalf of Congregation Beis Meir, a not-for-profit religious institution; and

WHEREAS, the subject site is located on the north side of 38th Street between 13th Avenue and 14th Avenue, within a M2-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 19, 2000 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted, in an M2-1 zoning district, the conversion of a one-story building to a school, as part of the

Beis Meir Synagogue and Yeshiva, which did not conform with the underlying district use regulations, contrary to ZR § 42-00; and

WHEREAS, most recently, on June 27, 2001, the Board amended the grant to permit the addition of two mezzanines to the main sanctuary on the site; and

WHEREAS, the applicant now requests that the Board amend the grant to legalize additional changes to the building that are contrary to the previously-approved plans; and

WHEREAS, specifically, the applicant seeks to legalize an increase in the floor area from 31,865 sq. ft. (1.45 FAR) to 33,567 sq. ft. (1.53 FAR); and

WHEREAS, the Board notes that the maximum FAR permitted for community facility uses in the subject M2-1 zoning district is 2.0; and

WHEREAS, the applicant states that the increase in floor area was necessary to provide an intermediate level between the first floor and second floor mezzanine at the southwest corner of the property and to provide an addition to the second floor; and

WHEREAS, the applicant also seeks to legalize a decrease in the height of the front roof from 20'-0" to 17'-9", an increase in the height of the building at the southwest corner of the property to accommodate the new intermediate level, and modifications to the interior layout and the location and size of windows and doors; and

WHEREAS, the applicant states that the increase in height at the southwest corner of the site matches the height at the rear of the building, which remains unchanged, and is appropriate within the context of the surrounding area, given the adjacent two-story building immediately to the west of the site and the adjacent four-story building immediately to the east of the site; and

WHEREAS, the applicant states that the proposed changes are necessary to make the building more efficient and to better meet the school's programmatic needs by providing additional bathrooms, offices and a utility room; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, continues to reflect the minimum variance and the Board has determined that it is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 19, 2000, so that as amended this portion of the resolution shall read: "to permit the noted modification to the approved plans; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received July 19, 2010"- (9) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

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THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”
(DOB Application No. 300798448)

Adopted by the Board of Standards and Appeals, August 3, 2010.

589-31-BZ

APPLICANT – Eric Palatnik, P.C., for Asha Ramnath, owner.

SUBJECT – Application March 5, 2010 – Amendment pursuant (§11-413) to permit the proposed change of use group from UG16 (Gasoline Service Station) to UG16 (Automotive Repair) with accessory used car sales. R3-2 zoning district.

PREMISES AFFECTED – 159-02 Meyer Avenue, intersection of Mayer Avenue, 159th Street, Linden Boulevard, Block 12196, Lot 1, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 24, 2010, at 10 A.M., for decision, hearing closed.

736-45-BZ

APPLICANT – Walter T. Gorman, P.E., for Mildel Property Associates, LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application May 6, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*Mobil*) which expires on March 17, 2011. C2-4/R8 zoning district.

PREMISES AFFECTED – 3740 Broadway, north east corner of West 155th Street, Block 2114, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Cindy Bachan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 24, 2010, at 10 A.M., for decision, hearing closed.

1715-61-BZ

APPLICANT – Mitchell S. Ross, for 21st Century Cleaners Corporation, owner.

SUBJECT – Application June 22, 2010 – Extension of Time to Obtain a Certificate of Occupancy of a UG6A dry cleaning establishment (*21st Century Cleaners*) which expired on June 8, 2010. R3X zoning district.

PREMISES AFFECTED – 129-02 Guy R. Brewer Boulevard, south west corner of 129th Avenue and Guy R. Brewer Boulevard, Block 2276, Lot 59, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for decision, hearing closed.

60-90-BZ

APPLICANT – EPDSCO, Incorporated for Nissim Kalev, owner.

SUBJECT – Application May 18, 2010 – Extension of Term of a previously granted Special Permit (§73-211) for the continued use of a Gasoline Service Station (*Citgo*) and Automotive Repair Shop which expired on February 25, 2001; Waiver of the Rules. C2-1/R3X zoning district.

PREMISES AFFECTED – 525 Forest Avenue, north side of Forest Avenue between Lawrence Avenue and Davis Avenue, Block 148, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for continued hearing.

139-92-BZ

APPLICANT – Samuel H. Valencia, for Samuel H. Valencia-Valencia Enterprises, owners.

SUBJECT – Application April 23, 2010 – Extension of Term for a previously granted Special Permit (§73-244) for the continued operation of a UG12 Eating and Drinking Establishment with Dancing (*Deseos*) which expired on March 7, 2010; Waiver of the Rules. C2-2/R6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53’ east of 52nd Street, Block 1316, Lot 76, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Samuel H. Valencia and Alejandro Valencia.

For Administrative: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

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Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 17, 2010, at 10 A.M., for decision, hearing closed.

44-97-BZ & 174-00-BZ

APPLICANT – Stuart A. Klein, Esq., for SDS Leonard, LLC, owner; Millennium Sports, LLC, lessee.

SUBJECT – Applications March 30, 2010 and March 18, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment which expired on October 28, 2007; Amendment of plans in sub-cellar; Waiver of the Rules. C6-2A zoning district.

PREMISES AFFECTED – 78-80 Leonard Street & 79 Worth Street, between Broadway and Church Street, Block 173, Lot 4, 19, 20, Borough of Manhattan.

COMMUNITY BOARD #1M

For Applicant: Abigail Patterson.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 24, 2010, at 10 A.M., for decision, hearing closed.

98-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 278 Eighth Associates, owner; TSI West 23 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application May 19, 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 November 1, 2006; Amendment to change the hours of operations; Waiver of the Rules. C2-7A zoning district.

PREMISES AFFECTED – 270 Eighth Avenue, northeast corner of Eighth Avenue and West 23rd Street, Block 775, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Fredrick A Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for decision, hearing closed.

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.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 24, 2010, at 10 A.M., for decision, hearing closed.

164-04-BZ

APPLICANT – Sheldon Lobel, P.C., 2241 Westchester Avenue Realty Corporation, owner; Castle Hill Fitness Group, LLC, lessee.

SUBJECT – Application April 5, 2010 – Extension of Time to obtain a Certificate of Occupancy for a previously granted physical culture establishment (*Planet Fitness*) which expired on February 7, 2007; Amendment to change operator, hours of operation and interior modification; Waiver of the Rules. C2-1/R6 zoning district.

PREMISES AFFECTED – 2241 Westchester Avenue, northwest corner of Westchester Avenue and Glebe Avenue, Block 3963, Lot 57, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for continued hearing.

APPEALS CALENDAR

217-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 514-516 East 6th Street, owner.

SUBJECT – Application July 7, 2009 – An appeal seeking to vary the applicable provisions under the Multiple Dwelling Law as it applies to the enlargement of non-fireproof tenement buildings. R7-2 zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of East 6th Street, between Avenue A and B, Block 401, Lots 17 and 18, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Ian Rasmussen.

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ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson.....4

Negative: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 6, 2009, acting on Department of Buildings Application No. 104744877 reads, in pertinent part:

MDL Objections

1. Increase in bulk/height is not permitted for 5-story building. (*MDL 211, MDL 4.35(a)(d), MDL 4.36*)
2. Any building, which exceeds 6 ‘stories’ or sixty feet in height, shall be equipped with one or more passenger elevators. (*MDL 51.6, MDL 4.36*)
3. A public corridor with FPSC doors is required to separate egress stair from the residential unit(s). (*MDL 102.i, MDL 103.5, MDL 129.2, MDL 144.3, MDL 146, MDL 149*)
4. A 3-hour FR enclosure is required for stair. Stair shown is not fully enclosed and is open to a shared egress corridor with community facility. Every stair must be completely separated and have a fire separation from the public hall. (*MDL 148.3*)
5. Structural support for stair must be non-combustible in a 3-hour fire rated enclosure. (*MDL 148.3, MDL 4.25*)
6. Any building that is six stories or less may be of non-fireproof construction. Proposed penthouse addition exceeds six “stories” enlargement is not permitted. (*MDL 141, MDL 4.36*)
7. Entrance hall must be 3-hour non-combustible (not wood) enclosure (walls, floor & ceiling). (*MDL 149.2, MDL 4.25*)
8. All floors: stairs must be 3’-0” wide minimum and landings must be 3’-6” minimum. (*MDL 148.2*)
9. Fire escape terminating at rear yard must have access to street through a Fireproof passage. MD that is New Law Tenement for multiple dwelling erected after 4/18/1929 requires access directly to street (proposed passage is not considered fireproof because it is open to stair). (*MDL 231, MDL 53.2.b*)
10. Proposed Penthouse addition exceeds 33% of roof and must be counted as a 7th floor. Bulkhead and stairs must be included in floor area calculations. Memo 4.26.72, Memo 9.29.80, C26-406.2, ZR15-00, ZR 43-00, ZR 111-00. (*MDL 36*); and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary the noted sections of the MDL to allow for the legalization of an enlargement to two

adjacent formerly five-story residential buildings (the “Buildings”) within an R7B zoning district, contrary to MDL regulations; and

WHEREAS, the subject site is occupied by two adjacent seven-story (including penthouses) tenement buildings located on the south side of East 6th Street, between Avenue A and Avenue B which were constructed before 1901 (prior to a November 19, 2008 rezoning, the site was within an R7-2 zoning district); and

WHEREAS, the property owner (the “Appellant”) constructed a sixth floor and a partial seventh floor, which resulted in MDL non-compliance, in 2007; an earlier iteration of the proposal sought the legalization of the sixth and seventh floors; and

WHEREAS, at the Board’s direction, the Appellant eliminated the seventh floor from the plans and proposes now to legalize only the sixth floor; and

WHEREAS, after due notice by publication in *The City Record*, a public hearing was held on this application on September 22, 2009, with continued hearings on November 17, 2009, December 5, 2009, February 9, 2010, May 25, 2010 and July 27, 2010, and then to decision on August 3, 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, a tenant of the Buildings, represented by the Urban Justice Center (the “Opposition”), provided written and oral testimony in opposition to the application, citing the following primary concerns: (1) the Board should review the application pursuant to the requirements of MDL § 310(2)(c), rather than MDL § 310(2)(a) and the Board does not have the ability to vary all of the noted MDL provisions within the context of MDL § 310(2)(c); (2) the required finding of unnecessary hardship was self-created due to the Appellant’s choice to enlarge the Buildings and thus was avoidable; (3) the Buildings are not unique, as required by MDL § 310(2)(c); (4) the Buildings do not comply with the current zoning requirements, including maximum FAR; (5) any claim of good faith reliance fails because ongoing litigation provided indication that the approval was being contested; (6) the proposed fire safety measures do not provide equivalent safety to that which would be provided by full compliance with the MDL; (7) the hardship costs are not substantiated and the Buildings should be viewed as one building, rather than two, so that the Appellant does not rely on duplicative costs; and (8) the Board should consider each provision of the MDL associated with the objections, rather than MDL § 211 alone; and

WHEREAS, New York State Assemblyman/Speaker Sheldon Silver, Assemblyman James Brennan, and State Senator Thomas K. Duane provided testimony in opposition to the application citing concerns about fire safety, whether the Appellant established a hardship, and whether the enlarged Buildings are compatible with neighborhood character, in light of the 2008 rezoning; and

WHEREAS, City Council Member Rosie Mendez provided testimony in opposition to the application, citing

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concerns about fire safety and the absence of an elevator, and zoning bulk and use non-compliance; and

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application, citing concerns about neighborhood character, fire safety not achieving the equivalent of the MDL, the failure to establish that it would be too expensive to fully comply with the MDL; and zoning non-compliance; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided written testimony in opposition to the application citing concerns about neighborhood character and zoning non-compliance; and

WHEREAS, the Good Old Lower East Side Inc. and the Tenants Association of 515 East 5th Street provided testimony in opposition to the application; and

Procedural History

WHEREAS, on October 3, 2007, DOB issued Alteration Permit No. 104744877 for the two-story vertical enlargement of the Buildings; and

WHEREAS, subsequently, a tenant of the Buildings filed an appeal to the Board of DOB's approval of the project on the basis that DOB did not have the jurisdiction to modify MDL requirements; and

WHEREAS, on November 22, 2008, under BSA Cal. Nos. 81-08-A, the Board concurred with the tenant and granted the appeal; and

WHEREAS, the Appellant (in the subject case) filed an Article 78 proceeding to challenge the Board's decision and the court directed the Appellant to first exhaust its administrative remedies by appealing DOB's objections to the Board pursuant to its authority to modify the MDL; and

WHEREAS, accordingly, the Appellant now requests that the Board vary the specified provisions of the MDL so that it may proceed with construction and complete the Buildings; and

WHEREAS, the Appellant makes the following primary arguments: (1) although it maintains that DOB has the authority to vary the MDL as requested, it finds that the Board has the authority to vary the requirements pursuant to MDL § 310(2)(a) and the Board should review the request under that section; (2) the Board should not consider the individual sections of the MDL, as noted in the objections, but should consider them all within the context of MDL § 211 – Height and Bulk, which is the source of all of the non-compliance; (3) strict compliance with the MDL would give rise to practical difficulty and unnecessary hardship, the required findings of MDL § 310(2); (4) the proposed alternative improvements, including sprinklering the entire building, serve to maintain the spirit of the law, preserve public health, safety, and welfare and provide for substantial justice, as required by MDL § 310(2); and (5) the construction was performed in good faith reliance on DOB approvals; and

The Board's Authority under MDL § 310(2)

WHEREAS, the Appellant seeks to have the Board modify the current objections issued by DOB by applying MDL § 310(2)(a), rather than MDL § 310(2)(c), in its analysis of the request to vary the noted MDL non-compliance; and

WHEREAS, MDL § 310 – Board of appeals - provides,

in pertinent part:

2. Where the compliance with the strict letter of this chapter causes any practical difficulties or any unnecessary hardships the board shall have the power, on satisfactory proof at a public hearing, provided the spirit and intent of this chapter are maintained and public health, safety and welfare preserved and substantial justice done, to vary or modify any provision or requirement of this chapter, or of any rule, regulation, supplementary regulation, ruling or order of the department with respect to the provisions of this chapter, as follows:

a. For multiple dwellings and buildings existing on July first, nineteen hundred forty-eight . . . and for multiple dwellings and buildings existing on November first, nineteen hundred forty-nine . . . provisions relating to:

- (1) Height and bulk;
- (2) Required open spaces;
- (3) Minimum dimensions of yards or courts;
- (4) Means of egress;
- (5) Basements and cellars in tenements converted to dwellings.

* * *

c. For multiple dwellings and buildings erected or to be erected or altered pursuant to plans filed on or after December fifteenth, nineteen hundred sixty-one, or before such date provided such plans comply with the provisions of paragraph d of subdivision one of section twenty-six, provisions relating to:

- (1) Height and bulk;
- (2) Required open spaces; or
- (3) Minimum dimensions of yards and courts.

Variations or modifications may be granted pursuant to Paragraphs b and c only on condition . . . that there are unique physical or topographical features, peculiar to and inherent in the particular premises, including irregularity, narrowness or shallowness of the lot size or shape and such variance would be permitted under any provision applicable thereto of the local zoning ordinance; and

WHEREAS, specifically, the Appellant relies on: (1) a plain reading of MDL § 310(2)(a), which does not prohibit the application of that section as the Buildings were constructed prior to 1948; and (2) the fact that a 1962 amendment to § 310(2) did not nullify or modify MDL § 310(2)(a) and statutory construction principles require an interpretation which gives effect to all the terms of the law; and

WHEREAS, the Appellant cites to McKinney's Consolidated Laws of New York, Book 1, Statutes § 144, "[i]n the course of constructing a statute, the court must assume that every provision thereof was intended for some useful purpose and [a] construction which would render a statute ineffective, must be avoided"; and

WHEREAS, the Opposition contends that the Board should review the request to vary the MDL requirements,

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pursuant to MDL § 310(2)(c); and

WHEREAS, the Opposition contends that (1) § 310(2)(a) was limited to pre-1948 buildings that are not being altered (as defined in the MDL) and (2) that the intent was that all buildings altered after 1948 were expected to comply with the MDL; and

WHEREAS, the Opposition notes that §§ 310(2)(b) and (c) specifically refer to “alterations” (a defined term in the MDL) unlike § 310(2)(a), which is silent as to the extent of construction; and

WHEREAS, the Opposition asserts that § 310(2)(c) should apply and that the Appellant would not be able to make the findings, which do not include provisions for means of egress and do include a requirement that the subject building be unique; and

WHEREAS, the Board has analyzed the threshold issue as to whether it should review the Appellant’s requests to vary the MDL pursuant to MDL § 310(2)(a) or § 310(2)(c); and

WHEREAS, the Board notes that a plain reading of § 310 suggests that there are two possible sub-sections which apply to the Buildings – sub-section (a), which applies to buildings in existence on July 1, 1948, and sub-section (c), which applies to plans filed after December 15, 1961, as the Buildings were constructed before 1948 and the plans for the enlargement were filed after December 15, 1961; and

WHEREAS, the Board finds that statutory interpretation principles dictate that both sub-sections must have meaning and, thus, only one can be applicable to the analysis of the Buildings’ non-compliance; and

WHEREAS, in answering the question of whether to apply (a) or (c) to the Buildings that were constructed prior to 1948 (as specified in (a)) and altered pursuant to plans filed after 1961 (as specified in (c)), the Board looks to the legislative history of § 310; and

WHEREAS, in consideration of the body of legislative history, which includes communication from the parties involved in the amendment process since the MDL’s adoption in 1929, the Board concludes that the date of the original construction controls and sub-section (a) applies to pre-1948 buildings, whenever they are altered; and

WHEREAS, the Board notes that MDL § 310(2)(a) addresses buildings existing on July 1, 1948 (the effective date of the provision) and lists five building parameters which may be modified; it remains un-changed since its initial adoption; and

WHEREAS, further, the Board notes that sub-section (a), which was drafted to address buildings constructed prior to July 1, 1948, has not expired, has not been superseded by any amendments, and is in full force and effect for the current renovations of buildings constructed prior to July 1, 1948 and there is nothing in the legislative documents that reflects any intent to affect or limit the Board’s power to grant modifications to the current renovation of buildings in existence on July 1, 1948; and

WHEREAS, the Board notes that a 1962 amendment includes the addition of MDL § 310(2)(c), which remains as originally adopted, and applies to buildings built or altered after December 15, 1961, pursuant to plans filed after December 15,

1961; and

WHEREAS, further, the Board notes that sub-section (b) was limited by term and has expired and since the expiration of sub-section (b), sub-section (c) assumed applicability over all buildings built after July 1, 1948 (which had historically been the subject of sub-section (b)); a reading that sub-section (c) applies to all buildings altered after December 15, 1961 would render sub-section (a) ineffective; and

WHEREAS, accordingly, the Board finds that sub-section (c) applies only to the construction of new buildings and the renovation of buildings constructed after July 1, 1948; and

WHEREAS, although the Board notes that the Opposition is accurate that alteration has a specific meaning in the MDL, the contention that in the period between the 1948 adoption of MDL § 310 and the time of its 1962 amendment, pre-1948 buildings could only be modified in ways that did not reach the level of alteration, is strained; and

WHEREAS, additionally, the Board finds that there is no legislative history to support the claim that modifications listed within § 310(2)(a), including those to Height and Bulk, which would involve structural changes (which are specifically included in the definition of alteration) or Means of Egress (which are also specifically included in the definition of alteration) would be prohibited; and

WHEREAS, further, the Board notes that pre-1948 buildings include pre-1929 buildings, which were constructed prior to the adoption of the MDL, and there is no meaningful reason to restrict buildings built before the adoption of the MDL and those built between 1929 and 1948, which were required to be constructed in compliance with the MDL, in the same way; and

WHEREAS, finally, the legislative history reflects that the 1961 and 1962 amendments were enacted to address buildings constructed after 1948 and there is no indication that the amendments were intended to extend to pre-1948 buildings; and

WHEREAS, in conclusion, based on a review of the legislative history and prior Board decisions, the Board has determined that MDL § 310(2)(a) is the appropriate sub-section under which to review the subject appeal for modifications; and

WHEREAS, the Board notes that MDL § 310(2)(a) does not require a finding that the Buildings be unique; and

Modification of the MDL

WHEREAS, the Appellant requests that the Board modify MDL § 211, generally, rather than individual MDL provisions, and to view the application as one height and bulk waiver; and

WHEREAS, MDL § 211(1) – Height and Bulk – provides, in pertinent part:

No tenement shall be increased in height so that its height shall exceed by more than one-half the width of the widest street upon which it stands. Except as otherwise provided in subdivision four of this section, no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April

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eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date; and

WHEREAS, the Appellant asserts that all non-compliance arises from the increase in height and bulk and thus the Board should view all of the non-compliances within the context of height and bulk, rather than as individual conditions, as identified by DOB in its objections; and

WHEREAS, the Appellant asserts that a height and bulk waiver, as permitted by MDL § 310(2)(a), would satisfy all of the outstanding objections because all of the objections arise from the increase in height and bulk and, because the Board can modify height and bulk, it can modify every requirement that is associated with the increase in height and bulk; and

WHEREAS, the Appellant asserts that there is no need to apply the required MDL § 310 findings to each of the MDL objections, but rather the Board should just apply the findings once to the overall building requirements; and

WHEREAS, although the Appellant requests that the Board consider all of the objections within the context of a single umbrella waiver to height and bulk, it does address each DOB objection for MDL non-compliance, by section, and describes the proposed measures to provide a form of equivalency in support of its modification request; and

WHEREAS, the Opposition argues that the broad approach that the Appellant suggests is not within the spirit of the law; and

WHEREAS, the Board has determined that the Appellant's argument about whether or not MDL § 211 covers all of the objections not convincing since an individualized approach is required to determine whether there is practical difficulty and whether the spirit of the law is maintained with the modifications; and

WHEREAS, further, the Board finds that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress - which the Board has express authority to vary; and

WHEREAS, thus, the Board does not find it necessary to make a determination in the context of this appeal as to whether the general provision of MDL § 211(1) – Height and Bulk – or the Board's specific enabling section, MDL § 310(2)(a), is the only means of analyzing the requests to modify the cited MDL provisions; and

WHEREAS, the Board finds it appropriate to analyze the Appellant's request as individual areas of non-compliance, pursuant to its express authority in MDL § 310(2)(a); and

WHEREAS, the Board notes that the Opposition disagrees with the Appellant that all objections arise under height and bulk and are contemplated by MDL § 211, rather than MDL 310(2), albeit sub-section (c), but concedes that all of the MDL objections are related to egress and fire protection; and

The Practical Difficulty or Unnecessary Hardship Finding

WHEREAS, the Appellant describes each of the requirements of bringing the Buildings into compliance with the MDL and the practical difficulties in terms of construction-related logistics and the unnecessary hardship in terms of

monetary expenditure, associated with each relevant provision; and

WHEREAS, specifically, the Appellant notes the practical difficulty of widening hallways and stairways, which includes relocating building infrastructure, redesigning apartments (some rooms may be rendered noncompliant with other provisions of the MDL), and removal of floors, beams, walls and joists; and

WHEREAS, the Opposition asserts that the difficulty and hardship are self-created since the Appellant chose to enlarge the Buildings and that, if it had not chosen to do so, it would not have been required to comply with the MDL; and

WHEREAS, the Opposition deems that certain requirements, such as the removal of the seventh floor are not legitimate hardships since the removal would not be required if the Appellant had not constructed an enlargement contrary to the MDL; and

WHEREAS, the Board agrees in part with the Appellant and, in part, with the Opposition; and

WHEREAS, specifically, the Board agrees with the Appellant that even if the Buildings were viewed as they were prior to any of the subject construction, there is logistical difficulty associated with achieving certain of the MDL requirements, including widening existing staircases and hallways and adding a vestibule, which in the Buildings, would require the redesign of infrastructure and a significant portion of the individual apartments; and

WHEREAS, as to the monetary expenditures, the Board accepts that there would be significant costs associated with the noted changes, but is not required to review a financial analysis within the context of the requested variance to the MDL as it may make the finding based on practical difficulty or unnecessary hardship; and

WHEREAS, however, the Board agrees with the Opposition that the costs and labor associated with demolishing the seventh floor should not be included in an analysis of hardship since the Appellant constructed it without consideration of the building-wide implications, per the MDL, of adding a seventh floor; and

WHEREAS, the Board finds the Appellant's assertion of hardship associated with the removal of the partial seventh floor space to be unconvincing and rejected the Appellant's initial proposal which included the seventh floor; and

WHEREAS, the Board agrees with the Appellant that whether the modifications required to the common space throughout the Buildings were performed at the outset of the project or now, after construction has occurred, there would be practical difficulty in achieving a majority of the conditions in strict compliance with the MDL; the removal of the seventh floor, which triggers a host of requirements beyond the numerous requirements triggered by the sixth floor, eliminates requirements including that the Buildings be fireproof, as opposed to the non-fireproof condition which is permitted for buildings up to a height of six stories; and

WHEREAS, thus, the Board agrees with the Opposition that the removal of the seventh floor does not reflect a practical difficulty or hardship; and

WHEREAS, accordingly, the Board agrees that the

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Appellant has established a sufficient level of practical difficulty and hardship for compliance with the MDL requirements unrelated to the seventh floor, rejects the assertions of practical difficulty for the seventh floor and has directed the Appellant to remove it, which the Appellant has agreed to do; and

The Proposed Building Conditions

WHEREAS, throughout the hearing process, the Appellant proposed a variety of safety measures, including those reflected on the original DOB approved plans, and provided analysis from fire safety consultants as to the fire safety of certain conditions; and

WHEREAS, the additional measures that the Appellant has included or proposes to include, as reflected on the proposed plans, are the (1) installation of a full automatic wet sprinkler system in the common areas, cellar, and all apartment interiors; (2) installation of hard-wired smoke detectors and emergency lighting with back-up battery power in all apartments and common areas; (3) installation of new fire escapes and ladders at the front and rear of the Buildings; (4) replacement of wood apartment doors with one and one-half-hour fire-rated self-closing metal doors; (5) installation of two layers of gypsum board on either side of the hallway and stairway walls to achieve three-hour equivalent fire separation; (6) replacement of stair treads with non-combustible material (marble or stone); (7) addition of two layers of gypsum to the underside of the staircases; (8) addition of a skylight at the top of each stairway (with a minimum area of 20 sq. ft.) and a ridge vent (with a minimum area of 40 sq. in.) with wire screen above and below plain glass as per MDL § 26.2; (9) installation of a layer of gypsum board on the entire cellar ceiling; (10) installation of non-combustible metal deck with poured concrete of a thickness of 45 inches between first floor joists and non-combustible finished floor in the ground floor entrance hall and public hallway to achieve three-hour fire separation; and (11) installation of non-combustible metal studs, one-inch core board, and two layers of gypsum board beneath second-floor joists in the first floor entrance hall and public hallway to achieve an equivalent three-hour fire separation; and

WHEREAS, the Appellant included submissions from fire safety consultants and information from the National Fire Safety Protection Agency, which advocates the installation of sprinkler systems and documents improved fire safety with such measures; and

The Spirit of the Law

WHEREAS, the Board has reviewed the proposed fire safety measures in light of the findings required by MDL § 310(2)(a) “[the Board has the power to vary or modify any provision of this chapter] provided the spirit and intent of this chapter are maintained and public health, safety and welfare preserved and substantial justice done” and finds that the measures meet the requirements of maintaining the spirit and intent of the law, to allow for the alteration of multiple dwellings while providing additional measures in the spirit of those contemplated by the specified requirements of the MDL; and

WHEREAS, as noted, the Board agrees with the Opposition that there is no basis to support the inclusion of a

seventh floor, primarily because the addition of any floor above the sixth floor triggers a requirement that the Buildings be fireproof and triggers the requirement for an elevator; and

WHEREAS, the Board recognizes the significant change in the requirements for a six or fewer story building (that it may be non-fireproof) per the MDL and the requirements for a seven or greater story building: (1) that it be fireproof and (2) that it provide an elevator, to be compelling and that the spirit of the law would be compromised with the allowance of the seventh floor; and

WHEREAS, the Board notes that the requirements that the Buildings be fireproof and provide an elevator, which the Appellant asserts would be practically difficult and impose a hardship, are eliminated with the elimination of the seventh floor; and

WHEREAS, during the hearing process, the Board was clear that it would not support a proposal that included a seventh floor and, accordingly, the Appellant removed a seventh floor from the plans; and

WHEREAS, the Board does not approve any construction on the roof that constitutes a floor, for MDL purposes; and

WHEREAS, the Board acknowledges that there are practical difficulties with bringing the subject pre-1929 Buildings into compliance with the MDL; and

WHEREAS, however, the Board recognizes that the MDL contemplates the enlargement of buildings and that it has express authority to approve such proposals, provided that the findings are met; and

WHEREAS, the Board finds that public health, safety, and welfare are preserved and substantial justice is done if the increased measures are installed and maintained; and

WHEREAS, specifically, the Board finds that the installation of full sprinklering throughout the public spaces and individual apartments, rooftop ventilation, smoke detectors and emergency lighting serve to improve fire suppression and aid emergency response; and

WHEREAS, further, the Board finds that increasing the fire-rating of the public halls and staircases, and doors promotes the goal of improved fire separation standards and protected egress; and

WHEREAS, however, the Board notes that it does not set forth any requirement or determination as to the materials proposed and, instead, relies on DOB to establish whether the proposed materials for the walls, ceilings, and stairs, where noted on the plans, achieve the proposed fire-rating or whether alternate materials or construction are required to achieve the proposed fire-rating; and

WHEREAS, the Board notes that, the Appellant has identified different levels of fire-rating throughout the hearing process and that different combinations of materials and fire-rating have been identified by the Appellant’s team at hearing, in written submissions, and on plan, and, thus, the Board requests that DOB review the final proposal to confirm the fire-rating; and

WHEREAS, the Board has not imposed the use of certain construction methods or materials, but rather accepts the proposed degree of fire-rating as being within the spirit of

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the law; and

WHEREAS, the Board notes that the MDL does not contain a definition for “equivalency” and, thus, any reference to equivalency, in the context of fire-rating, must be established by the Appellant and approved by DOB; and

WHEREAS, accordingly, the Board finds that the proposed construction meets the findings of MDL § 310(2)(a) to the extent that the proposed materials achieve the level of fire-rating the Appellant represents they do, subject to DOB review; and

Good Faith Reliance

WHEREAS, the Appellant makes a supplemental argument that it relied in good faith upon approvals from DOB and its precedent for approving comparable fire safety measures in lieu of MDL compliance; and

WHEREAS, the Board notes that it has not reviewed the Appellant’s claim of good faith reliance because it has not completed the good faith reliance analysis, which includes consideration of whether the permit was valid when issued and whether there was a reasonable basis to charge the Appellant with constructive notice that the permit should not have been issued; and

WHEREAS, instead, the Board considered the findings required under MDL § 310(2)(a) and whether the Appellant has made such findings and warrants the modifications it requests, without addressing the good faith reliance claim; and

WHEREAS, the Board notes that DOB approved an earlier iteration of the proposed measures and accepted the Appellant’s original plan; and

Conclusion

WHEREAS, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and varies the noted MDL sections except those within DOB objections numbers 2, 6, and 10 because it deems that the non-compliances associated with the addition of the seventh floor cannot be remedied in a way that is within the spirit of the law; and

WHEREAS, in reaching this determination, the Board notes that its finding is based on the unique facts related to the physical conditions of the site as presented in the instant application, and that this decision does not have general applicability to any pending or future Board application; and

WHEREAS, the Board notes that, according to the Appellant, the proposal will be in full compliance with all other relevant regulations including the Zoning Resolution; and

WHEREAS, the Board does not take any position as to any zoning compliance and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans associated with the MDL conditions; and

WHEREAS, the Board’s determination in this matter is limited to conditions associated with the cited MDL objections, dated July 6, 2009, and not with any outstanding or future zoning or any other kind of objections; and

WHEREAS, as to the Appellant’s assertion that it establishes equivalent fire-ratings, such as three-hour equivalent fire-rating for the hallway walls, the Board requests that DOB review and approve the conditions for compliance

with such a requirement and takes no position as to the capacity of the materials used or their fire safety rating.

Therefore it is Resolved, that the decision of the Manhattan Borough Commissioner, dated July 6, 2009, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, “Received July 26, 2010” nine (9) sheets and “Received July 29, 2010” one (1) sheet; and on further condition:

THAT the construction shall include the: (1) installation of a full automatic wet sprinkler system in the common areas, cellar, and all apartment interiors; (2) installation of hard-wired smoke detectors and emergency lighting with back-up battery power in all apartments and common areas; (3) installation of new fire escapes and ladders at the front and rear of the Buildings; (4) replacement of wood apartment doors with one and one-half-hour fire-rated self-closing metal doors; (5) installation of sufficient materials in the hallway and stairway walls to achieve three-hour fire separation; (6) replacement of stair treads with non-combustible material (marble or stone); (7) addition of two layers of gypsum to the underside of the staircases; (8) addition of a skylight at the top of each stairway (with a minimum area of 20 sq. ft.) and a ridge vent (with a minimum area of 40 sq. in.) with wire screen above and below plain glass as per MDL § 26.2; and (9) installation of sufficient materials within the cellar ceiling, first floor entrance hall (floor, ceiling, and walls) and public hallway walls to achieve three-hour fire separation within the first floor entrance hall and the public hallways on all floors; and

THAT the seventh floor be removed and all proposed fire safety measures be installed by February 3, 2011 and a Certificate of Occupancy be obtained by August 3, 2012;

THAT any additional materials installed to increase the fire-rating of the public halls or staircases shall not reduce the width of the public halls or staircases any more than what is reflected on the proposed plans; if additional materials beyond those reflected on the plans are required, they shall be installed on the side of the walls within the apartments;

THAT the Department of Buildings shall review all construction materials to confirm compliance with the required fire-rating; where conditions in the resolution are less specific as to the proposed materials and more restrictive as to fire-rating than the conditions reflected on the approved plans, the conditions in this resolution shall be controlling;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 3, 2010.

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67-10-A

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Eileen and James Conrad, lessee.

SUBJECT – Application May 4, 2010 – Proposed reconstruction and enlargement of an existing single-family dwelling and the proposed upgrade of the existing non-conforming private disposal system within the bed of a mapped street, contrary to Article 3, Section 35 of the General City Law. R4 zoning district.

PREMISES AFFECTED – 72 Bedford Avenue, west side of Bedford Avenue within the intersection of mapped 12th Avenue and Beach 204th Street, Block 16350, Lot p/o 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary D. Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 23, 2010, acting on Department of Buildings Application No. 420129970, reads in pertinent part:

“A1– The existing building to be reconstructed and altered lies within the bed of a mapped street contrary to General City Law, Article 3, Section 35; and

A2– The proposed upgraded private disposal system is in the bed of a mapped street contrary to General City Law Article 3, Section 35 and Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on June 15, 2010, after due notice by publication in the *City Record*, with a continued hearing on August 3, 2010, and then to closure and decision on the same date; and

WHEREAS, by letter dated July 1, 2010, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated May 20, 2010, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated, July 28, 2010 the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the applicant’s property is not included in the agency’s ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated April 23, 2010, acting on Department of Buildings Application No. 420129970 is

modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 4, 2010”– one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 3, 2010.

102-10-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc, owner; Tricia Kevin Davey, lessees.

SUBJECT – Application June 7, 2010 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 48 Tioga Walk, west side of Tioga Walk, south of 6th Avenue, Block 16350, Lot p/o400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 1, 2010, acting on Department of Buildings Application No. 420141590, reads in pertinent part:

“A1– The existing building to be altered lies within the bed of a mapped street contrary to General City Law, Article 3, Section 35; and

A2– The proposed upgraded private disposal system is in the bed of a mapped street and/or unmapped service road contrary to General City Law Article 3, Section 35 and Department of Buildings policy;” and

WHEREAS, a public hearing was held on this

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application on August 3, 2010, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated July 1, 2010, the Fire Department states that it has reviewed the subject proposal and has no objections provided the building is fully sprinklered; and

WHEREAS, by letter dated June 28, 2010, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 28, 2010, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated June 1, 2010, acting on Department of Buildings Application No. 420141590 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received June 7, 2010"—one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the home 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, August 3, 2010.

298-09-A

APPLICANT – Breezy Point Cooperative Inc., for Ann Baci, owner.

SUBJECT – Application October 23, 2009 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 109 Beach 217th Street, east side Beach 217th Street, 160' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for deferred decision.

71-10-A thru 84-10-A

APPLICANT – Eric Palatnik, P.C., for Brighton Street, LLC, owners.

SUBJECT – Application May 10, 2010 – Appeal seeking a determination that the owner has acquired a vested right to complete construction under the prior R3-2 zoning district. R3-1 zoning district.

PREMISES AFFECTED – 102-118 Turner Street and 1661 to 1669 Woodrow Road, between Crabtree Avenue and Woodrow Road, Block 7105, Lots 181 thru 188 and 2 thru 8, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

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Negative:.....0

ACTION OF THE BOARD – Laid over to August 17, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, JULY 13, 2010
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

9-10-BZ

CEQR #10-BSA-041Q

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.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 29, 2010 acting on Department of Buildings Application No. 420017458, reads in pertinent part:

“Proposed Use Group 6 eating and drinking establishment in R1-2 zoning district is contrary to ZR Section 22-00;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R1-2 zoning district, the use of an existing one-story building as an eating and drinking establishment (Use Group 6), contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on March 23, 2010, after due notice by publication in *The City Record*, with continued hearings on April 27, 2010, May 25, 2010 and June 22, 2010, and then to decision on August 3, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) the term be limited to 15 years; (2) the flooding in the southwest corner of the parking lot be remediated in a way that will not damage the wetlands area located to the rear of the site; (3) the closing time be at 2:00

a.m., daily; (4) the area at the front remain landscaped; (5) the dumpsters be placed in the rear of the property; and (6) the parking lot be secured when the premises is closed; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application with the same conditions as the Community Board regarding landscaping, the placement of dumpsters, and securing the parking lot; and

WHEREAS, State Senator Frank Padavan and City Council Member Daniel J. Halloran, III, provided written testimony in opposition to this application, citing concerns with storm water and sewer runoff into the adjacent wetlands and the flooding issue at the at the southwest corner of the parking lot; and

WHEREAS, the Douglaston Civic Association provided oral testimony in opposition to this application; and

WHEREAS, the Alley Pond Park Alliance provided written testimony in opposition to this application, citing concerns with environmental and health issues at the site, and the lack of action by the owner to address these issues; and

WHEREAS, a residential property owner located at 46-65 Hanford Street, represented by counsel, provided written and oral testimony in opposition to this application (hereinafter, the “Opposition”), citing the following primary concerns: (1) the proposed Use Group 6 use is not permitted because the use is not grandfathered at the site and the previous variance permitting such use has expired; (2) the applicant’s financial analysis does not establish that it is the only scenario that will provide a reasonable return for the site; (3) the drainage at the site is insufficient and the storm water and sewer runoff will have a detrimental effect on the adjacent wetlands; (4) any hardship at the site has been self-created; and (5) the proposal does not reflect the minimum variance necessary to afford relief; and

WHEREAS, the applicant argues that the Opposition does not have legal standing to oppose this application because 46-65 Hanford Street is located outside the 400-ft. radius of the site for which mandatory notice is provided and the Opposition has not alleged any special damage it will suffer from the proposed action that is different from that of the public at large; thus, the Opposition has not established that it is an “aggrieved person” sufficient to confer standing; and

WHEREAS, the Board notes that New York State courts have stated that as a general rule, in order to have standing a party must show that an administrative action will have a harmful effect on them that is in some way different from the public at large, and that the interest asserted is arguably within the zone of interest to be protected by the statute (see Sun-Brite Car Wash, Inc. v. Board of Zoning and Appeals of Town of North Hempstead, 69 N.Y.2d 406, 412 (1987)); and

WHEREAS, the Board notes that while it has accepted the papers submitted by the Opposition into the record and has allowed the Opposition to appear at the Board’s public hearings in opposition to the application, these actions do not constitute an admission or agreement on the question of standing; and

WHEREAS, the Board further notes that the general practice in the public hearing process is to accept testimony

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from the community at large into the record, without taking a position as to whether each and every individual that seeks to provide written or oral testimony has legal standing before the Board or in any other forum; and

WHEREAS, accordingly, the Board questions whether the Opposition, which has not established that the Board's actions will have a harmful effect on him that is in some way different than the public at large, meets the minimum threshold required by New York State courts for legal standing, and, thus, has not determined that the Opposition would have standing in any other forum; and

WHEREAS, another community resident, represented by counsel, provided written testimony in opposition to this application, citing concerns that the sale of the subject property to the current owners involved fraud; and

WHEREAS, the Board notes that the allegations of fraud are not within its jurisdiction under the subject variance application; and

WHEREAS, several other community residents provided testimony in opposition to this application; and

WHEREAS, the subject site is located on an irregular "L"-shaped lot on the northwest corner of Northern Boulevard and 232nd Street, within an R1-2 zoning district; and

WHEREAS, adjacent to the rear of the site is Alley Pond Park, a New York City Parks and Recreation Department nature preserve; and

WHEREAS, the site has approximately 135 feet of frontage along Northern Boulevard, a depth of approximately 214 feet, and a lot area of 50,034 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant one-story commercial building and an accessory parking lot for 118 vehicles; and

WHEREAS, the applicant proposes to increase the height of the existing building from 15'-0" to 19'-6", make interior renovations to the building, and operate it as a Use Group 6 eating and drinking establishment; and

WHEREAS, the applicant states that the proposed one-story building will maintain the existing floor area of 7,076 sq. ft., and that there will be 118 accessory parking spaces; and

WHEREAS, on January 20, 1976, under BSA Cal. No. 308-75-BZ, the Board granted a variance to permit the operation and enlargement of an existing one-story restaurant at the subject site, and the addition of a cabaret use limited to patron dancing, for a term of ten years, which expired on January 20, 1986; and

WHEREAS, on November 9, 1976, the grant was amended to limit the variance to a Use Group 6 eating and drinking establishment instead of the previously-approved Use Group 12 eating and drinking establishment; and

WHEREAS, on March 30, 1982, the grant was amended to permit an increase in the size of the open accessory parking lot from 44 spaces to 118 spaces; and

WHEREAS, on December 20, 1983, the grant was amended to legalize the paving of the landscaped area at the front of the restaurant; and

WHEREAS, most recently, on September 8, 1986, the Board extended the term of the variance for an additional ten years, which expired on January 20, 1996; and

WHEREAS, the applicant now proposes to restore the Use Group 6 eating and drinking establishment use; and

WHEREAS, as to the Opposition's argument that the prior variance expired and the proposed Use Group 6 use is not grandfathered on the site, the Board agrees and therefore has required the filing of the subject application for a new variance; and

WHEREAS, because the prior variance has expired and commercial use is not permitted in the subject R1-2 zoning district, the applicant seeks a use variance to permit the proposed Use Group 6 use; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the history of use of the site; (2) the irregular shape of the lot and its limited frontage on Northern Boulevard; (3) the site's location in a flood zone; and (4) the adjacent commercial uses and location on a heavily-trafficked commercial corridor; and

WHEREAS, as to the history of development at the site, the applicant represents that the subject site has operated as an eating and drinking establishment since approximately 1950; and

WHEREAS, as noted above, the site was the subject of a Board variance permitting an eating and drinking establishment on January 20, 1976, until its expiration on January 20, 1996; and

WHEREAS, the applicant states that after the expiration of the variance, the site continued to operate as an eating and drinking establishment until approximately three years ago; and

WHEREAS, the applicant represents that, due to the historic use of the premises as an eating and drinking establishment, the site has a distinct commercial character and the existing building on the site, which was designed for commercial use, does not lend itself to efficient re-use for residential or community facility use; and

WHEREAS, as to the irregular shape of the site, the applicant states that it is an "L"-shaped site with 135 feet of frontage on Northern Boulevard, a depth of 214 feet, and a width of 270 feet at the rear of the site; and

WHEREAS, the applicant represents that the narrow street frontage on Northern Boulevard in comparison to the site's depth, and install a private street in order to access as-of-right residential units; and

WHEREAS, the applicant states that the layout of the site and the need to install a private street limit the as-of-right potential for a residential development; and

WHEREAS, specifically, the applicant states that the total development permissible on the subject 50,034 sq. ft. lot is approximately 25,000 sq. ft. (0.50 FAR), and that a regularly-shaped lot could be developed with six to eight detached single family homes ranging from 3,100 sq. ft. to 4,100 sq. ft. of floor area, while the unusual layout of the subject lot limits the as-of-right residential development to four detached homes with a 4,800 sq. ft. of floor area each and a total floor area of 19,200 sq. ft., which is only approximately 75 percent of what could otherwise be developed on the site; and

WHEREAS, the applicant notes that although the four

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proposed homes could potentially increase in size, the market for such large homes is hindered by the site's location adjacent to auto-related commercial uses on both sides; and

WHEREAS, the applicant states that a residential development would also require the construction of a private sewer in the bed of the private street in order to connect with Northern Boulevard; and

WHEREAS, the applicant submitted a cost estimate indicating that the cost of developing the required private street for an as-of-right residential use would add \$105,201 to the construction costs at the site, and the private sewer would cost an additional \$558,000; and

WHEREAS, the applicant states that an as-of-right community facility use would not require the construction of a private street, but would nonetheless require a sewer connection with Northern Boulevard, which would add \$46,400 in development costs; and

WHEREAS, as to the site's location in a flood zone, the applicant submitted a FEMA Flood Insurance Rate Map and a letter from its architect reflecting that the site is located within a flood zone; and

WHEREAS, the applicant states that as a result of the site's location within a flood zone, any residential or community facility development would require the installation of piles to a depth of up to 100 feet, to insure the structural stability of the new development; and

WHEREAS, the applicant submitted cost estimates reflecting that the need to install piles would result in an additional \$256,200 for an as-of-right residential development, and \$708,600 for an as-of-right community facility development; and

WHEREAS, the applicant represents that, given the costs associated with the installation of piles due to the site's location in a flood zone, it is not feasible to construct a new residential or community facility development at the site; and

WHEREAS, as to the site's location, the applicant states that the site is located on Northern Boulevard, a heavily-trafficked commercial corridor; and

WHEREAS, the applicant further states that the site is located between an automotive service station immediately to the west and a car wash to the east; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that other uses in the vicinity of the site include a car dealership and a driving range, and that there are no residential or community facility uses within 400 feet of the site; and

WHEREAS, thus, the applicant represents that a conforming residential or community facility use would be incompatible with the heavily commercial nature surrounding the site along Northern Boulevard; and

WHEREAS, the Board agrees that the combination of conditions at the site result in a conforming new development that cannot carry the additional costs of construction; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) an as-of-right residential development with four detached homes; (2) an as-of-right two-story community facility building; and (3) the proposed one-story Use Group 6 eating and drinking establishment; and

WHEREAS, the study concluded that the as-of-right scenarios would not result in a reasonable return, but that the proposed use would realize a reasonable return; and

WHEREAS, during the course of the hearing, the Board directed the applicant to revise its financial analysis including the site value, the analysis of the as-of-right residential scenario, and the commercial sites used as comparables for the subject site; and

WHEREAS, in response, the applicant revised its financial analysis, and after several submissions in response to the concerns raised during the hearings, the Board was satisfied the applicant had established that only the proposed building use would realize a reasonable return; and

WHEREAS, throughout the course of the hearings, the Opposition raised additional concerns about the applicant's financial analysis, and questioned the methodology of the financial reports submitted to the Board; and

WHEREAS, the Board has reviewed the methodology and finds it acceptable for the purpose of meeting the finding under ZR § 72-21(b); and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area is characterized by commercial uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram indicating that the only uses within 400 feet of the subject site are commercial buildings located along Northern Boulevard, and park land; and

WHEREAS, as noted above, there are commercial uses located on either side of the site, with an automobile service station immediately to the west and a car wash to the east; and

WHEREAS, as to bulk, the applicant represents that there will be no change in the footprint of the existing building, which has been located at the site for several decades; and

WHEREAS, further, the applicant states that the proposal complies with the residential bulk regulations of the underlying R1-2 zoning district related to floor area, height, open space, and lot coverage; and

WHEREAS, the Opposition contends that the proposed commercial use is not compatible with the adjacent park and wetlands; and

WHEREAS, the Board notes that even a conforming residential development would involve the construction of four homes and a private road system, would increase the traffic on the site, and would have to address similar issues with runoff

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into the adjacent wetlands; and

WHEREAS, at hearing, the Board and the Opposition raised concerns about the drainage issues at the site and potential issues related to storm water and sewer runoff; and

WHEREAS, the Parks and Recreation Department submitted a letter requesting that any variance issued by the Board for the subject site be conditioned on the owner developing and implementing a storm water management plan approved by the Department of Environmental Protection ("DEP"), the Department of Environmental Conservation ("DEC"), and the Parks and Recreation Department; and

WHEREAS, in response, the applicant submitted a sewer connection application and storm water management plan that was submitted to the Department of Buildings ("DOB"), and will be reviewed by DEP; and

WHEREAS, the Board directed the applicant to comply with the landscaping and grading requirements under ZR § 37-90, which governs all developments that provide an open parking area accessory to commercial uses that contain 18 or more spaces, including issues pertaining to drainage; and

WHEREAS, the applicant submitted a letter from an environmental consulting firm, stating that it will attend to any necessary filings at DEC related to the adjacent wetlands; and

WHEREAS, the Board notes the Community Board's conditions for recommending approval of this application and agrees that they are appropriate; thus, as a condition of the Board's grant: (1) the proposed restaurant will close no later than 2:00 a.m.; (2) the area at the front of the site will remain landscaped; (3) the dumpsters will be placed in the rear of the property; and (4) the parking lot will be secured when the restaurant is closed; 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 Opposition contends that the alleged hardship is self-created because the owner purchased the property with knowledge that commercial use was not permitted on the site; and

WHEREAS, the Board notes that the purchase of a zoning lot subject to the restriction sought to be varied is specifically not a self-created hardship under ZR § 72-21(d); and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Opposition argues that the proposal does not reflect the minimum variance required to afford relief because the proposal will require approvals from the Board, DOB, and DEC, and is located adjacent to freshwater wetlands; and

WHEREAS, the Board notes that ZR § 72-21(e) requires that the bulk and/or intensity of use of the proposal, along with its return on investment, must be the minimum necessary to afford the owner relief; it does not refer to whether additional administrative approvals or procedures may be necessary before the proposal can operate; and

WHEREAS, the Board further notes that the proposal is merely retaining the existing, relatively small 7,076 sq. ft. building on the site as an eating and drinking establishment (Use Group 6) -- a use that is found to be compatible in many districts that have residential and community facility uses; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an unlisted action pursuant to pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA041Q, dated January 21, 2010; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R1-2 zoning district, the use of an existing one-story building as an eating and drinking establishment (Use Group 6), which does not conform to district use regulations, contrary to ZR § 22-00; and; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 6, 2010"- six (6) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 7,076 sq. ft. (0.14 FAR); a total height of 19'-6"; and a maximum of one-story, as indicated on the BSA-approved plans;

THAT the site shall comply with ZR § 37-90, inclusive;
THAT the eating and drinking establishment shall close no later than 2:00 a.m.;

THAT the area at the front of the site shall remain landscaped;

THAT the dumpsters shall be located at the rear of the property;

THAT the parking lot shall be secured when the

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restaurant is closed;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by August 3, 2014;

THAT the applicant shall pursue all applicable DEP and DEC approvals based on the scope of work submitted to the Board;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 3, 2010.

13-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yakov Platnikov, owner.

SUBJECT – Application January 27, 2010 – Special Permit (§73-622) for the enlargement of an existing two -family home to be converted to a single family home, contrary to lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 79 Amherst Street, east side of Amherst Street, north Hampton Avenue, Block 8727, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 23, 2009, acting on Department of Buildings Application No. 320054622, reads in pertinent part:

“The proposed horizontal and vertical enlargement of the existing two-family residence in an R3-1 zoning district:

1. Creates a new noncompliance with respect to lot coverage and is contrary to Section 23-141(b) of the Zoning Resolution (ZR).

2. Creates a new non-compliance with respect to floor area and is contrary to Section 23-141(b) ZR.

3. Creates a new non-compliance with respect to side yards and is contrary to Section 23-461(a) ZR.

4. Increases the degree of non-compliance with respect to rear yard and is contrary to Sections 23-47 and 54-31 ZR;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for lot coverage, floor area, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47 and 54-31; 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 27, 2010, June 8, 2010 and July 13, 2010, and then to decision on August 3, 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Amherst Street, between Oriental Boulevard and Hampton Avenue, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 4,160 sq. ft., and is occupied by a two-family home with a floor area of approximately 2,048 sq. ft. (0.49 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from approximately 2,048 sq. ft. (0.49 FAR) to approximately 4,064 sq. ft. (0.98 FAR); the maximum floor area permitted is 2,080 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide lot coverage of 36 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 4’-10” along the northern lot line (a side yard with a minimum width of 5’-0” is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 22’-10” (a minimum rear yard of 30’-0” is required); and

WHEREAS, at hearing, the Board requested that the applicant clarify the discrepancy between the lot dimensions of 40’-0” by 100’-0” reflected in the tax map on record at the Department of Finance (“DOF”) and the lot dimensions of 40’-0” by 104’-0” claimed by the applicant; and

WHEREAS, in response, the applicant submitted a revised DOF tax map reflecting that the dimensions of the subject lot are 40’-0” by 104’-0”; and

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WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for lot coverage, floor area, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47 and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 17, 2010"-(13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,064 sq. ft. (0.98 FAR); an open space of 64 percent; a lot coverage of 36 percent; a side yard with a width of 10'-3" along the southern lot line; a side yard with a minimum width of 4'-10" along the northern lot line; and a rear yard with a minimum depth of 22'-10", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, August 3, 2010.

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 1, 2010, acting on Department of Buildings Application No. 320113970, reads:

1. ZR 23-141(b). The proposed total floor area exceeded the permitted.
2. ZR 23-141(b). The proposed lot coverage exceeded the permitted.
3. ZR 23-141(b). The proposed open space is inadequate.
4. ZR 23-461. The proposed side yards are contrary to the permitted.
5. ZR 23-47. The proposed rear yard is contrary to the permitted;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on May 11, 2010, after due notice by publication in *The City Record*, with a continued hearing on June 22, 2010, and then to decision on August 3, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application (hereinafter, the "Opposition"); and

WHEREAS, the subject site is located on the east side

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of Norfolk Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 1,040 sq. ft. (0.42 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,040 sq. ft. (0.42 FAR) to 2,474 sq. ft. (0.99 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 44 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide an open space of 56 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard with a width of 1'-2" along the western lot line and to increase the width of the existing non-complying side yard along the eastern lot line from 1'-5" to 4'-8" (two side yards with a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will maintain the existing rear yard with a depth of 17'-3" at the first floor, and provide a rear yard with a depth of 22'-3" at the second and third floor (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the Opposition contends that the proposal is actually a new building rather than an enlargement, based on the following: (1) the proposal does not retain significant portions of the existing home; and (2) the engineer's affidavit is disingenuous because it was revised as to the type of concrete contained in the existing home; and

WHEREAS, the Opposition further argues that, due to the conflicting information in the engineer's affidavits as to the type of concrete contained in the existing home, the Board should enlist an independent engineer to corroborate the statements made by the applicant's engineer; and

WHEREAS, as to the portions of the existing home that are being retained, the applicant submitted revised plans reflecting that the first floor and portions of the foundation walls and first floor walls will be retained, and submitted the revised engineer's affidavit which states that the plans are accurate as to the portions of the home being retained; and

WHEREAS, the revised engineer's affidavit also states that the existing first floor will be raised by jacking the existing floor joists and that the existing exterior walls, foundation walls, and the footings are composed of pure concrete which is adequate to support the proposed enlargement; and

WHEREAS, the Board notes that the original engineer's affidavit stated that the exterior walls, foundation walls, and footings of the existing home were composed of reinforced concrete, rather than pure concrete; and

WHEREAS, the Board further notes that it is the Department of Buildings' ("DOB") role, and not the

Board's, to review construction and enforce compliance with the approved plans and with relevant zoning and Building Code regulations; and

WHEREAS, accordingly, the Board finds that it is appropriate for technical matters, such as the type and strength of concrete, to be subject to DOB, rather than the Board's, review; and

WHEREAS, therefore, the Board rejects the Opposition's assertion that an independent engineer must be retained to analyze the type and strength of the existing home's concrete for review by the Board within the context of the subject special permit; and

WHEREAS, in addition, the Opposition argues that the proposal should be denied because there are a number of mistakes and inconsistencies in the drawings submitted by the applicant and contends that the architect's calculations for the base plane are incorrect; and

WHEREAS, in response, the applicant submitted a letter from the architect explaining his methodology for calculating the base plane; and

WHEREAS, the Board notes that the applicant has submitted revised plans to address the inconsistencies in its drawings, and that the drawings will be subject to DOB review for compliance with all ZR and Building Code regulations; and

WHEREAS, finally, the Opposition argues that the proposed home does not fit within the character of the surrounding neighborhood, and that many of the examples of comparable homes provided by the applicant are non-compliant and have been illegally enlarged, and are out of context with the surrounding neighborhood; and

WHEREAS, in response, the applicant submitted six additional examples of homes in the surrounding area that are comparable in size to the proposed home; and

WHEREAS, the Board notes that several homes, including those on Norfolk Street, have been approved at the Board with similar floor area, side yard, and rear yard waivers; and

WHEREAS, the Board further notes that the perimeter wall and overall height of the proposed home are allowed under the Zoning Resolution, and the applicant is not seeking any waivers for height; and

WHEREAS, the Board notes that the proposed home, with a floor area of 2,474 sq. ft. (0.99 FAR), a height of 31'-10" (which is lower than the maximum permitted height of 35'-0"), and a wider side yard along the eastern lot line than currently exists, only requires waivers for floor area, lot coverage, open space, side yards and rear yard; and

WHEREAS, the Board further notes that, along with technical matters, compliance with regulations related to the measurement of the base plane, the perimeter wall height and the total height are subject to DOB, rather than the Board's, review; 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

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WHEREAS, the Board therefore is not persuaded that there is any basis to deny the subject application, as the required findings have been met; and

WHEREAS, the Board finds that many of the issues raised by the Opposition are based on speculation that the ensuing construction will not comport with the approved drawings, and are not necessarily indicative of bad faith on the part of the applicant; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 29, 2010"-(14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 2,474 sq. ft. (0.99 FAR); a lot coverage of 44 percent; an open space of 56 percent; a side yard with a minimum width of 1'-2" along the western lot line; a side yard with a minimum width of 4'-8" along the eastern lot line; and a rear yard with a minimum depth of 17'-3", as illustrated on the BSA-approved plans;

THAT DOB shall review the perimeter wall and total height for compliance;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, August 3, 2010.

40-10-BZ

CEQR #10-BSA-055K

APPLICANT – Sheldon Lobel, PC, for Campworth LLC, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to allow for an existing building to be converted for commercial use, contrary to §22-10. C4-4A/R5B zoning district.

PREMISES AFFECTED – 150 Kenilworth Place, through-lot between Campus Road and Kenilworth Place, Block 7556, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 22, 2010, acting on Department of Buildings Application No. 320107406, reads in pertinent part:

“Proposed Use Group 6 commercial use is contrary to 22-10 Zoning Resolution;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C4-4A zoning district and partially within an R5B zoning district, the enlargement of the second floor of a two-story building, and the conversion of the building to retail and office use (Use Group 6), which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on June 8, 2010, after due notice by publication in *The City Record*, with a continued hearing on July 13, 2010, and then to decision on August 3, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on an irregularly-shaped through lot with frontage on both Kenilworth Place and Campus Road, approximately 45 feet south of Hillel Place, and is partially within a C4-4A zoning district and partially within an R5B zoning district; and

WHEREAS, the site has approximately 20'-0" of frontage along Kenilworth Place, 20'-8" of frontage along Campus Road, a depth ranging from approximately 102'-10" to

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107'-11", and a lot area of 2,142 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant two-story building; and

WHEREAS, the applicant states that the second floor is actually two disconnected partial mezzanines which do not align with regard to height; one is located at the Campus Road frontage and the other is located at the Kenilworth Place frontage; and

WHEREAS, the applicant proposes to convert the existing building to retail use at the first floor and office use at the second floor (Use Group 6), and to convert the two disconnected mezzanine levels into a single complete second floor for office use; and

WHEREAS, commercial use is not permitted in the portion of the site within an R5B zoning district, thus the applicant seeks a use variance to permit the proposed Use Group 6 uses; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the history of use of the site; (2) the existing building on the site; (3) the split lot condition; and (4) the adjacent commercial use; and

WHEREAS, as to the history of development at the site, the applicant states that in 1962, while the site was located entirely within a C4-3 zoning district, permits were issued for the construction of the subject building, to be occupied by a Use Group 6 use, and that a subsequent zoning map change on October 11, 1962 shifted the C4-3 district boundary line such that a portion of the site was located within an R6 zoning district and the subject building became a legal non-conforming commercial use; and

WHEREAS, the applicant states that the subject building was occupied by a Use Group 6 bookstore and offices for over 20 years, until it was replaced by a church (Use Group 4) in 1985; and

WHEREAS, as to the existing building on the site, the applicant states that the site is occupied by a lot-line-to-lot-line legal non-complying commercial building which cannot be reused for as-of-right commercial use due to the discontinuation of such use and the intervening community facility use; and

WHEREAS, the applicant states that the existing building was designed for commercial use and later retrofitted with religious balcony space, and therefore does not lend itself to efficient re-use for a residential use; and

WHEREAS, the applicant further states that the existing building is approximately 20 feet wide by 100 feet deep with no yards and with insufficient access to light and air, and therefore it cannot be efficiently converted into a conforming residential use; and

WHEREAS, the applicant represents that demolition of the existing building and construction of a new one would be economically infeasible due to the excessive costs to demolish the existing building and build one that could accommodate a modern conforming use; and

WHEREAS, the applicant further represents that as-of-right community facility use is also not practically feasible, as

the property had been on the market for over two years without an offer from a viable community facility user; and

WHEREAS, the applicant submitted materials from a realty services agency reflecting the marketing efforts that were undertaken to secure a community facility use; and

WHEREAS, as to the split lot condition, the applicant states that approximately 68 percent of the lot is located within an R5B zoning district and approximately 32 percent of the lot is located within a C4-4A zoning district; and

WHEREAS, the applicant notes that because less than 50 percent of the site is located within the commercial zone, the owner is precluded from using the split district rules pursuant to ZR § 77-11, and is ineligible for the BSA special permit pursuant to ZR § 73-52, which would bring the entire building into the C4-4A zoning district, where the proposed Use Group 6 uses are permitted as-of-right; and

WHEREAS, as to the adjacency of commercial uses, the applicant states that there is a two-story commercial establishment located along the southern lot line of the site; and

WHEREAS, the applicant represents that the size and busy nature of the adjacent commercial establishment would decrease the potential rent or sale price for any new residential construction at the site; and

WHEREAS, the Board does not find the adjacency of a commercial use to be a condition that is incompatible with a conforming use, but finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) an as-of-right residential building; (2) an as-of-right community facility building; and (3) the proposed commercial retail and office building; and

WHEREAS, the study concluded that the as-of-right scenarios would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area is characterized by a mix of commercial and residential uses; and

WHEREAS, the applicant has submitted a land use map of the area indicating that a two-story commercial use is located immediately adjacent to the site to the south, three commercial uses are located directly across from the site on Kenilworth Place, and there is a commercial strip with various commercial shops located along Hillel Place, approximately 45 feet south of the site; and

WHEREAS, the applicant notes that the proposed use is permitted as-of-right within the portion of the site within the

MINUTES

C4-4A zoning district, which is approximately 38 percent of the total site; and

WHEREAS, the applicant states that the majority of the Kenilworth Place frontage is located within the C4-4A zoning district; therefore, the proposed use along Kenilworth Place is essentially as-of-right, except for a small portion of the frontage at the northern end of the site; and

WHEREAS, as noted above, the applicant states that the proposed use would be permitted as-of-right over the entire site pursuant to ZR § 77-11 or by BSA special permit pursuant to ZR § 73-52 if more than 50 percent of the site were located within the C4-4A district; and

WHEREAS, the applicant states that the proposed enlargement of the second floor, to convert the two disconnected mezzanine levels into a single complete second floor, will increase the FAR at the site from 1.59 to 2.0; and

WHEREAS, although ZR § 77-22, which governs bulk regulations for zoning lots divided by district boundaries, is only applicable when the intended use is permitted on the entire zoning lot and therefore does not apply to the subject lot, the applicant represents that the proposed increase in FAR at the site would be permitted under the averaging principles set forth in ZR § 77-22; and

WHEREAS, additionally, the applicant states that the proposed enlargement of the second floor is an entirely internal enlargement and will not change the envelope of the subject building; and

WHEREAS, at hearing, the Board questioned whether the signage at the site complied with the relevant district regulations; and

WHEREAS, in response, the applicant submitted a signage plan for both the Campus Road and Kenilworth Place frontages, reflecting that the signage complies with the underlying district regulations; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an unlisted action pursuant to pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA055K, dated March 19, 2010; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows;

Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C4-4A zoning district and partially within an R5B zoning district, the enlargement of the second floor of a two-story building, and the conversion of the building to retail and office use (Use Group 6), which does not conform to district use regulations, contrary to ZR § 22-00; and; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 22, 2010" - six (6) sheets and "Received June 30, 2010" - two (2) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 4,213 sq. ft. (2.0 FAR); lot coverage of 100 percent; a total height of 25'-0"; and no yards, as indicated on the BSA-approved plans;

THAT signage shall be provided in accordance with the approved signage plan;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 3, 2010.

58-10-BZ

CEQR No. 10-BSA-065K

APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner.

SUBJECT – Application April 22, 2010 – Special Permit (§73-36) to allow a physical culture establishment (*Barones Health Club*) in the existing one-story building. M1-2/R6A zoning district/MX8 special district.

PREMISES AFFECTED –16 Eckford Street, east side of

MINUTES

Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 20, 2010, acting on Department of Buildings Application No. 320134662, reads in pertinent part:

“Proposed physical culture establishment is not permitted as-of-right in a manufacturing zoning district pursuant to ZR 42-10 and therefore requires a ZR 73-36 special permit from the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-2/R6A zoning district within the MX8 special purpose district, the legalization of a physical culture establishment (“PCE”) on the first floor of a one-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on July 13, 2010, after due notice by publication in *The City Record*, and then to decision on August 3, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Eckford Street, between Engert Avenue and Newton Street, in an M1-2/R6A zoning district within the MX8 special purpose district; and

WHEREAS, the site is a single zoning lot occupied by three buildings: (1) a three-story mixed-use industrial/commercial building located on the northwestern portion of the lot (22 Eckford Street); (2) a one-story industrial building located on the northeastern portion of the lot (20 Eckford Street); and (3) a one-story commercial building located on the southern portion of the lot (16 Eckford Street); and

WHEREAS, the PCE occupies a total floor area of 4,710 sq. ft. on the first floor of the building located at 16 Eckford Street; and

WHEREAS, the PCE is operated as Quick Fitness; and

WHEREAS, the proposed hours of operation are from 6:00 a.m. to 11:00 p.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since June 10, 2010, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between June 10, 2010 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10-BSA-065K, dated April 21, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-2/R6A zoning district within the MX8 special purpose district, the legalization of a physical culture establishment on the first floor of an existing one-story commercial building, contrary

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to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 22, 2010”–One (1) sheet; “Received June 30, 2010” – Two (2) sheets and “Received July 20, 2010” – one (1) sheet and *on further condition*:

THAT the term of this grant shall expire on June 10, 2020;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a new Certificate of Occupancy shall be obtained by August 3, 2011;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 3, 2010.

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 Mark Londow.

ACTION OF THE BOARD – Laid over to September 14, 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

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 24, 2010 at 1:30 P.M., for adjourned 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 and Chris Wright.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for continued hearing.

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.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for adjourned hearing.

MINUTES

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radonicic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Josh Rinesmith and Zarko Ristic.

ACTION OF THE BOARD – Laid over to August 17, 2010, at 1:30 P.M., for continued hearing.

251-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bethany House of Worship Incorporated, owner.

SUBJECT – Application August 28, 2009 – Variance (§72-21) to permit the development of a two-story community facility (*Bethany Church*). The proposal is contrary to §§ 24-34 (front yard) and 25-31 (parking). R3-2 zoning district.

PREMISES AFFECTED – 130-34 Hawtree Creek Road, West side of Hawtree Creek Road, 249.93 feet north of 133rd Avenue. Block 11727, Lot 58, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Helen Leahy.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for continued hearing.

325-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Yetev Lev 11th Avenue, owner.

SUBJECT – Application December 7, 2009 – Variance (§72-21) to permit the proposed four-story and mezzanine synagogue (*Congregation Yetev Lev*), contrary to lot coverage (§24-11), rear yard (§24-36) and initial setback of front wall (§24-522). R6 zoning district.

PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Sheldon Lobel and Abe Berkawitz.

For Opposition: Stuart A. Klein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 21, 2010, at 1:30 P.M., for decision, hearing closed.

65-10-BZ

APPLICANT – Eric Palatnik, P.C., for Anna Shteerma, 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.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 17, 2010, at 1:30 P.M., for decision, hearing closed.

66-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yury, Aleksandr, Tatyana Dreysler

SUBJECT – Application May 3, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141) and side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 1618 Shore Boulevard, South side of Shore Boulevard between Oxford and Norfolk Streets. Block 8757, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Sergey Tishaev.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for continued hearing.

86-10-BZ

APPLICANT – Sheldon Lobel, P.C., for STM Development, LLC, owners.

SUBJECT – Application May 12, 2010 – Special Permit (§§11-411 & 11-412) for the re-instatement of a previously granted Variance for a UG16 manufacturing use which expired on June 10, 1980; the legalization of 180 square foot enlargement at the rear of the building; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 93-08 95th Avenue, south side of 95th Avenue, Block 9036, Lot 3, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to August 17, 2010, at 1:30 P.M., for continued hearing.

MINUTES

91-10-BZ

APPLICANT – Eric Palatnik, P.C., for Lawrence Kimel, owner.

SUBJECT – Application May 17, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to open space, lot coverage and floor area (§23-141); side yard (§23-461); rear yard (§23-47) and perimeter wall height (§23-631). R3-1 zoning district.

PREMISES AFFECTED – 123 Coleridge Street, south of Hampton Street, Block 8735, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and David Shtesikman.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for continued hearing.

93-10-BZ

APPLICANT – Harold Weinberg, P.E. for Paul Grosman, owner; Williamsburg Charter School, lessee.

SUBJECT – Application May 25, 2010 – Variance (§72-21) to convert the ground floor of a community facility (*Williamsburg Charter School*) from parking to school use, contrary to floor area regulations (§43-122).

PREMISES AFFECTED – 198 Varet Street, south side 170'6" west of White Street, between White Street and Bushwick Avenue. Block 3117, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Harold Weimberg, Frank Sellitto, Ralph Perez, Ann Beachamp and Paul Grosman.

THE VOTE TO CLOSE HEARING –

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 17, 2010, at 1:30 P.M., for decision, hearing closed.

98-10-BZ

APPLICANT – Stuart A. Klein, Esq., for Geriann Tepedino, owner.

SUBJECT – Application June 1, 2010 – Special Permit (§73-621) to allow a rooftop addition to an existing five-story, mixed-use building, contrary to §111-111. Tribeca Mixed-Use Special District/M1-5 zoning district.

PREMISES AFFECTED – 44 Lispenard Street, between Church Street and Broadway, Block 194, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Jay Goldstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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DOCKET

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138-10-A

174-20 North Boundary Road, Rockaway Boulevard to the north, Farmers Boulevard to the west, Guy R. Brewer Boulevard to the east., Block 14260, Lot(s) 110, Borough of **Queens, Community Board: 13**. Construction within the mapped street, contrary to General City Law 35. M1-1 district.

139-10-A

29 Roosevelt Walk, Eastside Roosevelt Walk 490' north of Breezsy Point Boulevard., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Construction not fronting a mapped street, contrary to General City Law 36. R4 district.

140-10-BZ

160 Edinboro Road, South of Meisner Avenue, 223.77' east of intersection of Lighthouse Avenue and Edinboro Road., Block 2267, Lot(s) 55 (tent), Borough of **Staten Island, Community Board: 2**. Variance to allow a single family home, contrary to bulk regulations. R1-2 (NA-1) district.

141-10-A

160 Edinboro Road, South of Meisner Avenue, 223.77' east of intersection of Lighthouse Avenue and Edinboro Road., Block 2267, Lot(s) 55 (tent), Borough of **Staten Island, Community Board: 2**. Construction not fronting a mapped street, contrary to General City Law 36. R1-2 (NA-1) district.

142-10-BZ

170 Edinboro Road, South of Meisner Avenue, 223.77' east of intersection of Lighthouse Avenue and Edinboro Road., Block 2267, Lot(s) 50, Borough of **Staten Island, Community Board: 2**. Variance to allow a single family home, contrary to bulk regulations. R1-2 (NA-1) district.

143-10-A

170 Edinboro Road, South of Meisner Avenue, 223.77' east of intersection of Lighthouse Avenue and Edinboro Road., Block 2267, Lot(s) 50, Borough of **Staten Island, Community Board: 2**. Construction not fronting a mapped street, contrary to General City Law 36. R1-2 (NA-1) district.

144-10-BZ

181 Edinboro Road, South of Meisner Avenue, 223.77' east of intersection of Lighthouse Avenue and Edinboro Road., Block 2268, Lot(s) 197, Borough of **Staten Island, Community Board: 2**. Variance to allow a single family home, contrary to bulk regulations. R1-2 (NA-1) district.

145-10-A

181 Edinboro Road, South of Meisner Avenue, 223.77' east of intersection of Lighthouse Avenue and Edinboro Road., Block 2268, Lot(s) 197, Borough of **Staten Island, Community Board: 2**. Construction not fronting a mapped street, contrary to General City Law Section 36. R1-2 (NA-1) district.

146-10-BZ

191 Edinboro Road, South of Meisner Avenue, 223.77' east of intersection of Lighthouse Avenue and Edinboro Road., Block 2268, Lot(s) 168, Borough of **Staten Island, Community Board: 2**. Variance to allow a single family home, contrary to bulk regulations. R1-2 (NA-1) district.

147-10-A

191 Edinboro Road, South of Meisner Avenue, 223.77' east of intersection of Lighthouse Avenue and Edinboro Road., Block 2268, Lot(s) 168, Borough of **Staten Island, Community Board: 2**. Construction not fronting a mapped street, contrary to General City Law Section 36. R1-2 (NA-1) district.

148-10-BZ

1559 East 29th Street, Between Avenue P and Kings Highway., Block 7690, Lot(s) 20, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family home. R3-2 district.

149-10-BZ

1415 East 29th Street, Between Avenue N and Kings Highway., Block 7683, Lot(s) 39, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home. R-2 district.

150-10-BZ

1124 East 26th Street, West side of East 26th Street, between Avenue K and Avenue L., Block 7625, Lot(s) 55, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home. R2 district.

DOCKET

151-10-BZ

224 West 35th Street, South side of West 35th Street, 225 feet west of Seventh Avenue., Block 784, Lot(s) 60, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to legalize the operation of a physical culture establishment. M1-6 district.

152-10-BZ

158 85th Street, 85th Street frontage, Block 6032, Lot(s) 31, Borough of **Brooklyn, Community Board: 10**. Special Permit (73-622) for the enlargement of a single family home. R2 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

SEPTEMBER 14, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 14, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

656-69-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLC, for JVM Company, LLC, owner.

SUBJECT – Application May 6, 2010 – Extension of Term of a (UG9) parking lot accessory to an existing funeral home establishment which expired on May 27, 2010; Extension of Time to obtain a Certificate of Occupancy; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 2617/23 Harway Avenue, aka 208/18 Bay 43rd Street. North west corner Harway Avenue and Bay 43rd Street. Block 6897, Lots 1 & 2, Borough of Brooklyn.

COMMUNITY BOARD #13BK

322-98-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for HUSA Management Company, LLC, owner; TSI West 125 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application–Extension of Term of a previously granted Special Permit (73-36) for the operation of a Physical Culture Establishment (New York Sports Club) which expired on March 23, 2009; Amendment to legalize the increase in floor area; Waiver of the Rules. C4-4(125) zoning district.

PREMISES AFFECTED – 300 West 125th Street, south side of West 12th Street between Saint Nicholas Avenue and Fredericks Douglas Boulevard, Block 1951, Lots 22, 25, 27, 28, 29, 33, 39, Borough of Manhattan.

COMMUNITY BOARD #10M

294-99-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for 521 5th Avenue Partners, LLC, owner; Equinox- 43rd Street, Incorporated, lessee.

SUBJECT – Application June 1, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (Equinox) which expired on May 9, 2010. C5-3(MID) & C5-2.5(MID) zoning district.

PREMISES AFFECTED – 521 5th Avenue, north east corner of 5th Avenue and East 43rd Street, Block 1278, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

161-00-BZ

APPLICANT – Stuart A. Klein, Esquire, for Stellar Sutton, LLC, owner; Mario Badescu Skin, Incorporated, lessee.

SUBJECT – Application–Extension of Term of a previously granted Variance (72-21) for the operation of a Physical Culture Establishment (Bodescu Skin Care) which expired on June 2, 2010; Extension of Time to obtain a Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 320 East 52nd Street, between 1st and 2nd Avenue, Block 1344, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEALS CALENDAR

121-10-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 25-50 FLB LLC, owner.

SUBJECT – Application July 1, 2010 – An appeal challenging the Department of Buildings determination that a demolition permit signoff was required before issuance of an alteration permit as per BC 28 -105.3 of the NYC Building Code . R2A zoning district.

PREMISES AFFECTED – 25-50 Francis Lewis Boulevard aka 166-43 168th Street, southwest corner of Francis Lewis Boulevard and 168th Street, Block 4910, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

138-10-A

APPLICANT –Melvin A. Glickman, P.E.-NYCEDC, for NYC Department of Small Business Services, owners.

SUBJECT – Application August 6, 2010 – Construction within the mapped street, contrary to General City Law 35. M1-1 Zoning District.

PREMISES AFFECTED – 174-20 North Boundary Road, Rockaway Boulevard to the north, Farmers Boulevard to the west, Guy R. Brewer Boulevard to the east, Block 14260, Lot 110, Borough of Queens

COMMUNITY BOARD #13Q

CALENDAR

SEPTEMBER 14, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 14, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

29-10-BZ

APPLICANT – Sheldon Lobel, P.C., for R.A.S. Associates, owner; Mojave Restaurant, lessee.

SUBJECT – Application March 4, 2010 – Special Permit (§73-52) to allow for an outdoor eating and drinking establishment within a residential district. C1-2 and R5 zoning districts.

PREMISES AFFECTED – 22-32/36 31st Street, Ditmas Boulevard and 23rd Avenue, Block 844, Lot 49, Borough of Queens.

COMMUNITY BOARD #1Q

43-10-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Cammastro Corp./Maria Pilato, owner; First Club One LLC/Spiro Tsadilas, lessee.

SUBJECT – Application March 30, 2010– Special Permit (§73-244) to allow an eating and drinking establishment without restrictions and no limitation on entertainment and dancing. The proposal is contrary to 32-21. C2-2 in R5 zoning district.

PREMISES AFFECTED – 23-70 Steinway Street, west side of Steinway Street, 17.65’ north of Astoria Boulevard North, Block 803, Lot 75, Borough of Queens.

COMMUNITY BOARD #1Q

95-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Kohanbash, owner.

SUBJECT – Application May 27, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-141); side yard (ZR §23-461) and less than the required rear yard (§ 23-47). R3-2 zoning district.

PREMISES AFFECTED – 2216 Quentin Road, south side of Quentin Road between East 22nd Street and East 23rd Street, Block 6805, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

100-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Gittie Wertenteil and Ephrem Wertenteil, owners.

SUBJECT – Application June 2, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141), side yard (§23-461 & §23-48) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2512 Avenue R, south side of Avenue R between Bedford Avenue and East 26th Street, Block 6831, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #15BK

101-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Crosby 54 LLC, owners.

SUBJECT – Application June 4, 2010 – Variance (§72-21) to allow a commercial use below the floor level of the second story, contrary to §42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 54 Crosby Street, west side of Crosby Street between Broome and Spring Streets, Block 483, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, AUGUST 17, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

139-92-BZ

APPLICANT – Samuel H. Valencia, for Samuel H. Valencia-Valencia Enterprises, owners.

SUBJECT – Application April 23, 2010 – Extension of Term for a previously granted Special Permit (§73-244) for the continued operation of a UG12 Eating and Drinking Establishment with Dancing (*Deseos*) which expired on March 7, 2010; Waiver of the Rules. C2-2/R6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53’ east of 52nd Street, Block 1316, Lot 76, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Samuel H. Valencia.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term of a previously granted special permit for an eating and drinking establishment without restrictions on entertainment (UG 12A), which expired on March 7, 2010; and

WHEREAS, a public hearing was held on this application on June 15, 2010, after due notice by publication in *The City Record*, with continued hearings on July 13, 2010 and August 3, 2010, and then to decision on August 17, 2010; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 2, Queens, recommends disapproval of this application; and

WHEREAS, the subject site is located on the north side of Roosevelt Avenue, between 52nd Street and 53rd Street, within a C2-2 (R6) zoning district; and

WHEREAS, the site is occupied by an eating and drinking establishment with entertainment, operated as *Deseos*; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 7, 1995, when, under the subject calendar number, the Board granted a special permit under ZR

§ 73-244 to permit the operation of an eating and drinking establishment with dancing (Use Group 12) on the first floor of an existing three-story building, for a term of three years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, on November 20, 2007, the Board granted an additional three-year term, which expired on March 7, 2010; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, at hearing, the Board raised concerns about the status of the rear of the property, and directed the applicant to establish that the rear area is not enclosed; and

WHEREAS, in response, the applicant submitted photographs reflecting that the rear area is unenclosed but has overhead beams that the applicant represents are required to support the air conditioning units; and

WHEREAS, the Board also directed the applicant to document that the sprinkler system at the site has been properly inspected and approved by the Department of Buildings; and

WHEREAS, in response, the applicant submitted a certificate for sprinkler inspection and monthly inspection reports; and

WHEREAS, based upon the above, the Board finds the requested extension of term is appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on March 7, 1995, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for a period of three years from March 7, 2010, to expire on March 7, 2013, *on condition*:

THAT the term of this grant shall expire on March 7, 2013;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 400322469)

Adopted by the Board of Standards and Appeals, August 17, 2010.

MINUTES

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted variance for a gasoline service station, which expired on August 10, 2009, and an extension of time to obtain a certificate of occupancy, which expired on August 10, 2000; and

WHEREAS, a public hearing was held on this application on June 22, 2010, after due notice by publication in *The City Record*, with a continued hearing on July 27, 2010, and then to decision on August 17, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application, with the condition that the applicant obtain a new certificate of occupancy within one year; and

WHEREAS, the site is located on the southwest corner of Forest Avenue and Jewett Avenue, within a C2-1 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 1957 when, under BSA Cal. No. 1008-55-BZ, the Board granted a variance for a gasoline service station with accessory uses for a term of 15 years, to expire January 22, 1972; and

WHEREAS, on December 10, 1957, the Board granted an amendment to permit changes to the size and number of curb cuts as well as the design of the fences at the site; and

WHEREAS, most recently, on August 10, 1999, under the subject calendar number, the Board granted a special permit under ZR § 73-211, to permit the construction of an automotive service station with gas sales and a convenience store for a term of ten years, to expire on August 10, 2009; a condition of the grant was that a certificate of occupancy be obtained by August 10, 2000; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, additionally, the applicant requests an extension of time to obtain a new certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant to remove the placard sign that had been placed along the Forest Avenue frontage in the northwest corner of the site; and

WHEREAS, in response, the applicant notes that the sign belongs to the business located on the adjoining property, and submitted photographs reflecting that the sign has been removed from the site and placed on the adjoining property; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on August 10, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from August 10, 2009 to August 10, 2019, and to permit an extension of time to obtain a certificate of occupancy to August 17, 2011; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received April 14, 2010’-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on August 10, 2019;

THAT the above condition shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by August 17, 2011;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 520031126)

Adopted by the Board of Standards and Appeals, August 17, 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 38th

MINUTES

Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for continued hearing.

558-71-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for WB Management of NY LLC, owner.

SUBJECT – Application March 26, 2010 – Amendment to a previously granted Variance (§72-21) to permit the change of a UG6 eating and drinking establishment to a UG6 retail use without limitation to a single use; minor reduction in floor area; increase accessory parking and increase to the height of the building façade. R3-1 zoning district.

PREMISES AFFECTED – 1949 Richmond Avenue, east side of Richmond Avenue at intersection with Amsterdam Place, Block 2030, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for continued hearing.

637-74-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 56th Realty LLC c/o Glenwood Management Corporation, owner.

SUBJECT – Application July 1, 2010 – Extension of Term for transient parking in a garage accessory to a multiple dwelling which expired on May 6, 2010; Waiver of the Rules. C1-9(TA)/R8 zoning district.

PREMISES AFFECTED – 1048-62 Second Avenue, East 55th Street, East 56th Street, First Avenue and Second Avenue, Block 1348, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Jim Power.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for continued hearing.

221-97-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for DFD Development Limited Partnership, owner; Crunch Kips Bay LLC, lessee.

SUBJECT – Application April 29, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a physical culture establishment which expired on June 16, 2008; Amendment for a change in ownership from *Bally Total Fitness* to *Crunch Fitness*; Waiver of the Rules. C2-5/R-8 zoning district.

PREMISES AFFECTED – 550 Second Avenue, east side of Second Avenue at southeast corner of East 30th Street, Block 936, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ellen Hay.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for decision, hearing closed.

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 40th and East 41st Streets, Block 1312, Lots 1401, 1456, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for decision, hearing closed.

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*) 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 12th Street, Block 615, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for decision, hearing

MINUTES

closed.

136-01-BZ

APPLICANT –Eric Palatnik, P.C., for Cel Net Holdings Corporation, owners.

SUBJECT – Application June 23, 2010 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy for a Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements which expired on July 12, 2010. M1-4/R7A(LIC) zoning district.

PREMISES AFFECTED – 11-11 44th Drive, east of 11th Street, Block 447, Lot 13, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Trevis Savage

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for continued hearing.

APPEALS CALENDAR

71-10-A thru 84-10-A

APPLICANT – Eric Palatnik, P.C., for Brighton Street, LLC, owners.

SUBJECT – Application May 10, 2010 – Appeals seeking a determination that the owner has acquired a vested right to complete construction under the prior R3-2 zoning district. R3-1 zoning district.

PREMISES AFFECTED – 102-118 Turner Street and 1661 to 1669 Woodrow Road, between Crabtree Avenue and Woodrow Road, Block 7105, Lots 181 thru 188 and 2 thru 8, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction on 14 single-family attached homes under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on August 3, 2010, after due notice by publication in *The City Record*, and then to decision on August 17, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Queens, recommends

approval of the application; and

WHEREAS, New York State Senator Andrew J. Lanza provided written testimony in opposition to this application; and

WHEREAS, the Civic Association of the Sandy Ground Area provided written testimony in opposition to this application; and

WHEREAS, the site is located on the northwest corner of Turner Street and Woodrow Street and has a lot area of 44,069 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with nine three-story single-family attached homes and five two-story single-family attached homes; and

WHEREAS, the Board notes that the homes are located on a single zoning lot that has been subdivided into 15 separate tentative tax lots; with one tax lot designated for off-street parking; and

WHEREAS, the subject site is currently located within an R3-1 zoning district, but was formerly located within an R3-2 zoning district; and

WHEREAS, the proposed homes comply with the former R3-2 zoning district parameters; and

WHEREAS, however, on February 3, 2010 (the “Enactment Date”), the City Council voted to adopt the Sandy Ground Rezoning, which rezoned the site to R3-1, as noted above; and

WHEREAS, the homes do not comply with the R3-1 zoning district parameters because attached homes are not permitted in R3-1 districts; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the Board notes that New Building Permit Nos. 520010737-01-NB, 520010728-01-NB, 520010719-01-NB, 520010700-01-NB, 520010746-01-NB, 520010755-01-NB, 520010764-01-NB, 520010773-01-NB, 520010782-01-NB, 520004049-01-NB, 520004691-01-NB, 520004717-01-NB, 520004708-01-NB and 520004030-01-NB (the “New Building Permits”), which authorized the development of the 14 single-family attached homes pursuant to R3-2 zoning district regulations were issued on February 3, 2010; and

WHEREAS, the Department of Buildings (“DOB”) issued a Stop Work Order on March 29, 2010 (“March 29th SWO”), stating that work permits were not obtained prior to the Enactment Date; and

WHEREAS, the applicant submitted a correspondence from DOB acknowledging that the New Building Permits were issued prior to the enactment of the zoning amendment and rescinding the March 29th SWO; and

WHEREAS, the New Building Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new R3-1 zoning district regulations and DOB determined that the foundations were not complete; and

WHEREAS, in addition, DOB issued a Stop Work Order dated April 9, 2010 (“April 9th SWO”), which states that all work on foundations was not complete before the effective date of the zoning amendment, and therefore DOB could not vest the project in accordance with ZR §§ 11-31 and 11-33; and

MINUTES

WHEREAS, by letter dated July 28, 2010, DOB stated that the New Building Permits were lawfully issued, authorizing construction of the building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to substantial construction, the applicant states that prior to the Enactment Date, the owner had completed the following: 100 percent of excavation work and the pouring of 321.5 cubic yards of concrete, or 91 percent of the concrete required for the foundation; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site, concrete pour tickets, a construction log, and copies of cancelled checks; and

WHEREAS, at hearing, the Board directed the applicant to address DOB's statement in the April 9th SWO that the concrete poured at the site was contrary to what was specified on approved documents, because the applicant's TR-2 and TR-3 forms stated that the concrete was to be at a strength of 4,000 psi, while the concrete delivery tickets indicated a strength of 3,000 psi; and

WHEREAS, in response, the applicant submitted a post approval amendment dated July 14, 2010, reflecting DOB's approval of the change in concrete strength from 4,000 psi to 2,500 psi; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$610,454, including hard and soft costs and irrevocable commitments, out of \$2,862,346 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, cancelled checks, and concrete pour tickets; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 21 percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that, because attached homes are not permitted in the new R3-1 zoning district, if development proceeded under the new zoning, the applicant would have to either relocate the existing foundations, or remove them entirely; and

WHEREAS, the applicant submitted an as-of-right scenario reflecting that if the owner demolished the existing foundations and built in accordance with the new zoning, a maximum of 11 homes (ten semi-detached homes and one detached home) could be constructed, resulting in a loss of \$655,354; and

WHEREAS, the applicant submitted a second as-of-right scenario reflecting that if the owner salvaged and re-used portions of the existing foundations for the development, it would decrease the allowable dwelling unity and result in the construction of ten homes (eight semi-detached homes and two detached homes), resulting in a loss of \$811,594; and

WHEREAS, the Board agrees that the reduction in the number of homes capable of being built on the site, coupled with the need to redesign and the loss of actual expenditures that could not be recouped, constitutes a serious economic loss, and that the supporting data submitted by the applicant

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supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Enactment Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of the New Building Permits associated with DOB Application Nos. 520010737-01-NB, 520010728-01-NB, 520010719-01-NB, 520010700-01-NB, 520010746-01-NB, 520010755-01-NB, 520010764-01-NB, 520010773-01-NB, 520010782-01-NB, 520004049-01-NB, 520004691-01-NB, 520004717-01-NB, 520004708-01-NB and 520004030-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, August 17, 2010.

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 233rd 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 September 21, 2010, at 10 A.M., for continued hearing.

110-10-BZY

APPLICANT – Cozen O'Connor, for Landmark Developers of Rockaway, owners.

SUBJECT – Application June 18, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning. R5A zoning district

PREMISES AFFECTED – 93-06 Shore Front Parkway, north side of Shore Front Parkway from B.94th to B.93rd Street, Block 16130, Lot 11, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Peter Geis

ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for continued hearing.

123-10-A

APPLICANT – Fire Department of the city of New York

OWNER – DiLorenzo Realty Corporation

LESSEES – Flair Display Incorporated

SUBJECT – Application July 6, 2010 – Application to modify Certificate of Occupancy to require automatic wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 3931 Mulvey Avenue, 301.75' north of East 233rd Street. Block 4972, Lot 60, Borough of the Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto.

For Opposition: Joel A. Miele Jr.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for continued hearing.

124-10-A

APPLICANT – Fire Department of the city of New York

OWNER – DiLorenzo Realty Corporation

LESSEES – Flair Display Incorporated

SUBJECT – Application July 6, 2010 – Application to modify Certificate of Occupancy to require automatic wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 3927 Mulvey Avenue, 301.75' north of East 233rd Street. Block 4972, Lot 162, Borough of the Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto.

For Opposition: Joel A. Miele Jr. and Gene DeLorenzo.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 17, 2010
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

254-09-BZ thru 256-09-BZ

APPLICANT – Ivan F. Khoury, for Kearney Realty Corporation, owner.

SUBJECT – Application September 4, 2009 – Variance (§72-21) to legalize three existing homes, contrary to front yard (§23-45) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 101-03/05/07 Astoria Boulevard aka 27-31 Kearney Street, north side of Astoria Boulevard & northeasterly side of Kearney Street, Block 1659, Lot 51, 53, 56, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Ivan F. Khoury.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated November 17, 2009, acting on Department of Buildings Application Nos. 401716381, 401716407, and 401719486, reads in pertinent part:

- “1) ZR 23-45 Front yard provided for proposed new buildings is contrary to ZR 23-45(a)
- 2) ZR 23-47 Show compliance with ZR 23-47 for required rear yard;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-2 zoning district, the construction of two two-story two-family homes and one two-story single-family home that do not provide the required front and rear yards, contrary to ZR §§ 23-45 and 23-47; and

WHEREAS, a public hearing was held on this application on March 9, 2010, after due notice by publication in *The City Record*, with continued hearings on June 8, 2010 and July 13, 2010, and then to decision on August 17, 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 3, Queens, recommends approval of this application, with the condition that the

applicant (1) submit planting plans to the Community Board for review and approval; and (2) repair damages incurred to the foundation wall of the neighboring property; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application, with the condition that the applicant comply with the yard planting requirements of the Zoning Resolution; and

WHEREAS, the site is located on the north side of Astoria Boulevard and the east side of Kearney Street, within an R3-2 zoning district; and

WHEREAS, the site consists of a single zoning lot comprising four separate tax lots: Lot 51, Lot 52, Lot 54 and Lot 56; and

WHEREAS, the site has an irregular triangular shape, with 121'-11" of frontage along Astoria Boulevard, 21'-11" of frontage along Kearney Street, a depth ranging between 23'-2" and 105'-0", and a total lot area of 7,577 sq. ft.; and

WHEREAS, the applicant seeks to legalize the three attached homes that have been constructed at the site, consisting of two two-story two-family homes and one two-story single-family home; and

WHEREAS, the proposed homes will have the following complying parameters: a total floor area of 4,493 sq. ft. (0.59 FAR, permitted under the attic rule); open space of 65 percent; lot coverage of 35 percent; a wall height of 21'-0"; a total height of 23'-6"; a side yard with a width of 8'-0" along the western lot line; and a side yard with a width of 32'-3" along the eastern lot line; and

WHEREAS, however, the applicant proposes to provide a front yard with a minimum depth of 10'-0" (a front yard with a minimum depth of 15'-0" is required), and a rear yard with a minimum depth of 1'-9" (a rear yard with a minimum depth of 30'-0" is required); and

WHEREAS, the Board notes that the applicant initially proposed homes with building envelopes that encroached into the front yard at both the first and second floors; and

WHEREAS, at hearing, the Board directed the applicant to minimize the front yard encroachment of the three homes; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the homes will be setback above the first floor, such that there will not be a front yard encroachment above the first floor; and

WHEREAS, the applicant states that the requested yard relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the lot's irregular shape; and

WHEREAS, the applicant states that the site has an irregular triangular shape, with 121'-11" of frontage along Astoria Boulevard, 21'-11" of frontage along Kearney Street, and a depth ranging between 23'-2" and 105'-0"; and

WHEREAS, the applicant represents that, given the irregular shape of the lot, the site cannot feasibly accommodate a complying development; and

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WHEREAS, specifically, the applicant submitted as-of-right plans reflecting that, as a consequence of its irregular shape, a complying development would result in triangular-shaped homes with inefficient floor plates; and

WHEREAS, accordingly, the applicant represents that the yard waivers are necessary to create a development with reasonable floor plates; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable yard regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) an as-of-right five-unit multiple dwelling; (2) an as-of-right alternative with three two and one-half story single-family homes; and (3) the proposed scenario; and

WHEREAS, the study concluded that only the proposed scenario would realize a reasonable return; and

WHEREAS, based upon its review of the applicant's financial analysis, the Board has determined that because of the subject site's unique physical condition, there is no reasonable possibility that use in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized predominantly by two-story single-family homes; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that that it complies with all relevant bulk regulations other than front and rear yards; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R3-2 zoning district regulations for FAR, side yards, open space, lot coverage, height, and parking; and

WHEREAS, the applicant states that the proposed front yard with a minimum width of 10'-0" is located along the Astoria Boulevard frontage; and

WHEREAS, the applicant further states that Astoria Boulevard is an eight lane arterial roadway with a width of 130 feet; therefore, the proposed front yards will not impact the properties located across from the subject site on Astoria Boulevard; and

WHEREAS, the applicant further states that the lot immediately adjacent to the east of the subject site on Astoria Boulevard is an open commercial yard, and the only other lot on the subject block with frontage on Astoria Boulevard is a one-story commercial building that provides less than a 10'-0" deep yard along Astoria Boulevard; and

WHEREAS, as to the requests of the Community Board and Borough President related to planting at the site, the Board agrees that the applicant must comply with the planting requirements of ZR § 23-451; and

WHEREAS, as to the Community Board's request that the applicant repair damages incurred to the adjacent property, the Board notes that concerns regarding property damage are not within the purview of the Board's analysis under ZR § 72-

21 and it is not within the Board's jurisdiction to resolve disputes between property owners; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's irregular shape; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

WHEREAS, the Board notes that the applicant initially proposed homes with building envelopes that encroached into the front yard at both the first and second floors; and

WHEREAS, at hearing, the Board directed the applicant to minimize the front yard encroachment of the three homes; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the homes will be setback above the first floor, such that there will not be a front yard encroachment above the first floor; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except for front and rear yards is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, in an R3-2 zoning district, the construction of two two-story two-family homes and one two-story single-family home that do not provide the required front and rear yards, contrary to ZR §§ 23-45 and 23-47; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 30, 2010"-(8) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 4,493 sq. ft. of floor area (0.59 FAR), a side yard with a minimum width of 8'-0" along the western lot line; a side yard with a minimum width of 32'-3" along the eastern lot line; a front yard with a minimum depth of 10'-0"; a rear yard with a minimum depth of 1'-9"; a minimum open space of 65 percent; a maximum lot coverage of 35 percent; a wall height of 21'-0"; a total height of 23'-0"; and parking for five cars, as per the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved

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only for the portions related to the specific relief granted;

THAT significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 17, 2010.

59-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Kaufman 8th Avenue Associates, owner; Bension Salon Inc., lessee.

SUBJECT – Application April 23, 2010 – Special Permit (73-36) to allow a physical culture establishment (*Luxe Den Salon & Spa*). M1-6/C6-4M zoning district.

PREMISES AFFECTED – 519 Eighth Avenue, southwest corner of West 36th Street and Eighth Avenue, Block 759, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 25, 2010, acting on Department of Buildings Application No. 120255204, reads in pertinent part:

“ZR 42-10. The proposed physical culture establishment is not permitted as-of-right in the manufacturing district and is contrary to the ZR;”
and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within an M1-6 zoning district and partially within a C6-4M zoning district, within the Special Garment Center District, the operation of a physical culture establishment (“PCE”) on the cellar, first floor and mezzanine of a 25-story mixed-use commercial/manufacturing building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 8, 2010 after due notice by publication in *The City Record*, with a continued hearing on July 27, 2010, and then to decision on August 17, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, states that it has no objection to this application; and

WHEREAS, the subject site is located on the southwest corner of Eighth Avenue and West 36th Street, partially within an M1-6 zoning district and partially within a C6-4M zoning district, within the Special Garment Center District; and

WHEREAS, the site is occupied by a 25-story mixed-use commercial/manufacturing building; and

WHEREAS, the proposed PCE will occupy a total floor area of 3,160 sq. ft. on the first floor and mezzanine, with an additional 3,275 sq. ft. of floor space located in the cellar; and

WHEREAS, the PCE will be operated as Luxe Den Salon and Spa; and

WHEREAS, the proposed hours of operation are 8:00 a.m. to 10:00 p.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for the practice of massage; and

WHEREAS, at hearing, the Board questioned how handicap access will be provided to the cellar level; and

WHEREAS, in response, the applicant states that it is requesting a waiver from the Department of Buildings (“DOB”) of the accessibility requirement for the cellar level due to the small size of the PCE’s cellar space and the hardship of providing access to that space; and

WHEREAS, the applicant further states that if the waiver request is not granted by DOB, it will install a wheelchair lift providing direct access from the PCE’s first floor to its cellar level; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 0BSA066M, dated May 25, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources;

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Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within an M1-6 zoning district and partially within a C6-4M zoning district, within the Special Garment Center District, the operation of a physical culture establishment at the cellar, first floor and mezzanine of an existing 25-story mixed-use commercial/manufacturing building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 19, 2010" - Four (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on August 17, 2020;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 17, 2010.

64-10-BZ

APPLICANT – Law Office Fredrick A. Becker, for Nechama Sonnenschine and Harry Sonnenschine, owners. SUBJECT – Application April 29, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yards (§23-461 & 23-48) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1253 East 29th Street, east side of East 29th Street, between Avenue L and Avenue M, Block 7647, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 23, 2010, acting on Department of Buildings Application No. 320118608, reads:

"Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space ratio.

Proposed plans are contrary to ZR 23-461 and 23-48 in that the proposed straight line extension of the side yard provides less than the minimum required side yard.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on June 15, 2010 after due notice by publication in *The City Record*, with a continued hearing on July 27, 2010, and then to decision on August 17, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application, with the condition that the FAR be no greater than 1.0; and

WHEREAS, the subject site is located on the east side of East 29th Street, between Avenue M and Avenue L, within an R2 zoning district; and

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WHEREAS, the subject site has a total lot area of 3,150 sq. ft., and is occupied by a single-family home with a floor area of 2,110 sq. ft. (0.67 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,110 sq. ft. (0.67 FAR) to 3,170 sq. ft. (1.01 FAR); the maximum permitted floor area is 1,575 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 61 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 3'-0" along the northern lot line (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 22'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 14, 2010"-(10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,170 sq. ft. (1.01 FAR); an open space ratio of approximately 61 percent; a front yard with a minimum depth of 13'-6"; a side yard with a minimum width of 6'-9½" along the southern lot line; a side yard with a minimum width of 3'-0" along the northern lot line; and a rear yard with a minimum depth of 22'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, August 17, 2010.

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 – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 27, 2010, acting on Department of Buildings Application No. 320115790, reads in pertinent part:

- “1. Proposed floor area ratio is contrary to ZR 23-141.
2. Proposed open space is contrary to ZR 23-141.
3. Proposed lot coverage is contrary to ZR 23-141.
4. Proposed rear yard is contrary to ZR 23-47;”
and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio

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("FAR"), open space, lot coverage, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on June 22, 2010 after due notice by publication in *The City Record*, with a continued hearing on August 3, 2010, and then to decision on August 17, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the east side of Beaumont Street, between Hampton Avenue and Shore Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,227 sq. ft. (0.56 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 2,227 sq. ft. (0.56 FAR) to 4,000 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of approximately 61 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of approximately 39 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, at hearing, the Board questioned why the applicant was removing the existing cellar from the home; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the site is located within a flood zone and the cellar is below the flood plane elevation; therefore, the existing cellar is being eliminated and converted into a crawl space in accordance with the Building Code requirement that neither usable space nor mechanical space be located below the flood plane elevation; and

WHEREAS, at hearing, the Board questioned how much of the existing home is being retained; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that all of the perimeter and area of exterior foundation walls and the majority of the perimeter and area of exterior first floor walls are being retained; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 3, 2010"-(1) sheet and "June 8, 2010"-(9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,000 sq. ft. (1.0 FAR); an open space of approximately 61 percent; a lot coverage of approximately 39 percent; a front yard with a depth of 16'-11"; a side yard with a minimum width of 8'-0" along the southern lot line; a side yard with a minimum width of 5'-0" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, August 17, 2010.

MINUTES

93-10-BZ

CEQR #10-BSA-074K

APPLICANT – Harold Weinberg, P.E. for Paul Grosman, owner; Williamsburg Charter School, lessee.

SUBJECT – Application May 25, 2010 – Variance (§72-21) to convert the ground floor of a community facility (*Williamsburg Charter School*) from parking to school use, contrary to floor area regulations (§43-122).

PREMISES AFFECTED – 198 Varet Street, south side 170'6" west of White Street, between White Street and Bushwick Avenue. Block 3117, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Harold Weimberg and Frank Sellitto.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 12, 2010, acting on Department of Buildings Application No. 301100671, reads in pertinent part:

“The altered arrangement of the 1st floor is contrary to BSA Cal. No. 43-09-BZ, in an M1-2 zoning district which causes an increase in the FAR making this change to the building non-complying as to bulk regulations and is referred back to the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-2 zoning district, the expansion of floor area-generating uses on the first floor of an existing eight-story school building (Use Group 3), which does not comply with zoning regulations for floor area ratio (“FAR”), contrary to ZR § 43-122; and

WHEREAS, a public hearing was held on this application on August 3, 2010, after due notice by publication in the *City Record*, and then to decision on August 17, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of the application, with the condition that the site not be used for residential uses; and

WHEREAS, this application is brought on behalf of The Williamsburg Charter High School (the “School”), a not for profit educational institution; and

WHEREAS, the site is located on the south side of Varet Street, between White Street and Bushwick Avenue, in an M1-2 zoning district; and

WHEREAS, the site has a lot area of 21,817 sq. ft.; and

WHEREAS, the site is occupied by an eight-story building which is operated by the School; and

WHEREAS, on January 26, 2010, under BSA Cal. No. 43-09-BZ, the Board granted a special permit to allow the

School to occupy the existing building, with a total floor area of 104,722 sq. ft. (4.38 FAR); and

WHEREAS, the applicant notes that the plans approved under BSA Cal. No. 43-09-BZ reflect a parking area, which is exempt from the floor area calculations, located in a portion of the first floor; and

WHEREAS, the applicant now proposes to occupy the entire first floor of the subject building with school uses, which will increase the floor area to 111,433 sq. ft. (5.11 FAR); the maximum permitted FAR for community facilities located in the subject M1-2 zoning district is 4.8; and

WHEREAS, the proposed first floor will be occupied by a fitness center, a food court, a kitchen, a school store, art rooms, and offices; and

WHEREAS, the applicant states that the proposed use of the first floor is necessary to meet the School’s programmatic needs of providing a cafeteria and adequate space for physical education and performing/studio art; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant represents that the plans approved for the School under BSA Cal. No. 43-09-BZ did not include a cafeteria and provided inadequate physical education and performing/studio art space; and

WHEREAS, the applicant further represents that the School cannot accommodate cafeteria space and additional physical education and performing/studio art space while maintaining the remainder of the School’s program without expanding onto the entire first floor; and

WHEREAS, therefore, the applicant states that the requested floor area waiver is necessary to provide the school with the required cafeteria, physical education, and performing/studio art space; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution’s application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the School create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

MINUTES

WHEREAS, as to the surrounding uses, the Board notes that it issued a special permit pursuant to ZR § 73-19, to permit the operation of the School within the subject M1-2 zoning district; and

WHEREAS, as to the bulk, the applicant states that the subject floor area non-compliance only arises due to the change of use at the first floor from parking, which is exempt from the floor area calculations, to school use; and

WHEREAS, the applicant notes that the proposed change to school use at the first floor will not increase the envelope of the existing building and does not result in any other non-compliances with the underlying bulk regulations; and

WHEREAS, at hearing, the Board questioned how garbage pickup would take place at the site; and

WHEREAS, in response, the applicant states that regular garbage will be picked up twice per week while recyclables will be picked up once per week, and that the School will contract a private waste disposal company to pick up garbage on a more frequent basis if necessary in order to meet Department of Education requirements; and

WHEREAS, at hearing, the Board inquired about the impact that the removal of parking spaces from the first floor of the subject building would have on the surrounding streets; and

WHEREAS, in response, the applicant submitted a letter from the owner of the subject site stating that parking will be provided for 25 cars at another building he owns at 211 Cook Street, which is approximately one block from the subject site; and

WHEREAS, the Board notes that the School is not required to provide parking to compensate for the parking spaces that will be lost from the first floor; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waiver is the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 (ak); and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10BSA074K, dated May 26, 2010; and

WHEREAS, the EAS documents that the operation of the School would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-2 zoning district, the expansion of floor area-generating uses on the first floor of an existing eight-story school building (Use Group 3) which does not comply with zoning regulations for FAR, contrary to ZR § 43-122, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 25, 2010" – (5) sheets and "Received July 20, 2010" – (1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: a maximum floor area of 111,433 sq. ft. (5.11 FAR);

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 17, 2010.

277-07-BZ

APPLICANT – Miele Associates, LLP, for Barnik Associates LLC & Lama Holdings, LLC, owner.

SUBJECT – Application December 3, 2007 – Variance (§72-21) proposed to erect a one story automotive service

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station with accessory convenience store, contrary to §22-10. R3-1 zoning district
PREMISES AFFECTED – 165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R, Brewer Boulevard. Block 12318, Lot 10, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Hiram Rothkrug, Joel Miele, Jr., and Adam Degesalomo.

ACTION OF THE BOARD – Laid over to October 5, 2010, at 1:30 P.M., for continued 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 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue. Block 2582, Lots 10, 11, 110, 111 and 112, Borough of Bronx.

COMMUNITY BOARD # 1BX

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to October 5, 2010, at 1:30 P.M., for an adjourned hearing.

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radoncic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to October 5, 2010, at 1:30 P.M., for continued hearing.

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.

ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for deferred decision, hearing closed.

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

APPEARANCES –

For Applicant: Sandy Anagnostou.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for decision, hearing closed.

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 (*Planet Fitness*) 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

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for continued hearing.

86-10-BZ

APPLICANT – Sheldon Lobel, P.C., for STM Development, LLC, owners.

SUBJECT – Application May 12, 2010 – Special Permit (§§11-411 & 11-412) for the re-instatement of a previously granted Variance for a UG16 manufacturing use which expired on June 10, 1980; the legalization of 180 square foot enlargement at the rear of the building; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 93-08 95th Avenue, south side of

MINUTES

95th Avenue, Block 9036, Lot 3, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to
September 14, 2010, at 1:30 P.M., for decision, hearing
closed.

60-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Soho Thompson
Realty, LLC, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-
21) to allow a commercial use below the floor level of the
second story, contrary to §42-14(D)(2)(b). M1-5B zoning
district.

PREMISES AFFECTED – 54 Thompson Street, northeast
corner of Thompson Street and Broome Street, Block 488,
Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel and Barbara Cohen.

ACTION OF THE BOARD – Laid over to October
5, 2010, at 1:30 P.M., for continued hearing.

99-10-BZ

APPLICANT – Fridman Saks, LLP for Dora Weiss, owner.

SUBJECT – Application June 2, 2010 – Special Permit
(§73-622) for the in-Part legalization of construction into the
side yard on a corner lot and proposed enlargement to an
existing single family home, contrary to open space, lot
coverage and floor area (§23-141) and side yards (§23-461).
R3-2 zoning district.

PREMISES AFFECTED – 2302 Avenue S, Located on the
southeast corner of Avenue S and East 23rd Street. Block
7302, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Boris Saks.

ACTION OF THE BOARD – Laid over to
September 14, 2010, at 1:30 P.M., for continued hearing.

106-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Ka Won Realty
Corporation, owner; Harmony Spa, lessee.

SUBJECT – Application June 9, 2010 – Special Permit
(§73-36) to legalize a physical culture establishment
(*Harmony Spa*) on the third floor of an existing four-story
commercial building. M1-6 zoning district.

PREMISES AFFECTED – 240 West 38th Street, 3rd Floor,
Located on south side of West 38th Street between 7th and

8th Avenue. Block 787, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabethe Safian.

ACTION OF THE BOARD – Laid over to
September 21, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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September 1, 2010

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DOCKET

New Case Filed Up to August 24, 2010

153-10-A

101-01 39th Avenue, Between 101st Street and 102nd Street., Block 1767, Lot(s) 59,
Borough of **Queens, Community Board: 3**. Construction within the mapped stret, contary
to General City Law 35. R5 district.

**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings,
Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings,
Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building,
The Bronx; H.D.-Health Department; F.D.-Fire Department.**

CALENDAR

SEPTEMBER 21, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 21, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

826-86-BZ thru 828-86-BZ

APPLICANT – Eric Palatnik, for North Shore Tower Apartment, Inc., owner; Continental Communications, lessee.

SUBJECT – Application August 26, 2010 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Special Permit (§73-11) to allow non-accessory radio towers and transmitting equipment on the roof of a multiple dwelling (*North Shore Towers*) which expired on July 26, 2010. R3-2 zoning district.

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, northeast corner of 267th Street, Block 8489, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

855-87-BZ

APPLICANT – Glen V. Cutrona, AIA, for Michael Beck, owner; Mueller Distributing, lessee.

SUBJECT – Application June 15, 2010 – Amendment to a previously granted Variance (§72-21) to remove the term for a (UG16) warehouse with (UG6) offices on the mezzanine level. R3A zoning district.

PREMISES AFFECTED – 15 Irving Place, bound by Van Duzer Street and Delford Street, Block 639, Lot 10, Borough of Staten Island.

COMMUNITY BOARD #1SI

181-06-BZ

APPLICANT – Goldman Harris LLC, for 471 VE LLC c/o Vella Group, owner; 471 VE LLC c/o Vella Group, lessee.

SUBJECT – Application September 21, 2010 – Amendment to a previously granted Variance (§72-21) to change the permitted ground floor retail to residential in a nine story building. M1-5/Area B-2 (TMU) zoning district.

PREMISES AFFECTED – 471 Washington Street, southeast corner of Washington Street and Canal Street, Block 595, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEALS CALENDAR

137-08-A thru 139-08-A

APPLICANT – Philip L. Rampulla, for Joseph Noce, owner.
SUBJECT – Application May 5, 2008 – Proposed construction of a one family residence within the bed of a legally mapped street contrary to General City Law Section 35. R1-2 zoning district.

PREMISES AFFECTED – 50, 55, 60 Blackhorse Court, south side of Richmond Road, 176.26' south of Blackhorse Court, Block 4332, Lots 34, 28, 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

38-10-A

APPLICANT – Jack Lester, Esquire for Anthony Naletilic.
OWNER - K.J. Chung/Jesus Covent Church.

SUBJECT – Application March 33, 2010 – Appeal challenging the Department of Building's issuance of a building permit for a House of Worship that fails to meet the parking requirement under ZR §25-35.

PREMISES AFFECTED – 26-18 210th Street, corner lot on 27th Avenue and 210th Street, Block 5992, Lot 36, Borough of Queens.

COMMUNITY BOARD #11Q

SEPTEMBER 21, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 21, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

267-09-BZ

APPLICANT – NYC Department of Housing Preservation & Development for The City of New York, owner.

SUBJECT – Application September 18, 2009 – Variance (§72-21) to permit one eight-story residential building and one ten-story mixed-use building with residential units and ground floor retail use on Block 4007, Lot 15 and one ten-story mixed-use building with residential units and ground floor retail use on Block 3909, Lot 8. The proposal is contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 1155-75 East Tremont Avenue, (aka 1160 Lebanon Street). Block bounded by Lebanon Street to the north, Morris Park Avenue to the east, East Tremont Avenue to the south and Bronx Park Avenue to the west. Block 4007, Lot 15, Borough of Bronx.

COMMUNITY BOARD #6BX

CALENDAR

268-09-BZ

APPLICANT – NYC Department of Housing Preservation & Development for The City of New York, owner.

SUBJECT – Application September 18, 2009 – Variance (§72-21) to permit one eight-story residential building and one ten-story mixed-use building with residential units and ground floor retail use on Block 4007, Lot 15 and one ten-story mixed-use building with residential units and ground floor retail use on Block 3909, Lot 8. The proposal is contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 1157-67 East 178th Street, (aka 1176 East Tremont Avenue). Block bounded by East Tremont Avenue to the north, Morris Park Avenue to the east, East 178th Street to the south and Bronx Park Avenue to the west. Block 3909, Lot 8, Borough of Bronx.

COMMUNITY BOARD #6BX

89-10-BZ

APPLICANT – Francis R. Angelino, Esq., for National Sculpture Society, owner.

SUBJECT – Application May 13, 2010 – Variance (§72-21) to allow for a commercial use below the floor level of the second story, contrary to ZR §42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 53 Mercer Street, west side between Grand and Broome Streets, Block 474, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #2M

92-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Lancaster Incorporated, owners.

SUBJECT – Application May 20, 2010 – Variance (§72-21) to allow for the construction of an elevator in an existing residential building, contrary to floor area, open space, (ZR §23-142) and court regulations (ZR §23-85, §23-87). R7-2 zoning district.

PREMISES AFFECTED – 39 East 10th Street, north side of 10th Street, between University Place and Broadway, Block 562, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #2M

112-10-BZ

APPLICANT – Sheldon Lobel, P.C., for John Grant, owner.

SUBJECT – Application June 18, 2010 – Special Permit (§73-44) to permit reduction in required parking in connection with the second floor change of use from UG 16 to UG 6. M1-1 zoning district.

PREMISES AFFECTED – 915 Dean Street, north side of Dean Street between Classon and Grand Avenues, Block 1133, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #8BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, AUGUST 24, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Hinkson and Commissioner Montanez.
Absent: Commissioner Ottley-Brown.

SPECIAL ORDER CALENDAR

589-31-BZ

APPLICANT – Eric Palatnik, P.C., for Asha Ramnath, owner.

SUBJECT – Application March 5, 2010 – Amendment pursuant (§11-413) to permit the proposed change of use group from UG16 (Gasoline Service Station) to UG16 (Automotive Repair) with accessory used car sales. R3-2 zoning district.

PREMISES AFFECTED – 159-02 Meyer Avenue, intersection of Mayer Avenue, 159th Street, Linden Boulevard, Block 12196, Lot 1, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to permit a change of use from a gasoline service station (Use Group 16) to automotive repair with accessory used car sales (Use Group 16), pursuant to ZR § 11-413; and

WHEREAS, a public hearing was held on this application on June 8, 2010, after due notice by publication in the *City Record*, with continued hearings on July 13, 2010 and August 3, 2010, and then to decision on August 24, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and WHEREAS, Community Board 12, Queens, recommends disapproval of this application; and

WHEREAS, the site is located on a corner lot bounded by Meyer Avenue to the north, 159th Street to the west, and Linden Boulevard to the south, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 5,012 sq. ft.; and

WHEREAS, the site is occupied by a vacant one-story building which contains facilities for automotive repairs; and

WHEREAS, the Board has exercised jurisdiction over

the subject site since March 4, 1932 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station on the site, without a term; and

WHEREAS, subsequently, the grant has been amended by the Board at various times; and

WHEREAS, most recently, the grant was amended on January 12, 1937, to reflect an increase in the size of the zoning lot and to permit certain accessory uses; and

WHEREAS, the applicant now seeks an amendment to permit a change in use from a gasoline service station (Use Group 16) to an automotive repair establishment with accessory used car sales (Use Group 16); and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use; and

WHEREAS, the applicant initially proposed to legalize the currently existing building, which includes enlargements along the Meyer Avenue frontage and Linden Boulevard frontage which are contrary to the previously approved plans; and

WHEREAS, the Board notes that ZR § 11-413 does not authorize the Board to grant an enlargement of the existing building, and that ZR § 11-412, under which the Board is authorized to grant enlargements of buildings that were the subject of a use variance granted prior to December 15, 1961, explicitly states that “no enlargements shall be authorized for a new non-conforming use authorized under the provisions of Section 11-413 (Change of use);” and

WHEREAS, accordingly, the Board directed the applicant to remove the enlarged portions of the building along the Meyer Avenue frontage and the Linden Boulevard frontage; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the enlarged areas of the building have been removed; and

WHEREAS, at hearing, the Board raised concerns as to whether the site was large enough to support accessory used car sales; and

WHEREAS, in response, the applicant submitted revised plans reflecting the reduction in the number of spaces for the display of used cars from three to one, and represents that the inclusion of one space for accessory used car sales is minimal and is requested in order to allow the operator to sell cars on which he has performed repairs; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide additional landscaping and street trees on the site; and (2) limit the signage at the site to a single sign and confirm that the signage complies with C1 district regulations; and

WHEREAS, in response, the applicant submitted revised plans reflecting that landscaping will be provided along the Meyer Avenue and Linden Boulevard frontages, and an additional street tree will be provided along the Meyer Avenue frontage; and

WHEREAS, the revised plans also reflect that excess signage will be removed and the site will be limited to one sign, and the applicant submitted a signage analysis reflecting that the signage on the site complies with C1

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district regulations; and

WHEREAS, the Board finds that the proposed use will not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, accordingly, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-413.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, as adopted on March 4, 1932, to permit the change in use at the premises from a gasoline service station (Use Group 16) to an automotive repair establishment with accessory used car sales (Use Group 16) pursuant to ZR § 11-413, for a period of ten years, to expire on August 24, 2020; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received August 17, 2010"- (4) sheets; and *on further condition*:

THAT this grant shall be for a term of ten years, to expire on August 24, 2020;

THAT street trees shall be planted as per the BSA-approved plans;

THAT no more than one car at a time shall be displayed for used car sales on the site;

THAT all signage shall comply with C1 zoning district regulations and be limited to that indicated on the BSA-approved drawings;

THAT the hours of operation shall be: Monday through Friday, from 7:00 a.m. to 6:00 p.m.; and Saturday and Sunday, from 9:00 a.m. to 2:00 p.m.;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 410190378)

Adopted by the Board of Standards and Appeals, August 24, 2010.

736-45-BZ

APPLICANT – Walter T. Gorman, P.E., for Mildel Property Associates, LLC, owner; ExxonMobil Corporation, lessee. SUBJECT – Application May 6, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*Mobil*) which expires on March 17, 2011. C2-4/R8 zoning district.

PREMISES AFFECTED – 3740 Broadway, north east corner of West 155th Street, Block 2114, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Arthur Sullivan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for the continued use of a gasoline service station with accessory uses; and

WHEREAS, a public hearing was held on this application on August 3, 2010 after due notice by publication in *The City Record*, and then to decision on August 24, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the site is located on the northeast corner of the intersection at Broadway and 155th Street, within a C2-4 (R8) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 25, 1949 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station, lubritorium, auto laundry, and office; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on December 16, 2008, the Board granted an extension of term for 12 years from the expiration of the prior grant, to expire March 17, 2011, and amended the grant to legalize the conversion of the southwest portion of the service building to an accessory convenience store and the installation of a handicap access ramp in front of the convenience store; and

WHEREAS, the applicant now seeks an additional extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the Board notes that the New York State Department of Environmental Conservation ("DEC") recorded an active spill at this site, identified as Spill No. 8910288; DEC has issued a separate spill number for 3750 Broadway, identified as Spill No. 0109628, which is an apartment building affected by the release at 3740 Broadway; and

WHEREAS, in response, the applicant represents that a vapor abatement system has been operating at 3750 Broadway since 2002 to remove hydrocarbon vapors in the basement of the apartment building and will remain in operation until DEC determines that Spill Nos. 8910288 and

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0109628 can be closed out; and

WHEREAS, at hearing, the Board raised concerns about an open Fire Department violation at the site (No. 11128760M) and related summonses related to dispensing motor fuel without a valid certificate of fitness; and

WHEREAS, in response, the applicant submitted certificates of fitness for each of the three individuals who dispense gasoline at the subject site; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 25, 1949, so that as amended this portion of the resolution shall read: "to extend the term for an additional ten years from March 17, 2011, to expire on March 17, 2021; *on condition on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received May 6, 2010"- (6) sheets; and *on further condition*:

THAT the term of the grant shall expire on March 17, 2021;

THAT all signage shall comply with C2 zoning district regulations;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 120342076)

Adopted by the Board of Standards and Appeals August 24, 2010.

44-97-BZ

APPLICANT – Stuart A. Klein, Esq., for SDS Leonard, LLC, owner; Millennium Sports, LLC, lessee.

SUBJECT – Applications March 30, 2010 and March 18, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment which expired on October 28, 2007; Amendment of plans in sub-cellar; Waiver of the Rules. C6-2A zoning district.

PREMISES AFFECTED – 78-80 Leonard Street, between Broadway and Church Street, Block 173, Lot 19, 20, Borough of Manhattan.

COMMUNITY BOARD #1M

For Applicant: Abigail Patterson.

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on October 28, 2007; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 174-00-BZ for an extension of term and an amendment to a previously granted special permit for a PCE which operates in conjunction with the subject site; this application was granted on the date hereof and is addressed within a separate resolution; and

WHEREAS, a public hearing was held on this application on July 13, 2010, after due notice by publication in *The City Record*, with a continued hearing on August 3, 2010, and then to decision on August 24, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the PCE is located on the south side of Leonard Street, between Church Street and Broadway, within a C6-2A zoning district; and

WHEREAS, the subject portion of the PCE occupies a total of 4,533 sq. ft. of floor area on the first floor and mezzanine of a six-story mixed-use commercial/residential building, with an additional 10,106 sq. ft. of floor space located in the cellar and sub-cellar; and

WHEREAS, the applicant notes that the site operates in conjunction with the 79 Worth Street site as a single PCE that occupies a total floor space of 19,856 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 28, 1997 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, which expired on October 28, 2007; and

WHEREAS, on May 15, 2001, under BSA Cal. No. 174-00-BZ, the Board granted a special permit to allow the legalization of an addition to the subject PCE at 79 Worth Street, to operate in conjunction with the pre-existing PCE at 78-80 Leonard Street, which expired on October 28, 2007; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, at hearing, the Board question whether there were sound attenuation measures in place to buffer the PCE from the residential units located above the second floor; and

WHEREAS, in response, the applicant submitted revised plans reflecting the sound attenuation measures that have been installed at the site; and

WHEREAS, based upon its review of the record, the

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Board finds the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on October 28, 1997, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from October 28, 2007, to expire on October 28, 2017, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received July 10, 2010”-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 28, 2017;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 101395250)

Adopted by the Board of Standards and Appeals, August 24, 2010.

174-00-BZ

APPLICANT – Stuart A. Klein, Esq., for SDS Leonard, LLC, owner; Millennium Sports, LLC, lessee.

SUBJECT – Applications March 30, 2010 and March 18, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment which expired on October 28, 2007; Amendment of plans in sub-cellar; Waiver of the Rules. C6-2A zoning district.

PREMISES AFFECTED – 79 Worth Street, between Broadway and Church Street, Block 173, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #1M

For Applicant: Abigail Patterson.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on October 28, 2007, and an amendment to legalize interior modifications that are contrary to the previously-approved plans; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 44-97-BZ for an extension of term of a previously granted special permit for a PCE which operates in conjunction with the subject site; this application was granted on the date hereof and is addressed within a separate resolution; and

WHEREAS, a public hearing was held on this application on July 13, 2010, after due notice by publication in *The City Record* with a continued hearing on August 3, 2010, and then to decision on August 24, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the PCE is located on the north side of Worth Street, between Church Street and Broadway, within a C6-2A zoning district; and

WHEREAS, the subject portion of the PCE occupies a total of 5,217 sq. ft. of floor space located in the cellar and sub-cellar of a six-story mixed-use commercial/residential building; and

WHEREAS, the applicant notes that the site operates in conjunction with the 78-80 Leonard Street site as a single PCE that occupies a total floor space of 19,856 sq. ft.; and

WHEREAS, on October 28, 1997, under BSA Cal. No. 44-97-BZ, the Board granted a special permit for a PCE at 78-80 Leonard Street for a term of ten years, which expired on October 28, 2007; and

WHEREAS, on May 15, 2001, under the subject calendar number, the Board granted a special permit to allow the legalization of an addition to the PCE at the subject site, to operate in conjunction with the pre-existing PCE at 78-80 Leonard Street, which expired on October 28, 2007; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, the applicant also requests an amendment to legalize minor changes to the interior layout of the PCE; and

WHEREAS, at hearing, the Board question whether there were sound attenuation measures in place to buffer the PCE from the residential units located above the second floor; and

WHEREAS, in response, the applicant submitted revised plans reflecting the sound attenuation measures that have been installed at the site; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on May 15, 2001, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from October 28, 2007, to expire on October 28, 2017, and to permit the noted modifications to the approved plans, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received July 10, 2010”-(4) sheets; and *on further condition*:

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THAT the term of this grant shall expire on October 28, 2017;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 101395269)

Adopted by the Board of Standards and Appeals, August 24, 2010.

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 #ISI

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 Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted variance to permit the operation of an automotive repair shop (Use Group 16), and an amendment to extend the term to 15 years; and

WHEREAS, a public hearing was held on this application on June 22, 2010 after due notice by publication in *The City Record*, with a continued hearing on August 3, 2010, and then to decision on August 24, 2010; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application, with the condition that the applicant install signage indicating that parking is prohibited on the sidewalk; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the southwest corner of

Brighton Avenue and Sumner Place, within an R3A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 26, 1959 when, under BSA Cal. No. 455-58-BZ, the Board granted a variance to permit the reconstruction of a gasoline service station accessory building for a lubritorium, car wash, auto repairs mainly with hand tools, for a term of 15 years; and

WHEREAS, subsequently, the grant was extended and amended by the Board at various times; and

WHEREAS, on February 1, 2000, under the subject calendar number, the Board granted the reestablishment of the expired variance for an automotive service station, and permitted a change in use from a gasoline service station with auto repairs and washing to repairs only, for a term of five years; and

WHEREAS, most recently, on September 27, 2005, the Board granted an extension of term for an additional five years, which expired on February 1, 2010; and

WHEREAS, the applicant now seeks an additional extension of term; and

WHEREAS, the applicant also requests an amendment to permit the term to be extended from five years to 15 years; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted photographs reflecting that two signs have been installed at the site which prohibit parking on the sidewalk; and

WHEREAS, at hearing, the Board questioned whether the signage at the site complied with C1 district regulations; and

WHEREAS, in response, the applicant submitted a signage analysis reflecting that the signage on the site complies with C1 regulations; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the previously-approved variance 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 February 1, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of 15 years from February 1, 2010 to expire February 1, 2025; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of this grant shall expire on February 1, 2025;

THAT all signage shall comply with C1 zoning regulations;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning

MINUTES

Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB App. No. 520030001)

Adopted by the Board of Standards and Appeals, August 24, 2010.

752-29-BZ

APPLICANT – Jack Gamill, P.E. for Marial Associates of New Jersey, L.P., owner; Bay Ridge Honda, lessee.

SUBJECT – Application May 21, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of Automotive Repair and Dealership (*Honda*) which expired on April 22, 2010. C4-2 zoning district.

PREMISES AFFECTED – 8801-8809 4th Avenue, Block 6065, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Frank Sellitto.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for continued hearing.

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

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for continued hearing.

914-86-BZ

APPLICANT – Stuart A. Klein, Esq., for Union Temple of Brooklyn, owner; Eastern Athletic, Incorporation, lessee.

SUBJECT – Application March 31, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (*Eastern Athletic*) which expired on May 17, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on November 12, 1998; Amendment to the interior layout and the hours of operation; Waiver of the Rules. R8X zoning district.

PREMISES AFFECTED – 1-19 Eastern Parkway, north side of Eastern Parkway, between Plaza Street, east and Underhill Avenue, Block 1172, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Abigail Patterson.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for continued hearing.

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 portion of the lot fronting on King Street to allow a warehouse and storage use (UG 16) and to facilitate a tax lot subdivision; Extension of Term. 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: Elisabeth Safian.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for deferred decision.

214-00-BZ

APPLICANT – Harold Weinberg, for Caliv LLC, owner.

SUBJECT – Application October 10, 2008 – Extension of Time to obtain a Certificate of Occupancy for a Special Permit (§73-242) for an eating and drinking establishment; Extension of Term; Amendment to the site plan; and Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2777 Plumb 2nd Street, northeast corner of Harkness Avenue, Block 8841, Lot 500, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Frank Sellitto.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for continued hearing.

124-05-BZ

APPLICANT – Deirdre A. Carson, for The Estate of Armand P. Arman c/o 482 Greenwich, LLC, owner; 482 Greenwich, LLC (Joint Venture Partner), lessee.

SUBJECT – Application June 15, 2010 – Amendment to a Variance (§72-21) for the construction of a mixed-use building to allow an increase in dwelling units, increase in street wall height and reduction of overall building height; Extension of Time to Complete Construction which expires on September 12, 2010. C6-2A zoning district.

PREMISES AFFECTED – 382 Greenwich Street, northwest intersection of Greenwich and Canal Streets, Block 595, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Randall Miner, David Reck, CB #2, Deidra Carson.

For Opposition: John Sutter, Sal Rosenblatt.

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ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for continued hearing.

APPEALS CALENDAR

120-10-A

APPLICANT – Gary D. Lenhart, RA, for The Breezy Point Cooperative, Inc., owner; Kevin Kennedy, lessee.

SUBJECT – Application June 30, 2010 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street, contrary to General City Law Section 36, and upgrade of an existing non-complying private disposal system contrary to Department of Buildings policy. R4 zoning district.

PREMISES AFFECTED – 5 Devon Walk, east side of Devon Walk 21.06’ south of mapped Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary D. Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 25, 2010, acting on Department of Buildings Application No. 420176053, reads in pertinent part:

A-1 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) 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

A2- The proposed upgraded private disposal system is in the bed of the service lane contrary to Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on August 24, 2010, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated July 19, 2010, the Fire Department states that it has reviewed the subject proposal and has no objections provided the following conditions are met: the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code and the entire building be provided with interconnected

smoke alarms in accordance with Section 907.2.10 of the NYC Building Code; and

WHEREAS, in response, the applicant submitted a revised plot plan reflecting that the building will be fully sprinklered and will provide interconnected smoke alarms, as requested by the Fire Department; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated June 25, 2010, acting on Department of Buildings Application No. 420176053, 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 August 3, 2010”– one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the home shall be sprinklered and smoke alarms shall be installed 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, August 24, 2010.

43-08-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.

SUBJECT – Application February 28, 2008 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35. R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for adjourned hearing.

3-10-A & 4-10-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.

SUBJECT – Application January 5, 2010 – Proposed construction in the bed of mapped street contrary to the

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General City Law Section 35. R2A zoning district.
PREMISES AFFECTED – 144-25 Bayside Avenue and 29-46 145th Street, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for adjourned continued.

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.

SUBJECT – Application January 25, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district. R6 zoning district.

PREMISES AFFECTED – 1882 East 12th Street, west side, of East 12th Street, 75’ north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for deferred decision.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, AUGUST 24, 2010 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson and Commissioner Montanez.

Absent: Commissioner Ottley-Brown.

ZONING CALENDAR

14-09-BZ

CEQR # 09-BSA-066R

APPLICANT – Eric Palatnik, P.C., for Orenstein Brothers, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application January 26, 2009 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store and automotive laundry (UG 16B). C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2294 Forest Avenue, Southeast intersection of Forest Avenue and South Avenue, Block 1685, Lot 15, 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.4

Absent: Commissioner Ottley-Brown.1

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated July 27, 2010, acting on Department of Buildings Application Nos. 510063636 and 510063645, reads in pertinent part:

“ZR 32-10. Proposed automotive service station (Use Group 16B) with accessory uses is not permitted as of right in a C2-1/R3-2 zoning district, and requires a special permit by the New York City Board of Standards and Appeals pursuant to Section 73-211 of the Zoning Resolution;” and

WHEREAS, this is an application for a special permit under ZR § 73-211, on a site previously before the Board, to permit the proposed demolition of the existing automotive service station and the construction of a new automotive service station with an accessory convenience store and automobile laundry (Use Group 16), within a C2-1 (R3-2) zoning district; and

WHEREAS, a public hearing was held on this application on October 27, 2009, after due notice by publication in the *City Record*, with continued hearings on January 12, 2010, March 9, 2010, May 11, 2010 and July 13, 2010, and then to decision on August 24, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan,

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Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application, with the following conditions: (1) the northwest corner of the site be developed as a right-turn only lane for northeast bound traffic on South Avenue; (2) that a curb cut not be installed at the northwest corner of Forest Avenue; and (3) new curbs and sidewalks are constructed along the Wemple Street frontage, along with asphalt paving and internal landscaping buffering as necessary; and

WHEREAS, Staten Island Borough President James P. Molinaro recommends approval of this application; and

WHEREAS, the premises is located on a corner through lot bounded by Forest Avenue to the north, South Avenue to the west, and Wemple Street to the south, within a C2-1 (R3-2) zoning district; and

WHEREAS, the subject site has a total lot area of 47,847 sq. ft.; and

WHEREAS, there is currently an automobile service station occupying the Lot 20 portion of the site; and

WHEREAS, on November 14, 1972, under BSA Cal. No. 389-72-BZ, the Board granted a special permit pursuant to ZR § 73-211 to permit the construction of an automotive service station with accessory uses; and

WHEREAS, most recently, on September 25, 1990, the Board amended the grant to permit the change in design and arrangement of the automotive service station, the construction of a new steel canopy over two new self-serve gasoline pump islands, and to alter the existing office and sales area of the accessory building to accommodate an attendant's booth; and

WHEREAS, the applicant now seeks to demolish the existing automotive service station and replace it with an automotive service station with an accessory convenience store, an 864 sq. ft. accessory auto laundry, eight new fuel pumps, and on-site parking for 14 automobiles; and

WHEREAS, the required findings for the special permit for gasoline service stations in certain districts, pursuant to ZR § 73-211, include the following: (1) that the site is located within certain commercial zoning districts in which the longer dimension is at least 375 feet; (2) the site has a minimum lot area of 7,500 sq. ft.; (3) the site has a maximum lot area of 15,000 sq. ft. unless it is located on an arterial highway or a major street; (4) that any facilities for lubrication, minor repairs or washing be located within an enclosed building; (5) that five reservoir parking spaces be provided; (6) that means of ingress and egress are designed so as to cause minimum obstruction; (7) that screening be provided along any rear lot line or side lot line adjoining residential districts; and (8) that signage comply with applicable district regulations; and

WHEREAS, the applicant represents that the C2-1 zoning district that encompasses this site extends to the east for a distance exceeding the 375-ft. minimum required by ZR § 73-211; and

WHEREAS, the site's total lot area of 47,847 sq. ft. meets the minimum lot area requirement of ZR § 73-211;

and

WHEREAS, the applicant provided correspondence from the Department of City Planning stating that Forest Avenue is a "major street"; thus, the maximum lot area requirement of ZR § 73-211 does not apply to the subject site; and

WHEREAS, the applicant states that there are no facilities for lubrication or minor repairs proposed at the subject site, and that the proposed accessory auto laundry consists of a completely enclosed building; and

WHEREAS, at hearing, the Board questioned whether the proposed auto laundry fit within the definition of an "accessory use" under ZR § 12-10; specifically, the Board raised concerns as to whether the proposed auto laundry use is "clearly incidental to, and customarily found in connection with" the principal gasoline station use; and

WHEREAS, in support of the argument that an auto laundry use is customarily found in connection with a gasoline station, the applicant submitted a report on the car wash industry from the Internal Revenue Service (the "IRS Report"), which states that there are approximately 22,000 auto laundries in the United States and Canada, and that 65 percent of these sites include the sale of gasoline, reflecting that these two uses are commonly co-located; and

WHEREAS, as further evidence that an auto laundry use is customarily found in connection with gasoline stations, the applicant submitted a letter from the Exxon Mobil Construction Project Coordinator dated June 15, 2010, stating that it is customary for new automotive service stations to include accessory auto laundries, and that approximately 70 percent of service stations developed from 2001 to 2008 also included accessory auto laundries; and

WHEREAS, the applicant also submitted various examples of auto laundries that operate in conjunction with gasoline stations within New York City, as well as the plans for a number of gasoline stations in Massachusetts, New Hampshire, and Rhode Island which all include self-service fully automated auto laundries for a single car, and with an average size of approximately 1,150 sq. ft.; and

WHEREAS, the applicant states that the proposed self-service, fully automated, 864 sq. ft. auto laundry at the subject site is comparable to the auto laundries associated with the gas stations for which the applicant submitted plans to the Board; and

WHEREAS, as to the incidental nature of the proposed auto laundry use at the site, the applicant submitted a survey from a traffic consultant for a similar facility located at 231 Bay Street, Staten Island, which concludes that on weekdays only eight out of 801 cars that visited the facility (one percent) used the auto laundry during a 7:00 a.m. to 7:00 p.m. period, and on weekends only 18 out of 456 cars that visited the facility (four percent) used the auto laundry from a 10:00 a.m. to 5:00 p.m. period; and

WHEREAS, the survey conducted by the traffic consultant further reflected that the auto laundry was the primary use for only one of the cars that visited the site; and

WHEREAS, the applicant represents that the use of the subject site will be comparable to that of the 231 Bay Street

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site, in that the proposed auto laundry will generate a minimal number of trips compared to the trips generated by the gasoline service and convenience store; and

WHEREAS, in further support of the incidental nature of the proposed auto laundry, the applicant submitted a letter from the Exxon Mobil Construction Project Coordinator dated February 19, 2010, stating that the proposed auto laundry is anticipated to account for just seven percent of the total sales at the subject site, while gasoline sales and convenience store sales are expected to account for the remaining 93 percent of total sales; and

WHEREAS, additionally, the IRS Report submitted by the applicant states that many of the sites where auto laundries are located file with the IRS as a gasoline and/or service station, as their auto laundry use serves as a secondary source of business income; and

WHEREAS, the Board notes that the proposed auto laundry accounts for less than two percent of the total lot area of the site (864 sq. ft. out of 47,847 sq. ft.), and that the small size of the proposed auto laundry, both in and of itself and when compared to the total lot area, supports the applicant's claim that the use will be incidental to the primary automotive service station use; and

WHEREAS, the IRS Report submitted by the applicant also distinguishes self-serve auto laundries from full service auto laundries, noting that the former usually consist of single stall drive-in bays that are fully automated and have limited washing options, while the latter usually can service multiple cars simultaneously, are operated by attendants, and provide various washing options; and

WHEREAS, the applicant states that the features of the proposed auto laundry are consistent with the self-serve auto laundries referenced in the IRS Report, and that such self-serve auto laundry uses are more commonly found incidental to a gas station use due to their limited features and capacity, while full service auto laundries are more often primary uses; and

WHEREAS, specifically, the applicant states that the proposed auto laundry can be distinguished from full service auto laundries in that the proposed facility will accommodate a single car at a time, will be fully automated, will not provide attendants or a vacuum station, will offer exterior washing only, will occupy only 864 sq. ft. out of a total lot area of 47,847 sq. ft., and is anticipated to account for only approximately seven percent of total sales at the site; and

WHEREAS, the Board is persuaded by the evidence submitted by the applicant and agrees that the proposed auto laundry is an "accessory use" to the proposed automotive service station in the instant case; and

WHEREAS, in accepting that the proposed auto laundry is an accessory use to the automotive service station, the Board notes that its finding is based on the unique facts related to the physical conditions of the site as presented in the instant application, and that this decision does not have general applicability to any pending or future Board application; and

WHEREAS, as to the requirement under ZR § 73-211

that five reservoir spaces be provided on the site, the applicant submitted a site plan reflecting that five reservoir parking spaces could be accommodated on the site; and

WHEREAS, with respect to ingress and egress from the site, in response to concerns raised by the Community Board and Borough President, the applicant revised its plans to eliminate the westernmost curb cut on Forest Avenue, and have also eliminated the northernmost curb cut on South Avenue and added a curb cut on the west side of Wemple Street; and

WHEREAS, the applicant also submitted a traffic circulation plan and states that the proposed layout of the site and the revised ingress and egress points are designed to ensure that vehicular movement in and from the site can circulate with a minimum of obstruction of streets and sidewalks; and

WHEREAS, as to site screening, the applicant notes this requirement is inapplicable to the subject site because the side and rear lot lines front upon either a C2-1 zoning district or a street; and

WHEREAS, nevertheless, the Board directed the applicant to provide landscaping and screening at the site; and

WHEREAS, in response, the applicant submitted revised plans reflecting a 4'-0" landscape buffer along Wemple Street, the addition of nine street trees along the Forest Avenue, South Avenue, and Wemple Avenue frontages, as well as additional landscaping along the perimeter of the site; and

WHEREAS, as to signage, the applicant initially proposed 210 sq. ft. of total signage, but revised its signage plan during the course of hearings to reduce the proposed signage to a total surface area of 150 sq. ft., in accordance with the provisions of ZR § 73-211; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the signage at the site complies with C2-1 district regulations; and

WHEREAS, in response, the applicant states that the signage on the site complies with C2-1 regulations; and

WHEREAS, accordingly, the applicant has submitted sufficient evidence that the findings set forth at ZR § 73-211 have been met; and

WHEREAS, the applicant states that the proposed accessory convenience store is permitted as of right in a C2-1 zoning district; and

WHEREAS, the Board notes that Technical Policy and Procedure Notice (TPPN) # 10/99, provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the convenience store is contained within a completely enclosed building; and (ii) the convenience store has a maximum retail selling space of 2,500 square feet or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the convenience store will be located within the enclosed building and will have a retail selling space of less than 2,500 square feet; and

WHEREAS, thus, the Board notes that the

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convenience store qualifies as an accessory use pursuant to TPPN # 10/99; and

WHEREAS, the applicant represents that lighting will be designed so as to be directed at the site and away from adjacent uses; and

WHEREAS, at hearing, the Board questioned whether a wetlands permit is required from the Department of Environmental Conservation (“DEC”), due to the site’s location; and

WHEREAS, in response, the applicant submitted a letter from the DEC stating that the site is not located within DEC Freshwater Wetlands jurisdiction or Tidal Wetlands jurisdiction, and therefore no wetlands permits are required; and

WHEREAS, the Board notes that the reconstruction of the gasoline service station will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-211 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09-BSA-066R, dated January 26, 2009; and

WHEREAS, the EAS documents show that the continued operation of the gasoline service station would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the gasoline service station will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-211 and 73-03, to permit in a C2-1 (R3-2) zoning district, the proposed demolition of the existing automotive service station and the construction of a new automobile service station with an accessory convenience store and accessory automotive laundry (Use

Group 16); *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 26, 2010”-(2) sheets, “May 10, 2010”-(1) sheet and “June 23, 2010”-(1) sheet; and *on further condition*:

THAT signage shall comply with C2-1 zoning district regulations and be limited to that indicated on the BSA-approved plans;

THAT the accessory automobile laundry shall: (1) have a maximum size of 864 sq. ft.; (2) be a fully automated self-serve facility with no attendants; (3) service no more than one car at a time; and (4) offer exterior washing only;

THAT landscaping shall be provided and maintained as indicated on the BSA-approved plans;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT the site shall be maintained clean and free of debris and graffiti;

THAT substantial construction be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 24, 2010.

327-09-BZ

CEQR #10-BSA-034K

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.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough

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Commissioner, dated November 12, 2009, acting on Department of Buildings Application No. 320092662, reads in pertinent part:

“Proposed Use Group 3 school, within an M1-2 zoning district requires a special permit from the Board of Standards and Appeals, pursuant to ZR 73-19;” and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-2 zoning district, the proposed use and enlargement of an existing four-story building by a Use Group 3 school, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on March 23, 2010, after due notice by publication in the *City Record*, with continued hearings on May 18, 2010, June 22, 2010, and July 27, 2010, and then to decision on August 24, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Brooklyn, recommends disapproval of this application, citing safety concerns with locating a school at this location; and

WHEREAS, the application is brought on behalf of the Summit Academy Charter School (the “School”), a not-for-profit school; and

WHEREAS, the site is located on a corner lot bounded by Baltic Street to the north, Nevins Street to the east, and Butler Street to the south, within an M1-2 zoning district; and

WHEREAS, the site has a lot area of 37,500 sq. ft.; and

WHEREAS, the site is currently occupied by an existing non-complying four-story warehouse building (Use Group 16); and

WHEREAS, the applicant proposes to renovate and enlarge the existing building to allow a Use Group 3 school on the second through fourth floors and on a portion of the first floor, occupying 69,000 sq. ft. of floor area (1.84 FAR), and with partial first floor retail and a total floor area of 96,230 sq. ft. (2.56 FAR); and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-2 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that the proposed building will serve an estimated 291 students from sixth through eighth grade in year one, and approximately 45 employees, and is anticipated to eventually reach a full capacity of 600-700 students from sixth through 12th grade, with approximately 65 employees; and

WHEREAS, the applicant states that the School’s program requires a building with at least 77,000 sq. ft. of available space or a vacant site with a minimum lot area of 15,000 sq. ft.; and

WHEREAS, the applicant’s program for the School includes classrooms, art rooms, science rooms, computer labs, a cafeteria, a gymnasium, a library and administrative offices; and

WHEREAS, the applicant states that the School has an additional programmatic need to be located within Community School District 15; and

WHEREAS, the applicant further states that due to the School’s requirements and because the majority of the students are anticipated to live in Community School District 15, it conducted a search for a suitable location for the School in that area; and

WHEREAS, the applicant represents that it conducted a two-year search, during which it specifically evaluated the feasibility of three Brooklyn buildings: 505 Carroll Street; 1260 Atlantic Avenue; and 467 Court Street; and

WHEREAS, the applicant states that, of the three buildings it evaluated, only 467 Carroll Street is located in a zoning district where the School would be permitted as-of-right; and

WHEREAS, the applicant states that 467 Court Street is an existing school that has a maximum floor area of 30,000 sq. ft. and required significant capital improvements, and was therefore determined to be inadequate to meet the School’s needs; and

WHEREAS, the applicant also conducted a search of vacant land within the catchment area of the school, and specifically evaluated three vacant sites: 399 Third Avenue; 363 Fourth Avenue; and 22 Caton Place; and

WHEREAS, the applicant states that 399 Third Avenue is limited by its 9,580 sq. ft. lot area, and would result in floor plates that are too small to meet the School’s programmatic needs; 463 Fourth Avenue was found to be too expensive for the construction of a school; and 22 Caton Place, while within Community District 15, was found to be too distant from the neighborhoods in which the majority of the School’s student body resides, and was also determined to be unaffordable; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located directly across from an R6 zoning district, less than 100 feet to the north, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

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WHEREAS, the applicant states that an ambient noise survey was conducted at the site, which reflected that adequate separation from noise, traffic and other adverse effects of the surrounding M1-2 zoning district can be provided through the installation of double-glazed windows at the site; accordingly, the applicant states that double-glazed windows will be installed in the subject building, which will maintain an interior noise level below the 45 dBA level stipulated in the CEQR Interior Noise Level guidelines; and

WHEREAS, the applicant represents that adequate separation from noise is further maintained because the surrounding uses include a one-story parking garage to the south, a vacant lot to the east, a large residential development to the northeast, and a vacant lot directly across from the site at the corner of Nevins Street and Baltic Street; and

WHEREAS, the applicant further represents that, although there are two manufacturing uses adjacent to the west of the site and several more directly across from the site along Baltic Street, they consist primarily of one- and two-story manufacturing buildings with specialized businesses that would have a minimal impact on noise and traffic at the site; and

WHEREAS, the Board finds that the conditions surrounding the site and the building's construction will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-2 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that busing will be provided only for the sixth grade students, and that it anticipates approximately 70 percent of the students to walk to the School; and

WHEREAS, the applicant submitted a traffic safety survey, which recommends the following measures be taken to ensure the movement of traffic through the surrounding streets can be controlled so as to protect students traveling to and from the School: (1) signs for pedestrian crossing be installed at the intersection approaches for the intersections of Nevins Street at Butler Street and Nevins Street at Baltic Street; (2) crossing guards be provided at four intersections (Nevins Street at Butler Street, Nevins Street at Baltic Street, Bond Street at Butler Street, and Bond Street at Baltic Street) during the AM student arrival time period and the PM student dismissal time period; (3) crosswalks be marked with safety measures at the intersections of Nevins Street at Butler Street and Nevins Street at Baltic Street; and (4) the on-street parking regulation be modified for safer and easier drop-off/pick-up in front of the School for approximately 100 feet along Nevins Street, to reflect "No Parking 7:00 a.m. – 6:00 p.m. Monday through Friday;" and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of

Transportation ("DOT"); and

WHEREAS, by letter dated February 1, 2010, DOT states that it has no objection to the proposed school, and states that it will prepare a school safety map with signs and markings upon the approval and completion of the School; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA034K, dated August 23, 2010; 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials, air quality and noise impacts; 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 review and approval; and

WHEREAS, DEP reviewed the applicant's air quality assessment and screening analysis and determined that the proposed project will not result in significant air quality impacts from stationary and mobile sources; and

WHEREAS, based on the results of noise monitoring, a closed window condition with a minimum of 31 dBA window-wall attenuation and central air-conditioning shall be maintained in order to achieve an interior noise level of 45

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dBA; 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 §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a Use Group 3 school, on a site within an M1-2 zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 23, 2010" - (8) sheets and *on further condition*:

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT 31 dBA of window-wall noise attenuation with central air-conditioning and a closed window condition shall be provided in the subject building;

THAT crossing guards shall be stationed at the intersections of Nevins Street at Butler Street, Nevins Street at Baltic Street, Bond Street at Butler Street, and Bond Street at Baltic Street, during the AM student arrival time period and the PM student dismissal time period;

THAT prior to obtaining a Permanent Certificate of Occupancy, the following traffic safety measures shall be provided at the site, subject to DOT review and approval: (1) signs for pedestrian crossing at the intersection approaches for the intersections of Nevins Street at Butler Street and Nevins Street at Baltic Street; (2) crosswalks marked with safety measures at the intersections of Nevins Street at Butler Street and Nevins Street at Baltic Street; and (3) modification of the on-street parking regulation in front of the School for approximately 100 feet along Nevins Street, to reflect "No Parking 7:00 a.m. – 6:00 p.m. Monday through Friday;"

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August

24, 2010.

88-10-BZ

APPLICANT – Dennis D. Dell’Angelo, for Sarah Weiss, owner.

SUBJECT – Application May 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141) and side yards (§23-461). R-2 zoning district.

PREMISES AFFECTED – 1327 East 21st Street, south east corner of East 21st Street and Avenue L, Block 7639, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Marc Dell’Angelo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 29, 2010, acting on Department of Buildings Application No. 320127554, reads:

- “1. Proposed FAR and OSR constitutes an increase in the degree of existing non-compliance contrary to Sec. 23-141 of the NYC Zoning Resolution.
2. Proposed horizontal enlargement provides less than the required side yards contrary to Sec. 23-46 ZR;” 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 two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on July 13, 2010 after due notice by publication in *The City Record*, with a continued hearing on July 27, 2010, and then to decision on August 24, 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, recommended disapproval of the original version of this application; and

WHEREAS, the subject site is located on the southeast corner of East 21st Street and Avenue L, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of 3,875 sq. ft. (0.78 FAR); and

WHEREAS, the premises is within the boundaries of a

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designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 3,875 sq. ft. (0.78 FAR) to 4,855 sq. ft. (0.97 FAR); the maximum permitted floor area is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 61 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a side yard with a width of 4'-3¾" along the eastern lot line (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the applicant initially proposed to build a home with a floor area of 5,096 sq. ft. (1.02 FAR), an open space ratio of 57 percent, and a side yard with a width of 0'-9¾" along the eastern lot line; and

WHEREAS, at the Board's direction, the applicant reduced the size of the home to the current proposal; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the height of the proposed home is compatible with the character of the surrounding area; and

WHEREAS, in response, the applicant submitted photographs of a number of homes within a 200-ft. radius of the subject site, reflecting that the proposed height of approximately 40'-0", which is permitted as-of-right in the underlying zoning district, is comparable to that of the homes in the surrounding neighborhood; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a two-family home and its conversion to a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, and side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 13, 2010"-(4) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,855 sq. ft. (0.97 FAR); an open space ratio of approximately 61 percent; a side yard with

a minimum width of 4'-3¾" along the eastern lot line; and a side yard with a width of 23'-0" along the southern lot line, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, August 24, 2010.

98-10-BZ CEQR #10-BSA-075M

APPLICANT – Stuart A. Klein, Esq., for Geriann Tepedino, owner.

SUBJECT – Application June 1, 2010 – Special Permit (§73-621) to allow a rooftop addition to an existing five-story, mixed-use building, contrary to §111-111. Tribeca Mixed-Use Special District/M1-5 zoning district.

PREMISES AFFECTED – 44 Lisenard Street, between Church Street and Broadway, Block 194, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated May 19, 2010, acting on Department of Buildings Application No. 104807755, reads in pertinent part:

“Proposed enlargement requires a special permit under ZR Section 73-621 from the Board of Standards and Appeals”; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, in an M1-5 zoning district within the Tribeca Mixed-Use Special Purpose District (Area B1) and the Tribeca East Historic District, the proposed enlargement of an existing five-story mixed-use residential/ commercial condominium building, contrary to ZR § 111-111; and

WHEREAS, a public hearing was held on this

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application on August 3, 2010, after due notice by publication in *The City Record*, and then to decision on August 24, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is located on the south side of Lispenard Street, between Church Street and Broadway, in an M1-5 zoning district within the Tribeca Mixed-Use Special Purpose District Area B1 and the Tribeca East Historic District; and

WHEREAS, the subject site has a total lot area of 2,168 sq. ft., and is occupied by a five-story mixed-use residential/commercial condominium building with a floor area of 9,678 sq. ft. (4.46 FAR); and

WHEREAS, the applicant proposes to construct a one-story rooftop enlargement above the fifth floor; and

WHEREAS, the applicant seeks an increase in the total floor area from 9,678 sq. ft. (4.46 FAR), to 10,611 sq. ft. (4.89 FAR); the maximum floor area permitted is 10,840 sq. ft. (5.0 FAR); and

WHEREAS, the Board notes that ZR § 73-621 permits the enlargement of a building containing a residential use, such as the subject mixed-use commercial/residential building, if the following requirements are met: (1) the proposed FAR does not exceed the maximum permitted FAR by more than ten percent; and (2) the proposed enlargement creates no new non-compliance nor increases the amount or degree of any existing non-compliance; and

WHEREAS, the Board notes that the proposed enlargement complies with the zoning regulations for FAR in the underlying zoning district, and does not create any new non-compliances or increase the degree of any existing non-compliances since it complies with all height and setback, and yard requirements; and

WHEREAS, however, the applicant notes that ZR § 111-111(e) prohibits the enlargement of buildings containing loft dwellings except by special permit of the City Planning Commission pursuant to ZR § 111-51; and

WHEREAS, the applicant states that ZR § 111-51 only applies to buildings “[i]n Area B1, outside of historic districts designated by the Landmarks Preservation Commission;” and

WHEREAS, because ZR § 111-111 prohibits the enlargement of the subject building, which contains loft dwellings, and because the special permit under ZR § 111-51 does not cover the subject site, which is located within the Tribeca East Historic District, the applicant states that the subject application was filed pursuant to ZR § 73-621, to permit the enlargement of the subject building; and

WHEREAS, accordingly, the Board has determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of

Appropriateness from the Landmarks Preservation Commission approving the proposed enlargement, dated April 23, 2008; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03.

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA075M, dated July 23, 2010; 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration determination under 6 N.Y.C.R.R. Part 617.4 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 §§ 73-621 and 73-03, to permit, in an M1-5 zoning district within the Tribeca Mixed-Use Special Purpose District (Area B1) and the Tribeca East Historic District, the proposed enlargement of an existing five-story mixed-use residential/commercial condominium building, contrary to ZR § 111-111; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received August 24, 2010”– (6) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the

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building: six stories; a floor area of 10,611 sq. ft. (4.89 FAR); and a total height of 85'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed 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 plan(s)/configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, August 24, 2010.

129-07-BZ

APPLICANT – Gerald J. Caliendo, R.A., for Angel Gerasimou, owner.

SUBJECT – Application May 21, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to ZR §42-00. 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

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to October 19, 2010, at 1:30 P.M., for continued hearing.

130-07-BZ thru 134-07-BZ

APPLICANT – Gerald J. Caliendo, P.A., Angelo Gerasimou, owner.

SUBJECT – Application May 21, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to ZR §42-00. M1-4 zoning district.

PREMISES AFFECTED – 1501, 1503, 1505, 1507 Cooper Avenue, corner formed by west side of Cooper Avenue and Irving Avenue, Block 3542, Lots 1, 95, 94, 93, 92, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to October 19, 2010, at 1:30 P.M., for continued hearing.

210-07-BZ

APPLICANT – Eric Palatnik, P.C., for Gasper Nogara, owner.

SUBJECT – Application August 30, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Luquer Street, Northern side of Luquer Street between Columbia and Hicks Streets, Block 513, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 5, 2010, at 1:30 P.M., for adjourned hearing.

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

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to October 5, 2010, at 1:30 P.M., for continued hearing.

24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district.

PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9,11,12,23,24, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 1:30 P.M., for adjourned hearing.

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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 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 October 5, 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 (§ZR 72-21) to allow for a four story mixed use building contrary to use regulations. (ZR §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: Chris Wright.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to October 5, 2010, at 1:30 P.M., for decision, hearing closed.

189-09-BZ

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 19, 2010, at 1:30 P.M., for continued hearing.

190-09-A

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 19, 2010, at 1:30 P.M., for continued hearing.

297-09-BZ

APPLICANT – Marvin Mitzner, Esq., for 180 Ludlow Development LLC, owner.

SUBJECT – Application October 20, 2009 – Variance (§72-21) to allow for the conversion of a recently constructed commercial building for residential use, contrary to rear yard regulations (§23-47). C4-4A zoning district.

PREMISES AFFECTED – 180 Ludlow Street, east side of Ludlow Street approximately 125' south of East Houston Street, Block 412, Lot 48, 49, 50, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Ian Rasmussen.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to October 26, 2010, at 1:30 P.M., for decision, hearing closed.

305-09-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, for South Queens Boys & Girls Club, Inc., owner.

SUBJECT – Application November 5, 2009 – Variance (§72-21) to permit the enlargement of an existing community facility building (*South Queens Boys & Girls Club*) contrary to floor area (§33-121) and height (§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

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APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 1:30 P.M., for adjourned hearing.

21-10-BZ

APPLICANT – Richard Lobel, P.C., for Aquila Realty Company, Incorporated, owner.

SUBJECT – Application February 12, 2010 – Special Permit (§73-243) to legalize an eating and drinking establishment with a drive-through. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roelbling Avenue, aka 1590 Hutchison River Parkway, southeast corner of Roelbling Avenue and Hutchinson River Parkway, Block 5386, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Richard Lobel and Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for decision, hearing closed.

35-10-BZ

APPLICATION – Sheldon Lobel, PC for Yuriy Pirov, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to permit the legalization of an existing synagogue. The proposal is contrary to front yard (§24-34), side yard (§24-35) and rear yard (§24-36). R4 zoning district.

PREMISES AFFECTED – 144-11 77th Avenue, approximately 65 feet east of the northeast corner of Main Street and 77th Avenue. Block 6667, Lot 45, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to October 5, 2010, at 1:30 P.M., for continued hearing.

39-10-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) for the legalization of a single-family home, contrary to side yards (§23-461). R-5 zoning district.

PREMISES AFFECTED – 2032 East 17th Street, East 17th Street and Avenue T, Block 7321, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to September 21, 2010, at 1:30 P.M., for continued hearing.

47-10-BZ

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Coprporation, owner; Airgas-East, Incorporated, lessee.

SUBJECT – Application April 8, 2010 – Variance (§72-21) to allow for a manufacturing use in a residential district, contrary to ZR §22-00. M1-1/R3-2 zoning district.

PREMISES AFFECTED – 895 Zerega Avenue, aka 2352 Story Avenue, Block 3698, Lot 36, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik, Robert Pauls, E. Doug, Eric Megn and Mike Rao.

ACTION OF THE BOARD – Laid over to October 19, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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September 23, 2010

DIRECTORY

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121-10-A	25-50 Francis Lewis Boulevard, Queens
138-10-A	174-20 North Boundary Road, Queens

Afternoon Calendar592

Affecting Calendar Numbers:

21-10-BZ	2801 Roebling Avenue, Bronx
63-10-BZ	163-18 Jamaica Avenue, Queens
86-10-BZ	93-08 95 th Avenue, Queens
92-08-BZ	13 Crosby Street, Manhattan
6-09-BZ	24 Nelson Avenue, Staten Island
192-09-BZ	912 Broadway, Brooklyn
194-09-BZ	2113 Utica Avenue, Brooklyn
251-09-BZ	130-34 Hawtree Creek Road, Queens
29-10-BZ	22-32/36 31 st Street, Queens
43-10-BZ	23-70 Steinway Street, Queens
66-10-BZ	1618 Shore Boulevard, Brooklyn
85-10-BZ	309-311 East Fordham Road, Bronx
91-10-BZ	123 Coleridge Street, Brooklyn
95-10-BZ	2216 Quentin Road, Brooklyn
99-10-BZ	2302 Avenue S, Brooklyn
100-10-BZ	2512 Avenue R, Brooklyn
101-10-BZ	54 Crosby Street, Manhattan

DOCKET

New Case Filed Up to September 14, 2010

154-10-A

540 Bedford Avenue, Bedford Avenue between Ross & Wilson Streets., Block 2181, Lot(s) 35, Borough of **Brooklyn, Community Board: 1**. Appeal of Revocation R71 district.

155-10-BZ

149-61 Willets Point Boulevard, Corner parcel bound by Willets Point Boulevard, 150th Street and 24th Avenue., Block 4675, Lot(s) 34, Borough of **Queens, Community Board: 7**. Variance to allow mixed use building, contrary to use regulations. R3-1 district.

156-10-BZ

1204 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5295, Lot(s) 4, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR 23-47) and minimum distance between windows and lot lines (ZR 23-861) regulations. M1-2/R6A zoning district. M2-1 district.

157-10-BZ

1208 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5295, Lot(s) 104, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR 23-47) and minimum distance between windows and lot lines (ZR 23-861) regulations. M1-2/R6A zoning district.. M2-1 district.

158-10-BZ

1214 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5295, Lot(s) 105, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR 23-47) and minimum distance between windows and lot lines (ZR 23-861) regulations. M1-2/R6A zoning district. M2-1 district.

159-10-BZ

1220 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5295, Lot(s) 106, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR 23-47) and minimum distance between windows and lot lines (ZR 23-861) regulations. M1-2/R6A zoning district. M2-1 district.

160-10-BZ

1226 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5295, Lot(s) 107, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR 23-47) and minimum distance between windows and lot lines (ZR 23-861) regulations. M1-2/R6A zoning district. M2-1 district.

161-10-BZ

1232 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5295, Lot(s) 108, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR 23-47) and minimum distance between windows and lot lines (ZR 23-861) regulations. M1-2/R6A zoning district. M2-1 district.

162-10-BZ

1264 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5295, Lot(s) 111, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR 23-47) and minimum distance between windows and lot lines (ZR 23-861) regulations. M1-2/R6A zoning district. M2-1 district.

163-10-BZ

1270 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue, Block 5295, Lot(s) 112, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR 23-47) and minimum distance between windows and lot lines (ZR 23-861) regulations. M1-2/R6A zoning district. M2-1 district.

164-10-BZ

1276 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5295, Lot(s) 113, Borough of **Brooklyn, Community Board: 12**. Variance to allow residential building, contrary to use regulations. M2-1 district.

165-10-BZ

1304 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5300, Lot(s) 9, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR 23-47) and minimum distance between windows and lot lines (ZR 23-861) regulations. M1-2/R6A zoning district. M2-1

DOCKET

district.

166-10-BZ

1310 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5300, Lot(s) 109, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR §23-47) and minimum distance between windows and lot lines (ZR §23-861) regulations. M1-2/R6A zoning district. M2-1 district.

167-10-BZ

1316 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5300, Lot(s) 110, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR §23-47) and minimum distance between windows and lot lines (ZR §23-861) regulations. M1-2/R6A zoning district. M2-1 district.

168-10-BZ

1322 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5300, Lot(s) 111, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR §23-47) and minimum distance between windows and lot lines (ZR §23-861) regulations. M1-2/R6A zoning district. M2-1 district.

169-10-BZ

1328 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5300, Lot(s) 112, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR §23-47) and minimum distance between windows and lot lines (ZR §23-861) regulations. M1-2/R6A zoning district. M2-1 district.

170-10-BZ

1334 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5300, Lot(s) 113, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR §23-47) and minimum distance between windows and lot lines (ZR §23-861) regulations. M1-2/R6A zoning district. M2-1 district.

171-10-BZ

1362 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5300, Lot(s) 115, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR §23-47) and minimum distance between windows and lot lines (ZR §23-861) regulations. M1-2/R6A zoning district. M2-1 district.

172-10-BZ

1368 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue., Block 5295, Lot(s) 116, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR §23-47) and minimum distance between windows and lot lines (ZR §23-861) regulations. M1-2/R6A zoning district. M2-1 district.

173-10-BZ

65-06 Fresh Pond Road, West side of Fresh Pond Road 45.89' south of corner of Linden Street & Fresh Pond Road., Block 3526, Lot(s) 67, Borough of **Queens, Community Board: 5**. Special Permit (73-03) for proposed gym and physical culture establishment. C2-4 IN R6B district.

174-10-BZ

36-29 Bell Boulevard, Bell Boulevard, between 36th Avenue and 38th Avenue., Block 6176, Lot(s) 61 p/o 2, Borough of **Queens, Community Board: 11**. Special Permit to permit reduction in required parking. R4/C2-2 district.

175-10-BZ

3400 Baychester Avenue, Northeast corner of Baychester and Tillotson Avenue, Block 5257, Lot(s) 47, Borough of **Bronx, Community Board: 12**. Special Permit (§11-411) to permit the re-establishment of term of a previously approved Automotive Service Station (UG 16B) within a R4 zoning district. R4 district.

176-10-A

62 Brighton 2nd Place, Located on the east side of Brighton 2nd Place approximately 65 feet north of Brighton 2nd Lane., Block 8662, Lot(s) 155, Borough of **Brooklyn, Community Board: 13**. Construction not fronting a mapped street, contrary to General City Law 36. R6 district.

DOCKET

177-10-BZ

8 Orange Avenue, Southwesterly corner of the intersection of Decker Avenue and Orange Avenue., Block 1061, Lot(s) 72, Borough of **Staten Island, Community Board: 1.** Variance to allow a three-story, single family dwelling, contrary to bulk regulations. R3A district.

178-10-BZ

943 East 24th Street, East side of East 24th Street between Avenue I and Avenue J., Block 7588, Lot(s) 27, Borough of **Brooklyn, Community Board: 14.** Special Permit (§73-622) to legalize and for the enlargement of a single family home. R2 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

OCTOBER 5, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 5, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

26-94-BZ

APPLICANT – Rampulla Associates Architects, for Joseph D'Alessio, owner.

SUBJECT – Application July 29, 2010 – Extension of Term of a previously granted Special Permit (§73-242) for a (UG6) eating and drinking establishment which expires on June 6, 2011. C3A (SSRD) zoning district.

PREMISES AFFECTED – 141 Mansion Avenue, west of McKee Avenue, Block 5201, Lot 33, Borough of Staten Island.

COMMUNITY BOARD #3SI

33-99-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for RCPI Trust, owner; Talla New York Incorporated, lessee.

SUBJECT – Application June 14, 2010 – Extension of Term of previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (The Sports Club/LA) which expired on January 11, 2010; waiver of the rules. C5-3(MID) zoning district.

PREMISES AFFECTED – 630 5th Avenue, block bounded by 5th Avenue, East 50th Street and Rockefeller Plaza, Block 1266, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

344-03-BZ

APPLICANT – Goldman, Harris LLC, for City of New York, owner; Nick's Lobster House, lessee.

SUBJECT – Application August 11, 2010 – Extension of Term of a previously approved Special Permit (§73-242) permitting an eating and drinking establishment located within a C3 zoning district.

PREMISES AFFECTED – 2777 Flatbush Avenue, between Flatbush and Mill Basin, Block 8591, Lot p/o 980, p/o 175, Borough of Brooklyn.

COMMUNITY BOARD #18BK

179-07-BZ

APPLICANT – Sheldon Lobel, PC, for 74-21 Queens Boulevard, LLC, owner.

SUBJECT – Application July 13, 2007 – Dismissal for Lack of Prosecution - Variance (§72-21) to allow a seven-story hotel building contrary to floor area regulations (§33-122). C8-1 zoning district.

PREMISES AFFECTED – 74-21 Queens Boulevard, located on north of Queens Boulevard, 25' from the intersection of Queens and 76th Street, Borough of Queens.

COMMUNITY BOARD #4Q

APPEALS CALENDAR

113-10-BZY

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Plaza Group 36 LLC, owner.

SUBJECT – Application June 22, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning. R5B zoning district.

PREMISES AFFECTED – 30-86 36th Street, west side of 36th Street, 152' north of 31st Avenue, Block 650, Lot 80, Borough of Queens.

COMMUNITY BOARD #1Q

125-10-A

APPLICANT – Simons & Wright, for Sofia Gazgalis & Spyridon Gazgalis, owner.

SUBJECT – Application July 8, 2010 – Appeal challenging the interpretation of ZR §23-22 as it applies to the required density factor for existing buildings in an R5B zoning district.

PREMISES AFFECTED – 346 Ovington Avenue, between 4th and 3rd Avenues, Block 5891, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #10BK

CALENDAR

OCTOBER 5, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 5, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

309-09-BZ

APPLICANT – Harold Weinberg, P.E., for Ralph Stroffolino, owner.

SUBJECT – Application November 20, 2009 – Variance (§72-21) to allow a mixed use building, contrary to lot coverage (§23-145), side yard (§35-541) and height (§35-542) regulations. R6A/C2-3 zoning district.

PREMISES AFFECTED – 2173 65th Street, between Bay Parkway and 21st Avenue, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

104-10-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Ohr Yisroel Inc., owner.

SUBJECT – Application June 8, 2010 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a synagogue and rectory. The proposal is contrary to lot coverage and floor area (§24-11) front yard (§24-34), side yard (§24-35) and wall height and sky exposure plane (§24-521). R5 zoning district.

PREMISES AFFECTED – 5002 19th Avenue, aka 1880-1890 50th Street, south side of 50th Street, west of 19th Avenue, Block 5461, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

105-10-BZ

APPLICANT – Eric Palatnik, for Misha Keylin, owner.

SUBJECT – Application October 2, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to side yards (§23-461). R4A zoning district.

PREMISES AFFECTED – 269 77th Street, between 3rd Avenue and Ridge Boulevard, Block 5949, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #10BK

108-10-BZ

APPLICANT – Roberts Organization (LRNC Myrtle Avenue NY LLC) for 5432-50 Myrtle Avenue LLC, owner.

SUBJECT – Application June 11, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Lucille Roberts*) in an existing two-story building. C4-3 zoning district.

PREMISES AFFECTED – 54-32 Myrtle Avenue,

intersection of Myrtle Avenue and Madison Street, Block 3544, Lot 27, Borough of Queens.

COMMUNITY BOARD #5Q

126-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Canarsie Plaza, LLC, owner; 1720 Hutchinson River Parkway, lessee.

SUBJECT – Application July 8, 2010 – Special Permit (§73-36) to allow the operation of the proposed physical culture establishment (*Canarsie Fitness*) in a two-story building under construction. M1-1 zoning district.

PREMISES AFFECTED – 856 Remsen Avenue, south side of Remsen Avenue, Block 7920, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #18BK

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, SEPTEMBER 14, 2010 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

1715-61-BZ

APPLICANT – Mitchell S. Ross, for 21st Century Cleaners Corporation, owner.

SUBJECT – Application June 22, 2010 – Extension of Term (§11-411) for a dry cleaning establishment (UG 6A), which expired on June 5, 2007; Extension of Time to obtain a certificate of occupancy, which expired on December 14, 2000; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 129-02 Guy R. Brewer Boulevard, south west corner of 129th Avenue and Guy R. Brewer Boulevard, Block 2276, Lot 59, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy, which expired on June 8, 2010; and

WHEREAS, a public hearing was held on this application on August 3, 2010 after due notice by publication in *The City Record*, and then to decision on September 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, City Council Member Thomas White, Jr. provided written testimony in support of this application, and requested that the Board permit the applicant to maintain the size of the existing curb cut along 129th Avenue, contrary to the previously-approved plans; and

WHEREAS, the subject site is located on the southwest corner of 129th Avenue and Guy R. Brewer Boulevard, within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 5, 1962 when, under the subject calendar number, the Board granted a variance to permit the change in use of an existing one-story five-car garage located in a residence use district to retail stores, for a term of 25 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on December 8, 2009, the Board granted an extension of the term for ten years from the expiration of the previous grant, to expire on June 5, 2017; a condition of the grant was that a certificate of occupancy be obtained by June 8, 2010; and

WHEREAS, the applicant now requests an extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant states that a new certificate of occupancy was not obtained because, due to financing concerns, the owner has been unable to reduce the size of the curb cut along 129th Avenue in accordance with the BSA-approved plans; and

WHEREAS, the applicant requests additional time to reduce the size of the curb cut, at which point it will be able to proceed with obtaining a new certificate of occupancy; and

WHEREAS, based upon the above, the Board finds that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 5, 1962, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy, to expire on September 14, 2011; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT a new certificate of occupancy shall be obtained by September 14, 2011;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 402636849)

Adopted by the Board of Standards and Appeals, September 14, 2010.

637-74-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 56th Realty LLC c/o Glenwood Management Corporation, owner.

SUBJECT – Application July 1, 2010 – Extension of Term for transient parking in a garage accessory to a multiple dwelling which expired on May 6, 2010; Waiver of the Rules. C1-9(TA)/R8 zoning district.

PREMISES AFFECTED – 1048-62 Second Avenue, East 55th Street, East 56th Street, First Avenue and Second Avenue, Block 1348, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: James Power.

ACTION OF THE BOARD – Application granted on condition.

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THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a transient parking garage, which expired on May 6, 2010; and

WHEREAS, a public hearing was held on this application on August 17, 2010, after due notice by publication in *The City Record*, with a continued hearing on September 14, 2010, and then to closure and decision on the same date; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, the subject site is located on a corner through lot bounded by East 55th Street to the south, Second Avenue to the west, and East 56th Street to the north; and

WHEREAS, the site is located partially in a C1-9 zoning district within the Special Transit Land Use District and partially in an R8 zoning district, and is occupied by a 32-story residential/commercial building; and

WHEREAS, the cellar, sub-cellar, and a portion of the first floor are occupied by a 300-space accessory parking garage; and

WHEREAS, on May 6, 1975, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to permit a maximum of 100 surplus parking spaces to be used for transient parking for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on September 12, 2000, the Board granted a ten-year extension of term, which expired on May 6, 2010; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution having been adopted on May 6, 1975, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional 10 years from May 6, 2010, to expire on May 6, 2020; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans and that all work shall substantially conform to drawings filed with this application and marked ‘Received July 1, 2010’ – (2) sheets

and ‘August 12, 2010’-(1) sheet; and *on further condition*:

THAT this term shall expire on May 6, 2020;

THAT signage shall comply with the underlying zoning district regulations;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 120360572)

Adopted by the Board of Standards and Appeals, September 14, 2010.

98-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 278 Eighth Associates, owner; TSI West 23 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application May 19, 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 November 1, 2006; Amendment to change the hours of operations; Waiver of the Rules. C2-7A zoning district.

PREMISES AFFECTED – 270 Eighth Avenue, northeast corner of Eighth Avenue and West 23rd Street, Block 775, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on November 1, 2006, and an amendment to change the hours of operation; and

WHEREAS, a public hearing was held on this

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application on August 3, 2010, after due notice by publication in *The City Record*, and then to decision on September 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on a corner through lot bounded by West 24th Street to the north, Eighth Avenue to the west, and West 23rd Street to the south, within a C2-7A zoning district; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE use is located on the second floor, with an entrance at the first floor, and occupies a total floor area of 19,760 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 24, 1998 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on November 1, 2006; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, the applicant also requests an amendment to change the hours of operation of the PCE; and

WHEREAS, the current hours of operation of the PCE are Monday through Thursday, from 6:00 a.m. to 11:00 p.m.; Friday, from 6:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 9:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant proposes to increase the hours of operation to: Monday through Thursday, from 5:30 a.m. to 11:00 p.m.; Friday, from 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment 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 February 24, 1998, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from November 1, 2006, to expire on November 1, 2016, and to permit the noted change in the hours of operation, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received May 19, 2010”- (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 1, 2016;

THAT the hours of operation shall be: Monday through Thursday, from 5:30 a.m. to 11:00 p.m.; Friday, from 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 100849664)

Adopted by the Board of Standards and Appeals, September 14, 2010.

221-97-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for DFD Development Limited Partnership, owner; Crunch Kips Bay LLC, lessee.

SUBJECT – Application April 29, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a physical culture establishment which expired on June 16, 2008; Amendment for a change in ownership from *Bally Total Fitness* to *Crunch*; Waiver of the Rules. C2-5/R-8 zoning district.

PREMISES AFFECTED – 550 Second Avenue, east side of Second Avenue at southeast corner of East 30th Street, Block 936, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ellen Hay.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on June 16, 2008, and an amendment to reflect a change in the operator of the PCE; and

WHEREAS, a public hearing was held on this application on August 17, 2010, after due notice by publication in *The City Record*, and then to decision on September 14, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the east side of Second Avenue between East 30th Street and East 33rd Street, within a C2-5 (R8) zoning district; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE has 1,100 sq. ft. of floor area on

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the first floor of the subject building, with an additional 20,675 sq. ft. of floor space located in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 16, 1998 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on June 16, 2008; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, the applicant also seeks an amendment to reflect the change of ownership and operation of the PCE since the prior grant; and

WHEREAS, the PCE is now operated as Crunch Fitness; and

WHEREAS, the Board notes that the Department of Investigation has approved the change of ownership and operation of the PCE; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the previous grant are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on June 16, 1998, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from June 16, 2008, to expire on June 16, 2018, and to permit the noted change in operator of the PCE, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received April 29, 2010’-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 16, 2018;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 101375851)

Adopted by the Board of Standards and Appeals, September 14, 2010.

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 40th and East 41st Streets, Block 1312, Lots 1401, 1456, 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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on April 30, 2008; and

WHEREAS, a public hearing was held on this application on July 27, 2010, after due notice by publication in *The City Record*, with a continued hearing on August 17, 2010, and then to decision on September 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the east side of Third Avenue between East 40th Street and East 41st Street, in a C5-3 zoning district within the Special Midtown District; and

WHEREAS, the site is occupied by a 41-story commercial building; and

WHEREAS, the PCE has 240 sq. ft. of floor area on the first floor of the subject building, with an additional 22,593 sq. ft. of floor space located in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 15, 1998 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on April 30, 2008; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on September 15, 1998, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from April 30, 2008, to expire on April 30, 2018, *on condition* that all work shall substantially conform to drawings as they apply to the

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objections above noted, filed with this application marked "Received August 4, 2010"-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 30, 2018;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 120246661)

Adopted by the Board of Standards and Appeals, September 14, 2010.

290-99-BZ

APPLICANT – Rothkrug, Rothkrug & 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*) 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 12th Street, Block 615, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #2M

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

Negative:.....5

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term of a previously granted variance for a physical culture establishment (PCE), which expired on March 28, 2010, and an amendment to change the hours of operation; and

WHEREAS, a public hearing was held on this application on July 27, 2010, after due notice by publication in *The City Record*, with a continued hearing on August 17, 2010, and then to decision on September 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application, on condition that

the applicant resolve all signage violations; and

WHEREAS, the PCE is located on the southwest corner of Greenwich Avenue and West 12th Street, in a C1-6/R6 zoning district within the Greenwich Village Historic District; and

WHEREAS, the site is occupied by a four-story commercial building; and

WHEREAS, the PCE use occupies the entire building, with a total floor area of 31,988 sq. ft. on the first through fourth floors, and an additional 8,781 sq. ft. of floor space at the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 28, 2000 when, under the subject calendar number, the Board granted a variance to permit the conversion and enlargement of an existing two-story building into a four-story PCE, for a term of ten years, which expired on March 28, 2010; and

WHEREAS, most recently, on August 14, 2001, the Board amended the grant to permit the installation of an accessory swimming pool at the cellar level of the PCE; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, the applicant also requests an amendment to change the hours of operation of the PCE; and

WHEREAS, the current hours of operation of the PCE are Monday through Thursday, from 6:00 a.m. to 11:00 p.m.; Friday, from 6:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant proposes to increase the hours of operation to: Monday through Thursday, from 5:30 a.m. to 11:00 p.m.; Friday, from 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.; and

WHEREAS, at hearing, the Board questioned whether the applicant had addressed the Environmental Control Board violations related to signage at the site; and

WHEREAS, in response to the concerns raised by the Board and the Community Board, the applicant states that the violations were issued for temporary signage that was installed on the site, which has since been removed from the subject building; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on March 28, 2000, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from March 28, 2010, to expire on March 28, 2020, and to permit the noted change in the hours of operation, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 6, 2010" - (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on March 28, 2020;

THAT the hours of operation shall be: Monday through Thursday, from 5:30 a.m. to 11:00 p.m.; Friday, from 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to

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9:00 p.m.;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 120288036)

Adopted by the Board of Standards and Appeals, September 14, 2010.

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

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for continued hearing.

656-69-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLC, for JVM Company, LLC, owner.

SUBJECT – Application May 6, 2010 – Extension of Term of a (UG9) parking lot accessory to an existing funeral home establishment which expired on May 27, 2010; Extension of Time to obtain a Certificate of Occupancy; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 2617/23 Harway Avenue, aka 208/18 Bay 43rd Street. North west corner Harway Avenue and Bay 43rd Street. Block 6897, Lots 1 & 2, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to October 5, 2010, at 10 A.M., for continued hearing.

60-90-BZ

APPLICANT – EPDSCO, Incorporated for Nissim Kalev, owner.

SUBJECT – Application May 18, 2010 – Extension of Term

of a previously granted Special Permit (§73-211) for the continued use of a Gasoline Service Station (*Citgo*) and Automotive Repair Shop which expired on February 25, 2001; Waiver of the Rules. C2-1/R3X zoning district.

PREMISES AFFECTED – 525 Forest Avenue, north side of Forest Avenue between Lawrence Avenue and Davis Avenue, Block 148, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #1SI

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 October 5, 2010, at 10 A.M., for decision, hearing closed.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Joykiss Management, LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Term (§§11-411 & §11-412) to allow the continued operation of an Eating and Drinking establishment (UG 6) which expired on March 15, 2004; Amendment to legalize alterations to the structure; Waiver of the Rules. C2-2 and R3-2 zoning districts.

PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, Northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safien.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 5, 2010, at 10 A.M., for decision, hearing closed.

322-98-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for HUSA Management Company, LLC, owner; TSI West 125 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application May 26, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on March 23, 2009; Amendment

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to legalize the increase in floor area; Waiver of the Rules. C4-4(125) zoning district.

PREMISES AFFECTED – 300 West 125th Street, south side of West 12th Street between Saint Nicholas Avenue and Fredericks Douglas Boulevard, Block 1951, Lots 22, 25, 27, 28, 29, 33, 39, Borough of Manhattan.

COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to October 5, 2010, at 10 A.M., for continued hearing.

294-99-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for 521 5th Avenue Partners, LLC, owner; Equinox- 43rd Street, Incorporated, lessee.

SUBJECT – Application June 1, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Equinox*) which expired on May 9, 2010. C5-3(MID) & C5-2.5(MID) zoning district.

PREMISES AFFECTED – 521 5th Avenue, north east corner of 5th Avenue and East 43rd Street, Block 1278, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for continued hearing.

161-00-BZ

APPLICANT – Stuart A. Klein, Esquire, for Stellar Sutton, LLC, owner; Mario Badescu Skin, Incorporated, lessee.

SUBJECT – Application June 9, 2010 – Extension of Term of a previously granted Variance (§72-21) for the operation of a Physical Culture Establishment (*Bodescu Skin Care*) which expired on June 2, 2010; Extension of Time to obtain a Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 320 East 52nd Street, between 1st and 2nd Avenue, Block 1344, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Laid over to October 5, 2010, at 10 A.M., for continued hearing.

136-01-BZ

APPLICANT – Eric Palatnik, P.C., for Cel Net Holdings Corporation, owners.

SUBJECT – Application June 23, 2010 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy for a Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements which expired on July 12, 2010. M1-4/R7A(LIC) zoning district.

PREMISES AFFECTED – 11-11 44th Drive, east of 11th Street, Block 447, Lot 13, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for decision, hearing closed.

164-04-BZ

APPLICANT – Sheldon Lobel, P.C., 2241 Westchester Avenue Realty Corporation, owner; Castle Hill Fitness Group, LLC, lessee.

SUBJECT – Application April 5, 2010 – Extension of Time to obtain a Certificate of Occupancy for a previously granted physical culture establishment (*Planet Fitness*) which expired on February 7, 2007; Amendment to change operator, hours of operation and interior modification; Waiver of the Rules. C2-1/R6 zoning district.

PREMISES AFFECTED – 2241 Westchester Avenue, northwest corner of Westchester Avenue and Glebe Avenue, Block 3963, Lot 57, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Elizabeth Safien.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 5, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

298-09-A

APPLICANT – Breezy Point Cooperative Inc., for Ann Baci, owner.

SUBJECT – Application October 23, 2009 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 109 Beach 217th Street, east side Beach 217th Street, 160' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough
Commissioner, dated October 6, 2009, acting on Department of
Buildings Application No. 420047942, reads in pertinent part:

“A1 – The site and building is not fronting on an
official mapped street therefore no permit or
Certificate of Occupancy can be issued as per
Art. 3, Sect. 36 of the General City Law; also
no permit can be issued since proposed
construction does not have at least 8% of total
perimeter of building fronting directly upon a
legally mapped street or frontage space and
therefore contrary to Section C27-291 of the
Administrative Code of the City of New
York; and

WHEREAS, a public hearing was held on this
application on May 18, 2010 after due notice by publication in
the *City Record*, with a continued hearing on June 8, 2010, and
then to decision on September 14, 2010; and

WHEREAS, by letter dated August 5, 2010 the Fire
Department states that it has reviewed the proposal and notes
that the proposed building is to be constructed on an existing
public street that is 37.10 feet in width, and that Fire Code
Section 503.8.2 requires new and altered buildings located on
streets less than 38 feet in width to be protected throughout by
a sprinkler system designed and installed in accordance with
the Building Code; and

WHEREAS, the letter from the Fire Department further
states that it grants a modification from compliance with Fire
Code Section 503.8.2 based on the fact that the unobstructed
street width is substantially in compliance with Fire Code
Section 503.8.2, with only a de minimus shortfall of two
inches; and

WHEREAS, accordingly, the Board has determined that
the applicant has submitted adequate evidence to warrant this
approval under certain conditions.

Therefore it is Resolved that the decision of the Queens
Borough Commissioner, dated October 6, 2009, acting on
Department of Buildings Application No. 420047942 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 23, 2009” - one (1) sheet; that the
proposal shall comply with all applicable zoning district
requirements; and that all other applicable laws, rules, and
regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the
Board in response to specifically cited and filed DOB/other
jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure
compliance with all relevant provisions of the Zoning
Resolution;

THAT the approved plans shall be considered approved

only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure
compliance with all other applicable provisions of the Zoning
Resolution, the Administrative Code and any other relevant
laws under its jurisdiction irrespective of
plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,
September 14, 2010.

315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir
Organization, LLC, owner.

SUBJECT – Application December 23, 2008 – An appeal
seeking the revocation of permits for a condominium hotel
on the basis that the approved plans allow for exceeding of
maximum permitted floor area. M1-6 zoning.

PREMISES AFFECTED – 246 Spring Street, between
Varick Street and Hudson Street, block 491, Lot 36,
Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October
5, 2010, at 10 A.M., for deferred decision.

237-09-A & 238-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP for
Safet Dzemovski, owner.

SUBJECT – Application July 31, 2009 – Proposed
construction in the bed of a mapped street, contrary to
General City Law Section 35. R3X zoning district.

PREMISES AFFECTED – 81 & 85 Archwood Avenue, aka
5219 Amboy Road, east side of Archwood Avenue, 198.25’
north of Amboy Road, Block 6321, Lot 152 & 151, Borough
of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to October
26, 2010, at 10 A.M., for adjourned hearing.

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for
Joseph Durzieh, owner.

SUBJECT – Application January 25, 2010 – Appeal seeking
a determination that the owner has acquired a common law
vested right to continue development commenced under the
prior zoning district. R6 zoning district.

PREMISES AFFECTED – 1882 East 12th Street, west side,
of East 12th Street, 75’ north of Avenue S, Block 6817, Lot
41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to October
5, 2010, at 10 A.M., for deferred decision.

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REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 14, 2010
1:30 P.M.

121-10-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 25-50 FLB LLC, owner.

SUBJECT – Application July 1, 2010 – An appeal challenging the Department of Buildings determination that a demolition permit signoff was required before issuance of an alteration permit, as per BC 28-105.3 of the NYC Building Code. R2A zoning district.

PREMISES AFFECTED – 25-50 Francis Lewis Boulevard aka 166-43 168th Street, southwest corner of Francis Lewis Boulevard and 168th Street, Block 4910, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug, Todd Dale, Gino Lurko and Paul Rifino.

For Opposition: , DOB, Marc Bresky, Assembly Rory Lacman, Tony Avella, Peter Brancazio, Ronni Brancazio, James a. Soressi, Gloria Clark, Henry Euler and Terri Pouymari.

ACTION OF THE BOARD – Laid over to November 9, 2010, at 10 A.M., for continued hearing.

138-10-A

APPLICANT – Melvin A. Glickman, P.E. – NYCEDC, for NYC Department of Small Business Services, owners.

SUBJECT – Application August 6, 2010 – Construction of a NYPD vehicle storage facility, to be located within the bed of a mapped street, contrary to General City Law 35. M1-1 Zoning District.

PREMISES AFFECTED – 174-20 North Boundary Road, Rockaway Boulevard to the north, Farmers Boulevard to the west, Guy R. Brewer Boulevard to the east, Block 14260, Lot 110, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: David Kane and Teresa Llorente.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 21, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

21-10-BZ

CEQR #10-BSA-047X

APPLICANT – Richard Lobel, P.C., for Aquila Realty Company, Incorporated, owner.

SUBJECT – Application February 12, 2010 – Special Permit (§73-243) to legalize an eating and drinking establishment with a drive-through. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roebling Avenue, aka 1590 Hutchison River Parkway, southeast corner of Roebling Avenue and Hutchinson River Parkway, Block 5386, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated March 31, 2010, acting on Department of Buildings Application No. 220010048, reads:

“BSA approval required for drive-thru in conjunction with existing eating & drinking establishment (UG 6) as per ZR 73-243;” and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site within a C1-2 (R4A) zoning district, the operation of an accessory drive-through facility in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on May 25, 2010, with continued hearings on July 27, 2010 and August 24, 2010, and then to decision on September 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the operator of the site, represented by separate counsel, submitted written and oral testimony in

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support of this application, with the following additional requests: (1) that the hours of operation be extended to 6:00 a.m. to 2:00 a.m., daily; and (2) that the signage at the site not be limited to that reflected on the plans, but rather that the Board only require that the signage comply with C1 district regulations; and

WHEREAS, the subject site is located on the southeast corner of Roebing Avenue and Hutchinson River Parkway, within a C1-2 (R4A) zoning district; and

WHEREAS, the subject site has a total lot area of 12,517 sq. ft. and is occupied by a Burger King restaurant; and

WHEREAS, on June 2, 1987, under BSA Cal. No. 473-86-BZ, the Board granted a special permit for the development of a drive-through facility accessory to an eating and drinking establishment, for a term of five years; the special permit lapsed on June 2, 1992; and

WHEREAS, the applicant seeks to re-establish the special permit for a period of five years; and

WHEREAS, the applicant states that the site is operated in substantial compliance with the Board-approved plans from the 1987 grant; and

WHEREAS, under ZR § 73-243, the application must demonstrate that: (1) the drive-through facility provides reservoir space for not less than ten automobiles; (2) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; (3) the eating and drinking establishment with accessory drive-through facility complies with accessory off-street parking regulations; (4) the character of the commercially-zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle; (5) the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity; and (6) there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant submitted a site plan indicating that the drive-through facility provides reservoir space for a ten-car queue; and

WHEREAS, the applicant represents that the facility will cause minimal interference with traffic flow in the immediate vicinity of the subject site; and

WHEREAS, in support of this representation, the applicant states that the drive-thru facility does not generate more traffic flow than would be generated by other as-of-right commercial uses, and that cars visiting the drive-through enter the site on Roebing Avenue, with minimal impact on the flow of traffic, and exit the site on the Hutchinson River Parkway Extension, a one-way street; and

WHEREAS, the applicant represents that the facility fully complies with the accessory off-street parking regulations for the C1-2 (R4A) zoning district; and

WHEREAS, in support of this representation, the applicant submitted a proposed site plan providing 11 accessory off-street parking spaces, which is more than the requirement of ten parking spaces; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward the motor vehicle; and

WHEREAS, the applicant submitted photographs of the premises and the surrounding area, which support this representation; and

WHEREAS, the applicant represents that the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, the applicant represents that the fact that the proposed drive-through facility has operated at this site without complaints since 1987, when the Board granted the original special permit, is evidence that it does not have an adverse impact on residences in the surrounding area; and

WHEREAS, the applicant states that the adjacent residential building to the east of the subject site does not have any windows on the wall facing the subject site; and

WHEREAS, at hearing, the Board raised concerns about the mural located on the side of the adjacent residential building; and

WHEREAS, in response, the applicant states that the owner of the site will work with the adjacent residential neighbor to either remove or mitigate the mural; and

WHEREAS, the applicant represents that adequate buffering between the drive-through facility and adjacent residential uses is provided; and

WHEREAS, specifically, the applicant submitted a site plan which reflects that an opaque fence with a height of six feet separates the site from the adjacent residential building, and that a planting area will be provided along the fence adjacent to the rear yard of the residential building, as well as along the Roebing Avenue frontage; and

WHEREAS, at hearing, the Board directed the applicant to comply with the street tree requirement for the underlying zoning district; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that a new street tree will be planted along both the Roebing Avenue frontage and the Hutchinson River Parkway Extension frontage; and

WHEREAS, the applicant states that the current hours of operation are: Sunday through Wednesday, from 6:00 a.m. to 1:00 a.m., and Thursday through Saturday, from 6:00 a.m. to 2:00 a.m.; and

WHEREAS, as noted above, the operator of the site, represented by separate counsel, requests that the hours of operation be extended to 6:00 a.m. to 2:00 a.m., daily, in order to comply with the corporate business plan of the operator; and

WHEREAS, the Board finds the request from the operator of the site to extend the hours of operation to be appropriate; and

WHEREAS, as to the request from the operator of the site regarding signage, the Board does not object to the Department of Buildings approving signage that differs from the approved plans, provided that all signage complies with C1 district regulations; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

MINUTES

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-243 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA047X dated February 12, 2010; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration 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 §§ 73-243 and 73-03 to permit, on a site within a C1-2 (R4A) zoning district, the operation of an accessory drive-through facility in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; *on condition* “that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received June 20, 2010’ - (4) sheets, and ‘Received August 13, 2010’ - (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on September 14, 2015;

THAT the premises shall be maintained free of debris and graffiti;

THAT parking and queuing space for the drive-through shall be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering shall be maintained as indicated on the BSA-approved plans;

THAT exterior lighting shall be directed away from the nearby residential uses;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all signage shall conform with the underlying C1 zoning district regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT 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 plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, September 14, 2010.

63-10-BZ CEQR #10-BSA-069Q

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

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated August 13, 2010, acting on Department of Buildings Application No. 420127491, reads in pertinent part:

“Proposed physical culture establishment is contrary to ZR 32-10. Physical culture establishment in a C6-3 zoning district (DJ Special District) requires special permit from BSA as per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-3 zoning district within the Downtown Jamaica Special District, the legalization of a physical culture establishment (PCE) on the second floor of a seven-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 27, 2010, after due notice by publication in *The City Record*, with a continued hearing on August 17, 2010, and then to decision on September 14, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner

MINUTES

Montanez; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Jamaica Avenue, between Guy Brewer Boulevard and 165th Street, in a C6-3 zoning district within the Downtown Jamaica Special District; and

WHEREAS, the site is occupied by a seven-story commercial building; and

WHEREAS, the PCE will occupy a total floor area of 9,086 sq. ft. on the second floor of the subject building; and

WHEREAS, on December 19, 2000, under BSA Cal. No. 31-00-BZ, the Board granted a special permit for the operation of a PCE at the subject premises for a term of ten years; a condition of the grant was that a certificate of occupancy be obtained within one year of the grant, which expired on December 19, 2001; and

WHEREAS, the applicant states that because it never obtained a certificate of occupancy for the site and never filed for an extension of time to obtain a certificate of occupancy, the subject application was filed for a new special permit for the PCE; and

WHEREAS, the PCE is operated as Lucille Roberts; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 9:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 9:00 a.m. to 2:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10BSA069Q, dated July 7, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in a C6-3 zoning district within the Downtown Jamaica Special District, the legalization of a physical culture establishment on the second floor of a seven-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 3, 2010"- (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 14, 2020;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 14, 2010.

MINUTES

86-10-BZ

APPLICANT – Sheldon Lobel, P.C., for STM Development, LLC, owners.

SUBJECT – Application May 12, 2010 – Special Permit (§§11-411 & 11-412) for the re-instatement of a previously granted Variance for a UG16 manufacturing use which expired on June 10, 1980; the legalization of 180 square foot enlargement at the rear of the building; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 93-08 95th Avenue, south side of 95th Avenue, Block 9036, Lot 3, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 26, 2010, acting on Department of Buildings Application No. 420465412, reads in pertinent part:

“The continued operation of Use Group 16 custom woodworking shop in an R5 zoning district is contrary to Section 22-10 and BSA Cal. No. 282-58-BZ and must be referred to the Board of Standards and Appeals for approval;” and

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reinstatement of a prior variance to permit a manufacturing use (Use Group 16) in an R5 zoning district pursuant to ZR § 11-411, and an amendment to legalize an enlargement at the rear of the building pursuant to ZR § 11-412; and

WHEREAS, a public hearing was held on this application on August 3, 2010, after due notice by publication in the *City Record*, with a continued hearing on August 17, 2010, and then to decision on September 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, the premises is located on the south side of 95th Avenue between 93rd Street and 94th Street, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 18, 1958 when, under BSA Cal. No. 282-58-BZ, the Board granted a variance to permit the occupancy of the subject building by a factory for a term of five years; and

WHEREAS, subsequently, the Board extended and amended the grant at various times; and

WHEREAS, most recently, on June 10, 1975, the Board extended the term for an additional five years, which expired on June 10, 1980; and

WHEREAS, the term of the variance has not been extended since its expiration on June 10, 1980, and

WHEREAS, the applicant represents, however, that the use of the site for manufacturing purposes has been continuous since the initial grant; and

WHEREAS, in support of the continuous manufacturing use of the site since the expiration of the term of the variance, the applicant submitted Sanborn maps from 1980, 1985, 1988, 1995, and 2004, which all reflect manufacturing use on the subject site; and

WHEREAS, the applicant now proposes to reinstate the prior grant to legalize the use of the site as a custom woodworking shop (Use Group 16); and

WHEREAS, the applicant has requested a ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, the applicant also seeks to amend the grant to legalize an enlargement at the rear of the site, which is used for the storage of materials; and

WHEREAS, pursuant to ZR § 11-412, the Board may allow the enlargement of a building on a premises subject to a pre-1961 variance, provided that the building may not be enlarged in excess of 50 percent of the floor area of such building occupied or utilized by the use on December 15, 1961; and

WHEREAS, the applicant states that the proposed enlargement comprises 180 sq. ft. of floor area, while the subject building had a floor area of 1,800 sq. ft. as of December 15, 1961; therefore, the proposed enlargement represents a ten percent increase in the pre-1961 floor area of the building; and

WHEREAS, at hearing, the Board directed the applicant to remove the graffiti from the building frontage on 95th Avenue, and to comply with the Community Board’s request that a street tree be planted at the site; and

WHEREAS, in response, the applicant submitted photographs reflecting that the graffiti has been removed from the building, and submitted revised plans reflecting that a street tree will be planted along 95th Avenue; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-412.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 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, as amended, and makes each and every one of the required findings under ZR §§ 11-411 and 11-412 for a reinstatement of a prior Board approval of a manufacturing use at the subject site, now occupied by a custom woodworking shop (Use Group 16), and for an amendment to legalize a 180 sq. ft. enlargement at the rear of the subject building, within an R5 zoning district, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked “Received August 12, 2010”-(5) sheets; and *on further condition*:

MINUTES

THAT this permit shall be for a term of ten years, to expire on September 14, 2020;

THAT the site shall be kept free of graffiti, dirt and debris;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 14, 2010.

92-08-BZ

APPLICANT – Riker Danzig, for Boquen Realty, LLC, owner.

SUBJECT – Application April 14, 2008 – Variance (§72-21) to allow for Use Group 6 below the floor level of the second story in an existing building, contrary to use, rear yard and floor area regulations (§42-14, §43-12 and §43-26). M1-5B zoning district.

PREMISES AFFECTED –13 Crosby Street, east side of Crosby Street between Grand and Howard Street, Block 233, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Juan D. Reyes, Jack Freeman, John Furth Peachy and Lisamarie Dixon.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 19, 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 October 19, 2010, at 1:30 P.M., for continued hearing.

192-09-BZ

APPLICANT – Richard Lobel, for Leon Mann, owner.

SUBJECT – Application June 16, 2009 – Variance (§72-21) to allow for the construction of a department store (UG10), contrary to use regulations (§§22-00, 32-00). R6 and R6/C2-3 zoning districts.

PREMISES AFFECTED – 912 Broadway, northeast corner of the intersection of Broadway and Stockton Street, Block 1584, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to October 19, 2010, at 1:30 P.M., for adjourned hearing.

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 and Charles Sosik.

ACTION OF THE BOARD – Laid over to November 9, 2010, at 1:30 P.M., for continued hearing.

251-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bethany House of Worship Incorporated, owner.

SUBJECT – Application August 28, 2009 – Variance (§72-21) to permit the development of a two-story community facility (*Bethany Church*). The proposal is contrary to §§ 24-34 (front yard) and 25-31 (parking). R3-2 zoning district.

PREMISES AFFECTED – 130-34 Hawtree Creek Road, West side of Hawtree Creek Road, 249.93 feet north of 133rd Avenue. Block 11727, Lot 58, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 1:30 P.M., for continued hearing.

MINUTES

29-10-BZ

APPLICANT – Sheldon Lobel, P.C., for R.A.S. Associates, owner; Mojave Restaurant, lessee.

SUBJECT – Application March 4, 2010 – Special Permit (§73-52) to allow for an outdoor eating and drinking establishment within a residential district. C1-2 and R5 zoning districts.

PREMISES AFFECTED – 22-32/36 31st Street, Ditmas Boulevard and 23rd Avenue, Block 844, Lot 49, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Irving Minkin and Frances Rocco.

ACTION OF THE BOARD – Laid over to October 26, 2010 at 1:30 P.M., for continued hearing.

43-10-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Cammastro Corp./Maria Pilato, owner; First Club One LLC/Spiro Tsadilas, lessee.

SUBJECT – Application March 30, 2010 – Special Permit (§73-244) to allow an eating and drinking establishment without restrictions and no limitation on entertainment and dancing. C2-2/R5 zoning district.

PREMISES AFFECTED – 23-70 Steinway Street, west side of Steinway Street, 17.65' north of Astoria Boulevard North, Block 803, Lot 75, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Sandy Anagnostou and Charles Pilate.

For Opposition: Rose Niebylsici.

ACTION OF THE BOARD – Laid over to October 26, 2010 at 1:30 P.M., for continued hearing.

66-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yury, Aleksandr, Tatyana Dreysler

SUBJECT – Application May 3, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141) and side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 1618 Shore Boulevard, South side of Shore Boulevard between Oxford and Norfolk Streets. Block 8757, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Sergey Tishaev.

For Opposition: Judy Barrow.

ACTION OF THE BOARD – Laid over to October 19, 2010, at 1:30 P.M., for continued hearing.

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 (*Planet Fitness*) 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

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 21, 2010, at 1:30 P.M., for decision, hearing closed.

91-10-BZ

APPLICANT – Eric Palatnik, P.C., for Lawrence Kimel, owner.

SUBJECT – Application May 17, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to open space, lot coverage and floor area (§23-141); side yard (§23-461); rear yard (§23-47) and perimeter wall height (§23-631). R3-1 zoning district.

PREMISES AFFECTED – 123 Coleridge Street, south of Hampton Street, Block 8735, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Judy Barrow.

ACTION OF THE BOARD – Laid over to October 19, 2010, at 1:30 P.M., for continued hearing.

95-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Kohanbash, owner.

SUBJECT – Application May 27, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2216 Quentin Road, south side of Quentin Road between East 22nd Street and East 23rd Street, Block 6805, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to November 23, 2010, at 1:30 P.M., for continued hearing.

MINUTES

99-10-BZ

APPLICANT – Fridman Saks, LLP for Dora Weiss, owner.
SUBJECT – Application June 2, 2010 – Special Permit (§73-622) for the in-Part legalization of construction into the side yard on a corner lot and proposed enlargement to an existing single family home, contrary to open space, lot coverage and floor area (§23-141) and side yards (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 2302 Avenue S, Located on the southeast corner of Avenue S and East 23rd Street. Block 7302, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Boris Saks.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 21, 2010, at 1:30 P.M., for decision, hearing closed.

100-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Gittie Wertenteil and Ephrem Wertenteil, owners.

SUBJECT – Application June 2, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141), side yard (§§23-461 & 23-48) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2512 Avenue R, south side of Avenue R between Bedford Avenue and East 26th Street, Block 6831, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 5, 2010, at 1:30 P.M., for decision, hearing closed.

101-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Crosby 54 LLC, owners.

SUBJECT – Application June 4, 2010 – Variance (§72-21) to allow a commercial use below the floor level of the second story, contrary to use (§42-14(D)(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 54 Crosby Street, west side of Crosby Street between Broome and Spring Streets, Block

483, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Howard Zipser, Lawrence F. Flick, Walter Catham and Josha Simons.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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DOCKET

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179-10-BZ

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180-10-A

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181-10-BZ

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182-10-BZ

1082 East 23rd Street, West side of East 23rd Street between Avenue J and Avenue K @ 100' north of Avenue K., Block 7604, Lot(s) 79, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home. R2 district.

183-10-BZ

873 Belmont Avenue, Northwest corner of Belmont Avenue and Milford Street., Block 4024, Lot(s) 36, Borough of **Brooklyn, Community Board: 5**. Variance to permit a two family dwelling, contrary to use regulations. R5 district.

184-10-A

20 Olive Walk, West side of Olive Walk, 230.0 feet north of Breezy Point Boulevard., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction not fronting a mapped street, contrary to General City Law. R4 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

OCTOBER 19, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 19, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

180-99-BZ

APPLICANT – Michael T. Cetera, AIA, for Geulah, LLC, owner.

SUBJECT – Application June 4, 2010 – Extension of Term of a previously granted Variance (§72-21) for a non-conforming (UG9A) catering establishment which expired on April 4, 2010; waiver of the rules. R-6 zoning district.

PREMISES AFFECTED – 564/66 East New York Avenue, south side, 329'-7" east of Brooklyn Avenue, Block 4793, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #9BK

175-05-BZ

APPLICANT – Eric Palatnik, P.C., for Athanasios Amaxus, owner.

SUBJECT – Application September 9, 2010 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to construct a four story multiple dwelling with accessory parking which expires on January 9, 2011. M1-1 zoning district.

PREMISES AFFECTED – 18-24 Luquer Street, between Hicks Street and Columbia Street, Block 520, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #16BK

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for Randy Lee, owner.

SUBJECT – Application September 9, 2010 – Extension of Time to Complete Construction a previously approved Variance (§72-21) to construct a four story multiple dwelling which expires on October 17, 2010. R3-2(HS) zoning district.

PREMISES AFFECTED – 908 Clove Road, between Broadway and Bement Avenue, Block 323, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #1SI

238-07-BZ

APPLICANT – Goldman Harris LLC, for OCA Long Island City LLC; OCAII & III c/o O'Connor Capital, owner.

SUBJECT – Application July 1, 2010 – In-Part Legalization for an Amendment of minor modification of a previously approved Variance (§72-21) to allow the Mixed Use Building or the Dormitory Building to be constructed and occupied prior to the construction and occupancy of the other building. M-4/R6A (LIC) and M1-4 zoning districts.

PREMISES AFFECTED – 5-11 47th Avenue, 46th Road at north, 47th Avenue at south, 5th Avenue at west, Vernon Boulevard at east. Block 28, Lot 12, 15, 17, 18, 21, 38. Borough of Queens

COMMUNITY BOARD #2Q

141-08-BZ

APPLICANT – Sheldon Lobel, PC, for DoRay 46, Incorporated, owner.

SUBJECT – Application May 7, 2008 – Dismissal for Lack of Prosecution - Variance (§72-21) to allow for a mixed use building contrary to floor area, lot coverage (§23-145), height (§35-24), and street wall requirements (§101-41). R6A/C2-4 zoning district, DB.

PREMISES AFFECTED – 46-48 Third Avenue, northeast corner of the intersection of Third Avenue and Atlantic Avenue, Block 185, Lot 25, 26, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEALS CALENDAR

366-05-A

APPLICANT – Deirdre A. Carson, for Greenberg Traurig, LLP, for Prospect Terrace, LLC, owner.

SUBJECT – Application August 20, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously granted Appeals application to determine Common Law Vested rights under the prior R5 zoning regulations which expired on August 22, 2010. R5-B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, east side of Eighth Avenue, between Windsor Place and Prospect Avenue, Block 1112, Lots 52 & 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

111-10-A

APPLICANT – Victor K. Han, R.A., AIA, for Seungho Kim, owner.

SUBJECT – Application June 18, 2010 – Appeal challenging Department of Building's determination that the proposed hotel is not within 1000 ft. of the entrance or exit of a limited access expressway, freeway, parkway, or highway, which prohibits direct vehicular access to the abutting land as per ZR §32-14. C2-2 Zoning District.

PREMISES AFFECTED – 211-08 Northern Boulevard,

CALENDAR

southeast side of Northern Boulevard, southeast of 211th Street, Block 7313, Lot 5, Borough of Queens.

COMMUNITY BOARD #11Q

OCTOBER 19, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 19, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

55-10-BZ

APPLICANT – Eric Palatnik, P.C., for FAS Main Street Family Limited Partnership, owner.

SUBJECT – Application April 19, 2010 – Special Permit (§73-44) to permit a reduction in required parking for an ambulatory or diagnostic treatment center. C4-2/C4-3 zoning districts.

PREMISES AFFECTED – 40-22 Main Street, northwest corner of Main Street, northwest corner of Main Street and 40th Street, Block 5036, Lot 42, Borough of Queens.

COMMUNITY BOARD #7Q

103-10-BZ

APPLICANT – Law Office of Frederick A. Becker, for Zehava Kraitenberg and Larry Kraitenberg, owners.

SUBJECT – Application June 7, 2010 – In-Part Legalization of a Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space (§23-141), side yard requirement (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1036 East 24th Street, west side of East 24th Street, between Avenue J and Avenue K, Block 7605, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

129-10-BZ

APPLICANT – Andrea M. Harris, for Paul Trinchese, owner; Gustavo Larrea, lessee.

SUBJECT – Application July 16, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Traditional Karate of America*). M1-2 zoning district.

PREMISES AFFECTED – 98-18 103rd Avenue, cross street of 103rd Avenue and 99th Street, Block 9121, Lot 9, Borough of Queens.

COMMUNITY BOARD #9Q

131-10-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 841-853 Broadway Associates, owner; Jivamukti Yoga Center, lessee.

SUBJECT – Application July 21, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Jivamukti Yoga Studio*). C6-4 (US)/C6-1 zoning districts.

PREMISES AFFECTED – 841 Broadway, northwest corner of Broadway and East 13th Street, Block 565, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

152-10-BZ

APPLICANT – Peter Poruczynski, RA, for Jeannie Kontopirakis, owner.

SUBJECT – Application August 17, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage §23-141. R2 zoning district.

PREMISES AFFECTED – 158 85th Street, 85th Street frontage. Block 6032, Lot 31. Borough of Brooklyn.

COMMUNITY BOARD #10BK

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, SEPTEMBER 21, 2010 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

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 portion of the lot fronting on King Street to allow a warehouse and storage use (UG 16) and to facilitate a tax lot subdivision; Extension of Term. 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: Elisabeth Safian.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of time to obtain a certificate of occupancy, which expired on May 26, 2009, an extension of term, which expires on September 22, 2010, and an amendment to a variance permitting carpentry and metalworking uses on a site partially within an R5 zoning district and partially within a C1-3 zoning district; and

WHEREAS, a public hearing was held on this application on June 22, 2010, after due notice by publication in *The City Record*, with a continued hearing on July 27, 2010, and then to decision on September 21, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, certain neighborhood residents provided oral testimony in opposition to the initial application; and

WHEREAS, the site is a through lot with 210 feet of frontage on the south side of King Street and 183.25 feet of frontage on the north side of Sullivan Street, between Van Brunt Street and Richard Street, partially within an R5 zoning district and partially within a C1-3 zoning district; and

WHEREAS, the subject site has a total lot area of

approximately 39,000 sq. ft. and consists of two tentative tax lots: (1) tentative lot 43, which is located on the portion of the site with frontage along Sullivan Street and is occupied by two industrial buildings with a total floor area of 22,738 sq. ft., which are occupied by warehouse (Use Group 16) uses, a carpentry shop, office use, and accessory parking (the “Sullivan Street Lot”); and (2) tentative lot 15, which is located on the portion of the site with frontage along King Street and is occupied by a vacant industrial building (the “King Street Lot”); and

WHEREAS, the site has been under the Board’s jurisdiction since April 20, 1948 when, under BSA Cal. No. 1053-47-BZ, the Board granted a variance to permit, in a residential district, the construction and maintenance of a commercial building on King Street using more than the area permitted and without the required rear yard, for a term of ten years; and

WHEREAS, on October 7, 1958, the Board amended the variance to permit the construction of a two-story extension of the building onto the Sullivan Street portion of the site; and

WHEREAS, on February 4, 1969, under BSA Cal. No. 815-68-BZ, the Board granted a variance under ZR § 11-412 to permit a further enlargement in lot area and an increase in the accessory parking area; and

WHEREAS, on July 21, 1981, under BSA Cal. No. 334-81-BZ, the Board granted a variance pursuant to ZR § 72-21, to permit the erection of a one-story enlargement, which was subsequently amended to extend the time to obtain building permits and complete construction; and

WHEREAS, on September 22, 1992, under the subject calendar number, the Board granted a variance to legalize a change in use from refrigerator repair with accessory parking (Use Group 17) to auto repair and warehouse (Use Group 16) and office use (Use Group 6), and to legalize the enlargement of the lot area, for a term of ten years to expire on September 22, 2002; and

WHEREAS, most recently, on August 26, 2008, the Board modified the plot plan to reduce the size of the subject site by removing the King Street Lot from the grant, the Board also legalized the carpentry and metalworking uses at the site, permitted amendments to the plans, and extended the term for eight years from the expiration of the prior grant, to expire on September 22, 2010; a condition of the grant was that a certificate of occupancy be obtained by May 26, 2009; and

WHEREAS, the Board notes that the King Street Lot was eliminated from the prior grant with the understanding that the applicant would seek a subdivision of the Sullivan Street Lot and the King Street Lot, and that the King Street Lot would conform with all requirements of the Zoning Resolution; and

WHEREAS, the applicant notes that the definition of “zoning lot” under ZR § 12-10, provides that “a zoning lot may be subdivided provided such subdivision does not create a new non-compliance or increase the degree of non-compliance of such building;” and

WHEREAS, the applicant states that the King Street Lot is improved with a non-complying building constructed pursuant to the original variance granted in 1948; therefore, the applicant represents that the Department of Buildings (“DOB”)

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has not permitted the subdivision of the site because such subdivision would create a new non-compliance on the King Street Lot, as it was removed from the Board's jurisdiction in the prior grant; and

WHEREAS, accordingly, the applicant now requests that the Board re-incorporate the King Street Lot into the variance in order to facilitate the subdivision of the site so that the applicant can obtain a certificate of occupancy for the Sullivan Street Lot and bring the King Street Lot into conformance with the Zoning Resolution; and

WHEREAS, the applicant initially sought to re-incorporate the King Street Lot into the variance as a Use Group 16 use for a period of two to three years, after which the site would be subdivided and the King Street Lot would be brought into conformance; and

WHEREAS, in support of its request for short term Use Group 16 use of the King Street Lot, the applicant represents that the inability to subdivide the site following the prior Board grant left the owner with a non-conforming building without any viable legal use, which caused financial hardship due to the inability to sell the King Street Lot and the expenses related to carrying the property without any rental income and maintaining the vacant building; and

WHEREAS, the Board notes that the current configuration of the site, with the King Street Lot removed from the grant, was the result of a proposal that the applicant entered into of its own volition during the course of the hearing process for the prior grant; and

WHEREAS, the Board further notes that the instant application was filed on April 21, 2009, that Board staff issued a Notice of Objections on June 18, 2009, and that due to the applicant's failure to respond to the Notice of Objections, the application was placed on the dismissal calendar on April 13, 2010 and again on May 25, 2010 before the applicant responded to the Notice of Comments; and

WHEREAS, therefore, the Board finds that some of the alleged financial hardship could have been averted by a timelier prosecution of the application before the Board; and

WHEREAS, the Board further notes that the prior grant, which eliminated the King Street Lot from the variance, was based on the Board's concerns about the impacts of the then-existing uses of the King Street Lot on the surrounding residential neighborhood, its determination that trucks servicing the premises were adding to existing traffic congestion, and the concerns raised by the neighborhood residents; and

WHEREAS, several neighborhood residents testified in opposition to the initial application, citing concerns that allowing a Use Group 16 use to return to the site would result in the reoccurrence of the issues that led to the elimination of the King Street Lot in the prior grant, specifically illegal parking, noise, and a lack of compatibility with the neighborhood context; and

WHEREAS, accordingly, the Board directed the applicant to revise its proposal to reflect that there will only be conforming uses on the King Street Lot; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the King Street Lot will be limited to

conforming uses; and

WHEREAS, the Board notes that by re-incorporating the King Street Lot into the variance, it intends to facilitate the subdivision of the site into two tentative lots, consisting of the King Street Lot (tentative lot 15) and the Sullivan Street Lot (tentative lot 43), and to allow the vacant non-complying building on the King Street Lot to remain but to only allow conforming uses within the building as well as on the remainder of the King Street Lot; and

WHEREAS, the applicant also seeks to extend the term of the variance, which expires on September 22, 2010, and to extend the time to obtain a certificate of occupancy, which expired on May 26, 2009; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the plans and extension of term are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, as adopted September 22, 1992, so that as amended this portion of the resolution shall read: "to modify the plot plan to enlarge the size of the subject site to its previously existing parameters, to permit an extension of the term for ten years from the expiration of the prior grant, to expire on September 21, 2015, and to permit an extension of time to obtain a certificate of occupancy, to September 21, 2011; *on condition* that the use and operation of the site and any and all work on the site shall substantially conform to the previously approved plans and to the drawings filed with this application marked "Received September 17, 2010"- (1) sheet; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the term shall expire on September 21, 2015;

THAT the site be maintained free of debris, graffiti and illegally-parked vehicles;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the site shall be brought into compliance with the BSA-approved plans and a certificate of occupancy shall be obtained by September 21, 2011;

THAT prior to the issuance of a Certificate of Occupancy, the applicant shall obtain tax lot subdivision approval from DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 301113916)

Adopted by the Board of Standards and Appeals, September 21, 2010.

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136-01-BZ

APPLICANT – Eric Palatnik, P.C., for Cel Net Holdings Corporation, owners.

SUBJECT – Application June 23, 2010 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy for a Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements which expired on July 12, 2010. M1-4/R7A(LIC) zoning district.

PREMISES AFFECTED – 11-11 44th Drive, east of 11th Street, Block 447, Lot 13, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction and obtain a certificate of occupancy for a previously granted variance; and

WHEREAS, a public hearing was held on this application on August 17, 2010, after due notice by publication in *The City Record*, with a continued hearing on September 14, 2010, and then to decision on September 21, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the subject site is located on the north side of 44th Drive, between 11th Street and 21st Street, within an M1-4 (R7A) zoning district; and

WHEREAS, on June 11, 2002, the Board granted an application under ZR § 72-21, to permit, in an M1-4 zoning district, an increase in floor area for a wholesale office with accessory storage (Use Group 10) and the legalization of the existing encroachment into the rear yard; and

WHEREAS, substantial construction was to be completed by June 11, 2006 in accordance with ZR § 72-23; and

WHEREAS, on March 28, 2006, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, to expire on March 28, 2008; and

WHEREAS, most recently, on January 12, 2010, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, which expired on July 12, 2010, and an amendment to the approved plans to reflect that the previously-approved enlargement had been eliminated and that the total floor area of the proposed building will remain at 31,784 sq. ft.; and

WHEREAS, the applicant now requests an additional extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that all of the zoning-related work has been completed at the site, but that additional

time is necessary to complete enhancements to the building's structural support system, sprinkler system, mechanical system, and fireproofing, before a certificate of occupancy can be obtained; and

WHEREAS, based upon the above, the Board finds that the requested extension of time and amendment to the 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 June 11, 2002, so that as amended this portion of the resolution shall read: "to permit an extension of time to complete construction and obtain a certificate of occupancy, to expire on March 21, 2012; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT substantial construction shall be completed by March 21, 2012;

THAT a new certificate of occupancy shall be obtained by March 21, 2012;

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. 400849748)

Adopted by the Board of Standards and Appeals, September 21, 2010.

752-29-BZ

APPLICANT – Jack Gamill, P.E. for Marial Associates of New Jersey, L.P., owner; Bay Ridge Honda, lessee.

SUBJECT – Application May 21, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of Automotive Repair and Dealership (*Honda*) which expired on April 22, 2010. C4-2 zoning district.

PREMISES AFFECTED – 8801-8809 4th Avenue, Block 6065, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Frank Sellitto and Harold Weinberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for decision, hearing closed.

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558-71-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for WB Management of NY LLC, owner.

SUBJECT – Application March 26, 2010 – Amendment to a previously granted Variance (§72-21) to permit the change of a UG6 eating and drinking establishment to a UG6 retail use without limitation to a single use; minor reduction in floor area; increase accessory parking and increase to the height of the building façade. R3-1 zoning district.

PREMISES AFFECTED – 1949 Richmond Avenue, east side of Richmond Avenue at intersection with Amsterdam Place, Block 2030, Lot 1, 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 October 19, 2010, at 10 A.M., for decision, hearing closed.

826-86-BZ, 827-86-BZ and 828-86-BZ

APPLICANT – Eric Palatnik, for North Shore Tower Apartment, Inc., owner; Continental Communications, lessee.

SUBJECT – Application August 26, 2010 – Extension of Time to obtain a Certificate of Occupancy which expired on July 26, 2010 for a Special Permit (§73-11) to allow non-accessory radio towers and transmitting equipment on the roof of a 33-story multiple dwelling (*North Shore Towers*). R3-2 zoning district.

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, northeast corner of 267th Street, Block 8489, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over October 19, 2010, at 10 A.M., for continued hearing.

914-86-BZ

APPLICANT – Stuart A. Klein, Esq., for Union Temple of Brooklyn, owner; Eastern Athletic, Incorporation, lessee.

SUBJECT – Application March 31, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (*Eastern Athletic*) which expired on May 17, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on November 12, 1998; Amendment to the interior layout and the hours of operation; Waiver of the Rules. R8X zoning district.

PREMISES AFFECTED – 1-19 Eastern Parkway, north side of Eastern Parkway, between Plaza Street, east and Underhill Avenue, Block 1172, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for continued hearing.

855-87-BZ

APPLICANT – Glen V. Cutrona, AIA, for Michael Beck, owner; Mueller Distributing, lessee.

SUBJECT – Application June 15, 2010 – Amendment to a previously granted Variance (§72-21) to remove the term for a (UG16) warehouse with (UG6) offices on the mezzanine level. R3A zoning district.

PREMISES AFFECTED – 15 Irving Place, bound by Van Duzer Street and Delford Street, Block 639, Lot 10, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Glen V. Cutrona.

ACTION OF THE BOARD – Laid over October 26, 2010, at 10 A.M., for continued hearing.

214-00-BZ

APPLICANT – Harold Weinberg, for Caliv LLC, owner.

SUBJECT – Application October 10, 2008 – Extension of Time to obtain a Certificate of Occupancy for a Special Permit (§73-242) for an eating and drinking establishment; Extension of Term; Amendment to the site plan; and Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2777 Plumb 2nd Street, northeast corner of Harkness Avenue, Block 8841, Lot 500, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Frank Sellitto and Harold Weinberg.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for adjourned hearing.

124-05-BZ

APPLICANT – Deirdre A. Carson, for The Estate of Armand P. Arman c/o 482 Greenwich, LLC, owner; 482 Greenwich, LLC (Joint Venture Partner), lessee.

SUBJECT – Application June 15, 2010 – Amendment to a Variance (§72-21) for the construction of a mixed-use building to allow an increase in dwelling units, increase in street wall height and reduction of overall building height; Extension of Time to Complete Construction which expires on September 12, 2010. C6-2A zoning district.

PREMISES AFFECTED – 382 Greenwich Street, northwest intersection of Greenwich and Canal Streets, Block 595, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Randall Miner

For Opposition: Patrick McDonough.

MINUTES

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 5, 2010, at 10 A.M., for decision, hearing closed.

181-06-BZ

APPLICANT – Goldman Harris LLC, for 471 VE LLC c/o Vella Group, owner; 471 VE LLC c/o Vella Group, lessee. SUBJECT – Application September 21, 2010 – Amendment to a previously granted Variance (§72-21) to change the permitted ground floor retail to residential in a nine-story building. M1-5/Area B-2 (TMU) zoning district.

PREMISES AFFECTED – 471 Washington Street, southeast corner of Washington Street and Canal Street, Block 595, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Caroline Harris and Vivian Kreiger.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

138-10-A

APPLICANT – Melvin A. Glickman, P.E. – NYCEDC, for NYC Department of Small Business Services, owners.

SUBJECT – Application August 6, 2010 – Construction of a NYPD vehicle storage facility, to be located within the bed of a mapped street, contrary to General City Law 35. M1-1 Zoning District.

PREMISES AFFECTED – 174-20 North Boundary Road, Rockaway Boulevard to the north, Farmers Boulevard to the west, Guy R. Brewer Boulevard to the east, Block 14260, Lot 110, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: David Kane.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 22, 2010, acting on Department of

Buildings Application No. 420190992, reads in pertinent part:

“Proposed NB in bed of mapped street contrary to GCL 35; and

WHEREAS, this is an application brought by the New York City Economic Development Corporation (“EDC”) acting on behalf of the New York City Police Department (“NYPD”), to permit the proposed construction of a new vehicle storage facility and administration building on a site within the bed of a mapped street, Nassau Expressway, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on September 14, 2010, after due notice by publication in the *City Record*, and then to decision on September 21, 2010; and

WHEREAS, the project site was filed with the City Planning Commission on August 19, 2008 for site selection pursuant to Section 197-c of the New York City Charter; and

WHEREAS, after public review, the City Planning Commission approved site selection of the property for NYPD’s vehicle storage facility on December 17, 2008; and

WHEREAS, by letter dated August 10, 2010, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated August 26, 2010, the Department of Environmental Protection (“DEP”) states that it has reviewed the subject proposal and that the latest Drainage Plan No. 42-SW(13) and 42S(20) Sheet No. 7, calls for an 8’-0” by 17’-0” storm sewer south of Rockaway Boulevard, crossing the site, and requires that the applicant submit a survey/plan showing: (1) the total width of the mapped street, Nassau Expressway, and the width of the widening portion of the street; and (2) that DEP requires a 15’-0” right of way on each side of the 8’-0” by 17’-0” storm sewer, in addition to the width of the aforementioned storm sewer for the maintenance and/or reconstruction of this sewer; and

WHEREAS, in response, the applicant submitted a Memorandum of Understanding/ Easement document and a revised site plan dated September 9, 2010, reflecting a 15’-0” wide sewer easement/right of way on both sides of the 8’-0” by 17’-0” storm sewer, which will serve for the installation, maintenance and/or reconstruction of the existing and future 8’-0” by 17’-0” storm sewer at the site; and

WHEREAS, by letter dated September 10, 2010, DEP states that it has reviewed the revised site plan and Memorandum of Understanding and has no objections to the subject proposal; and

WHEREAS, by letter dated March 12, 2010, the New York State Department of Transportation (“DOT”) states that while it has no objection to the proposed establishment of a vehicle parking/storage facility, it does not approve of the administration building as proposed; and

WHEREAS, subsequently, the parties prepared a Memorandum of Agreement addressing DOT’s concerns with the proposed administration building; and

WHEREAS, by letter dated September 14, 2010, DOT states that it has reviewed the subject proposal and has no objections, provided that a Memorandum of Agreement is executed by all parties involved; and

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WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 22, 2010, acting on Department of Buildings Application No. 420190992, 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 September 10, 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 prior to the issuance of a Building Permit the applicant shall provide DOB and the Board with a copy of the Memorandum of Agreement executed between the New York City Economic Development Corporation, the New York City Police Department and the New York State Department of Transportation, and any other necessary parties;

THAT this 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, September 21, 2010.

43-08-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application February 28, 2008 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35. R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to November 9, 2010, at 10 A.M., for continued hearing.

3-10-A & 4-10-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application January 5, 2010 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35. R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue and 29-46 145th Street, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to November 9, 2010, at 10 A.M., for continued hearing.

137-08-A thru 139-08-A

APPLICANT – Philip L. Rampulla, for Joseph Noce, owner.
SUBJECT – Application May 5, 2008 – Proposed construction of a one-family residence within the bed of a legally mapped street, contrary to General City Law Section 35. R1-2 zoning district.

PREMISES AFFECTED – 50, 55, 60 Blackhorse Court, south side of Richmond Road, 176.26' south of Blackhorse Court, Block 4332, Lots 34, 28, 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

ACTION OF THE BOARD – Laid over October 26, 2010, at 10 A.M., for continued hearing.

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 233rd Street, Block 4972, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto.

For Opposition: Joel A. Miele Jr. and Gene Delorenzo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for decision, hearing closed.

MINUTES

123-10-A & 124-10-A

APPLICANT – Fire Department of the city of New York
OWNER – DiLorenzo Realty Corporation
LESSEES – Flair Display Incorporated
SUBJECT – Application July 6, 2010 – Application to modify Certificate of Occupancy to require automatic wet sprinkler system throughout the entire building.
PREMISES AFFECTED – 3931, 3927 Mulvey Avenue, 301.75' north of East 233rd Street. Block 4972, Lot 60, 62 Borough of the Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto.

For Opposition: Joel A. Miele Jr. and Gene Delorenzo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for decision, hearing closed.

38-10-A

APPLICANT – Jack Lester, Esquire for Anthony Naletilic.
OWNER – K.J. Chung/Jesus Covent Church.

SUBJECT – Application March 22, 2010 – Appeal challenging the Department of Building's issuance of a building permit for a house of worship/community facility which waived parking per §25-35. R2A zoning district.

PREMISES AFFECTED – 26-18 210th Street, corner lot on 27th Avenue and 210th Street, Block 5992, Lot 36, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over October 19, 2010, at 10 A.M., for postponed hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, SEPTEMBER 21, 2010

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

325-09-BZ

CEQR #10-BSA-033K

APPLICANT – Sheldon Lobel, P.C., for Congregation Yetev Lev 11th Avenue, owner.

SUBJECT – Application December 7, 2009 – Variance (§72-21) to permit the proposed four-story and mezzanine synagogue (*Congregation Yetev Lev*), contrary to lot coverage (§24-11), rear yard (§24-36) and initial setback of front wall (§24-522). R6 zoning district.

PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 1, 2009, acting on Department of Buildings Application No. 302065011, reads in pertinent part:

“Proposed maximum lot coverage, community facility, is contrary to ZR 24-11.

Proposed rear yards, community facility, is contrary to ZR 24-36.

Proposed initial setback of front wall, community facility, is contrary to ZR 24-522;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R6 zoning district, the construction of a four-story and mezzanine community facility building to be occupied by a synagogue (Use Group 4), which does not comply with lot coverage, rear yard, and setback requirements for community facilities, contrary to ZR §§ 24-11, 24-36 and 24-522; and

WHEREAS, a public hearing was held on this application on March 9, 2010, after due notice by publication in *The City Record*, with continued hearings on April 13, 2010, June 15, 2010 and August 3, 2010, and then to decision on September 21, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-

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Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application, with the condition that the applicant meet with the neighbor to the rear to agree on the back windows and other privacy issues; and

WHEREAS, City Council Member Simcha Felder provided written testimony in support of this application; and

WHEREAS, City Council Member David G. Greenfield provided written testimony in support of this application; and

WHEREAS, certain members of the community provided written and oral testimony in support of this application; and

WHEREAS, an adjacent neighbor, represented by counsel, provided written and oral testimony in opposition to this application (hereinafter, the "Opposition"), with the following primary concerns: (1) the applicant has not demonstrated how the requested relief serves the congregation's programmatic needs; (2) the applicant did not fully respond to the concerns raised by the Board at hearing; (3) the alleged growth in the congregation from 2007 to the present is not credible; and (4) the work being performed on the site does not conform to the previously approved plans; and

WHEREAS, the Opposition also objected to the Board's decision to reopen the case on September 21, 2010 solely to accept revised drawings from the applicant prior to the closure and decision of the case on that date, and argues that the Board must postpone the decision date to afford the Opposition time to review the drawings and make an additional submission in response; and

WHEREAS, the Board notes that the revised drawings accepted into the record on September 21, 2010 represent the exact same proposal submitted to the Board for consideration on July 7, 2010, which was provided to the Opposition at that time; and

WHEREAS, further, the Board notes that the only changes to the drawings include an architect's signature and seal on all drawings, and technical corrections, neither of which substantially changes the subject proposal; and

WHEREAS, accordingly, the Board is not persuaded by the Opposition's contention that the Board must leave the case open to afford the Opposition additional time to respond to the applicant's revised drawings; and

WHEREAS, this application is brought on behalf of Congregation Yetev Lev, a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject premises is located on the south side of 52nd Street between 13th Avenue and 14th Avenue, within an R6 zoning district; and

WHEREAS, the site has a frontage of 75'-0" on 52nd Street, a depth of 100'-2", and a total lot area of 7,512.5 sq. ft.; and

WHEREAS, the subject site is currently under construction based on plans for an as-of-right three-story synagogue approved in 2007, pursuant to New Building Permit No. 30231537-01-NB; and

WHEREAS, the applicant proposes to construct a four-story synagogue building with a mezzanine level above the

second floor; and

WHEREAS the proposed synagogue will have the following parameters: a floor area of 27,414 sq. ft. (36,060 sq. ft. is the maximum permitted); an FAR of 3.65 (4.8 is the maximum permitted); a lot coverage of 93.5 percent above the first floor, at the second floor and second floor mezzanine; (65 percent is the maximum permitted); a rear yard of 6'-0" above the first floor, at the second floor and second floor mezzanine (a rear yard of 30'-0" is required); and an initial front setback distance of 4'-0" (a minimum initial setback of 20'-0" is required at a height of 60'-0"); and

WHEREAS, the applicant initially proposed to construct a synagogue with a floor area of 28,597 sq. ft. (3.8 FAR), 100 percent lot coverage at the second floor and second floor mezzanine, and no rear yard at the second floor and second floor mezzanine; and

WHEREAS, in response to concerns raised by the Board and the Opposition, the applicant submitted revised plans reflecting the current proposal, with a floor area of 27,414 sq. ft. (3.65 FAR), a lot coverage of 93.5 percent at the second floor and second floor mezzanine and 65 percent at the third and fourth floor, a rear yard with a depth of six feet at the second floor and second floor mezzanine and 35'-0" at the third and fourth floor, and a 6'-0" reduction in the height of a portion of the building that encroaches into the rear yard; and

WHEREAS, the proposal provides for the following uses: (1) two mikvahs and a study hall at the cellar level; (2) accessory prayer rooms and space for the congregation on the first floor; (3) the main sanctuary on the second floor; (4) an observatory/prayer area for female members of the congregation on the second floor mezzanine; (5) accessory study rooms on the third floor; and (6) a library, Rabbi's office and administrative offices on the fourth floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the current congregation and the future growth in the congregation's membership; (2) to locate the accessory prayer rooms at the first floor level; (3) to provide separate areas of prayer for men and women; and (4) to accommodate the Synagogue's religious services and community outreach programs; and

WHEREAS, the applicant further states that the congregation currently worships in a rented space in a building located one block west of the subject site, at 1245 52nd Street, which is inadequate to serve the current congregation and meet the programmatic needs of the Synagogue; and

WHEREAS, the applicant represents that the requested waivers are necessary to accommodate the size of the congregation, which consists of over 1,000 dues paying families and is expected to grow steadily over the next few years; and

WHEREAS, the applicant further represents that the Synagogue anticipates approximately 400-450 daily visitors, with approximately 500 male members and 200 female members attending each Sabbath during the service and on Jewish holidays and celebrations; and

WHEREAS, the Opposition argues that the number of

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congregants alleged by the Synagogue is not credible, given that the as-of-right three-story synagogue proposed in 2007 had a smaller capacity, and the applicant's initial submissions listed a smaller number of congregants; and

WHEREAS, the Board notes that the applicant has submitted a list of congregants which supports the applicant's representation regarding the number of members of the Synagogue; and

WHEREAS, the applicant states that the Synagogue will be open seven days a week from 4:30 a.m. to 12:00 a.m., hosting routine daily religious services and study programs divided into morning, mid-day, and evening services; and

WHEREAS, the applicant states that the Synagogue also provides important programs to the community, serving children, teenagers and adults in religious services and educational classes daily; and

WHEREAS, the applicant represents that the Synagogue has an additional programmatic need to locate its accessory prayer rooms at the first floor level; and

WHEREAS, the applicant states that the Synagogue requires accessory prayer rooms to accommodate daily prayers; the prayer rooms are designed to accommodate 35 to 75 people, and upwards of 100 people on the Sabbath and Jewish holidays; and

WHEREAS, the applicant states that new services in the prayer rooms begin every 15 to 20 minutes, therefore there is a programmatic need to place the prayer rooms in an efficient location for circulation purposes, as there will be a large number of congregants entering and exiting the prayer rooms at any given time; and

WHEREAS, the applicant represents that the prayer rooms must be located on the first floor because many congregants use the mikvahs in the cellar on a daily basis prior to attending the prayer sessions, and locating the prayer rooms above the first floor would create difficulties in circulation as congregants would enter the synagogue at the first floor, descend the stairs to the cellar to utilize the mikvahs, then climb up multiple flights of stairs to the prayer rooms, before ultimately exiting back on the first floor; and

WHEREAS, the applicant notes that the main sanctuary at the second floor can hold 489 occupants, which is barely sufficient to satisfy the Synagogue's programmatic needs; therefore, it is unable to place both the main sanctuary and the smaller prayer rooms on the same floor while accommodating the size of the congregation; and

WHEREAS, the applicant states that, since the prayer rooms must be located at the ground floor level, the main sanctuary must be located at the second floor; and

WHEREAS, in support of its programmatic need regarding the location of the prayer rooms and sanctuary, the applicant submitted a number of examples of other synagogues where the prayer rooms are located at or below ground level and the sanctuary space is above; and

WHEREAS, the applicant notes that the requested lot coverage and rear yard waivers are necessary in order to provide sufficient space at the second floor to accommodate the male congregants in the main sanctuary while also providing the DOB-required safe area at that level; and

WHEREAS, the applicant states that Jewish Law requires the Synagogue to have separate, private prayer spaces for the men and women of the congregation; and

WHEREAS, therefore, the Synagogue has an additional programmatic need to place the women's observatory/prayer area at the mezzanine level above the main sanctuary on the second floor; and

WHEREAS, the applicant represents that the requested lot coverage and rear yard waivers are required at the mezzanine level in order to both accommodate for the separate women's prayer area and the DOB-required safe area at that level, as well as to provide a large opening with a double height space above the main sanctuary that is befitting of a large sanctuary; and

WHEREAS, in support of the need for a double height space in the main sanctuary, the applicant submitted photographs of other sanctuaries with double height spaces, and provided a letter from a Rabbi regarding the religious need for the double height space in the main sanctuary; and

WHEREAS, the applicant states that the Synagogue has an additional programmatic need of accommodating its religious and educational services, as well as its community outreach programs; and

WHEREAS, the applicant represents that the requested front setback waiver is necessary in order to create a more efficient building by providing a floor plate large enough to accommodate the Kollel program and other offices used for religious and educational services at the fourth floor, rather than constructing an inefficient fifth floor and providing an additional setback to accommodate these programs; and

WHEREAS, the applicant represents that the proposed building can accommodate the religious services and programs of the Synagogue and will better accommodate the size of its congregation; and

WHEREAS, the Opposition contends that the applicant has not demonstrated a nexus between the programmatic needs of the Synagogue and the requested relief, and that the applicant has not provided the Board with all of the information requested during the hearing process; and

WHEREAS, based upon the above, the Board finds that the applicant has submitted sufficient evidence to demonstrate how the requested relief serves the Synagogue's programmatic needs, and further finds that the applicant has satisfied the concerns raised by the Board during the hearing process; and

WHEREAS, in response to concerns raised by the Board and the Opposition at hearing, the applicant submitted plans for an as-of-right scenario, as well as a lesser variance scenario in which the women's prayer room on the mezzanine level is relocated from the rear of the building to the front; the plans reflected that neither the as-of-right nor lesser variance scenarios could accommodate the programmatic needs of the Synagogue; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester

MINUTES

Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed use and floor area are permitted in the subject zoning district; and

WHEREAS, the Board notes that the requested waivers allow the Synagogue to accommodate its program within a four-story and mezzanine building, rather than providing additional program space in a five- or six-story building; and

WHEREAS, the applicant notes that although the first floor of the proposed synagogue is built to the rear lot line, because a community facility is a permitted obstruction up to a height of 23 feet and because the building is setback above the mezzanine level, the requested lot coverage and rear yard waivers are only necessary for the second floor and second floor mezzanine portion of the building; and

WHEREAS, specifically, the applicant notes that the building is set back at the rear yard six feet at the second floor and second floor mezzanine, and 35 feet at the third and fourth floors; and

WHEREAS, the applicant provided a shadow analysis which studied the effect of the proposal on the adjacent properties to the rear and to the west of the subject site; and

WHEREAS, the shadow analysis submitted by the applicant reflects that the proposed synagogue does not result in any potentially adverse significant shadow impacts on the adjacent properties; and

WHEREAS, the Opposition argues that the applicant has failed to explain why the Synagogue now requires a building with a greater bulk than the three-story as-of-right synagogue reflected in the approved 2007 plans for the subject site; and

WHEREAS, the Board notes that the applicant has submitted sufficient evidence to demonstrate how the Synagogue's programmatic needs necessitate the relief requested in the current proposal; and

WHEREAS, the Board further notes that the applicant's prior consideration of an as-of-right building is not relevant to the Board's analysis of the current proposal; and

WHEREAS, the Opposition also contends that work on

the site does not conform to the approved plans; and

WHEREAS, in response, the applicant submitted letters from the architect and engineer confirming that the work on the site conforms with the approved plans; and

WHEREAS, the Board notes that the proposed plans are signed and sealed by a registered architect and that the conformance of the construction at the site to the approved plans is subject to Department of Buildings ("DOB") review; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board notes that the development of the proposed Synagogue is entirely as-of-right, with the exception of the non-compliant lot coverage, front setback, and rear yard; and

WHEREAS, as noted above, the applicant initially proposed to construct a synagogue with a floor area of 28,597 sq. ft. (3.8 FAR), 100 percent lot coverage at the second floor and second floor mezzanine, and no rear yard at the second floor and second floor mezzanine; and

WHEREAS, in response to concerns raised by the Board and the Opposition, the applicant submitted revised plans reflecting the current proposal, with a floor area of 27,414 sq. ft. (3.65 FAR), a lot coverage of 93.5 percent at the second floor and second floor mezzanine and 65 percent at the third and fourth floor, a rear yard with a depth of six feet at the second floor and second floor mezzanine and 35'-0" at the third and fourth floor, and a 6'-0" reduction in the height of a portion of the building that encroaches into the rear yard; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10BSA033K, dated December 7, 2009; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows;

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Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, 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 R6 zoning district, the construction of a four-story and mezzanine community facility building to be occupied by a synagogue (Use Group 4), which does not comply with lot coverage, rear yard, and setback requirements for community facilities, contrary to ZR §§ 24-11, 24-36 and 24-522, on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 17, 2010"-(12) sheets and "Received September 20, 2010"-(1) sheet and on further condition:

THAT the building parameters shall be: a floor area of 27,414 sq. ft.; an FAR of 3.65; lot coverage of 93.5 percent above the first floor; a rear yard with a depth of 6'-0" above the first floor; and an initial front setback of 4'-0" at a height of 60'-0", as indicated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 21, 2010.

85-10-BZ

CEQR #10-BSA-072X

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 (*Planet Fitness*) 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

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Superintendent, dated April 14, 2010, acting on Department of Buildings Application No. 220051690, reads in pertinent part:

“Proposed change of use to a physical culture establishment is contrary to ZR Section 32-10 and must be referred to the BSA for approval pursuant to ZR Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C4-4 zoning district, the legalization of a physical culture establishment (PCE) on the first and second floors of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 27, 2010, after due notice by publication in *The City Record*, with continued hearings on August 17, 2010 and September 14, 2010, and then to decision on September 21, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of East Kingsbridge Road and East Fordham Road, within a C4-4 zoning district; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE will occupy a total floor area of 16,044 sq. ft. on a portion of the first floor and the entire second floor of the subject building; and

WHEREAS, the PCE is operated as Planet Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 24 hours per day; Friday, from

MINUTES

12:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Fire Department submitted a letter dated August 12, 2010, stating that the proposed PCE use requires the installation of a sprinkler system; and

WHEREAS, in response, the applicant submitted revised plans reflecting the installation of a sprinkler system, and a final inspection form for the sprinkler system which was reviewed by the Department of Buildings; and

WHEREAS, at hearing, the Board questioned whether the signage on the roof of the building was properly permitted; and

WHEREAS, in response, the applicant submitted photographs reflecting that the signage on the roof has been removed; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since February 1, 2010, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between February 1, 2010 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10BSA072X, dated July 9, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure;

Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4 zoning district, the legalization of a physical culture establishment on the first and second floor of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 13, 2010"-(3) sheets and "Received July 13, 2010"-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on February 1, 2020;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 21, 2010.

99-10-BZ

APPLICANT – Fridman Saks, LLP for Dora Weiss, owner.
SUBJECT – Application June 2, 2010 – Special Permit (§73-622) for the in-Part legalization of construction into the side yard on a corner lot and proposed enlargement to an existing single family home, contrary to open space, lot coverage and floor area (§23-141) and side yards (§23-461). R3-2 zoning district.

MINUTES

PREMISES AFFECTED – 2302 Avenue S, Located on the southeast corner of Avenue S and East 23rd Street. Block 7302, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Fridman Saks LLP

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 13, 2010, acting on Department of Buildings Application No. 320121578, reads in pertinent part:

“Proposed minimum open space is less than 65% as required pursuant to ZR 23-141.

Proposed floor area ratio exceeds the 0.5 permitted pursuant to ZR 23-141.

Proposed lot coverage exceeds the 35% permitted pursuant to ZR 23-141.

Proposed extension in side yard measuring 1’-11” is contrary to ZR 23-461;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for open space, floor area ratio (“FAR”), lot coverage, and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on August 17, 2010, after due notice by publication in *The City Record*, with a continued hearing on September 14, 2010, and then to decision on September 21, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Avenue S and East 23rd Street, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with a floor area of 1,802 sq. ft. (0.60 FAR); and

WHEREAS, the applicant states that the subject home was enlarged pursuant to plans approved by the Department of Buildings in 1993, which permitted a one-story addition and an open porch on the southern corner of the home, as well as another open porch on the northern corner of the home; and

WHEREAS, the applicant further states that the owner subsequently performed additional alterations, including a second story addition on the southern corner of the home

and the covering of the open porch on the northern corner of the home, which the owner now proposes to legalize; 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 1,802 sq. ft. (0.60 FAR) to 2,262 sq. ft. (0.75 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 54 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 46 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 1’-11” along the eastern lot line (a minimum width of 5’-0” is required); and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for open space, FAR, lot coverage, and side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received June 2, 2010”- (6) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,262 sq. ft. (0.75 FAR); an open space of 54 percent; a lot coverage of 46 percent; a wall height of 20’-8”; a total height of 26’-10”; a side yard with a minimum width of 1’-11” along the eastern lot line; and a side yard with a minimum width of 10’-0” along the southern lot line, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

MINUTES

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, September 21, 2010.

24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district.

PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9, 11, 12, 23, 24, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most, Sol Greenberger.

For Opposition: Peter Sell and Ken Cohen.

ACTION OF THE BOARD – Laid over to November 16, 2010, at 1:30 P.M., for continued hearing.

267-09-BZ

APPLICANT – NYC Department of Housing Preservation & Development for The City of New York, owner.

SUBJECT – Application September 18, 2009 – Variance (§72-21) to permit one eight-story residential building and two 10-story mixed-use buildings with residential and ground floor retail use, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1155-75 East Tremont Avenue, (aka 1160 Lebanon Street). Block bounded by Lebanon Street to the north, Morris Park Avenue to the east, East Tremont Avenue to the south and Bronx Park Avenue to the west. Block 4007, Lot 15, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Ted Weinstein (HPD), Mark Ginsberg and Michael Wadman.

For Opposition: Charles Leonard, Frank Punzurino, Sr.,

Frank Punzurino, Jr., Magdamari Marcano and William Soto.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for decision, hearing closed.

268-09-BZ

APPLICANT – NYC Department of Housing Preservation & Development for The City of New York, owner.

SUBJECT – Application September 18, 2009 – Variance (§72-21) to permit one eight-story residential building and two 10-story mixed-use buildings with residential and ground floor retail use, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1157-67 East 178th Street, (aka 1176 East Tremont Avenue). Block bounded by East Tremont Avenue to the north, Morris Park Avenue to the east, East 178th Street to the south and Bronx Park Avenue to the west. Block 3909, Lot 8, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Ted Weinstein (HPD), Mark Ginsberg and Michael Wadman.

For Opposition: Charles Leonard, Frank Punzurino, Sr., Frank Punzurino, Jr., Magdamari Marcano and William Soto.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for decision, hearing closed.

304-09-BZ

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – Variance (§72-21) to allow the erection of a ten-story, mixed-use community facility (*Women In Need*) and commercial building, contrary to floor area (§42-00, 43-12 and 43-122), height and sky exposure plane (§43-43), and parking (§44-21). M1-4 zoning district.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Laid over to November 23, 2010, at 1:30 P.M., for adjourned hearing.

MINUTES

305-09-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, for South Queens Boys & Girls Club, Inc., owner.

SUBJECT – Application November 5, 2009 – Variance (§72-21) to permit the enlargement of an existing community facility building (*South Queens Boys & Girls Club*) contrary to floor area (§33-121) and height (§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

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 1:30 P.M., for adjourned hearing.

6-10-BZ

APPLICANT – Sheldon Lobel, P.C. for 2147 Mill Avenue, LLC, owner.

SUBJECT – Application January 8, 2010 – Variance (§72-21) to allow for legalization of an enlargement of a commercial building, contrary to §22-00. R2 zoning 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

APPEARANCES –

For Applicant: Richard Lobel, Senator Carl Kruger, Sal Weedle, Dorothy Turano of CB 18, Robert Sherman, Frank Seddio and Robert Pauls.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 1:30 P.M., for continued hearing.

39-10-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) for the legalization of a single-family home, contrary to side yards (§23-461). R-5 zoning district.

PREMISES AFFECTED – 2032 East 17th Street, East 17th Street and Avenue T, Block 7321, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over to October 19, 2010, at 1:30 P.M., for continued hearing.

89-10-BZ

APPLICANT – Francis R. Angelino, Esq., for National Sculpture Society, owner.

SUBJECT – Application May 13, 2010 – Variance (§72-21) to allow for a commercial use below the floor level of the second story, contrary to §§42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 53 Mercer Street, west side between Grand and Broome Streets, Block 474, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Francis R. Angelino.

ACTION OF THE BOARD – Laid over October 26, 2010, at 1:30 P.M., for continued hearing.

92-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Lancaster Incorporated, owners.

SUBJECT – Application May 20, 2010 – Variance (§72-21) to allow for the construction of an elevator in an existing residential building, contrary to floor area, open space (§23-142) and court regulations (§§23-85, 23-87). R7-2 zoning district.

PREMISES AFFECTED – 39 East 10th Street, north side of 10th Street, between University Place and Broadway, Block 562, Lot 38, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel and Robert Pauls.

ACTION OF THE BOARD – Laid over October 26, 2010, at 1:30 P.M., for continued hearing.

106-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Ka Won Realty Corporation, owner; Harmony Spa, lessee.

SUBJECT – Application June 9, 2010 – Special Permit (§73-36) to legalize a physical culture establishment (*Harmony Spa*) on the third floor of an existing four-story commercial building. M1-6 zoning district.

PREMISES AFFECTED – 240 West 38th Street, 3rd Floor, Located on south side of West 38th Street between 7th and 8th Avenue. Block 787, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for decision, hearing closed.

MINUTES

112-10-BZ

APPLICANT – Sheldon Lobel, P.C., for John Grant, owner.
SUBJECT – Application June 18, 2010 – Special Permit (§73-44) to permit reduction in required parking in connection with change of use from UG 16 to UG 6 in an existing building. M1-1 zoning district.

PREMISES AFFECTED – 915 Dean Street, north side of Dean Street between Classon and Grand Avenues, Block 1133, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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October 13, 2010

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DOCKET

New Case Filed Up to October 5, 2010

185-10-A

115 Beach 216th Street, East side Beach 216th Street 280'0 south of Breezy Point Boulevard., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14.** Construction not fronting a mapped street, contrary to General City Law. R4 district.

186-10-BZ

400-424 East 34th Street, East 34th Street, Franklin D. Roosevelt (FDR) Drive, East 30th Street and First Avenue., Block 962, Lot(s) 80,108 & 1001-1107, Borough of **Manhattan, Community Board: 6.** Variance to allow two buildings with existing hospital, contrary to use regulations. R8 district.

187-10-BZ

40-29 72nd Street, Between Roosevelt Avenue and 41st Avenue., Block 1304, Lot(s) 16, Borough of **Queens, Community Board: 2.** Variance (§72-21) to permit the legalization of a three family building which does not comply with the side yard zoning requirements (ZR §23-462(c)). R6B zoning district. R6B district.

188-10-A

9 Olive Walk, East side of Olive Walk 121.6' south of West End Avenue., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14.** Proposed construction not fronting on a mapped street contrary to General City Law Section 36 within an R4 zoning district. R4 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

OCTOBER 26, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 26, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1493-61-BZ, 1495-61-BZ, 1497-61-BZ, 1499-61-BZ, 1501-61-BZ

APPLICANT – Bryan Cave LLP, for London Terrace Gardens, owner.

SUBJECT – Application August 12, 2010 – Pursuant to §11-411 for an Extension of Term for transient parking in a multiple dwelling building which expired on February 27, 2002; waiver of the rules. R8A zoning district.

PREMISES AFFECTED – 415, 425, 435, 445, 455 West 23rd Street, aka 420, 430, 440, 450, 460 West 24th Street, West 23rd Street, West 24th Street, 125 feet west of Ninth Avenue, 125 feet east of Tenth Avenue. Block 721, Lot 7. Borough of Manhattan.

COMMUNITY BOARD #4M

242-09-A

APPLICANT – NYC Board of Standards and Appeals
Owner: One for the Money, LLC.

SUBJECT – Application August 13, 2009 – Dismissal for Lack of Prosecution – Appeal seeking a common law vested right to continue construction commenced under the prior R7-2/C2-5 Zoning district. R7-A/C2-5 Zoning District.

PREMISES AFFECTED – 75 First Avenue and 77-81 First Avenue, corner lot on the west side of First Avenue between East 4th Street and East 5th Street, Block 446, Lots 29, 30, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEALS CALENDAR

116-10-BZY

APPLICANT – Steven Sinacori, Esq., for Akerman Senterfitt, LLP, for 3516 Development LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 35-16 Astoria Boulevard, south side of Astoria Boulevard between 35th and 36th Streets, Block 633, Lots 39 and 140, Borough of Queens.

COMMUNITY BOARD #1Q

132-10-A

APPLICANT – Adam Leitman Bailey, P.C., for N & J Associates, owner; Ariza, LLC, lessee.

SUBJECT – Application July 28, 2010 – Appeal challenging Department of Buildings determination not to reinstate revoked permits and approval based on failure to provide owner authorization in accordance with Section 28-104.8.2 of the Administrative Code . C4-6A zoning district. PREMISES AFFECTED – 105 West 72nd Street, 68 feet west of corner formed by Columbus Avenue and West 72nd Street. Block 1144, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

133-10-A

APPLICANT – Deidre Duffy, P.E., for Breezy Point Cooperative, Inc., owner; Brian Murphy, lessee.

SUBJECT – Application July 29, 2010 – Proposed enlargement of an existing single family home not fronting a legally mapped street contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 20 Suffolk Walk, west side of Suffolk Walk, 65.10' south of West End Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

139-10-A

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Marcella and Joseph Freisen, lessee.

SUBJECT – Application August 9, 2010 – Proposed reconstruction and enlargement of an existing single family home not fronting a mapped street contrary to General City Law 36 and the proposed upgrade of an existing non-conforming private disposal system partially in the bed of a service road is contrary to Buildings Department Policy. R4 Zoning District.

PREMISES AFFECTED – 29 Roosevelt Walk, east side of Roosevelt Walk 490' north of Breezy Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

OCTOBER 26, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 26, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

Avenue P and Kings Highway. Block 7690, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

ZONING CALENDAR

68-10-BZ

APPLICANT – Eric Palatnik, P.C., for CDI Lefferts Boulevard, LLC, owner.

SUBJECT – Application May 4, 2010 – Variance (§72-21) to allow a commercial building contrary to use regulations ZR §22-00. R5 zoning district.

PREMISES AFFECTED – 80-15 Lefferts Boulevard, between Kew Gardens Road and Talbot Street, Block 3354, Lot 38, Borough of Queens.

COMMUNITY BOARD #9Q

117-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Rhond Mizrahi and Garv Mizrahi, owners.

SUBJECT – Application June 28, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to side yards (§23-461) and less than the required rear yard (§23-47). R-5 zoning district.

PREMISES AFFECTED – 1954 East 14th Street, west side of East 14th Street, between Avenue S and Avenue T, Block 7292, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #15BK

134-10-BZ

APPLICANT – Stuart Beckerman, for Passiv House Xperimental LLC, owner.

SUBJECT – Application July 30, 2010 – Variance (§72-21) to allow a residential building, contrary to floor area (ZR §43-12), height (ZR §43-43), and use (ZR §42-10) regulations. M1-1 zoning district.

PREMISES AFFECTED – 107 Union Street, north side of Union Street, between Van Brunt and Columbia Streets, Block 335, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #6BK

148-10-BZ

APPLICANT – Eric Palatnik, P.C., for Giselle E. Salamon, owner.

SUBJECT – Application August 11, 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), side yards (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 1559 East 29th Street, Between

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**REGULAR MEETING
TUESDAY MORNING, OCTOBER 5, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

60-90-BZ

APPLICANT – EPDSO, Incorporated for Nissim Kalev, owner.

SUBJECT – Application May 18, 2010 – Extension of Term of a previously granted Special Permit (§73-211) for the continued use of a Gasoline Service Station (*Citgo*) and Automotive Repair Shop which expired on February 25, 2001; Waiver of the Rules. C2-1/R3X zoning district.

PREMISES AFFECTED – 525 Forest Avenue, north side of Forest Avenue between Lawrence Avenue and Davis Avenue, Block 148, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 an automotive service station, which expired on February 26, 2001; and

WHEREAS, a public hearing was held on this application on August 3, 2010, after due notice by publication in *The City Record*, with a continued hearing on September 14, 2010, and then to decision on October 5, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application, with the condition that the extension of term be limited to 15 years from the expiration of the previous term; and

WHEREAS, the site is located on the north side of Forest Avenue between North Mada Avenue and Davis Avenue, within a C2-1 (R3X) zoning district; and

WHEREAS, the site is currently occupied by an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 25, 1937 when, under BSA Cal. No.

385-36-BZ, the Board granted a variance to permit the extension of an existing gasoline service station; and

WHEREAS, most recently, on February 26, 1991, under the subject calendar number, the Board granted an application for a special permit under ZR § 73-211 to allow an automotive service station at the site for a term of ten years, which expired on February 26, 2001; and

WHEREAS, the applicant now seeks to extend the term; and

WHEREAS, at hearing, the Board directed the applicant to remove the container located at the northeast corner of the site, to provide landscaping along the eastern lot line to replace the planting strip that was removed, and to modify the parking plan on the site to make it more orderly; and

WHEREAS, in response, the applicant submitted a revised site plan and photos reflecting that the container has been removed from the site, planters have been installed along the eastern lot line, and the parking plan has been modified to increase the number of accessory parking spaces along the western lot line from five to eight; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated February 26, 1991, so that as amended this portion of the resolution shall read: “to extend the term for a period of 15 years from the expiration of the prior grant, to expire on February 26, 2016; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received May 18, 2010’- (3) sheets, ‘Received September 7, 2010’- (2) sheets; and ‘Received September 24, 2010’- (1) sheet and *on further condition*:

THAT the term of this grant shall expire on February 26, 2016;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance 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. 510046709)

Adopted by the Board of Standards and Appeals, October 5, 2010.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Joykiss Management, LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Term (§11-411 & §11-412) to allow the continued operation of an Eating and Drinking establishment (UG 6) which expired on March 15, 2004; Amendment to legalize

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alterations to the structure; Waiver of the Rules. C2-2 and R3-2 zoning districts.

PREMISES AFFECTED – 46-45 Kissena Boulevard, aka 140-01 Laburnum Avenue, Northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previous grant for the operation of a restaurant (Use Group 6) in a C2-2 (R3-2) zoning district, which expired on March 15, 2004, and an amendment to legalize minor modifications to the approved plans, pursuant to ZR §§ 11-411 and 11-412; and

WHEREAS, a public hearing was held on this application on March 23, 2010, after due notice by publication in the City Record, with continued hearings on May 11, 2010, June 8, 2010, July 27, 2010 and September 14, 2010, and then to decision on October 5, 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 7, Queens, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of Kissena Boulevard and Laburnum Avenue, within a C2-2 (R3-2) zoning district; and

WHEREAS, the subject site has a total lot area of 40,830 sq. ft.; and

WHEREAS, the site is occupied by a one-story building operated as a restaurant (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 6, 1958 when, under BSA Cal. No. 788-57-BZ, the Board granted a variance to permit the construction of a one-story storage garage and motor vehicle repair shop, with two gasoline dispensing pumps, for a term of 20 years; and

WHEREAS, subsequently, the grant has been amended by the Board at various times; and

WHEREAS, most recently, on March 15, 1994, under the subject calendar number, the Board granted a special permit under ZR § 11-413 to permit the change of use from motor vehicle storage and repair to an eating and drinking establishment with accessory parking, for a term of ten years, which expired on March 15, 2004; and

WHEREAS, the applicant now seeks to extend the term for an additional ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, the applicant also seeks an amendment to permit changes to the previously approved plans; and

WHEREAS, the applicant initially proposed to legalize the following modifications to the previously approved plans: (i) the modification of internal partitions on the ground floor; (ii) the addition of an overhang at the rear of the building; (iii) the replacement of the building façade, which resulted in an increase in the street wall height; (iv) an extension to the rear of the building; (v) the construction of a mezzanine floor within the existing building; and (vi) the construction of a bulkhead and skylight on the roof of the building; and

WHEREAS, the Board notes that it is authorized to grant enlargements to buildings that were the subject of a use variance granted prior to December 15, 1961 pursuant to ZR § 11-412, but that “no structural alterations, extensions or enlargements shall be authorized for a new-non-conforming use authorized under the provisions of Section 11-413 (Change of use);” and

WHEREAS, the Board notes that a new non-conforming use was authorized at the site under the prior grant on March 15, 1994, when the Board permitted the change of use from motor vehicle storage and repair to an eating and drinking establishment with accessory parking pursuant to ZR § 11-413; therefore, the Board is not authorized to grant any enlargements for the subject building; and

WHEREAS, accordingly, the Board directed the applicant to remove the enlargements located at the rear of the building, the mezzanine and the bulkhead, as these areas contributed to floor area and were therefore impermissible enlargements under ZR § 11-412; and

WHEREAS, in response, the applicant agreed to remove the enlargements at the rear of the building, the mezzanine, and the bulkhead, and submitted revised plans reflecting the removal of those portions of the building; and

WHEREAS, the applicant also submitted demolition plans reflecting the removal of the extension that was constructed at the rear of the building; and

WHEREAS, the applicant represents that the other requested modifications are permissible because they fit within the ZR § 12-10 definition of “incidental alterations,” and pursuant to ZR § 11-412, “repairs or incidental alterations” may be made regardless of whether a new non-conforming use was authorized under ZR § 11-413; and

WHEREAS, the Board agrees that the remaining modifications to the approved plans, specifically the alteration of the internal partitions on the ground floor, the open overhang at the rear of the building, and the replacement of the façade of the building are appropriately classified as “incidental alterations” pursuant to ZR § 12-10, and therefore are permissible modifications under ZR § 11-412; and

WHEREAS, the Fire Department submitted a letter stating that the applicant has been obtaining public assembly permits for both a restaurant (Use Group 6) and a catering establishment (Use Group 9), contrary to the prior Board

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approval; and

WHEREAS, in response, the applicant states that the building is being used solely as a restaurant (Use Group 6); and

WHEREAS, the applicant submitted an affidavit from the owner and operator of the site, describing the operation of the facility and stating that the building is operated as a restaurant and not a catering establishment, that all the food prepared in the kitchen is consumed at the restaurant or picked up at the take-out window, and that the party rooms in the building are used for gatherings of larger parties which takes place approximately three to four times per month; and

WHEREAS, the Board finds the information submitted by the applicant to be sufficient to establish that the site operates as a restaurant (Use Group 6) rather than a catering establishment (Use Group 9); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-412.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on March 15, 1994, to permit an extension of term for a period of ten (10) years from the expiration of the previous grant, to expire on March 15, 2014, and to permit the noted modifications to the approved plans pursuant to ZR §§ 11-411 and 11-412; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received June 7, 2010"- (2) sheets, and "Received September 29, 2010"-(1) sheet; and *on further condition*:

THAT this grant shall be for a term of ten years, to expire on March 15, 2014;

THAT use of the site shall be limited to a restaurant (Use Group 6) with accessory parking;

THAT all signage shall comply with C2 zoning district regulations;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by October 5, 2011;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 400475776)

Adopted by the Board of Standards and Appeals, October 5, 2010.

164-04-BZ

APPLICANT – Sheldon Lobel, P.C., 2241 Westchester Avenue Realty Corporation, owner; Castle Hill Fitness Group, LLC, lessee.

SUBJECT – Application April 5, 2010 – Extension of Time to obtain a Certificate of Occupancy for a previously granted physical culture establishment (*Planet Fitness*) which expired on February 7, 2007; Amendment to change operator, hours of operation and interior modification; Waiver of the Rules. C2-1/R6 zoning district.

PREMISES AFFECTED – 2241 Westchester Avenue, northwest corner of Westchester Avenue and Glebe Avenue, Block 3963, Lot 57, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Elizabeth Safien.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of time to obtain a certificate of occupancy for a previously granted special permit for a physical culture establishment (PCE), which expired on February 7, 2007, and an amendment to reflect a change in the operator of the PCE, interior modifications, and a change in the hours of operation of the PCE; and

WHEREAS, a public hearing was held on this application on June 15, 2010, after due notice by publication in *The City Record*, with continued hearings on August 3, 2010 and September 14, 2010, and then to decision on October 5, 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 10, Bronx, recommends disapproval of this application, based on the following primary concerns: (i) the PCE operates 24 hours per day, contrary to the prior grant; (ii) the PCE is not equipped with a fire alarm and sprinkler system; (iv) a uniformed security officer is not on site during the PCE's hours of operation; (v) an on-site manager is not always present during the PCE's hours of operation; (vi) the windows should be tinted to prevent glare and negative effects on adjacent residences; (vii) the parking lot and perimeter of the building are not cleaned on a regular basis of trash and snow accumulation; and (viii) that signage should be posted throughout the PCE advising patrons that they should be respectful of their neighbors; and

WHEREAS, certain neighborhood residents provided oral testimony in opposition to this application; and

WHEREAS, the PCE is located on the northwest corner

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of Westchester and Glebe Avenues, within a C2-1 (R6) zoning district; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE occupies 13,084 sq. ft. of floor area at the second floor of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 7, 2006 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years from July 15, 2004, to expire on July 15, 2014; a condition of the grant was that a certificate of occupancy be obtained within one year, which expired on February 7, 2007; and

WHEREAS, the applicant now seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant also seeks an amendment to reflect the change of ownership and operation of the PCE since the prior grant; and

WHEREAS, the PCE is now operated as Planet Fitness; and

WHEREAS, the Board notes that the Department of Investigation has approved the change of ownership and operation of the PCE; and

WHEREAS, the applicant also seeks an amendment to legalize minor interior modifications to the PCE, including: (i) a decrease in the PCE floor area from 13,837 sq. ft. to 13,084 sq. ft.; (ii) the reconfiguration of the reception counter, fitness rooms and locker rooms within the second floor; (iii) removal of the second floor's additional restrooms, office space, and steam rooms within the locker rooms, as well as the associated partitions; and (iv) minor signage changes to the frontages along Westchester Avenue and Glebe Avenue; and

WHEREAS, the applicant also seeks an amendment to legalize the change in the hours of operation of the site to 24 hours per day; the hours of operation approved in the prior grant were Monday through Friday, from 5:00 a.m. to 12:00 a.m., and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, at hearing, the Board directed the applicant to revert to the approved hours of operation and to respond to the issues raised by the Community Board; and

WHEREAS, in response, the applicant provided photographs of signage that has been installed at the site reflecting that a manager is on duty, that the parking lot is for PCE patrons only, that Glebe Avenue is a one-way street, that guests must present photo ID upon signing in, and requesting that PCE patrons "Please be courteous to our neighbors and keep noise at a minimum;" and

WHEREAS, the applicant also submitted letters from contractors stating that a fire alarm and sprinkler system have been installed and all the necessary paperwork has been filed at the Department of Buildings; and

WHEREAS, the applicant states that window tinting has been installed to reduce light emission from the PCE, a uniformed parking attendant will be provided and the PCE has security guards positioned throughout the facility; and

WHEREAS, the applicant also submitted photographs reflecting that the PCE revised its hours of operation to Monday through Thursday, from 5:00 a.m. to 12:00 a.m., Friday, from 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, however, the applicant represents that the reduction in hours creates a hardship for the business and that 24-hour weekday access is the cornerstone of the PCE's business model, and therefore requests that the Board grant the requested amendment to permit the PCE to operate 24 hours daily; and

WHEREAS, the Board notes that there is significant community opposition to the proposed amendment to change the hours of operation to 24 hours per day, and finds it appropriate to limit the PCE to its current hours of operation; and

WHEREAS, the Board further notes that the term of the grant expires on July 15, 2014, and the applicant is not barred from seeking to amend the grant to extend its hours of operation at a later date; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy and the amendments to permit a change in the operator of the PCE and to allow minor interior modifications to the previous grant are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on February 7, 2006, so that as amended this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy for one year from the date of this grant, to expire on October 5, 2011, and to permit the noted change in operator of the PCE and the noted modifications to the approved plans, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received April 5, 2010' - (4) sheets; and *on further condition*:

THAT the hours of operation of the PCE shall be: Monday through Thursday, from 5:00 a.m. to 12:00 a.m.; Friday, from 5:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.;

THAT the site shall be maintained free of garbage and debris

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by October 5, 2011;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure

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compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 210053378)

Adopted by the Board of Standards and Appeals, October 5, 2010.

124-05-BZ

APPLICANT – Deirdre A. Carson, for The Estate of Armand P. Arman c/o 482 Greenwich, LLC, owner; 482 Greenwich, LLC (Joint Venture Partner), lessee.

SUBJECT – Application June 15, 2010 – Amendment to a Variance (§72-21) for the construction of a mixed-use building to allow an increase in dwelling units, increase in street wall height and reduction of overall building height; Extension of Time to Complete Construction which expires on September 12, 2010. C6-2A zoning district.

PREMISES AFFECTED – 482 Greenwich Street, northwest intersection of Greenwich and Canal Streets, Block 595, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of time to complete construction, which expired on September 12, 2010, and an amendment to a previously granted variance which permitted, in a C6-2A zoning district, the construction of an 11-story mixed-use residential/commercial/community facility building; and

WHEREAS, a public hearing was held on this application on August 24, 2010, after due notice by publication in *The City Record*, with a continued hearing on September 21, 2010, and then to decision on October 5, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, certain members of the community provided oral and written testimony in opposition to the applicant’s proposal to increase the street wall height of the building along Canal Street and Greenwich Street from 60 feet to 85 feet; and

WHEREAS, the subject site is located on the northwest corner of the intersection of Greenwich Street and Canal Street, within a C6-2A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 12, 2006 when, under the

subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted, in a C6-2A zoning district, the construction of an 11-story mixed-use residential/commercial/community facility building with ten dwelling units, a street wall height of 60 feet, and an overall building height of 120 feet, which did not comply with applicable zoning requirements for lot coverage, side yard, setback, courts, parking area size, and curb cut location, contrary to ZR §§ 23-145, 35-32, 23-83, 13-143, 35-24 and 13-142(a); and

WHEREAS, the applicant now proposes the construction of a nine-story mixed-use residential/commercial/community facility building with 19 dwelling units, a street wall height of 85 feet, and a total height of 109 feet, which eliminates the waiver related to the parking area size, but requires an additional waiver pursuant to ZR § 35-24(b)(2) for the articulation of the street wall; and

WHEREAS, the applicant requests an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant represents that construction at the site was delayed due to financing issues, which have since been resolved; and

WHEREAS, the applicant also requests that the Board amend the grant to allow changes to the building that are contrary to the previously-approved plans; and

WHEREAS, specifically, the applicant requests that the Board permit the following modifications to the approved plans, which will either reduce or eliminate a non-compliance that was approved in the prior grant: (i) a reduction in the lot coverage from approximately 97 percent to 91.5 percent; (ii) an increase in the size of the non-complying side yard, from 130 sq. ft. to 223 sq. ft.; (iii) the compliance of the two dormers within the required setback area on Canal Street and Greenwich Street, respectively; and (iv) a reduction in the number of cars in the garage to two and a reduction in the area devoted to the garage to 358 sq. ft.; and

WHEREAS, the applicant also requests that the Board permit the following modifications to the approved plans, which may increase certain elements of the building, but which are all permitted as-of-right in the underlying zoning district: (i) an increase in the total floor area of the building from 20,255 sq. ft. (6.33 FAR) to 20,346 sq. ft. (6.44 FAR), with a corresponding increase in the residential floor area from 18,878 sq. ft. to 19,023 sq. ft., an increase in the commercial floor area from 963 sq. ft. to 996 sq. ft., and a decrease in the community facility floor area from 413 sq. ft. to 327 sq. ft.; (ii) an increase in the street wall height of the building from 60 feet to 85 feet; (iii) an increase in the number of dwelling units from ten to 19; (iv) a reduction in the number of stories in the building from 11 to nine; and (v) a decrease in the total building height from 120 feet to 109 feet; and

WHEREAS, at hearing, the Board requested that the applicant consider whether a portion of the Greenwich Street street wall could be reduced in height to 60 feet adjacent to the property at 484 Greenwich Street; and

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WHEREAS, in response, the applicant states that reducing the street wall height would undermine the primary design objectives for the building and would introduce a new non-compliance in the form of a non-complying outer court; and

WHEREAS, further, the applicant notes that such a change would compromise the efficiency and unit size of the building and required the reallocation of square footage to the top of the building, thereby undermining the feasibility of the units; and

WHEREAS, the applicant notes that the proposed envelope of the building is permitted as-of-right in the underlying zoning district; and

WHEREAS, finally, the applicant requests that the Board permit the following modifications to the approved plans, which result in an increase in the degree of non-compliance from the previous grant: (i) the articulation of the street wall of the building along Canal Street and Greenwich Street to cut the corner at the intersection; and (ii) the reduction in the distance between the curb cut for the garage and the intersection at the corner from 34'-3 3/4" to 23'-10 3/4"; and

WHEREAS, the applicant states that the articulation of the street wall along Canal Street will begin 18'-5" from the intersection of Canal Street and Greenwich Street, contrary to ZR §35-24(b)(2); and

WHEREAS, the Board notes that the applicant submitted an objection from the Department of Buildings ("DOB") for the non-compliance related to ZR § 35-24(b)(2); and

WHEREAS, the applicant states that this modification is necessary to increase the functionality of the building and states that a cut corner was requested by the community during the hearing process for the prior grant; and

WHEREAS, the applicant states that pursuant to ZR § 13-142(a), the prohibition of the placement of a curb cut within 50 feet of a corner can be waived at the discretion of the Commissioner of DOB; and

WHEREAS, however, the applicant represents that such a waiver was granted by the Board for the prior building conditions and that the same conditions that warranted the granting of relief in the first instance still pertain and have actually been enhanced by the reduction in the number of cars that the garage will accommodate and the cutting of the corner, which will increase visibility of the garage entrance to vehicles approaching the intersection from the southwest; and

WHEREAS, at hearing, the Board requested that the applicant reconsider the width and location of the proposed curb cut on Greenwich Street; and

WHEREAS, in response, the applicant reduced the width of the curb cut from 22 feet to 19 feet and relocated it from approximately 24 feet from the intersection to approximately 27 feet from the intersection; and

WHEREAS, the applicant also states that the curb cut will not generate many trips since it will only service two cars, that the subject portion of Greenwich Street is not heavily trafficked, and that cars that turn onto Greenwich Street will have a clear line of sight from the intersection to the point at

which cars would enter and leave the garage; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, continues to reflect the minimum variance and the Board has determined that it is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 12, 2006, so that as amended this portion of the resolution shall read: "to grant an extension of time to complete construction for a term of four years, to expire on September 12, 2014, and to permit the noted modifications to the approved plans, including the articulation of the street wall along Canal Street beginning 18'-5" from the intersection of Canal Street and Greenwich Street; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received July 30, 2010"-(5) sheets, "Received August 10, 2010"-(2) sheets, "Received August 11, 2010"-(1) sheet, and "Received September 7, 2010"-(2) sheets ; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 120051521)

Adopted by the Board of Standards and Appeals, October 5, 2010.

179-07-BZ

APPLICANT – Sheldon Lobel, PC, for 74-21 Queens Boulevard, LLC, owner.

SUBJECT – Application July 13, 2007 – Dismissal for Lack of Prosecution - Variance (§72-21) to allow a seven-story hotel building contrary to floor area regulations (§33-122). C8-1 zoning district.

PREMISES AFFECTED – 74-21 Queens Boulevard, located on north of Queens Boulevard, 25' from the intersection of Queens and 76th Street, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

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THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated November 12, 2008, acting on Department of Buildings Application No. 402590790, reads in pertinent part:

“Proposed hotel use group 5 in C8-1 exceeds max permitted F.A.R. contrary to section 33-122.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C8-1 zoning district, the construction of a hotel building which does not comply with the zoning regulations for floor area ratio, contrary to ZR § 33-122; and

WHEREAS, the variance application was filed on July 13, 2007; and

WHEREAS, on August 29, 2007, Board staff referred the application to the NYC Department of Environmental Protection for Hazardous Materials, Air Quality and Noise review; and

WHEREAS, on September 12, 2007, Board staff issued a Notice of Comments requesting that the applicant submit the following: (1) a revised Statement of Facts and Findings; (3) a revised economic analysis; (4) revised plans; and (5) a revised zoning analysis sheet; and

WHEREAS, on August 8, 2008, the applicant responded to the Notice of Comments; however, the zoning text had been amended to require parking lot landscaping and maneuverability; and

WHEREAS, on October 9, 2008, a second Notice of Comments was sent to the applicant notifying him to amend the plans to comply with these new zoning regulations; and

WHEREAS, on October 17, 2008, the Department of Environmental Protection signed off on Air Quality and Noise review and requested a Phase II to further review Hazardous Materials; and

WHEREAS, the Board did not receive any subsequent response from the applicant on Hazardous Materials; and

WHEREAS, on November 20, 2008, the applicant responded to the second Notice of Comments; and

WHEREAS, on November 24, 2008, Board staff notified the applicant that the response did not comply with the new zoning regulations; and

WHEREAS, the Board did not receive any subsequent response from the applicant; and

WHEREAS, on April 10, 2009, staff issued a letter notifying the applicant that if no correct response to the second Notice of Comments was received within 45 days of the letter, the Board would schedule a dismissal hearing; and

WHEREAS, the Board did not receive any subsequent response from the applicant; and

WHEREAS, accordingly, the Board placed the matter on the calendar for dismissal; and

WHEREAS, on August 24, 2010, the Board sent the applicant a notice stating that the case had been put on the October 5, 2010 dismissal calendar; and

WHEREAS, the applicant did not appear at the hearing on October 5, 2010; and

WHEREAS, accordingly, due to the applicant’s lack of

good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 179-07-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, October 5, 2010.

656-69-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLC, for JVM Company, LLC, owner.

SUBJECT – Application May 6, 2010 – Extension of Term of a (UG9) parking lot accessory to an existing funeral home establishment which expired on May 27, 2010; Extension of Time to obtain a Certificate of Occupancy; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 2617/23 Harway Avenue, aka 208/18 Bay 43rd Street. North west corner Harway Avenue and Bay 43rd Street. Block 6897, Lots 1 & 2, Borough of Brooklyn.

COMMUNITY BOARD #13BK

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 October 19, 2010, at 10 A.M., for decision, hearing closed.

26-94-BZ

APPLICANT – Rampulla Associates Architects, for Joseph D'Alessio, owner.

SUBJECT – Application July 29, 2010 – Extension of Term of a Special Permit (§73-242) for a (UG6) eating and drinking establishment which expires on June 6, 2011. C3A (SSRD) zoning district.

PREMISES AFFECTED –141 Mansion Avenue, west of McKee Avenue, Block 5201, Lot 33, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Philip Rampulla.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for continued hearing.

322-98-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for HUSA Management Company, LLC, owner; TSI West 125 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application May 26, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on March 23, 2009; Amendment

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to legalize the increase in floor area; Waiver of the Rules. C4-4(125) zoning district.

PREMISES AFFECTED – 300 West 125th Street, south side of West 12th Street between Saint Nicholas Avenue and Fredericks Douglas Boulevard, Block 1951, Lots 22, 25, 27, 28, 29, 33, 39, Borough of Manhattan.

COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for decision, hearing closed.

33-99-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for RCPI Trust, owner; Talla New York Incorporated, lessee.

SUBJECT – Application June 14, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*The Sports Club/LA*) which expired on January 11, 2010; waiver of the rules. C5-3(MID) zoning district.

PREMISES AFFECTED – 630 5th Avenue, block bounded by 5th Avenue, East 50th Street and Rockefeller Plaza, Block 1266, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

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 October 26, 2010, at 10 A.M., for decision, hearing closed.

161-00-BZ

APPLICANT – Stuart A. Klein, Esquire, for Stellar Sutton, LLC, owner; Mario Badescu Skin, Incorporated, lessee.

SUBJECT – Application June 9, 2010 – Extension of Term of a previously granted Variance (§72-21) for the operation of a Physical Culture Establishment (*Bodescu Skin Care*) which expired on June 2, 2010; Extension of Time to obtain a Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 320 East 52nd Street, between 1st and 2nd Avenue, Block 1344, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Jay Goldstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for decision, hearing closed.

344-03-BZ

APPLICANT – Goldman, Harris LLC, for City of New York, owner; Nick's Lobster House, lessee.

SUBJECT – Application August 11, 2010 – Extension of Term of a Special Permit (§73-242) permitting an eating and drinking establishment which expired on July 12, 2010. C3 zoning district.

PREMISES AFFECTED – 2777 Flatbush Avenue, between Flatbush and Mill Basin, Block 8591, Lot p/o 980, p/o 175, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Vivien Krieger.

ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for continued hearing.

APPEALS CALENDAR

315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC, owner.

SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for a condominium hotel on the basis that the approved plans allow for exceeding of maximum permitted floor area. M1-6 zoning.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Goldstein.

For Opposition: John E-Bene.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a Final Determination letter dated November 24, 2008 by the New York City Department of Buildings (“DOB”) (the “Final Determination”), with respect to New Building Application No. 104403324; and

WHEREAS, the Final Determination states, in pertinent part:

“The New York City Department of Buildings (“DOB”) re-confirms its issuance of the above-referenced permit and approval of the post-approval amendment (“PAA”) to this permit on August 22, 2008. Should you wish to challenge DOB’s actions with regard to this permit, you may consider this

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letter a final determination on the validity of the permit and PAA for purposes of bringing an appeal to the Board of Standards and Appeals”; and

WHEREAS, a public hearing was held on this appeal on November 17, 2009, after due notice by publication in *The City Record*, with continued hearings on November 24, 2009, January 26, 2010 and July 27, 2010, and then to decision on October 5, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioners Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, this appeal concerns the construction of a 44-story condominium hotel with 420 individual units in an M1-6 zoning district (the “Building”); and

WHEREAS, the appeal is brought on behalf of the SoHo Alliance, a membership organization of persons who live and work in the SoHo community (the “Appellant”); the Appellant was represented by counsel in this proceeding; and

WHEREAS, DOB and the owner of 246 Spring Street (the “Owner”) have been represented by counsel throughout this Appeal; and

PROCEDURAL HISTORY

WHEREAS, on May 17, 2007, DOB issued New Building Permit No. 104403324 (the “Building Permit”) for a proposed transient hotel at the subject site; and

WHEREAS, on October 30, 2007, the Appellant filed an appeal with the Board under BSA Cal. No. 247-07-A, arguing that DOB should revoke the Building Permit for the following reasons: (i) the length of stay permitted to unit owners violates the Zoning Resolution (the “ZR”) and the New York City Administrative Code; (ii) individual ownership of units violates the ZR; (iii) DOB and the City cannot enforce against illegal residential use of the condominium hotel units; and (iv) that DOB acted inconsistently in approving the Building Permit; and

WHEREAS, on May 6, 2008, the Board denied the appeal under BSA Cal. No. 247-07-A, based on its determination that the Building, as proposed, complied with the criteria for a transient hotel in an M1-6 zoning district and that there was no basis for the revocation of the permit; and

WHEREAS, the Appellant subsequently filed an Article 78 action (SoHo Alliance, Inc. v. City of New York) to challenge the Board’s denial of the appeal, in which the Appellate Division upheld the Board’s determination; and

WHEREAS, on August 22, 2008, DOB approved a post-approval amendment which involved the addition of the 43rd and 44th floors to the Building; and

WHEREAS, on September 18, 2008 the Appellant submitted a letter to DOB requesting that it revoke the Building Permit on the basis that the plans filed indicated a floor area exceeding that permitted under the applicable zoning regulations; and

WHEREAS, in response, DOB issued the Final Determination on November 24, 2008, denying Appellant’s request to revoke the Building Permit; and

WHEREAS, on December 23, 2008, the Appellant filed

the subject appeal; and

ISSUES PRESENTED

WHEREAS, the Appellant asserts that the Building exceeds the maximum allowable floor area and, therefore, DOB should revoke the Building Permit; and

WHEREAS, the Appellant makes the following primary arguments in support of its position that DOB should revoke the Building Permit: (i) the elevator shafts and stairwells at the fourth floor were improperly deducted from the floor area calculations; (ii) excessive deductions were taken for the loading berths; and (iii) the swimming pool service process equipment and electric meter rooms were improperly deducted as mechanical equipment; and

WHEREAS, the Appellant makes several additional arguments in support of its position that the Building Permit should be revoked, including: (i) that the curb level elevations for the new building are calculated only for a portion of the zoning lot, contrary to the ZR § 12-10 definition of “curb level;” (ii) that no survey was provided to establish the zoning lot areas for different portions of the site, including the portion occupied by 145 Sixth Avenue, an existing building on the zoning lot; and (iii) that without the plans for the proposed work at 145 Sixth Avenue, it is not possible to confirm the accuracy of the attributable floor areas in determining floor area ratio (“FAR”) compliance; and

WHEREAS, the Appellant initially submitted several arguments related to the permit issued for the enlargement of the adjacent building on the subject zoning lot, 145 Sixth Avenue (Alteration Permit No. 104351979), including concerns related to the zoning computations, and the inclusion and dimensions of a greenhouse; and

WHEREAS, the Appellant made additional arguments, regarding deductions taken on the first through sixth floors and the classification of certain uses in the Building as non-accessory, based on amended plans that were submitted by the Owner during the course of the hearing process (the “Revised Plans”); and

WHEREAS, the Board notes that the Appellant failed to submit a final determination from DOB either for the issues related to the permit for 145 Sixth Avenue or the issues related to the Revised Plans and, thus, the Appellant’s concerns regarding those issues are not properly before the Board within the context of the subject appeal; and

WHEREAS, accordingly, the Board acknowledges the Appellant’s arguments associated with both 145 Sixth Avenue and the Revised Plans, but does not analyze or reach a determination on any of them in the absence of a final determination from DOB; and

THE ZONING RESOLUTION’S DEFINITION OF FLOOR AREA

WHEREAS, ZR § 12-10 (titled “Definitions”) provides the definition for “Floor Area,” and reads, in pertinent part: ‘Floor area’ is the sum of the gross areas of the several floors of a *building* or *buildings*, measured from the exterior faces of exterior walls or from the center lines of walls separating two *buildings*. In particular, *floor area* includes:

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(b) elevator shafts or stairwells at each floor;

(o) any other floor space not specifically excluded.

However, the *floor area* of a *building* shall not include:

(7) floor space used for *accessory* off-street loading berths, up to 200 percent of the amount required by the applicable district regulation;

(8) floor space used for mechanical equipment

DISCUSSION

A. Elevator Shafts and Stairwells on a Mechanical Floor

WHEREAS, in support of its assertion that the elevator shafts and stairwells on the fourth floor should be included in the floor area calculations, the Appellant makes the following arguments: (i) the ZR text is unambiguous and states that those spaces count towards floor area; (ii) DOB does not have the authority to narrow a definition contained in the ZR; and (iii) even if there is a longstanding DOB practice of excluding elevator shafts and stairwells on a mechanical floor, it does not legitimize such an incorrect interpretation; and

WHEREAS, in response, DOB makes the following arguments with which the Owner concurs: (i) the inclusion of elevator shafts and stairwells in the floor area calculations on a mechanical floor would lead to an absurd result; (ii) DOB, as the agency that administers and enforces the ZR, has the authority to narrow the definition of otherwise clear language to further the purpose of the ZR; and (iii) DOB's longstanding and consistent practice has been to exclude elevator shafts and stairwells on mechanical floors from the floor area calculations; and

WHEREAS, in addition to the arguments set forth by DOB, the Owner also asserts that DOB's interpretation is necessary to account for relevant advances in technology and approaches to building design that allow for a wholly mechanical floor; and

1. Interpretation of the ZR Text

WHEREAS, in its analysis of the appropriateness of floor area deductions for elevator shafts and stairwells on the Building's fourth floor – a mechanical floor – the Appellant relies on the plain meaning doctrine; and

WHEREAS, the Appellant, citing Raritan Development Corp. v. Silva, 91 N.Y.2d 98, 107 (1997), asserts that the plain language of the ZR § 12-10 definition of floor area is unambiguous, and that under applicable New York law on statutory interpretation, DOB may not go outside the text to interpret the ZR's unambiguous language; and

WHEREAS, the Appellant notes that the definition of floor area under ZR § 12-10 is subdivided into two lists, one which includes those areas that count towards floor area, and one which includes those areas which are not deemed floor area; and

WHEREAS, the Appellant asserts that the plain language of the ZR requires the inclusion of the elevator shafts and stairwells at the fourth floor of the Building in the floor area calculation because the text specifically lists as floor area "elevator shafts or stairwells at each floor" and "any other floor

space not specifically excluded," and the list of exemptions does not include any reference to elevator shafts or stairwells; and

WHEREAS, the Appellant cites to McKinney's Consolidated Laws of New York, Book 1, Statutes § 76, "[w]here words of a statute are free from ambiguity and express plainly, clearly and distinctly the legislative intent, resort may not be had to other means of interpretation;" and

WHEREAS, accordingly, the Appellant contends that it was improper to exclude the fourth floor elevator shafts and stairwells from the zoning floor area, and the Building Permit must be revoked because there is not sufficient available bulk to accommodate the inclusion of the elevator shafts and stairwells in the floor area, which will increase the actual net zoning floor area by between 1,200 sq. ft. and 1,500 sq. ft.; and

WHEREAS, in response, DOB acknowledges that the ZR § 12-10 definition of floor area specifically includes "elevator shafts or stairwells at each floor," however, it notes that the entire fourth floor of the Building is a mechanical floor devoted to mechanical equipment; and

WHEREAS, DOB notes that the ZR § 12-10 definition of floor area also specifically excludes "floor space used for mechanical equipment," and that because the entire fourth floor is allocated to mechanical use and is thus wholly excluded, the elevator shafts and stairwells which pass through the mechanical floor are excluded from floor area calculations; and

WHEREAS, DOB asserts that the ZR is silent as to whether elevator shafts and stairwells should be included in floor area calculations when the remainder of the floor is occupied by mechanical equipment and thus exempt from floor area calculations; and

WHEREAS, DOB concludes that an interpretation whereby such spaces are the only floor area on a floor would be unreasonable; and

WHEREAS, further, in support of its authority to interpret the ZR, DOB cites to Appelbaum v. Deutsch, 66 N.Y.2d 975, 977 (1985), wherein the Court of Appeals noted that "BSA and DOB are responsible for administering and enforcing the zoning resolution, and their interpretation must therefore be given great weight and judicial deference, so long as the interpretation is neither irrational, unreasonable nor inconsistent with the governing statute" (internal citations and quotation marks omitted); and

WHEREAS, DOB states that its duty as the agency that administers and enforces the ZR (see New York City Charter § 643; ZR § 71-00) requires that it interpret the Zoning Resolution in a logically consistent manner; and

WHEREAS, DOB argues that the result of applying the Appellant's interpretation to the Building leads to a result contrary to the spirit of the ZR; and

WHEREAS, DOB cites to McKinney's Consolidated Laws of New York, Book 1, Statutes § 113, "[g]eneral words in a statute may receive limited construction in order to avoid absurd, unjust, or other objectionable results;" and

WHEREAS, DOB states that its interpretation that elevator shafts and stairwells are excluded from floor area on an entirely mechanical floor is necessary in order to avoid the absurd result of counting these voids as floor area when they

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have no floor space and where the adjoining floor is not counted as floor area; and

WHEREAS, the Owner claims that DOB's interpretation of the relevant provisions of the ZR to permit elevator shafts and stairwells to be excluded from zoning floor area on floors occupied solely by mechanical equipment is the only rational way to reconcile the several different characteristics of zoning floor area; and

WHEREAS, specifically, the Owner contends that the determination of whether or not elevator shafts and stairwells on an otherwise mechanical floor should be treated as floor area involves the interaction of three different elements of the definition of zoning floor area, pursuant to ZR § 12-10: (i) that "'floor area' is the sum of the gross areas of the several floors of a building [emphasis added];" (ii) that "elevator shafts and stairwells at each floor" are to be included as floor area; and (iii) that "floor space used for mechanical equipment" is to be excluded from zoning floor area; and

WHEREAS, the Owner argues that the ZR requires elevator shafts and stairwells to be included in zoning floor area because these areas are not "floors;" rather, they are voids that do not fall strictly into the definition of floor area, and therefore the ZR must specify that these spaces are treated as floor area so that they can take on the character of the remainder of the floor on which they are located; and

WHEREAS, the Owner further argues that these areas are better characterized as voids rather than floor space because they are circulation elements appurtenant to the floor through which they pass or which they serve, and therefore should be treated for floor area purposes in the same manner as the floor to which they relate is treated; and

WHEREAS, the Owner concurs with DOB's interpretation for the following reasons: (i) vertical circulation spaces do not have a character of their own but are accessory to and take their character from, the individual floors through which they pass; (ii) excluding elevator shafts and stairwells on mechanical floors is entirely consistent with the purposes of the ZR's floor area controls because these spaces make no greater contribution to a building's density and have no greater impact on its neighbors than does the actual floor space on the mechanical equipment floor; and (iii) it is absurd to exclude from zoning floor area all of the floor space on an exclusively mechanical floor while including all of the voids; and

WHEREAS, the Owner states that the elevator shafts and stairwells merely pass through the subject mechanical floor, which is only accessible via the service elevator and as a fire exit stair, and that if the elevators and stairwells did not have to pass through the subject mechanical floor to connect the floors above and below, the entire floor could be occupied by mechanical space – and therefore be exempted from floor area – even though the bulk of the building, which is what the ZR's floor area regulations seek to control, would be the same; and

WHEREAS, the Board agrees that DOB has the authority to administer and enforce the ZR and that it is within its authority to interpret how the language including elevator shafts and stairwells as floor area applies to floors that are otherwise completely exempt from floor area; and

WHEREAS, further, the Board agrees with DOB and the

Owner that it is unreasonable to exclude from zoning floor area all of the floor space on an exclusively mechanical floor while including all of the voids; and

2. The Extent of DOB's Interpretive Authority

WHEREAS, the Appellant asserts that DOB's interpretation has the effect of rewriting the law in violation of the doctrine of legislative equivalency, which provides that "existing legislation may only be amended or repealed by the same means as was used to enact it." Noghrey v. Town of Brookhaven, 214 A.D. 2d 659 (N.Y.A.D. 2d Dept., 1995), citing Matter of Gallagher v. Regan, 42 N.Y.2d 230, 234 (N.Y. 1977); and

WHEREAS, the Appellant argues that DOB has no authority to narrow a definition in the ZR in the face of clear and unambiguous language; and

WHEREAS, in response, DOB asserts that, although the ZR states that elevator shafts and stairwells are treated as floor area, a rational interpretation of the statute requires DOB to apply a more narrow interpretation which recognizes that those spaces do not count as floor area when the entire floor through which they pass is excluded as mechanical space; and

WHEREAS, DOB argues that New York State courts' and the Board's precedent support its authority to narrow the definition of otherwise clear language to further the purpose of the ZR and prevent an inconsistent result; and

WHEREAS, DOB cites to People v. Rvan, 274 N.Y. 149 (N.Y. 1937) for the principle that narrowing the application of a statutory term is permitted to avoid a result contrary to legislative intent; and

WHEREAS, DOB also cites to BSA Cal. No. 307-06-A (86-18 58th Avenue, Queens), wherein the Board denied a property owner's appeal seeking to have its use classified as a Use Group 3 philanthropic or non-profit institution with sleeping accommodations pursuant to ZR § 22-13; although the applicant was a registered non-profit corporation whose proposed premises contained sleeping accommodations, the Board upheld DOB's interpretation narrowing the application of ZR § 22-13 to apply only to institutions for which the provision of sleeping accommodations was necessary to a philanthropic purpose that was not itself the provision of sleeping accommodations; and

WHEREAS, the Board agrees that BSA Cal. No. 307-06-A is analogous to the subject case in that both involve a DOB interpretation which narrows the application of the ZR's general language in order to achieve results consistent with the purposes of the ZR; and

WHEREAS, the Appellant argues that the subject case is analogous to BSA Cal. No. 67-07-A (515 East 5th Street, Manhattan), wherein the Board rejected DOB's attempts to "create ambiguity in the Zoning Resolution where none exists;" and

WHEREAS, the Board notes that BSA Cal. No. 67-07-A involved a challenge to DOB's issuance of a permit for an enlargement of a building that would exceed 60'-0" in height, despite the language in ZR § 23-692 prohibiting the building from exceeding a height equal to the width of the abutting street, which was 60'-0"; DOB argued that that the term "height" was ambiguous because it was not defined in the ZR,

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and that DOB was therefore authorized to define height by turning to the “Penthouse Rule,” codified in Building Code § 27-306(c), under which the proposed penthouse was not included in the calculation of height; and

WHEREAS, in granting the appeal, the Board found that merely because “height” is not defined in the ZR does not mean that the word is ambiguous, that the Building Code cannot override the ZR and the limitations it establishes on the heights of buildings, and that DOB’s application of the Penthouse Rule in the absence of action by the Board or City Planning was equivalent to a legislative act, which exceeded its authority; and

WHEREAS, the Board finds the facts underlying BSA Cal. No. 67-07-A to be distinguishable from the case at hand for a number of reasons; and

WHEREAS, the Board finds that, unlike in BSA Cal. No. 67-07-A, DOB’s interpretation in the subject case does not rely on the application of the Building Code or any other extrinsic statutory source, but rather is based on a more inclusive reading of the ZR § 12-10 definition of floor area; and

WHEREAS, the Board notes that in Lee v. Chin, 781 N.Y.S.2d 625 (N.Y. Sup. Ct. 2003) the court stated that it is a “well-established rule in statutory construction that a statute be viewed as a whole, and all of its parts, if possible, be harmonized to achieve the legislative purpose;” and

WHEREAS, the Board finds that, as opposed to being equivalent to a legislative act, DOB’s current interpretation merely limits the construction of the general words that floor area includes “elevator shafts or stairwells at each floor,” in order to harmonize the components of the ZR to achieve the legislative purpose and avoid an absurd result; and

WHEREAS, as to the Appellant’s contention that the relevant text is entirely free from ambiguity, the Board finds that the fact that the ZR § 12-10 definition of “floor area” includes elevators and stairwells in the floor area calculations, yet specifically excludes floor space devoted to mechanical equipment from the floor area calculations, creates a degree of ambiguity as to whether or not elevator shafts and stairwells are to be treated as floor area when they are located on a floor that consists entirely of mechanical space; and

WHEREAS, the Board notes that while the two provisions may not be ambiguous when read independently, an ambiguity arises in applying the provisions to a situation in which they are both applicable, as is the case with elevator shafts and stairwells on an entirely mechanical floor; and

WHEREAS, the Appellant also asserts that DOB’s authority to narrow a definition contained in the ZR was rejected by the Court of Appeals in Raritan; and

WHEREAS, in Raritan, the Court rejected DOB’s practice of counting cellar space as floor area when it was being used for residential purposes despite the fact that the ZR exempted cellar space from floor area; and

WHEREAS, the Appellant asserts that Raritan is analogous to the subject case because the language in the ZR regarding the inclusion of elevator shafts and stairwells in floor area calculations is clear and unambiguous, similar to the cellar language in Raritan; and

WHEREAS, the Board finds that the Appellant’s reliance on Raritan is not supported by the underlying facts of the case; and

WHEREAS, the Board notes that Raritan involved a development consisting of two-family homes with residential use within the cellar space, where the developer excluded the cellar space from floor area calculations based on the “cellar space” exemption of the ZR § 12-10 definition of floor area, however, DOB revoked the building permit based on its determination that the cellar space should be included in the floor area calculations since it was being used for residential purposes and space dedicated to residential use was included in floor area calculations wherever it was located within a building; the developer appealed DOB’s decision to the Board, and the Board upheld DOB’s decision; and

WHEREAS, the Court of Appeals overturned the Board’s denial of the developer’s appeal in Raritan, holding that the statutory language was clear in that “cellar space,” without qualification, is expressly excluded from floor area calculations, and therefore floor area calculations “should not include cellars regardless of the intended use of the space” Raritan, 91 N.Y.2d 98, at 103; and

WHEREAS, contrary to the Appellant’s argument, the Board finds the analysis in Raritan – that if an entire floor is excluded from floor area calculations even space dedicated to other uses otherwise not exempted should also be excluded – more analogous to the subject case in terms of the ZR’s express exclusion of “floor space used for mechanical equipment,” in that if the floor space of a floor is devoted entirely to mechanical equipment the entire floor should be exempt, regardless of whether the floor includes elevator shafts and stairs which count towards floor area on other floors; and

WHEREAS, the Board notes that since the Court’s decision in Raritan, the ZR has been amended to specify that, “cellar space” is exempt from floor area calculations, “except where such space is used for dwelling purposes;” and

WHEREAS, the Board finds an additional parallel between the exemption for “cellar space” and the current situation, in that DOB does not count elevator shafts or stairwells in the floor area calculations for “cellar space” since the entire floor is exempt under ZR § 12-10 (unless it is used for dwelling purposes); therefore, the Board finds DOB’s practice of exempting elevator shafts and stairwells for floors occupied entirely of mechanical space consistent with its approach to “cellar space,” in that the entire mechanical floor is exempt; and

WHEREAS, the Board agrees with DOB and the Owner that, when read in the context of the ZR § 12-10 definition of floor area as a whole, a rational interpretation of the statute requires DOB to apply a more narrow definition of floor area which recognizes that elevator shafts and stairwells do not count as floor area when the entire floor is excluded as mechanical space; and

3. DOB’s Past Practice

WHEREAS, the Appellant asserts that DOB practice, however longstanding, does not inherently legitimize an interpretation that is inconsistent with the plain meaning of a statute; and

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WHEREAS, the Appellant again points to BSA Cal. No. 67-07-A, wherein the Board rejected the argument that a longstanding DOB practice in and of itself signifies that an interpretation is correct; and

WHEREAS, the Appellant further argues that even if a longstanding and consistent DOB practice does exist on this matter, no written memoranda or technical policy and procedure notices have been published by DOB to provide guidance as to this aspect of its interpretation of the definition of floor area; and

WHEREAS, DOB and the Owner argue that DOB's interpretation should be upheld because it is consistent with the agency's longstanding practice and policy to exclude elevator shafts and stairwells from the zoning floor area when the remainder of the entire floor is excluded from the definition of floor area as mechanical equipment; and

WHEREAS, as evidence of its policy to exclude elevator shafts and stairwells located on wholly mechanical floors from the floor area calculation, DOB provided a list of other cases in which it has applied this interpretation, and submitted examples of reconsiderations which were granted specifically on this issue; and

WHEREAS, in further support of DOB's consistent practice in this regard, the Owner submitted a list prepared by its zoning consultant which showed 16 additional buildings, dating back approximately 40 years, that have mechanical floors in the middle of the building and for which DOB determined that elevator shafts and stairwells were excluded from the zoning floor area where they passed through the mechanical floor; and

WHEREAS, the Owner also argues that the concept of an entire floor being devoted to mechanical space was not contemplated when the ZR was drafted in 1961 and therefore DOB's interpretation is necessary to account for relevant advances in technology and approaches to building design that allow for a wholly mechanical floor; and

WHEREAS, the Owner notes that DOB is often required to interpret provisions of the ZR that appear to be clear and unambiguous in order to achieve fairness, accommodate new approaches to building design or engineering, or recognize new technologies; and

WHEREAS, the Owner provided a number of examples of situations in which DOB made such interpretations of seemingly unambiguous text in order to accommodate modern building designs or advances in technology; and

WHEREAS, the Board finds the evidence of DOB's longstanding and consistent practice to be a relevant consideration regarding the propriety of DOB's interpretation of the ZR, but agrees with the Appellant that evidence of such practice, particularly in the absence of any written memoranda or technical policy and procedure notices, does not, in and of itself, signify that an interpretation is correct; and

WHEREAS, conversely, the Board notes that the fact that DOB has not memorialized this longstanding policy is not a compelling reason to nullify DOB's rational interpretation to exclude elevator shafts and stairwells from floor area calculations on a wholly mechanical floor; and

WHEREAS, the Board agrees with the Owner that

DOB's past practice of interpreting provisions of the ZR that appear to be unambiguous in order to accommodate new approaches to building design or advances in technology supports DOB's interpretation in the subject case, as wholly mechanical floors may not have been contemplated when the ZR was drafted in 1961; and

WHEREAS, accordingly, for the reasons stated above, the Board concludes that the elevator shafts and stairwells on the fourth floor of the Building – which is otherwise an entirely mechanical floor – were properly excluded from the floor area calculations; and

B. Floor Area Deductions Related to the Loading Berths

WHEREAS, initially, the Appellant made the argument that the Owner took excessive floor area deductions on the ground floor for the loading berths; and

WHEREAS, specifically, the Appellant asserted that ancillary space, including an office, was improperly included in the areas for which the Owner took deductions for the loading berths; and

WHEREAS, the Board notes that at the time of filing of this appeal, two loading berths were required as per the underlying zoning regulations; and

WHEREAS, pursuant to the ZR § 12-10 definition of floor area, floor area does not include "floor space used for *accessory* off-street loading berths, up to 200 percent of the amount required by the applicable district regulation;" and

WHEREAS, however, the Appellant contends that the Owner took deductions for the loading berths that were approximately 671 sq. ft. in excess of the allowable 200 percent of the area of the loading berths; and

WHEREAS, on November 13, 2009, DOB sent the Owner a letter requesting that it clarify how specified areas in the Building function as part of the loading berth, so as to confirm whether the areas are properly deducted from floor area computations; and

WHEREAS, during the course of the hearing process, the Owner filed an application with the Board under BSA Cal. No. 281-09-BZ, for a special permit to allow a physical culture establishment ("PCE") on the fifth and sixth floors of the subject Building; and

WHEREAS, in response to requests to clarify the loading berth computations, the Owner stated that the proposed plans would be amended based on the disposition of BSA Cal. No. 281-09-BZ, as the loading berth configuration would be revised upon approval of the PCE application; and

WHEREAS, on February 23, 2010, the Board approved the PCE application; and

WHEREAS, subsequently, the Owner submitted the Revised Plans, which reduce the number of required loading berths from two loading berths to a single loading berth, and as a result the floor area deductions were correspondingly reduced; and

WHEREAS, DOB submitted a letter dated July 6, 2010, stating that the Revised Plans address the disputed loading berth deductions and were approved by DOB on June 24, 2010; and

WHEREAS, the Board notes that loading berth is not a

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defined term in the ZR and that the ZR § 12-10 definition of floor area, by permitting 200 percent of the amount of floor space required for an accessory loading berth to be deducted from floor area calculations, recognizes that what constitutes a loading berth for the purposes of calculating floor area inherently goes beyond the floor space devoted to the loading berth itself, and may include some ancillary spaces as well; and

WHEREAS, following the submission of the Revised Plans, the Appellant did not pursue its argument that ancillary space was improperly included in floor area deductions for the single loading berth; and

WHEREAS, the Board notes that loading berth deductions in the Revised Plans have been reduced to 200 percent of the floor space required for the single loading berth; and

WHEREAS, accordingly, the Board finds that the deductions related to the loading berth on the Revised Plans are proper; and

C. Classification of Swimming Pool Service Process Equipment Spaces and Electric Meter Rooms as Mechanical Equipment

WHEREAS, the Appellant asserts that the floor area deductions taken for swimming pool service process equipment spaces and electric meter rooms are improper because neither of these facilities constitutes “mechanical equipment” as set forth in the allowable deductions for floor area under ZR § 12-10; and

WHEREAS, the Appellant further asserts that since such deductions are not specifically excluded in the ZR, they should be included in the attributable zoning floor area, and there is not sufficient available zoning bulk to accommodate this increase; and

WHEREAS, in response, DOB states that the swimming pool service process equipment spaces and electric meter rooms are properly excluded from floor area calculations as mechanical equipment deductions because these spaces service the swimming pool, which in turn serves the entire building; and

WHEREAS, the Owner similarly states that these spaces are necessary to operate the swimming pool, which will be available to all guests in the hotel, and therefore falls within the ZR § 12-10 exclusion from zoning floor area for “space used for mechanical equipment;” and

WHEREAS, the Board notes that following its initial submission, the Appellant did not pursue the arguments related to the swimming pool service process equipment spaces and electric meter rooms, and failed to provide additional evidence to support them; and

WHEREAS, the Board notes that the ZR does not differentiate swimming pool service process equipment and electric meter rooms from other mechanical equipment; and

WHEREAS, the Board further notes that the Appellant has offered no specific reason for why the swimming pool service process equipment spaces and electric meter rooms do not qualify as mechanical equipment; and

WHEREAS, accordingly, the Board agrees with DOB and the Owner that these spaces are properly excluded from the

floor area calculations as “space used for mechanical equipment,” pursuant to ZR § 12-10; and

D. Calculations Related to the Zoning Lot

WHEREAS, the Appellant initially made several additional arguments in support of its position that the Building Permit should be revoked, based on issues related to the zoning lot as a whole and the effect of the adjacent building at 145 Sixth Avenue on the Building; and

WHEREAS, the Board notes that the zoning lot on which the Building is being developed includes Lots 1101 through 1131, the lots located within an eight-story (including penthouse) condominium building at 145 Sixth Avenue; and

WHEREAS, the Owner states that the zoning lot was created pursuant to a Declaration of Zoning Lot Restrictions, dated February 3, 2006, which merged the 246 Spring Street lot with the adjacent property at 145 Sixth Avenue; and

WHEREAS, the Appellant asserts that the mean curb level elevations have been calculated only for the portion of the zoning lot on which the Building is to be developed, and that the definition of curb level in ZR § 12-10 requires that the curb level elevations be calculated for the entire zoning lot; and

WHEREAS, in response, DOB states that since the ZR requires the curb level to be independently calculated for each portion of the zoning lot, adequate calculations have been provided for the subject site, which is a large corner lot with a portion of the lot subject to through lot regulations; and

WHEREAS, DOB further states that corner and through lot requirements have been satisfied and there is no requirement in the ZR to factor in curb level elevations from the other corner lot portion on which 145 Sixth Avenue is located; and

WHEREAS, the Board agrees with DOB that adequate curb level calculations have been provided for the subject site; and

WHEREAS, the Appellant also argues that there are inconsistencies between the zoning lot areas indicated in the plans for the Building and the plans for 145 Sixth Avenue, and that no survey was provided to establish which zoning lot area is correct; and

WHEREAS, in response, DOB notes that a survey was provided in the approved plans for the Building, which were submitted to the Board, reflecting that the zoning lot area is 34,102 sq. ft.; and

WHEREAS, DOB states that the Appellant has cited no authority to dispute the survey submitted with the approved plans for the Building; and

WHEREAS, the Board agrees with DOB that it was proper to rely on the zoning lot area indicated on the survey submitted with the approved plans for the Building; and

WHEREAS, finally, the Appellant asserts that without the plans showing the floor area for each floor at 145 Sixth Avenue, it is not possible to confirm the accuracy of the attributable floor areas in determining FAR compliance; and

WHEREAS, in response, DOB states that while there is not a diagram showing the floor area for each floor of 145 Sixth Avenue, the plans include a drawing with a table of the relevant floor areas, which shows compliance, and DOB customarily accepts such tables as evidence of the FAR

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compliance; and

WHEREAS, DOB further states that 145 Sixth Avenue has full lot coverage without any floor area deductions for the first four floors, so it is not possible for these floors to take up any more floor area; and

WHEREAS, the Board finds that DOB's acceptance of the floor area table provided in the drawings for 145 Sixth Avenue was appropriate, particularly in light of the physical constraints of the lot; and

WHEREAS, the Board notes that following its initial submission, the Appellant provided no additional arguments or support for its assertions related to the curb levels, the lack of a survey, or the lack of plans demonstrating the floor area for each floor of 145 Sixth Avenue; and

WHEREAS, accordingly, the Board finds that the Appellant has provided no compelling argument as to why the Building Permit should be revoked on these bases; and

E. Issues Related to the Permit for 145 Sixth Avenue

WHEREAS, the Appellant initially included arguments related to the compliance of 145 Sixth Avenue with the relevant zoning regulations; and

WHEREAS, the Board notes that following its initial submission, the Appellant did not pursue the arguments related to 145 Sixth Avenue, and failed to provide additional evidence to support them; and

WHEREAS, DOB argues that the Appellant's allegations about the 145 Sixth Avenue site are not properly joined in these proceedings, and are not appropriate claims for an appeal in connection with the subject application; and

WHEREAS, specifically, DOB states that despite the fact that the Appellant's claim that the 145 Sixth Avenue site does not comply with the approved plans is irrelevant to the propriety of the Building Permit, and therefore is irrelevant to the subject appeal, DOB nonetheless inspected the construction at 145 Sixth Avenue and found that it was in compliance with the approved plans; and

WHEREAS, pursuant to New York City Charter § 666(6) and the Board's Rules of Practice and Procedure § 1-01(6), a final determination in the form of an "order, requirement, decision or determination" from DOB is required in order for the Board to hear and decide an appeal of a DOB action related to a site; and

WHEREAS, the Board notes that a final determination has not been issued by DOB related to the arguments raised by the Appellant concerning 145 Sixth Avenue; and

WHEREAS, specifically, the Board notes that the Appellant's letter dated September 15, 2008, upon which the Final Determination is based, only raised issues concerning the allegedly excessive floor area deductions taken by the Owner, which are addressed *supra*, and did not refer to any of the issues concerning 145 Sixth Avenue; and

WHEREAS, the Board further notes that the building at 145 Sixth Avenue is owned separately from the subject building, at 246 Spring Street, and that work on the buildings is being performed pursuant to separate building permits; therefore the resolution of the issues raised by the Appellant as to 145 Sixth Avenue involves different parties than, and is not directly related to, the subject appeal; and

WHEREAS, accordingly, the Board finds that the compliance of the building at 145 Sixth Avenue, and any issues related thereto, are not included in the subject appeal; and

F. Issues related to the Revised Plans

WHEREAS, during the course of the hearing, in response to the Revised Plans which reflected a reduced loading berth requirement, the Appellant made the following additional arguments: (i) the Revised Plans improperly took deductions on the first through sixth floors of the Building; and (ii) in order to reduce the loading berth requirement the Owner improperly listed accessory uses within the hotel as separate uses; and

WHEREAS, notwithstanding the absence of a final determination on the additional deductions and the accessory use question, DOB and the Owner provided responses refuting the Appellant's claims; and

WHEREAS, as to the additional floor area deductions, the Appellant now contends that deductions were improperly taken on the first through sixth floors in order to compensate for the approximately 700 sq. ft. increase in floor area on the ground floor attributed to the space formerly occupied by the second loading berth, which had been excluded from the floor area calculations; and

WHEREAS, in response, DOB states that it accepted additional floor area deductions for mechanical space found to be necessary in the Revised Plans; and

WHEREAS, specifically, the Owner submitted a letter from the project architect which states that the additional floor area deductions in the Revised Plans reflect (i) the incorporation of the new spa facility (the Board-granted PCE), (ii) the incorporation of the final kitchen plans and restaurant drawings, and (iii) revisions to the mechanical and plumbing chases that pass through the lower floors of the Building to service the spa facility and kitchen spaces; and

WHEREAS, DOB states that it reviewed the additional floor area deductions reflected in the Revised Plans and determined that they are for mechanical space and, thus, are appropriate; and

WHEREAS, as to the accessory use issue, the Appellant argues that, in order to reduce the required number of loading berths for the Building from two to one, the Owner improperly listed the spa, restaurant and catering facility as separate rather than accessory uses from the hotel use; and

WHEREAS, the Appellant contends that the spa, restaurant, and catering facility are properly classified as accessory uses to the hotel, such that the floor area of these uses is counted toward the overall hotel floor area, which would put the hotel floor area over the 300,000 sq. ft. threshold and require a second loading berth; and

WHEREAS, the Owner states that the spa is designed to be open to the public, and submitted the public relations plan for the spa which illustrates that while it will serve hotel guests, the spa is marketed towards people who are not staying at and have no association to the hotel; and notes that it obtained a special permit from the Board pursuant to ZR § 73-36 for a PCE specifically so that it could operate the spa as a public facility; and

WHEREAS, the Owner states that the restaurant can be

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entered directly from the street, and that it is intended to operate independently from the hotel and attract a clientele outside of hotel guests; and

WHEREAS, the Owner states that the third floor function space is correctly identified as a catering space and not accessory to the hotel; and

WHEREAS, finally, the Owner states that these uses are operated in individual condominium spaces that, although the Owner is holding for now, could be sold and owned by different entities; and

WHEREAS, DOB states that the spa, restaurant, and catering facility uses, which were previously listed as being part of the hotel, will be open to the public and therefore will not be accessory to the hotel use; and

WHEREAS, DOB further states that if it finds in the future that the spaces are, in fact, closed to the public, it is an enforcement issue that DOB will address at that time; and

WHEREAS, as noted above, the Board declines to make a determination as to the propriety of the deductions taken on the first through sixth floors of the Building or whether or not the spa, restaurant, and catering facility are accessory uses, but notes that DOB has accepted the additional deductions as mechanical and has accepted the spa, restaurant and catering facility as non-accessory uses for the reasons stated above; and

CONCLUSION

WHEREAS, for the reasons stated above, the Board rejects the Appellant's arguments that: (i) the elevator shafts and stairwells at the fourth floor were improperly deducted from the floor area calculations; (ii) excessive deductions were taken for the loading berths; (iii) the swimming pool service process equipment and electric meter rooms were improperly deducted as mechanical equipment; (iv) the curb levels were improperly calculated; (v) the zoning lot area for the site was not established; and (vi) compliance with FAR cannot be established without plans for the proposed construction at 145 Sixth Avenue; and

WHEREAS, accordingly, the Board agrees with DOB and the Owner that there is no basis for the revocation of the Building Permit.

Therefore it is Resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated November 24, 2008, is hereby denied.

Adopted by the Board of Standards and Appeals, October 5, 2010.

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.

SUBJECT – Application January 25, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district. R6 zoning district.

PREMISES AFFECTED – 1882 East 12th Street, west side, of East 12th Street, 75' north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra A. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 construction of a three-story and solarium building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on April 27, 2010, after due notice by publication in *The City Record*, with continued hearings on June 8, 2010, and then to decision on October 5, 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 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, the adjacent neighbors, represented by counsel, provided written and oral testimony in opposition to the application (hereinafter, the "Opposition"), with the following primary concerns: (1) the underlying building permit is invalid; (2) work on the site was performed illegally; (3) substantial expenditures should have been calculated in light of the six-story building approved at the time of the zoning change; (4) the owner did not act in good faith; and (5) there is insufficient evidence that the owner will incur a serious loss if vesting were not permitted; and

WHEREAS, certain members of the community provided oral testimony in opposition to this application; and

WHEREAS, the applicant proposes to develop the subject site with a three-story residential building and solarium; and

WHEREAS, the subject site was formerly located within an R6 zoning district; and

WHEREAS, however, on February 15, 2006 (hereinafter, the "Rezoning Date"), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site to R4-1; and

WHEREAS, the applicant represents that the development complies with the former R6 district parameters; and

WHEREAS, because the site is now within an R4-1 district, the development does not comply with requirements for floor area ratio, height, and front yard depth; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, on December 13, 2005, the Department of Buildings ("DOB") issued Alteration Permit No. 302049441-01-AL (the "Alteration Permit"), permitting construction of a five-story and cellar residential building at the site; and

WHEREAS, the applicant states that on February 7, 2006, DOB issued a post approval amendment ("PAA")

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permitting the addition of a sixth floor to the proposed residential building at the site; the six-story building complied with the R6 zoning district in effect at the time the PAA was issued; and

WHEREAS, the applicant now proposes to construct a three-story residential building and solarium, which utilizes all of the work completed at the site prior to the Rezoning Date; and

WHEREAS, the applicant notes that, as compared to the six-story building, the proposed three-story building represents a reduction in floor area from 7,515 sq. ft. (3.0 FAR) to 4,038 sq. ft. (1.61 FAR), a reduction in wall height from 62'-1" to 42'-10 1/2", and a reduction in total height from 62'-1" to 53'-10 3/4"; and

WHEREAS, therefore, the proposed three-story building reduces the degree of non-compliance with the current R4-1 zoning district, with respect to the floor area and height of the building; and

WHEREAS, the Opposition argues that the Alteration Permit was invalid at the time it was issued because the approved plans did not comply with the requirements of law in effect when the property was zoned as R6, and because the subject construction necessitated a New Building Permit rather than an Alteration Permit; and

WHEREAS, in response, the applicant notes that DOB issued letters dated April 20, 2010 and May 6, 2010 stating that the Alteration Permit was lawfully issued prior to the Rezoning Date; and

WHEREAS, the Board notes that on September 17, 2010, DOB submitted a letter stating that it was auditing the construction documents in response to a complaint by the Opposition; and

WHEREAS, by letter dated October 1, 2010, DOB confirms that the Alteration Permit was lawfully issued; and

WHEREAS, the Opposition also contends that the Alteration Permit is invalid because construction was performed illegally at the site; and

WHEREAS, specifically, the Opposition states that on December 8, 2008 DOB issued a full Stop Work Order ("SWO") because over 50 percent of the foundation, floor joists, and walls of the old structure had been removed; and

WHEREAS, the Opposition argues that the issuance of the SWO confirms that the permit was invalid and that the work performed should have been done pursuant to a New Building Permit, notwithstanding the fact that the SWO was later rescinded; and

WHEREAS, the applicant submitted a copy of the letter of rescission of the SWO, dated April 3, 2009, and represents that the SWO was rescinded because it was determined to be factually incorrect; and

WHEREAS, the Board has reviewed the record and acknowledges that based on DOB's determination, the Alteration Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which

involves a major enlargement, as a "minor development"; and

WHEREAS, for a "minor development," ZR § 11-331 permits an extension of time to complete construction and obtain a certificate of occupancy upon a finding that all work on foundations had been completed prior to the Rezoning Date; and

WHEREAS, the Board notes that as of the Rezoning Date the owner had obtained permits for the development and had completed foundation work, such that the right to continue construction was vested by DOB pursuant to ZR § 11-331; 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 construction was not completed 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 Alteration Permit pursuant to ZR § 11-332 before the deadline of February 15, 2008 and is therefore requesting additional time to complete construction and obtain certificates 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, the Opposition argues that the applicant did not act in good faith because it knew or should have known that the Alteration Permit was not lawfully issued due to the discrepancies, inconsistencies and illegalities in the DOB plans; and

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WHEREAS, as noted above, by letters dated April 20, 2010, May 6, 2010 and October 1, 2010 DOB has confirmed that the Alteration Permit was lawfully issued; and

WHEREAS, as to substantial construction, the Board notes that DOB determined that the applicant had completed foundation work 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 as of February 15, 2008, the applicant completed excavation, footings, and the entire foundation of the building, including foundation bracing and strapping and underpinning of the existing foundation; and

WHEREAS, in support of the assertion that the owner has undertaken substantial construction, the applicant submitted the following evidence: photographs of the site; construction contracts, a construction schedule, copies of cancelled checks, and invoices; and

WHEREAS, the Board notes that it has not considered any work performed subsequent to February 15, 2008 and the 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 \$158,390.56 or 14 percent, including hard and soft costs and irrevocable commitments, out of \$1,168,251.50 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, and invoices; and

WHEREAS, the Opposition argues that the Board should consider the expenditures as a percentage of the total construction costs for the six-story building rather than the proposed three-story building, because the plans approved at the time of the Rezoning Date were for the six-story building; and

WHEREAS, the Board notes that the fact that DOB vested the project under ZR § 11-331 based on plans approved for the six-story building does not preclude the applicant from changing the scope of the project to the proposed three-story building; and

WHEREAS, as noted above, the proposed three-story building decreases the degree of non-compliance with the current R4-1 zoning district as to floor area and height; and

WHEREAS, the applicant represents that the proposed three-story building utilizes all of the work completed prior to February 15, 2008; and

WHEREAS, accordingly, the Board is not persuaded by the Opposition's argument that the expenditures should

be considered in light of the six-story building, given that the applicant is permitted to change the scope of the project to the proposed three-story building; and

WHEREAS, the Opposition also contends that there are inconsistencies with respect to the total construction costs represented by the applicant; and

WHEREAS, specifically, the Opposition states that the construction cost of the original five-story proposal listed on the Alteration Permit was \$200,000, but that the construction contract submitted in connection with the six-story building approved under the PAA estimated a construction cost in excess of \$1,740,000, and that the estimated construction cost for the proposed three-story building is \$1,168,251.50; and

WHEREAS, in response, the applicant represents that the estimated cost of the six-story building and the proposed three-story building are accurate, and states that at the time the initial application was filed at DOB the cost of construction was underestimated, and the costs would have been adjusted upon completion of the job by filing a PW3 form indicating the actual construction costs; 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, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if vesting were not permitted, it would result in the inability to develop approximately 1,780 sq. ft., or approximately 44 percent, of the proposed residential floor area of the three-story building; and

WHEREAS, the Opposition argues that the applicant has failed to provide evidence to support the purported loss that it will incur if vesting were not permitted, and has not explained what portion of the approved three-story building will have to be reduced or redesigned to create a conforming building, and

WHEREAS, in response, the applicant states that if required to construct pursuant to the current R4-1 district regulations, it would limit the size of the building to a complying floor area of 1,882 sq. ft., with a potential 376 sq. ft. increase under the attic rule, which would be a significant reduction from the originally approved floor area of 7,515 sq. ft. and the currently proposed floor area of 4,038 sq. ft.; and

WHEREAS, the applicant further states that a complying home would require the street wall to be reduced from the proposed 42'-10 1/2" to 25'-0", and the maximum

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building height would be have to be reduced from 53'-10 3/4" to 35'-0"; and

WHEREAS, the applicant further states that the inability to construct under the prior zoning regulations would require the owner to re-design the home; 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. 302049441-01-AL, 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, October 5, 2010.

110-10-BZY

APPLICANT – Cozen O’Connor, for Landmark Developers of Rockaway, owners.

SUBJECT – Application June 18, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning. R5A zoning district
PREMISES AFFECTED – 93-06 Shore Front Parkway, north side of Shore Front Parkway from B.94th to B.93rd Street, Block 16130, Lot 11, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Peter Geis.

For Opposition: Joeline Ballonzoli, Karen Traynor and Vivian Carter.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for decision, hearing closed.

113-10-BZY

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Plaza Group 36 LLC, owner.

SUBJECT – Application June 22, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning. R5B zoning district.
PREMISES AFFECTED – 30-86 36th Street, west side of 36th Street, 152’ north of 31st Avenue, Block 650, Lot 80,

Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Todd Dale and Adam Rothkrug.

For Opposition: Donnelly Marks and Maureen Neary.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for continued hearing.

125-10-A

APPLICANT – Simons & Wright, for Sofia Gazgalis & Spyridon Gazgalis, owner.

SUBJECT – Application July 8, 2010 – Appeal challenging the interpretation of ZR §23-22 as it applies to the required density factor for existing buildings in an R5B zoning district.

PREMISES AFFECTED – 346 Ovington Avenue, between 4th and 3rd Avenues, Block 5891, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Chris Wright.

For Opposition: John E-Bene.

ACTION OF THE BOARD – Laid over to November 16, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, OCTOBER 5, 2010 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

100-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Gittie Wertenteil and Ephrem Wertenteil, owners.

SUBJECT – Application June 2, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141), side yard (§§23-461 & 23-48) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2512 Avenue R, south side of Avenue R between Bedford Avenue and East 26th Street, Block 6831, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

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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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 3, 2010, acting on Department of Buildings Application No. 320134653, reads:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio.

Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required opens space.

Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted lot coverage.

Proposed plans are contrary to ZR 23-461 and 23-48 in that the proposed straight line extension of the side yard provides less than the minimum required side yard.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than that of the minimum required rear yard;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on September 14, 2010, after due notice by publication in *The City Record*, and then to decision on October 5, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Avenue R, between Bedford Avenue and East 26th Street, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,250 sq. ft., and is occupied by a single-family home with a floor area of 1,896 sq. ft. (0.58 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,896 sq. ft. (0.58 FAR) to 2,665 sq. ft. (0.82 FAR); the maximum permitted floor area is 1,625 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of approximately 53 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of approximately 47 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 2’-11” along the eastern lot line (a minimum width of 5’-0” is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received June 2, 2010”-(8) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,665 sq. ft. (0.82 FAR); an open space of approximately 53 percent; a lot coverage of approximately 47 percent; a side yard with a minimum width of 6’-6” along the western lot line; a side yard with a minimum width of 2’-11” along the eastern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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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, October 5, 2010.

210-07-BZ

APPLICANT – Eric Palatnik, P.C., for Gasper Nogara, owner.

SUBJECT – Application August 30, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Luquer Street, Northern side of Luquer Street between Columbia and Hicks Streets, Block 513, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik and Bob Pauls.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 9, 2010, at 1:30 P.M., for decision, hearing closed.

277-07-BZ

APPLICANT – Miele Associates, LLP, for Barnik Associates LLC & Lama Holdings, LLC, owner.

SUBJECT – Application December 3, 2007 – Variance (§72-21) proposed to erect a one story automotive service station with accessory convenience store, contrary to §22-10. R3-1 zoning district

PREMISES AFFECTED – 165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R, Brewer Boulevard. Block 12318, Lot 10, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to November 9, 2010, at 1:30 P.M., for adjourned hearing.

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

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to November 16, 2010, at 1:30 P.M., for adjourned 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 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 and Angelo Graci.

ACTION OF THE BOARD – Laid over to November 9, 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 (§ZR 72-21) to allow for a four story mixed use building contrary to use regulations. (ZR §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: Chris Wright.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 1:30 P.M., for deferred decision.

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 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue. Block 2582, Lots 10, 11, 110, 111 and 112, Borough of Bronx.

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COMMUNITY BOARD # 1BX

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to November 16, 2010, at 1:30 P.M., for adjourned hearing.

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radoncic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 19, 2010, at 1:30 P.M., for decision, hearing closed.

309-09-BZ

APPLICANT – Harold Weinberg, P.E., for Ralph Stroffolino, owner.

SUBJECT – Application November 20, 2009 – Variance (§72-21) to allow a mixed use building, contrary to lot coverage (§23-145), side yard (§35-541) and height (§35-542) regulations. R6A/C2-3 zoning district.

PREMISES AFFECTED – 2173 65th Street, between Bay Parkway and 21st Avenue, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto, Ralph Stroffolino, Chris Andrani and Father D. Cassato.

For Opposition: Domenico Calcagno, Vincenza Calcagno, Vito Desento, Sal Ferrara and other.

ACTION OF THE BOARD – Laid over to November 16, 2010, at 1:30 P.M., for continued hearing.

35-10-BZ

APPLICATION – Sheldon Lobel, PC for Yuriy Pirov, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to permit the legalization of an existing synagogue (*Congregation Torah Haim Ohel Sara*), contrary to front yard (§24-34), side yard (§24-35) and rear yard (§24-36). R4 zoning district.

PREMISES AFFECTED – 144-11 77th Avenue, approximately 65 feet east of the northeast corner of Main Street and 77th Avenue. Block 6667, Lot 45, Borough of

Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to November 9, 2010, at 1:30 P.M., for continued hearing.

60-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Soho Thompson Realty, LLC, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-21) to allow a commercial use below the floor level of the second story, contrary to §42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 54 Thompson Street, northeast corner of Thompson Street and Broome Street, Block 488, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel and Robert Pauls.

ACTION OF THE BOARD – Laid over to November 9, 2010, at 1:30 P.M., for continued hearing.

104-10-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Ohr Yisroel Inc., owner.

SUBJECT – Application June 8, 2010 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a synagogue and rectory, contrary to lot coverage and floor area (§24-11) front yard (§24-34), side yard (§24-35) and wall height and sky exposure plane (§24-521). R5 zoning district.

PREMISES AFFECTED – 5002 19th Avenue, aka 1880-1890 50th Street, south side of 50th Street, west of 19th Avenue, Block 5461, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

ACTION OF THE BOARD – Laid over to November 16, 2010, at 1:30 P.M., for continued hearing.

105-10-BZ

APPLICANT – Eric Palatnik, for Misha Keylin, owner.

SUBJECT – Application October 2, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yard regulations (§23-461). R4A zoning district.

PREMISES AFFECTED – 269 77th Street, between 3rd Avenue and Ridge Boulevard, Block 5949, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Susan Rinato and Dennis Albo.

THE VOTE TO CLOSE HEARING –

MINUTES

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October
19, 2010, at 1:30 P.M., for decision, hearing closed.

108-10-BZ

APPLICANT – Roberts Organization (LRNC Myrtle
Avenue NY LLC) for 5432-50 Myrtle Avenue LLC, owner.
SUBJECT – Application June 11, 2010 – Special Permit
 (§73-36) to legalize the operation of a physical culture
 establishment (*Lucille Roberts*) in an existing two-story
 building. C4-3 zoning district.

PREMISES AFFECTED – 54-32 Myrtle Avenue,
intersection of Myrtle Avenue and Madison Street, Block
3544, Lot 27, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Narnie R. Kudon.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October
26, 2010, at 1:30 P.M., for decision, hearing closed.

126-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Canarsie Plaza,
LLC, owner; 1720 Hutchinson River Parkway, lessee.

SUBJECT – Application July 8, 2010 – Special Permit (§73-
36) to allow the operation of the proposed physical culture
 establishment (*Canarsie Fitness*) in a two-story building
 under construction. M1-1 zoning district.

PREMISES AFFECTED – 856 Remsen Avenue, south side
of Remsen Avenue, Block 7920, Lot 5, Borough of
Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October
26, 2010, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

*CORRECTION

This resolution adopted on August 17, 2010, under Calendar No. 139-92-BZ and printed in Volume 95, Bulletin Nos. 33-34, is hereby corrected to read as follows:

139-92-BZ

APPLICANT – Samuel H. Valencia, for Samuel H. Valencia-Valencia Enterprises, owners.

SUBJECT – Application April 23, 2010 – Extension of Term for a previously granted Special Permit (§73-244) for the continued operation of a UG12 Eating and Drinking Establishment with Dancing (*Deseos*) which expired on March 7, 2010; Waiver of the Rules. C2-2/R6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53' east of 52nd Street, Block 1316, Lot 76, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Samuel H. Valencia.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term of a previously granted special permit for an eating and drinking establishment without restrictions on entertainment (UG 12A), which expired on March 7, 2010; and

WHEREAS, a public hearing was held on this application on June 15, 2010, after due notice by publication in *The City Record*, with continued hearings on July 13, 2010 and August 3, 2010, and then to decision on August 17, 2010; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 2, Queens, recommends disapproval of this application; and

WHEREAS, the subject site is located on the north side of Roosevelt Avenue, between 52nd Street and 53rd Street, within a C2-2 (R6) zoning district; and

WHEREAS, the site is occupied by an eating and drinking establishment with entertainment, operated as *Deseos*; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 7, 1995, when, under the subject calendar number, the Board granted a special permit under ZR § 73-244 to permit the operation of an eating and drinking establishment with dancing (Use Group 12) on the first floor of an existing three-story building, for a term of three years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, on November 20, 2007, the Board granted an additional three-year term, which expired on March 7, 2010; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, at hearing, the Board raised concerns about the status of the rear of the property, and directed the applicant to establish that the rear area is not enclosed; and

WHEREAS, in response, the applicant submitted photographs reflecting that the rear area is unenclosed but has overhead beams that the applicant represents are required to support the air conditioning units; and

WHEREAS, the Board also directed the applicant to document that the sprinkler system at the site has been properly inspected and approved by the Department of Buildings; and

WHEREAS, in response, the applicant submitted a certificate for sprinkler inspection and monthly inspection reports; and

WHEREAS, based upon the above, the Board finds the requested extension of term is appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on March 7, 1995, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for a period of three years from March 7, 2010, to expire on March 7, 2013, *on condition*:

THAT the term of this grant shall expire on March 7, 2013;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 420136944)

Adopted by the Board of Standards and Appeals, August 17, 2010.

***The Resolution has been corrected to amend the DOB Application No. which now reads: “DOB Application No. 420136944”. Corrected in Bulletin Nos. 40-41, Vol. 95, dated October 13, 2010.**

MINUTES

*CORRECTION

This resolution adopted on October 28, 2008, under Calendar No. 59-08-BZ and printed in Volume 93, Bulletin Nos. 41-43, is hereby corrected to read as follows:

59-08-BZ

CEQR #08-BSA-068R

APPLICANT – Sheldon Lobel, P.C., for 591-595 Forest Avenue Realty Corp., owner; Forest Avenue Fitness Group, LLC, lessee.

SUBJECT – Application March 17, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the first and second floors of an existing building. The proposal is contrary to section 32-10. C2-1 within R3X district.

PREMISES AFFECTED – 591 Forest Avenue, north side of Forest Avenue, between Pelton Avenue and Regan Avenue, Block 154, Lot 140, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated July 6, 2008, acting on Department of Buildings Application No. 52003854, reads in pertinent part:

“A-1 application is filed to change building use to physical culture establishment. The use is subject to review & approval by Board of Standards & Appeals. ZR 73-36, 32-10.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in a C2-1 (R3X) zoning district, the legalization of a physical culture establishment (PCE) in a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 22, 2008, after due notice by publication in *The City Record*, with continued hearings on August 26, 2008 and September 23, 2008, and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Ottley-Brown, and Commissioner Montanez; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application on condition that the PCE enter into a contract with another business or property owner to utilize their parking facility; and

WHEREAS, residents of the surrounding community provided testimony in opposition to the proposal, citing

concerns with parking, site maintenance, and noise; and

WHEREAS, the subject site is located on the north side of Forest Avenue, between Pelton Avenue and Regan Avenue; and

WHEREAS, the site is occupied by a two-story commercial building with a floor area of 11,424 sq. ft.; and

WHEREAS, the PCE occupies the entire building and is operated as “Planet Fitness”; and

WHEREAS, the applicant represents that the PCE will provide facilities for group training, body building, weight reduction, and aerobics; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, at hearing, neighborhood residents testified as to a lack of parking for PCE patrons; and

WHEREAS, the applicant represents that the parking requirements under the current Zoning Resolution are not applicable because the subject building was constructed without parking accommodations pursuant to the 1916 Zoning Resolution; and

WHEREAS, the applicant further represents that the permitted use for the building, according to its certificate of occupancy, is for office use and that pursuant to ZR § 36-21, the parking requirements for a PCE are the same as the parking requirements for office use; and

WHEREAS, a parking study submitted by the applicant indicates that an as-of-right commercial use could potentially generate parking demand similar or greater than that of a PCE; and

WHEREAS, the applicant submitted an affidavit from the manager of the PCE, stating that the managers and/or owners of five businesses with parking facilities near the subject building were approached regarding the possibility of renting parking spaces for PCE patrons and that none of these businesses were willing to rent any parking spaces; and

WHEREAS the applicant further states that there are no licensed public parking lots or garages in the project vicinity; and

WHEREAS, the applicant represents, however, that the number of parking spaces in the surrounding area is adequate to serve the patrons of the facility; and

WHEREAS, the applicant provided an analysis of available parking within a 400-foot radius of the subject building indicating that metered spaces permitting up to two hours’ parking are located along Forest Avenue and metered as well as unmetered parking spaces are available on most side streets; and

WHEREAS, the analysis further indicates that, during a peak period of operation, 19 of the 68 metered spaces (28 percent) and 33 of the 133 unmetered spaces (24 percent) within 400 feet of the subject building were available to serve an estimated 50 patrons; and

WHEREAS, the current hours of operation are: Monday through Thursday, 24 hours daily; Friday from

MINUTES

12:00 a.m. to 10:00 p.m.; and Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing, neighborhood residents complained about the noise generated by the PCE during evening hours; and

WHEREAS, the Board directed the applicant to reduce the hours of operation of the PCE to: Monday through Friday from 5:00 a.m. to 12:00 a.m.; and on Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing, neighborhood residents also complained about debris outside the building; and

WHEREAS, in response, the Board directed the applicant to store refuse inside the building until the day of pick-up; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has operated at the site since approximately February 14, 2008; and

WHEREAS, accordingly, the Board will reduce the term of the special permit for the period of time between February 14, 2008 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 08BSA068R dated June 27, 2008; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the

Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in a C2-1 (R3X) zoning district, the legalization of a physical culture establishment in a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 27, 2008"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 14, 2018;

THAT there shall be no change in the ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation of the PCE shall be limited to: Monday through Friday, from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.;

THAT the PCE shall store its refuse within the building until the time of pick-up;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 28, 2008.

***The Resolution has been corrected to amend the DOB Application No. which now reads:**

"Application No. 52003854". Corrected in Bulletin Nos. 40-41, Vol. 95, dated October 13, 2010.

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*CORRECTION

This resolution adopted on August 3, 2010, under Calendar No. 13-10-BZ and printed in Volume 95, Bulletin No. 32, is hereby corrected to read as follows:

13-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yakov Platnikov, owner.

SUBJECT – Application January 27, 2010 – Special Permit (§73-622) for the enlargement of an existing two-family home to be converted to a single family home, contrary to lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 79 Amherst Street, east side of Amherst Street, north Hampton Avenue, Block 8727, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 23, 2009, acting on Department of Buildings Application No. 320054622, reads in pertinent part:

“The proposed horizontal and vertical enlargement of the existing two-family residence in an R3-1 zoning district:

1. Creates a new noncompliance with respect to lot coverage and is contrary to Section 23-141(b) of the Zoning Resolution (ZR).
2. Creates a new non-compliance with respect to floor area and is contrary to Section 23-141(b) ZR.
3. Creates a new non-compliance with respect to side yards and is contrary to Section 23-461(a) ZR.
4. Increases the degree of non-compliance with respect to rear yard and is contrary to Sections 23-47 and 54-31 ZR;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for lot coverage, floor area, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47 and 54-31; 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 27, 2010, June 8, 2010 and July 13, 2010, and then to decision on August 3, 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Amherst Street, between Oriental Boulevard and Hampton Avenue, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 4,160 sq. ft., and is occupied by a two-family home with a floor area of approximately 2,048 sq. ft. (0.49 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from approximately 2,048 sq. ft. (0.49 FAR) to approximately 4,064 sq. ft. (0.98 FAR); the maximum floor area permitted is 2,080 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide lot coverage of 36 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 4’-10” along the northern lot line (a side yard with a minimum width of 5’-0” is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 22’-10” (a minimum rear yard of 30’-0” is required); and

WHEREAS, at hearing, the Board requested that the applicant clarify the discrepancy between the lot dimensions of 40’-0” by 100’-0” reflected in the tax map on record at the Department of Finance (“DOF”) and the lot dimensions of 40’-0” by 104’-0” claimed by the applicant; and

WHEREAS, in response, the applicant submitted a revised DOF tax map reflecting that the dimensions of the subject lot are 40’-0” by 104’-0”; 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)

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and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for lot coverage, floor area, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47 and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received June 17, 2010”-(13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,064 sq. ft. (0.98 FAR); an open space of 64 percent; a lot coverage of 36 percent; a side yard with a width of 10’-2” along the southern lot line; a side yard with a minimum width of 4’-10” along the northern lot line; and a rear yard with a minimum depth of 22’-10”, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, August 3, 2010.

***The resolution has been corrected in that the portion which read: “a side yard with a width of 10’-3” along the southern lot line;” now reads: “a side yard with a width of 10’-2” along the southern lot line;”. Corrected in Bulletin Nos. 40-41, Vol. 95, dated October 13, 2010.**

MINUTES

*CORRECTION

This resolution adopted on August 3, 2010, under Calendar No. 102-10-A and printed in Volume 95, Bulletin No. 32, is hereby corrected to read as follows:

102-10-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc, owner; Tricia Kevin Davey, lessees.

SUBJECT – Application June 7, 2010 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 48 Tioga Walk, west side of Tioga Walk, south of 6th Avenue, Block 16350, Lot p/o400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 1, 2010, acting on Department of Buildings Application No. 420141590, reads in pertinent part:

“A1– The existing building to be altered lies within the bed of a mapped street contrary to General City Law, Article 3, Section 35; and

A2- The proposed upgraded private disposal system is in the bed of a mapped street and/or unmapped service road contrary to General City Law Article 3, Section 35 and Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on August 3, 2010, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated July 1, 2010, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated June 28, 2010, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 28, 2010, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the applicant’s property is not included in the agency’s ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens

Borough Commissioner, dated June 1, 2010, acting on Department of Buildings Application No. 420141590 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received June 7, 2010”–one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 3, 2010.

***The resolution has been revised to remove “provided the building is fully sprinklered”, and removed “That the home shall be sprinklered in accordance with the BSA-approved plans;” Corrected in Bulletin Nos. 40-41, Vol. 95, dated October 13, 2010.**

BULLETIN

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189-10-A

127-131 West 25th Street, Between 6th and 7th Avenue., Block 801, Lot(s) 21, Borough of **Manhattan, Community Board: 4**. Appeal challenging the issuance of permits by the Department of Buildings to allow the construction of a health care facility in an M1-6 zoning district. M1-6 district.

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191-10-BZ

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DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

NOVEMBER 9, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 9, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

575-37-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Duffton Realty, Inc., owner; C & D Service Center, Inc., lessee.

SUBJECT – Application July 16, 2010 – Pursuant to ZR §11-411 for an Extension of Term of an expired variance for the continued operation of a gasoline Service Station (*Gulf*) which expired on February 14, 2008; waiver of the rules. C1-3/R5B zoning district.

PREMISES AFFECTED – 60-93 Flushing Avenue, northwest corner of 61st Street, Block 2697, Lot 51, Borough of Queens.

COMMUNITY BOARD #5Q

15-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker for Columbus Properties, Incorporated, owner; TSI 217 Broadway LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 18, 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 June 15, 2009; waiver of the rules. C5-3 (LM) zoning district.

PREMISES AFFECTED – 217 Broadway, Northwest corner of Broadway and Vesey Streets. Block 88, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

43-99-BZ

APPLICANT – Carl A. Sulfaro, Esq., for White Castle System Inc., owner.

SUBJECT – Application February 25, 2010 – Extension of Term of a Special Permit (§73-243) for the continued operation of an accessory drive-thru to an Eating and Drinking Establishment (*White Castle*) which expired on December 7, 2010; Waiver of Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 88-02 Northern Boulevard, southwest corner of 88th Street, Block 1436, Lot 001, Borough of Queens.

COMMUNITY BOARD #3Q

APPEALS CALENDAR

184-10-A

APPLICANT – Deidre Duffy, PE, for Breezy Point Cooperative, Incorporated, owner; Mary James Chimenti, lessee.

SUBJECT – Application September 21, 2010 – Proposed construction not fronting a mapped street contrary to General City Law Section 36 within an R4 zoning district.

PREMISES AFFECTED – 20 Olive Walk, West side of Olive Walk, 230.0 feet north of Breezy Point Boulevard. Block 16350, Lot 400. Borough of Queens.

COMMUNITY BOARD #14Q

NOVEMBER 9, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 9, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

140-10-BZ thru 147-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Edward Lauria, owner.

SUBJECT – Application August 9, 2010 – Variance (§72-21) to allow four single family homes on lots that does not meet the minimum lot width requirements of ZR §23-32, not fronting a mapped street contrary to General City Law Section 36. R1-2 (NA-1) Zoning district. Companion BZ R1-2 zoning district, NA-1.

PREMISES AFFECTED – 160, 170, 181, 191, Edinboro Road, south of Meisner Avenue, east of intersection Lighthouse Avenue and Edinboro Road, Block 2267, Lot 55(tent), 50, 197, 168, Borough of Staten Island.

COMMUNITY BOARD #2SI

151-10-BZ

APPLICANT – Sheldon Lobel, P.C. for Profile Enterprises, LP, owner; Bamboo Garden Spa, Incorporated, lessee.

SUBJECT – Application August 16, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (Bamboo Garden Spa) located within an M1-6 zoning district.

PREMISES AFFECTED – 224 West 35th Street, South side of West 35th Street, 225 feet west of Seventh Avenue. Block 784, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #5M

CALENDAR

175-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application September 1, 2010 – Special Permit (§11-411) to permit an Extension of Term of a previously approved Automotive Service Station (UG 16B) which expired on December 18, 2001; Extension of Time to obtain a certificate of occupancy which expired on September 21, 1994; Waiver of the Rules of Practice and Procedures. Located in a R4 zoning district.

PREMISES AFFECTED – 3400 Baychester Avenue, Northeast corner of Baychester and Tillotson Avenue, Block 5257, Lot 47, Borough of Bronx.

COMMUNITY BOARD #12BX

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, OCTOBER 19, 2010 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

752-29-BZ

APPLICANT – Jack Gamill, P.E. for Marial Associates of
New Jersey, L.P., owner; Bay Ridge Honda, lessee.

SUBJECT – Application May 21, 2010 – Extension of Term
of a previously granted Variance (§72-21) for the continued
operation of Automotive Repair and Dealership (*Honda*)
which expired on April 22, 2010. C4-2 zoning district.

PREMISES AFFECTED – 8801-8809 4th Avenue, Block
6065, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Frank Sellitto.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and
an extension of term for the continued use of an automotive
repair shop and dealership, which expired on April 22, 2010;
and

WHEREAS, a public hearing was held on this
application on August 24, 2010 after due notice by
publication in *The City Record*, with a continued hearing on
September 21, 2010, and then to decision on October 19,
2010; and

WHEREAS, the premises and surrounding area had site
and neighborhood examinations by Chair Srinivasan, Vice-
Chair Collins, Commissioner Hinkson, and Commissioner
Montanez; and

WHEREAS, the site is located on a corner through lot
bounded by 88th Street to the north, Fourth Avenue to the west,
and 89th Street to the south, within a C4-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over
the subject site since 1930 when, under the subject calendar
number, the Board granted a variance to permit the premises
to be occupied by an accessory motor vehicle repair shop
building and gasoline service station, for a term of ten years;
and

WHEREAS, subsequently, the grant has been
amended and the term extended by the Board at various
times; and

WHEREAS, most recently, on May 7, 2002, the Board
granted an extension of term for ten years from the
expiration of the prior grant, which expired on April 22,
2010; and

WHEREAS, the applicant now seeks an additional
extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may
permit an extension of term; and

WHEREAS, at hearing, the Board directed the
applicant to remove the cars from the sidewalk along 88th
Street, and to remove the “No Parking” signs installed by
the owner on city-owned property; and

WHEREAS, in response, the applicant states that the
cars have been removed from the sidewalk along 88th Street
and that the “No Parking” signs installed by the owner have
been removed; and

WHEREAS, the Board also requested that the
applicant clarify the number of curb cuts accessing the site;
and

WHEREAS, in response, the applicant states that there
are two curb cuts accessing the site on Fourth Avenue and
one curb cut accessing the site on 88th Street, and that the
second curb cut on 88th Street accesses the adjacent
building, which is not a part of this application; and

WHEREAS, based upon its review of the record, the
Board finds the requested extension of term is appropriate
with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and
Appeals *reopens* and *amends* the resolution, as amended
through May 7, 2002, so that as amended this portion of the
resolution shall read: “to extend the term for an additional ten
years from April 22, 2010, to expire on April 22, 2020; *on*
condition that all use and operations shall substantially
conform to BSA-approved plans associated with the prior
grant; and *on further condition*:

THAT the term of the grant shall expire on April 22,
2020;

THAT all signage shall comply with C4 zoning district
regulations;

THAT all conditions from prior resolutions not
specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved
only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the
Board in response to specifically cited and filed DOB/other
jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure
compliance with all other applicable provisions of the
Zoning Resolution, the Administrative Code and any other
relevant laws under its jurisdiction irrespective of plan(s)
and/or configuration(s) not related to the relief granted.”
(DOB Application No. 320162220)

Adopted by the Board of Standards and Appeals October
19, 2010.

MINUTES

656-69-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLC, for JVM Company, LLC, owner.

SUBJECT – Application May 6, 2010 – Extension of Term of a (UG9) parking lot accessory to an existing funeral home establishment which expired on May 27, 2010; Extension of Time to obtain a Certificate of Occupancy; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 2617/23 Harway Avenue, aka 208/18 Bay 43rd Street. North west corner Harway Avenue and Bay 43rd Street. Block 6897, Lots 1 & 2, Borough of Brooklyn.

COMMUNITY BOARD #13BK

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance permitting an accessory parking facility for a funeral establishment, which expired on May 27, 2010; and

WHEREAS, a public hearing was held on this application on September 14, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 5, 2010, and then to decision on October 19, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 13, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Harway Avenue and Bay 43rd Street, within an R5 zoning district; and

WHEREAS, the site is occupied by a parking lot which is accessory to an existing funeral home; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 10, 1970 when, under the subject calendar number, the Board granted a variance to permit the construction of an off-site accessory parking facility for a funeral establishment for a term of ten years; and

WHEREAS, subsequently the grant was extended and amended at various times; and

WHEREAS, on December 4, 1990, the Board extended the term for ten years and amended the grant to reduce the number of accessory parking spaces from 26 to 19, to eliminate the carport, and to eliminate the requirement to restore the hedges; and

WHEREAS, most recently, on February 6, 2001, the Board extended the term for ten years, to expire on May 27, 2010; and

WHEREAS, the applicant now seeks to extend the term of the variance for an additional ten years; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated March 10, 1970, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from May 27, 2010, to expire on May 27, 2020, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received September 20, 2010’- (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 27, 2020;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(Alt. No. 910/68)

Adopted by the Board of Standards and Appeals, October 19, 2010.

558-71-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for WB Management of NY LLC, owner.

SUBJECT – Application March 26, 2010 – Amendment to a previously granted Variance (§72-21) to permit the change of a UG6 eating and drinking establishment to a UG6 retail use without limitation to a single use; minor reduction in floor area; increase accessory parking and increase to the height of the building façade. R3-1 zoning district.

PREMISES AFFECTED – 1949 Richmond Avenue, east side of Richmond Avenue at intersection with Amsterdam Place, Block 2030, Lot 1, 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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an

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amendment to a previously granted variance to permit, in an R3-1 zoning district, the conversion of an eating and drinking establishment (Use Group 6) to retail use (Use Group 6), the redistribution of floor area, an increase in accessory parking, and an increase in the height of the building façade; and

WHEREAS, a public hearing was held on this application on June 15, 2010, after due notice by publication in *The City Record*, with continued hearings on July 13, 2010, August 17, 2010 and September 21, 2010, and then to decision on October 19, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Richmond Avenue, between Eton Place and Rockland Avenue, within an R3-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 16, 1971 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the rearrangement of an existing nursery and greenhouse establishment and the addition to the uses to include the sale of agricultural products, contrary to ZR § 22-14; and

WHEREAS, a letter of substantial compliance was issued by the Board on March 25, 2005, to permit interior alterations to facilitate the renovation of the interior display layout; and

WHEREAS, most recently, on August 21, 2007, the Board permitted the conversion of the existing building from a greenhouse with an accessory retail store (Use Group 6) to an eating and drinking establishment (Use Group 6); and

WHEREAS, the applicant now requests that the Board amend the grant to permit the conversion of the eating and drinking establishment (Use Group 6) to retail use without limitation to a single use (Use Group 6); and

WHEREAS, the applicant also seeks to remove 805 sq. ft. of floor area from the southern portion of the existing building and to redistribute 780 sq. ft. of the removed floor area to the western portion of the building, resulting in a 25 sq. ft. reduction in overall floor area; and

WHEREAS, specifically, the applicant proposes to remove 320 sq. ft. of floor area from the rear of the building and an additional 485 sq. ft. of floor area along the southern side of the building by reducing the width of the building by five feet, and to redistribute 780 sq. ft. of the floor area to an enlargement at the front of the building, resulting in a reduction of the floor area from 5,849 sq. ft. to 5,824 sq. ft.; and

WHEREAS, the applicant states that as a result of the alteration of the existing structure, the number of accessory parking spaces provided on the site would be increased from 19 spaces to 24 spaces; and

WHEREAS, the applicant also proposes to increase the height of the building's façade from 15'-2" to 29'-6" fronting Richmond Avenue and 22'-6" for the remainder of the building; and

WHEREAS, the applicant represents that the proposed changes are necessary in order to realize a reasonable return by increasing the commercial viability of the building, which the owner has been unable to lease under its permitted use as an eating and drinking establishment; and

WHEREAS, at hearing, the Board directed the applicant to reduce the height of the façade along Richmond Avenue; and

WHEREAS, in response, the applicant submitted revised plans reflecting a reduction in the height of the building's façade on Richmond Avenue to 25'-6"; and

WHEREAS, the applicant submitted a streetscape reflecting that the adjacent building has a façade with a height of 30'-0"; and

WHEREAS, the applicant also submitted a land use map and photographs reflecting the prevalence of two-story commercial buildings located along Richmond Avenue in the vicinity of the subject site; and

WHEREAS, the applicant also provided photographs reflecting numerous sites in the surrounding area fronting on Richmond Avenue which provide parking at the side and rear of the building, similar to the proposed building; and

WHEREAS, the applicant notes that the site is within an area that is in the process of being rezoned under the proposed Commercial Corridor Rezoning, which was certified on September 13, 2010 and is currently going through the Uniform Land Use Review Process; and

WHEREAS, the applicant states that under the proposed rezoning, the subject site would be located in an R3-1 (C1-2) zoning district; and

WHEREAS, the applicant states that the proposed relocation of floor area to the front of the existing building would result in a front yard of 0'-6", which would be compliant with C1-2 zoning district regulations and in character with other commercial uses fronting Richmond Avenue in the surrounding area; and

WHEREAS, the applicant further states that the proposed development would be compliant with all C1-2 zoning district regulations other than a pre-existing side yard of 7'-0" and a pre-existing rear yard of 5'-8", which were previously approved by the Board; and

WHEREAS, the applicant notes that the pre-existing rear yard abuts Willowbrook Park, which is undeveloped land; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 16, 1971, so that as amended this portion of the resolution shall read: "to permit the conversion of an eating and drinking establishment (Use Group 6) to retail use without limitation to a single use (Use Group 6), the redistribution of floor area, an increase in accessory parking from 19 spaces to 24 spaces, and

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an increase in the height of the building façade, as indicated on the approved plans; *on condition* that all work shall substantially conform to drawings filed with this application and marked ‘Received June 30, 2010’-(1) sheet, ‘August 3, 2010’-(2) sheets, ‘August 9, 2010’-(1) sheet and ‘September 30, 2010’-(1) sheet; and *on further condition*:

THAT substantial construction shall be completed by October 19, 2014;

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. 520018436)

Adopted by the Board of Standards and Appeals, October 19, 2010.

322-98-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for HUSA Management Company, LLC, owner; TSI West 125 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application May 26, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on March 23, 2009; Amendment to legalize the increase in floor area; Waiver of the Rules. C4-4(125) zoning district.

PREMISES AFFECTED – 300 West 125th Street, south side of West 12th Street between Saint Nicholas Avenue and Fredericks Douglas Boulevard, Block 1951, Lots 22, 25, 27, 28, 29, 33, 39, Borough of Manhattan.

COMMUNITY BOARD #10M

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), operated by New York Sports Club, which expired on March 23, 2009, and an amendment to legalize an increase in floor area of the PCE; and

WHEREAS, a public hearing was held on this application on September 14, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 5, 2010, and then to decision on October 19, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Manhattan, recommends approval of this application; and

WHEREAS, the PCE is located on the south side of West 125th Street, between St. Nicholas Avenue and Frederick Douglas Boulevard, in a C4-4D zoning district within the Special 125th Street District; and

WHEREAS, the site is occupied by a four-story commercial building; and

WHEREAS, the PCE occupies 21,502 sq. ft. of floor area on the first and fourth floor of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 23, 1999 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, which expired on March 23, 2009; and

WHEREAS, on February 15, 2005, the Board granted an amendment to permit a 5,343 sq. ft. expansion of the PCE on the fourth floor in order to allow for the construction of a basketball court; and

WHEREAS, the applicant states that the proposed basketball court was never constructed and the PCE continued to operate as originally approved, with a total floor area of 20,902 sq. ft.; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, the applicant also seeks an amendment to legalize the enlargement of the PCE at the southwest corner of the fourth floor for an additional workout area, which results in a 600 sq. ft. increase in the floor area of the PCE, for a total floor area of 21,502 sq. ft.; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the previous grant are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on March 23, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from March 23, 2009, to expire on March 23, 2019, and to permit the noted increase in floor area of the PCE, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received May 26, 2010’- (4) sheets and ‘September 20, 2010’-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on March 23, 2019;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

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THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 101835016)

Adopted by the Board of Standards and Appeals, October 19, 2010.

161-00-BZ

APPLICANT – Stuart A. Klein, Esquire, for Stellar Sutton, LLC, owner; Mario Badescu Skin, Incorporated, lessee.

SUBJECT – Application June 9, 2010 – Extension of Term of a previously granted Variance (§72-21) for the operation of a Physical Culture Establishment (*Bodescu Skin Care*) which expired on June 2, 2010; Extension of Time to obtain a Certificate of Occupancy. R8B zoning district.

R8B zoning district.

PREMISES AFFECTED – 320 East 52nd Street, between 1st and 2nd Avenue, Block 1344, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Jay Goldstein.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on June 2, 2010, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on September 14, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 5, 2010, and then to closure and decision on October 19, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the PCE is located on the south side of East 52nd street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site is occupied by a 13-story (including penthouse) residential building; and

WHEREAS, the PCE use is located in the cellar and occupies a total floor space of 4,915 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over

the subject site since December 12, 2000 when, under the subject calendar number, the Board granted a variance to legalize a PCE in the subject building for a term of ten years, to expire on June 2, 2010; and

WHEREAS, a condition of the grant was that fire protection systems, including an automatic wet sprinkler system, an interior fire alarm system, and a smoke detection system be installed throughout the entire cellar within two years of the grant, which expired on December 12, 2002; and

WHEREAS, on March 18, 2003, the Board granted an extension of time to install fire protection measures and obtain a certificate of occupancy, which expired December 12, 2003, and granted an amendment to permit a change in ownership of the PCE; and

WHEREAS, the applicant now seeks an extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant submitted a letter from its fire alarm system specialist stating that all fire protection systems required in the previous grant have been installed and approved by the Fire Department; and

WHEREAS, the applicant also submitted photographs reflecting the installation of the required fire protection systems; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and extension of time are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on June 2, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from June 2, 2010, to expire on June 2, 2020, and to extend the time to obtain a certificate of occupancy for one year from the date of this grant, to expire on October 19, 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 expire on June 2, 2020;

THAT a certificate of occupancy shall be obtained by October 19, 2011;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 102889297)

Adopted by the Board of Standards and Appeals, October 19, 2010.

MINUTES

181-06-BZ

APPLICANT – Goldman Harris LLC, for 471 VE LLC c/o Vella Group, owner; 471 VE LLC c/o Vella Group, lessee.

SUBJECT – Application September 21, 2010 – Amendment to a previously granted Variance (§72-21) to change the permitted ground floor retail to residential in a nine-story building. M1-5/Area B-2 (TMU) zoning district.

PREMISES AFFECTED – 471 Washington Street, southeast corner of Washington Street and Canal Street, Block 595, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Vivian Kreiger.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, in an M1-5 zoning district within Area B2 of the Special Tribeca Mixed Use District, a nine-story residential building with retail use on the first floor, contrary to ZR §§ 42-00 and 111-104(d); and

WHEREAS, a public hearing was held on this application on September 21, 2010, after due notice by publication in *The City Record*, and then to decision on October 19, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Washington Street and Canal Street; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 13, 2007 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted, in an M1-5 zoning district within Area B2 of the Special Tribeca Mixed Use District, the construction of a nine-story residential building with retail use on the first floor and seven dwelling units above, contrary to ZR §§ 42-00 and 111-04(d); and

WHEREAS, a letter of substantial compliance was issued by the Board on April 12, 2010, to permit an increase in the number of units in the proposed building from seven to 12, by subdividing the single dwelling unit on the second floor into three units, and subdividing the single dwelling units on the third, fourth and fifth floors into two units each; and

WHEREAS, the applicant now requests that the Board amend the grant to permit the ground floor to be occupied by residential use instead of the approved retail use; and

WHEREAS, the applicant states that the amendment is necessary in order for the site to realize a reasonable return,

because there is not enough demand for commercial space in the immediate area and retail use is not feasible; and

WHEREAS, the applicant submitted a financial analysis which reflects that retail space at the ground floor has proved infeasible due to the site’s location on one of the busiest vehicular sections of Canal Street, the lack of proximity of any retail uses in adjacent buildings on any of the surrounding streets, and the irregular shape of the lot and grade changes which limit the retail access and frontage; and

WHEREAS, the applicant states that the proposed change in the permitted use of the ground floor from commercial retail to residential will result in an increase in the residential floor area ratio (“FAR”) from 4.53 to 4.99, but that the overall FAR of the building will remain at 4.99 and the number of units will remain at 12, in accordance with the prior grant; and

WHEREAS, the applicant notes that the site is within an area that is in the process of being rezoned under the North Tribeca Proposed Rezoning, which was certified on June 7, 2010 and is currently going through the Uniform Land Use Review Process; and

WHEREAS, the applicant states that under the proposed rezoning, the subject site would be located in a C6-2A zoning district within Subarea A5 of the Tribeca Mixed-Use District, where residential use would be permitted on all floors, including the proposed ground floor residential use; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board’s findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, dated February 13, 2007, so that as amended this portion of the resolution shall read: “to permit the ground floor of the subject building to be occupied by residential use; *on condition* that all work shall substantially conform to drawings filed with this application and marked “Received August 16, 2010”-(2) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 104439546)

Adopted by the Board of Standards and Appeals, October 19, 2010.

MINUTES

141-08-BZ

APPLICANT – Sheldon Lobel, PC, for DoRay 46, Incorporated, owner.

SUBJECT – Application May 7, 2008 – Dismissal for Lack of Prosecution - Variance (§72-21) to allow for a mixed use building contrary to floor area, lot coverage (§23-145), height (§35-24), and street wall requirements (§101-41). R6A/C2-4 zoning district, DB.

PREMISES AFFECTED – 46-48 Third Avenue, northeast corner of the intersection of Third Avenue and Atlantic Avenue, Block 185, Lot 25, 26, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: None.

ACTION OF THE BOARD – Application dismissed for lack of prosecution.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated May 2, 2008, acting on Department of Buildings Application No. 302179130, reads in pertinent part:

“Z.R. Sec. 23-145; Total development floor area is requested to be 13,998 sq. ft. for a floor area ratio of 6.36. Lot coverage is requested to be 90%.

Z.R. Sec 35-24; Proposed building base height is requested to be 74 feet, with maximum building height of 88 feet at the top of the penthouse.

Z.R. Sec 101-41(b); Proposed street wall height is requested to be 64 feet;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R6A/C2-4 zoning district within the Special Downtown Brooklyn District, Atlantic Avenue Subdistrict, the construction of a mixed use commercial and residential building which does not comply with the zoning regulations for floor area ratio and height, contrary to ZR §§ 33-122, 35-24 and 101-41(b); and

WHEREAS, the variance application was filed on May 7, 2008; and

WHEREAS, in June 2008, Board staff was verbally notified by the applicant that the proposal was being revised and to place the application on hold; and

WHEREAS, the Board did not receive any subsequent communication from the applicant; and

WHEREAS, on August 24, 2010, Board staff issued a letter notifying the applicant that if a revised proposal was not received by September 24, 2010 the application would be scheduled for a dismissal hearing; and

WHEREAS, the Board did not receive any subsequent response from the applicant; and

WHEREAS, accordingly, the Board placed the matter on the calendar for dismissal; and

WHEREAS, on September 14, 2010, the Board sent the applicant a notice stating that the case had been put on the October 19, 2010 dismissal calendar; and

WHEREAS, the applicant did not appear at the hearing on October 19, 2010; and

WHEREAS, accordingly, due to the applicant’s lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 141-08-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, October 19, 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 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Calvin Wong.

For Administration: Amanda Perr, Department of Buildings.

ACTION OF THE BOARD – Laid over to November 23, 2010, at 10 A.M., for continued hearing.

826-86-BZ, 827-86-BZ and 828-86-BZ

APPLICANT – Eric Palatnik, for North Shore Tower Apartment, Inc., owner; Continental Communications, lessee.

SUBJECT – Application August 26, 2010 – Extension of Time to obtain a Certificate of Occupancy which expired on July 26, 2010 for a Special Permit (§73-11) to allow non-accessory radio towers and transmitting equipment on the roof of a 33-story multiple dwelling (*North Shore Towers*). R3-2 zoning district

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, northeast corner of 267th Street, Block 8489, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for decision, hearing closed.

MINUTES

294-99-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for 521 5th Avenue Partners, LLC, owner; Equinox- 43rd Street, Incorporated, lessee.

SUBJECT – Application June 1, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Equinox*) which expired on May 9, 2010. C5-3(MID) & C5-2.5(MID) zoning district.

PREMISES AFFECTED – 521 5th Avenue, north east corner of 5th Avenue and East 43rd Street, Block 1278, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

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 November 16, 2010, at 10 A.M., for decision, hearing closed.

180-99-BZ

APPLICANT – Michael T. Cetera, AIA, for Geulah, LLC, owner.

SUBJECT – Application June 4, 2010 – Extension of Term of a previously granted Variance (§72-21) for a non-conforming (UG9A) catering establishment which expired on April 4, 2010; waiver of the rules. R6 zoning district.

PREMISES AFFECTED – 564/66 East New York Avenue, south side, 329’-7” east of Brooklyn Avenue, Block 4793, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Michael T. Cetera.

ACTION OF THE BOARD – Laid over to November 9, 2010, at 10 A.M., for continued hearing.

344-03-BZ

APPLICANT – Goldman, Harris LLC, for City of New York, owner; Nick's Lobster House, lessee.

SUBJECT – Application August 11, 2010 – Extension of Term of a Special Permit (§73-242) permitting an eating and drinking establishment which expired on July 12, 2010. C3 zoning district.

PREMISES AFFECTED – 2777 Flatbush Avenue, between Flatbush and Mill Basin, Block 8591, Lot p/o 980, p/o 175, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Vivien Krieger.

ACTION OF THE BOARD – Laid over to November 16, 2010, at 10 A.M., for continued hearing.

175-05-BZ

APPLICANT – Eric Palatnik, P.C., for Athanasios Amaxus, owner.

SUBJECT – Application September 9, 2010 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to construct a four-story multiple dwelling with accessory parking which expires on January 9, 2011. M1-1 zoning district.

PREMISES AFFECTED – 18-24 Luquer Street, between Hicks Street and Columbia Street, Block 520, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 23, 2010, at 10 A.M., for continued hearing.

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for Randy Lee, owner.

SUBJECT – Application September 9, 2010 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to construct a four-story multiple dwelling which expires on October 17, 2010. R3-2(HS) zoning district.

PREMISES AFFECTED – 908 Clove Road, between Broadway and Bement Avenue, Block 323, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palantik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for decision, hearing closed.

238-07-BZ

APPLICANT – Goldman Harris LLC, for OCA Long Island City LLC; OCAII & III c/o O'Connor Capital, owner.

SUBJECT – Application July 1, 2010 – Amendment of a previously approved Variance (§72-21) to permit a residential/commercial building and community facility/dormitory building. The amendment will divide the project into two separate buildings and allow the construction and occupancy of one building prior to the construction and occupancy of the other. M-4/R6A (LIC) and M1-4 zoning districts.

PREMISES AFFECTED – 5-11 47th Avenue, 46th Road at north, 47th Avenue at south, 5th Avenue at west, Vernon Boulevard at east. Block 28, Lot 12, 15, 17, 18, 21, 38, Borough of Queens

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Vivian Krieger.

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ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for postponed hearing.

APPEALS CALENDAR

110-10-BZY

APPLICANT – Cozen O’Connor, for Landmark Developers of Rockaway, owners.

SUBJECT – Application June 18, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning. R5A zoning district

PREMISES AFFECTED – 93-06 Shore Front Parkway, north side of Shore Front Parkway from B.94th to B.93rd Street, Block 16130, Lot 11, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a six-story residential building currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on August 17, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 5, 2010, and then to decision on October 19, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Queens, recommends disapproval of this application; and

WHEREAS, certain members of the community provided testimony in opposition to this application (hereinafter, the “Opposition”), citing concerns that the proposed building does not fit within the character of the neighborhood and that the site has not been properly maintained and is in poor condition; and

WHEREAS, the subject site is located on the north side of Shore Front Parkway, between Beach 93rd Street and Beach 94th Street; and

WHEREAS, the subject site has approximately 107 feet of frontage along Shore Front Parkway, a depth ranging from 167 feet to 175 feet, and a total lot area of 18,488 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story residential building with 57 dwelling units and 36 accessory parking spaces (the “Proposed Development”); and

WHEREAS, the Proposed Development complies with the former R6 zoning district parameters; and

WHEREAS, on January 8, 2007, New Building Permit

No. 402483013-01-NB (hereinafter, the “New Building Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, however, on August 14, 2008 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Rockaway Neighborhoods Rezoning, which rezoned the site from R6 to R5A; and

WHEREAS, as of that date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

WHEREAS, for a “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for . . . three terms of not more than two years each for a major development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated August 17, 2010, DOB stated that the New Building Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term

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for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant, and directed the applicant to exclude pre-permit expenditures; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the Proposed Development subsequent to the issuance of the permits includes: 100 percent of the excavation; 100 percent of the foundation (including the installation of over 300 driven piles); and the installation of a complex drainage system; and

WHEREAS, in support of this statement, the applicant has submitted the following: a breakdown of the construction costs by line item; a foundation survey; copies of cancelled checks; invoices; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$2,968,614 (including \$1,474,974 in hard costs), or 17 percent, out of the \$17,610,614 cost to complete; and

WHEREAS, as noted, the applicant has submitted invoices and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, in response to the concerns raised by the Opposition regarding the site conditions and maintenance, the applicant states that the subject site is regularly visited by a maintenance person, that the majority of water runoff is accommodated by the surrounding sand and any excess water is pumped from the site, and that there are currently three open

violations for the site, one of which is an unidentified construction violation from March 2007, while the other two relate to an expired fence permit; and

WHEREAS, as to the Opposition's concerns about neighborhood character, the applicant states that the Proposed Development fits within the character of the surrounding area, which includes a number of six- to 12-story residential buildings; and

WHEREAS, the applicant further states that even if the proposed building is out of context with the surrounding neighborhood, that is not a relevant consideration in an application for an extension of time to complete construction under ZR §11-332; and

WHEREAS, the Board notes that the subject site was initially vested by DOB, and that the applicant now only seeks an extension of time to complete construction and obtain a certificate of occupancy under ZR § 11-332; and

WHEREAS, while the Board is not swayed by any of the Opposition's arguments, it nevertheless understands that the community residents and elected officials worked diligently on the Rockaway Neighborhoods Rezoning and that the Proposed Development does not comply with the new zoning parameters; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Permit No. 402483013-01-NB, as well as all related permits for various work types either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on October 19, 2012.

Adopted by the Board of Standards and Appeals, October 19, 2010.

366-05-A

APPLICANT – Deirdre A. Carson, for Greenberg Traurig, LLP, for Prospect Terrace, LLC, owner.

SUBJECT – Application August 20, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted vesting application under the Common Law which expired on August 22, 2010. R5 previous zoning districts; R5-B current zoning district. PREMISES AFFECTED – 1638 8th Avenue, east side of Eighth Avenue, between Windsor Place and Prospect Avenue, Block 1112, Lots 52 & 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdra A. Carson.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November

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9, 2010, at 10 A.M., for decision, hearing closed.

38-10-A

APPLICANT – Jack Lester, Esquire for Anthony Naletilic.
OWNER – K.J. Chung/Jesus Covent Church.

SUBJECT – Application March 22, 2010 – Appeal challenging the Department of Building's issuance of a building permit to allow for the waiver of parking per §25-35 for a house of worship/community facility. R2A zoning district.

PREMISES AFFECTED – 26-18 210th Street, corner lot on 27th Avenue and 210th Street, Block 5992, Lot 36, Borough of Queens.

COMMUNITY BOARD #11Q

For Applicant: Jack Lester, Joseph Lobowo, Anthony Naletilic and Henry Euler.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for decision, hearing closed.

111-10-A

APPLICANT – Victor K. Han, R.A., AIA, for Seungho Kim, owner.

SUBJECT – Application June 18, 2010 – Appeal challenging Department of Building's determination that a proposed hotel does not meet the requirements of §32-14 and is therefore not permitted. C2-2 zoning district.

PREMISES AFFECTED – 211-08 Northern Boulevard, southeast side of Northern Boulevard, southeast of 211th Street, Block 7313, Lot 5, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Victor Han.

For Opposition: Henry Euler.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 16, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, OCTOBER 19, 2010 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radoncic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 16, 2010, acting on Department of Buildings Application No. 420004088, reads in pertinent part:

“Proposed two-family residence in an R5 zoning district on an existing small lot, pursuant to ZR Section 23-33, provides side yards less than minimum required pursuant to ZR Section 23-48;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R5 zoning district, the proposed construction of a three-story two-family home that does not provide the required side yards, contrary to ZR § 23-48; and

WHEREAS, a public hearing was held on this application on February 2, 2010, after due notice by publication in *The City Record*, with continued hearings on March 9, 2010, April 27, 2010, May 18, 2010, July 13, 2010, August 3, 2010, August 17, 2010 and October 5, 2010, and then to decision on October 19, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 1, Queens, recommends approval of this application with the following conditions: (1) that a 5'-0” side yard be provided; and (2) that the applicant not exceed a floor area ratio (“FAR”) of 1.25; and

WHEREAS, Queens Borough President Helen Marshall

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recommends approval of this application; and

WHEREAS, the site is located on the east side of 44th Street, between 25th Avenue and 28th Avenue; and

WHEREAS, the site has a width of 25 feet, a depth of 100 feet, and a total lot area of approximately 2,500 sq. ft.; and

WHEREAS, the site is currently occupied with a one-story single-family home with no side yards, which will be demolished; and

WHEREAS, the applicant proposes to construct a three-story two-family home; and

WHEREAS, the proposed home will have the following complying parameters: 3,120 sq. ft. of floor area (1.24 FAR); an open space of 59 percent; a lot coverage of 41 percent; a front yard with a depth of 10'-0"; a rear yard with a depth of 38'-0"; a wall height of 30'-0"; and a total height of 36'-6"; and

WHEREAS, however, the applicant proposes to provide one side yard with a width of 5'-0" along the southern lot line, and no side yard along the northern lot line, (side yards with minimum widths of 5'-0" each are required); and

WHEREAS, the applicant initially proposed to construct a home with 3,432 sq. ft. of floor area (1.34 FAR), a front yard with a depth of 18'-0", a side yard with a width of 3'-0" along the southern lot line, no side yard along the northern lot line, and a rear yard with a depth of 30'-0"; and

WHEREAS, at the Board's direction, the applicant reduced the FAR of the home and provided a larger side yard which reduced the width of the proposed home to 20'-0"; and

WHEREAS, the applicant also revised the plans to shift the proposed home forward in order to provide an additional 8'-0" of rear yard depth, which resulted in a corresponding 8'-0" decrease in front yard depth; and

WHEREAS, at hearing, the Board questioned whether the slope of the front yard driveway ramp complied with the underlying zoning regulations following the decrease in front yard depth from 18'-0" to 10'-0"; and

WHEREAS, in response, the applicant states that the proposed driveway grade complies with ZR § 25-635; and

WHEREAS, the Board notes that the slope of the front yard driveway and garage will be as approved by DOB and no waiver is sought for that condition; and

WHEREAS, the applicant has provided documentation establishing that the subject lot is an undersized lot pursuant to ZR § 23-32; and

WHEREAS, the Board notes that ZR § 23-33 eliminates lot area and width requirements for two-family homes in an R5 zoning district where the zoning lot was owned separately and individually from all adjoining tracts of land both on December 15, 1961 and on the date of the application for a building permit; and

WHEREAS, the applicant submitted deeds reflecting that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the two adjoining lots; and

WHEREAS, the Board notes that ZR § 23-33 would eliminate a lot area and width requirement for a two-family dwelling, but not the side yard objection; and

WHEREAS, the applicant states that side yard relief is

necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the narrowness of the subject site; and

WHEREAS, the applicant represents that the requested side yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing lot width of 25'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that if both required side yards were provided, the building would have an exterior width of only 15'-0" which would result in an interior width of approximately 13'-0" and floor plates that narrow to approximately ten feet due to interior staircases; and

WHEREAS, accordingly, the applicant represents that the side yard waiver is necessary to create a home of a reasonable width; and

WHEREAS, the applicant submitted a survey of the surrounding lots which reflected that the homes in the study area have an average width of approximately 21'-0", and therefore an as-of-right home on the subject lot would be nearly 30 percent narrower than the average building in the surrounding area; and

WHEREAS, the survey submitted by the applicant also reflected that the average total side yards for homes in the surrounding area is only 3'-0", while approximately 98 percent of the homes in the study area provide less than 10'-0" in total side yards, and 72 percent of the homes in the area provide less than 5'-0" in total side yards; and

WHEREAS, the applicant states that the demolition of the existing home on the site is appropriate because it is an 'L'-shaped one-story non-complying structure at the rear of the property that is significantly undersized with a floor area of only 695 sq. ft., and it cannot be enlarged or expanded because it is built in the rear yard and does not provide side yards or a rear yard; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable side yard regulations; and

WHEREAS, the Board has determined that because of the subject site's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized by single-family to three-family homes; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that that it complies with all relevant bulk regulations other than side yards; and

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WHEREAS, specifically, the applicant notes that the proposed home complies with the R5 zoning district regulations for FAR, open space, lot coverage, front and rear yards, and height; and

WHEREAS, the applicant states that the proposed home has a width of 20'-0", and the lot survey submitted by the applicant reflects that the homes in the surrounding area have an average width of approximately 21'-0"; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's narrow width; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

WHEREAS, as noted above, the applicant initially proposed a home with 3,432 sq. ft. of floor area (1.34 FAR), a side yard with a width of 3'-0" along the southern lot line, and no side yard along the northern lot line; and

WHEREAS, during the course of the hearing process, the applicant revised the drawings at the Board's direction to reduce the FAR of the home, and to provide a larger side yard which reduced the width of the home to the proposed 20'-0"; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except for side yards is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, in an R5 zoning district, the proposed construction of a three-story two-family home that does not provide the required side yards, contrary to ZR § 23-48; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 29, 2010"– (12) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 3,120 sq. ft. of floor area (1.24 FAR), a side yard with a width of 5'-0" along the southern lot line; no side yard along the northern lot line; a front yard with a depth of 10'-0"; a rear yard with a depth of 38'-0"; a wall height of 30'-0"; a total height of 36'-6"; and parking for two cars, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be subject to DOB review and approval;

THAT the slope of the front yard driveway and garage shall be subject to DOB review and approval;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 19, 2010.

105-10-BZ

APPLICANT – Eric Palatnik, for Misha Keylin, owner.

SUBJECT – Application October 2, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yard regulations (§23-461). R-4A/C1-3 (BRSD) zoning district.

PREMISES AFFECTED – 269 77th Street, between 3rd Avenue and Ridge Boulevard, Block 5949, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #10BK

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 25, 2010, acting on Department of Buildings Application No. 320088221, reads:

“Proposed side yard is contrary to ZR 23-461 and therefore must be referred to the NYC BSA for a special permit pursuant to ZR Section 73-622;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in a C1-3 (R4A) zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side yards, contrary to ZR § 23-461; and

WHEREAS, a public hearing was held on this application on October 5, 2010 after due notice by publication in *The City Record*, and then to decision on October 19, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Brooklyn, recommends disapproval of this application, citing concerns that the proposed roof terrace above the first floor would

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impede upon the adjacent neighbor's privacy; and

WHEREAS, the adjacent neighbor provided oral testimony in opposition to this application, citing concerns that the proposed second floor terrace would invade their privacy and block their light and air; and

WHEREAS, the subject site is located on the north side of 77th Street, between Third Avenue and Ridge Boulevard, within a C1-3 (R4A) zoning district; and

WHEREAS, the subject site has a total lot area of 2,187 sq. ft., and is occupied by a single-family home with a floor area of 1,519 sq. ft. (0.69 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,519 sq. ft. (0.69 FAR) to 1,555 sq. ft. (0.70 FAR); the maximum permitted floor area is 2,268 sq. ft. (1.04 FAR); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yards with a width of 4'-0 1/2" along the western lot line and no side yard along the eastern lot line (two side yards with a total width of 10'-0" and a minimum width of 2'-0" each are required); and

WHEREAS, as to the concerns raised by the Community Board and the adjacent neighbor, the Board notes that the proposed enlargement is minimal and that the proposed roof terrace above the first floor at the rear of the home is subject to Department of Buildings ("DOB") approval; and

WHEREAS, the Board further notes that at hearing the applicant offered to install a privacy screen at the proposed roof terrace to address the adjacent neighbor's concerns regarding privacy, but that the offer was rejected due to the neighbor's concerns about an increased impact on their light and air; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within a C1-3 (R4A) zoning district, the enlargement of a single-family home, which

does not comply with the zoning requirements for side yards, contrary to ZR § 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 30, 2010"-(9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 1,555 sq. ft. (0.70 FAR); a side yard with a minimum width of 4'-0 1/2" along the western lot line; and no side yard along the eastern lot line, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, October 19, 2010.

106-10-BZ
CEQR #10-BSA-079Q

APPLICANT – Sheldon Lobel, P.C., for Ka Won Realty Corporation, owner; Harmony Spa, lessee.

SUBJECT – Application June 9, 2010 – Special Permit (§73-36) to legalize a physical culture establishment (*Harmony Spa*) on the third floor of an existing four-story commercial building, M1-6 zoning district.

PREMISES AFFECTED – 240 West 38th Street, 3rd Floor, Located on south side of West 38th Street between 7th and 8th Avenue. Block 787, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated September 20, 2010, acting on Department of Buildings Application No. 120231007, reads in pertinent part:

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“Proposed physical cultural & health establishment is not permitted as-of-right in M1-6 zoning district and it is contrary to ZR 42-10. BSA special permit is required as per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-6 zoning district within the Special Garment Center District, the legalization of a physical culture establishment (“PCE”) on the third floor of a four-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 17, 2010 after due notice by publication in *The City Record*, with a continued hearing on September 21, 2010, and then to decision on October 19, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of West 38th Street, between Seventh Avenue and Eighth Avenue, in an M1-6 zoning district within the Special Garment Center District; and

WHEREAS, the site is occupied by a four-story commercial building; and

WHEREAS, the proposed PCE will occupy a total floor area of 1,570 sq. ft. on the third floor of the subject building; and

WHEREAS, the PCE will be operated as Harmony Spa; and

WHEREAS, the proposed hours of operation are 10:00 a.m. to 12:00 a.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for the practice of massage; and

WHEREAS, the applicant notes that the subject site is located within Preservation Area P-1 of the Special Garment Center District, but states that the Special Garment Center District regulations do not restrict the use of the third floor of the subject building for the proposed PCE use; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that

the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since June 2, 2009, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between June 2, 2009 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA079Q, dated August 4, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-6 zoning district within the Special Garment Center District, the legalization of a physical culture establishment on the third floor of an existing four-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 4, 2010” – Four (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 2, 2019;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by

MINUTES

the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 19, 2010.

112-10-BZ

CEQR #10-BSA-081K

APPLICANT – Sheldon Lobel, P.C., for John Grant, owner.
SUBJECT – Application June 18, 2010 – Special Permit (§73-44) to permit reduction in required parking in connection with change of use from UG 16 to UG 6 in an existing building. M1-1 zoning district.

PREMISES AFFECTED – 915 Dean Street, north side of Dean Street between Classon and Grand Avenues, Block 1133, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 19, 2010, acting on Department of Buildings Application No. 320155522, reads in pertinent part:

“Proposed number of accessory parking spaces for the building at the premises is less than required pursuant to ZR 44-21”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within an M1-1 zoning district, a reduction in the required number of accessory parking spaces for a proposed conversion of the second story of a two-story building from Use Group 16 warehouse to UG 6 professional office building parking category B1, from 38 to 28 attended spaces, contrary to ZR § 44-21; and

WHEREAS, a public hearing was held on this application on September 21, 2010, after due notice by publication in *The City Record*, and then to decision on October 19, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 8, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Dean Street, between Classon Avenue and Grand Avenue, and has a lot area of 11,440 sq. ft.; and

WHEREAS, the site is currently occupied by an 11,414 sq. ft. two-story building with professional offices on the first floor and warehouse/storage on the second floor with open parking for 21 vehicles; and

WHEREAS, the applicant proposes to convert the entire 5,707 sq. ft. second floor to UG 6 professional offices; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject M1-1 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable ZR provision, for Use Group 6 uses in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 44-21 the total number of required parking spaces for the existing and proposed office use at the site is 38; and

WHEREAS, the applicant represents that the proposed use of the site does not require 38 accessory parking spaces; and

WHEREAS, the applicant states that the immediate vicinity is served by numerous bus lines and subway lines, as well as the Long Island Rail Road; and

WHEREAS, based on the facility’s users (dialysis patients) it is anticipated that many users will arrive by mass transit or be dropped off via ambulette, car service or taxi, lessening the demand for on-site parking; and

WHEREAS, the proposed second floor of the office building (Use Group 6) on the premises will occupy 5,707 sq. ft., and under the special permit authorized by ZR § 73-44 the number of parking spaces could be reduced to 19 for the proposed use; and

WHEREAS, the applicant proposes to provide a total of 28 attended parking spaces; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the Use Group 6 use in the B1 parking category is contemplated in good faith; and

WHEREAS, the applicant has submitted an affidavit from the owner of the premises stating that the second floor will be used for Use Group 6 professional offices; and

WHEREAS, in addition, the applicant states that any Certificate of Occupancy for the building will state that no subsequent Certificate of Occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, the applicant has submitted sufficient evidence of good faith in limiting the use of the premises to professional offices; and

WHEREAS, the Board agrees that the accessory parking space needs can be accommodated even with the parking reduction; and

WHEREAS, based upon the above, the Board finds

MINUTES

that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.10BSA081K, dated June 18, 2010; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-44 and 73-03, to permit, within a M1-1 zoning district, a reduction in the required number of accessory parking spaces for conversion of the second story of a two-story building from Use Group 16 warehouse to UG 6 professional office building from 38 to 28 attended spaces, contrary to ZR § 44-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received October 12, 2010"- (2) sheets and *on further condition*:

THAT there shall be no change in ownership of the site or the building without prior application to and approval from the Board;

THAT a minimum of 28 attended parking spaces shall be provided in the accessory parking lot for the proposed use;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT any building enlargement shall be as approved

by DOB and must comply with all relevant zoning district regulations;

THAT the layout and design of the accessory parking lot shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 19, 2010.

129-07-BZ

APPLICANT – Gerald J. Caliendo, R.A., for Angel Gerasimou, owner.

SUBJECT – Application May 21, 2007 – Variance (§72-21) to allow a residential use in a manufacturing district, contrary to use regulations (§42-00). 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

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to November 23, 2010, at 1:30 P.M., for adjourned hearing.

130-07-BZ thru 134-07-BZ

APPLICANT – Gerald J. Caliendo, P.A., Angelo Gerasimou, owner.

SUBJECT – Application May 21, 2007 – Variance (§72-21) to allow a residential use in a manufacturing district, contrary to use regulations (§42-00). M1-4 zoning district. PREMISES AFFECTED – 1501, 1503, 1505, 1507 Cooper Avenue, corner formed by west side of Cooper Avenue and Irving Avenue, Block 3542, Lots 1, 95, 94, 93, 92, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to November 23, 2010, at 1:30 P.M., for adjourned hearing.

92-08-BZ

APPLICANT – Riker Danzig, for Boquen Realty, LLC, owner.

SUBJECT – Application April 14, 2008 – Variance (§72-21) to allow for Use Group 6 below the floor level of the

MINUTES

second story in an existing building, contrary to use, rear yard and floor area regulations (§42-14, 43-12 and 43-26). M1-5B zoning district.

PREMISES AFFECTED –13 Crosby Street, east side of Crosby Street between Grand and Howard Street, Block 233, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Juan D. Reyes.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 23, 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.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 9, 2010, at 1:30 P.M., for decision, hearing closed.

189-09-BZ

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north

side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for adjourned hearing.

190-09-A

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for adjourned hearing.

192-09-BZ

APPLICANT – Richard Lobel, for Leon Mann, owner.

SUBJECT – Application June 16, 2009 – Special Permit (§72-52) to allow for the construction of a commercial building with accessory parking. R6 and R6/C2-3 zoning districts.

PREMISES AFFECTED – 912 Broadway, northeast corner of the intersection of Broadway and Stockton Street, Block 1584, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for adjourned hearing.

39-10-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) for the legalization of a single-family home, contrary to side yards (§23-461). R-5 zoning district.

PREMISES AFFECTED – 2032 East 17th Street, East 17th Street and Avenue T, Block 7321, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to
November 9, 2010, at 1:30 P.M., for decision, hearing
closed.

47-10-BZ

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue
Realty Coprporation, owner; Airgas-East, Incorporated,
lessee.

SUBJECT – Application April 8, 2010 – Variance (§72-21)
to allow a manufacturing use in a residential district,
contrary to ZR 22-00. M1-1/R3-2 zoning district.

PREMISES AFFECTED – 895 Zerega Avenue, aka 2352
Story Avenue, Block 3698, Lot 36, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to
November 23, 2010, at 1:30 P.M., for continued hearing.

55-10-BZ

APPLICANT – Eric Palatnik, P.C., for FAS Main Street
Family Limited Partnership, owner.

SUBJECT – Application April 19, 2010 – Special Permit
 (§73-44) to permit a reduction in required parking for an
ambulatory or diagnostic treatment center. C4-2/C4-3
zoning districts.

PREMISES AFFECTED – 40-22 Main Street, northwest
corner of Main Street, northwest corner of Main Street and
40th Street, Block 5036, Lot 42, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to December
14, 2010, at 1:30 P.M., for continued hearing.

66-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yury, Aleksandr,
Tatyana Dreysler

SUBJECT – Application May 3, 2010 – Special Permit
 (§73-622) for the enlargement of an existing single family
home, contrary to floor area, open space and lot coverage
(23-141) and side yards (23-461). R3-1 zoning district.

PREMISES AFFECTED – 1618 Shore Boulevard, South
side of Shore Boulevard between Oxford and Norfolk
Streets. Block 8757, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Susan Klapper.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to
November 9, 2010, at 1:30 P.M., for decision, hearing
closed.

91-10-BZ

APPLICANT – Eric Palatnik, P.C., for Lawrence Kimel,
owner.

SUBJECT – Application May 17, 2010 – Special Permit
 (§73-622) for the enlargement of an existing single family
home contrary to open space, lot coverage and floor area
 (§23-141); side yard (§23-461); rear yard (§23-47) and
perimeter wall height (§23-631). R3-1 zoning district.

PREMISES AFFECTED –123 Coleridge Street, south of
Hampton Street, Block 8735, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Judy Barrow.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to
November 9, 2010, at 1:30 P.M., for decision, hearing
closed.

103-10-BZ

APPLICANT – Law Office of Frederick A. Becker, for
Zehava Kraitenberg and Larry Kraitenberg, owners.

SUBJECT – Application June 7, 2010 – Special Permit
 (§73-622) for the enlargement and in-part legalization of an
existing single family home contrary to floor area, open
space (§23-141), side yard requirement (§23-461) and less
than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1036 East 24th Street, west side
of East 24th Street, between Avenue J and Avenue K, Block
7605, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to November
16, 2010, at 1:30 P.M., for continued hearing.

129-10-BZ

APPLICANT – Andrea M. Harris, for Paul Trinchese,
owner; Gustavo Larrea, lessee.

SUBJECT – Application July 16, 2010 – Special Permit
 (§73-36) to legalize the operation of a physical culture
establishment (*Traditional Karate America*). M1-2 zoning
district.

PREMISES AFFECTED – 98-18 103rd Avenue, cross street
of 103rd Avenue and 99th Street, Block 9121, Lot 9, Borough

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of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Andrea M. Morris.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to
November 9, 2010, at 1:30 P.M., for decision, hearing
closed.

November 9, 2010, at 1:30 P.M., for decision, hearing
closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

131-10-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for
841-853 Broadway Associates, owner; Jivamukti Yoga
Center, lessee.

SUBJECT – Application July 21, 2010 – Special Permit
(§73-36) to legalize the operation of a physical culture
establishment (*Jivamukti Yoga Studio*). C6-4 (US)/C6-1
zoning districts.

PREMISES AFFECTED – 841 Broadway, northwest corner
of Broadway and East 13th Street, Block 565, Lot 15,
Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to
November 9, 2010, at 1:30 P.M., for decision, hearing
closed.

152-10-BZ

APPLICANT – Peter Poruczynski, RA, for Jeannie
Kontopirakis, owner.

SUBJECT – Application August 17, 2010 – Special Permit
(§73-622) for the enlargement of an existing single family
home, contrary to floor area, open space and lot coverage
§23-141. R2 zoning district.

PREMISES AFFECTED – 158 85th Street, 85th Street
frontage. Block 6032, Lot 31. Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Peter Zaharatos.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to

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DIRECTORY

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CHRISTOPHER COLLINS, *Vice-Chair*

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Commissioners

Jeffrey Mulligan, *Executive Director*

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Tuesday, October 26, 2010**

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26-94-BZ	141 Mansion Avenue, Staten Island
214-00-BZ	2777 Plumb 2 nd Street, Brooklyn
273-03-BZ thru 285-03-BZ	211/51/49/45/43/41/54/52/50/48/46/44/42 94 th Road, Queens
133-10-A	20 Suffolk Walk, Queens
139-10-A	29 Roosevelt Walk, Queens
137-08-A thru 139-08-A	50, 55, 60 Blackhorse Court, Staten Island
237-09-A & 238-09-A	81 & 85 Archwood Avenue, aka 5219 Amboy Road, Staten Island
274-09-A	3920 Merritt Avenue, aka 3927 Mulvey Avenue, Bronx
123-10-A & 124-10-A	3931, 3927 Mulvey Avenue, Bronx
113-10-BZY	30-86 36 th Street, Queens
116-10-BZY	35-16 Astoria Boulevard, Queens
132-10-A	105 West 72 nd Street, Manhattan

Afternoon Calendar694

Affecting Calendar Numbers:

267-09-BZ	1155-75 East Tremont Avenue, Bronx
268-09-BZ	1157-67 East 178 th Street, aka 1176 East Tremont Avenue, Bronx
297-09-BZ	180 Ludlow Street, Manhattan
108-10-BZ	54-32 Myrtle Avenue, Queens
126-10-BZ	856 Remsen Avenue, Brooklyn
173-09-BZ	845 Broadway, Brooklyn
251-09-BZ	130-34 Hawtree Creek Road, Queens
305-09-BZ	110-04 Atlantic Avenue, Queens
6-10-BZ	2147 Mill Avenue, Brooklyn
29-10-BZ	22-32/36 31 st Street, Queens
43-10-BZ	23-70 Steinway Street, Queens
68-10-BZ	80-15 Lefferts Boulevard, Queens
89-10-BZ	53 Mercer Street, Manhattan
92-10-BZ	39 East 10 th Street, Manhattan
101-10-BZ	54 Crosby Street, Manhattan
117-10-BZ	1954 East 14 th Street, Brooklyn
134-10-BZ	107 Union Street, Brooklyn
148-10-BZ	1559 East 29 th Street, Brooklyn

DOCKET

New Case Filed Up to October 26, 2010

192-10-BZ

39-16 College Point Boulevard, West side of College Point Boulevard, at the cross section of Roosevelt Avenue and College Point Boulevard., Block 4962, Lot(s) 4, Borough of **Queens, Community Board: 7**. Special Permit (§73-66) to allow for a waiver of height restrictions around airports. C4-2 zoning district. C4-2 district.

193-10-BZ

35-27 Prince Street, Located on Prince Street directly at the congruence of 36th Road and Prince Street., Block 4971, Lot(s) 8, Borough of **Queens, Community Board: .** Special Permit, ZR 73-66, to allow for a waiver of height restrictions around airports. C4-3 zoning district. district.

194-10-BZ

175 Exeter Street, Exeter Street, North of Oriental Avenue., Block 8737, Lot(s) 17, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of a single family home contrary to floor area §23-141. R3-1 zoning district. R3-1 district.

195-10-BZY

38-28 27th Street, Between 38th and 39th Avenue., Block 387, Lot(s) 31, Borough of **Queens, Community Board: 1**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-2/R5B zoning district. M1-2/R5B district.

196-10-BZ

234 East 53rd Street, Mid-block parcel located on the southside of 53rd Street between 2nd and 3rd Avenue., Block 1326, Lot(s) 34, Borough of **Manhattan, Community Board: 6**. Variance (ZR 72-21) to allow for a commercial use in a residential zone, contrary to ZR 22-00. R8B zoning district. R8B district.

197-10-BZ

59 Fillmore Street, 491.88' West of York Avenue., Block 61, Lot(s) 27,29,31, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to allow three residential buildings in a manufacturing zone, contrary to use regulations ZR 42-10. M1-1 zoning district. M1-1 district.

198-10-BZ

63 Fillmore Street, 491.88' West of York Avenue., Block 61, Lot(s) 27, 29, 31, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to allow residential building, contrary to use regulations. M1-1 zoning district. M1-1 district.

199-10-BZ

67 Fillmore Street, 491.88' West of York Avenue., Block 61, Lot(s) 27,29,31, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to allow residential building, contrary to use regulations. M1-1 zoning district. M1-1 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

NOVEMBER 16, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 16, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

433-65-BZ

APPLICANT – Andrea Claire/Peter Hirshman, for 15 West 72 Owner Corporation, owner; Mafair Garage Corporation, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term for transient parking in an accessory parking garage of a multiple dwelling building which expired on June 22, 2010. R8B/R10A zoning district.

PREMISES AFFECTED – 15 West 72nd Street, 200'-2½ west of Central Park West 72nd Street, Block 1125, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #7M

315-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owners.

SUBJECT – Application July 30, 2010 – Pursuant to ZR §11-411 for an Extension of Term of a previously approved variance for the continued operation of a Gasoline Service Station (*Gulf*) with accessory convenience store which expires on March 13, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on March 13, 2003; waiver of the rules.C2-2/R4 zoning district.

PREMISES AFFECTED – 82-06 Astoria Boulevard, southeast corner of Astoria Boulevard and 82nd Street, block 1094, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

APPEALS CALENDAR

188-10-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Catherine & Kevin Kelly, lessee.

SUBJECT – Application October 5, 2010 – Proposed construction not fronting on a mapped street contrary to General City Law Section 36 within an R4 zoning district.

PREMISES AFFECTED – 9 Olive Walk, east side of Olive Walk, 121.6' south of West End Avenue, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

NOVEMBER 16, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 16, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

107-10-BZ

APPLICANT – Akerman Senterfitt, for Associazione Sacchese D'America, owner.

SUBJECT – Application September 10, 2010 – Variance (§72-21) to allow for a community facility use contrary to side yard regulations ZR 24-35. R2 zoning district.

PREMISES AFFECTED – 12-24 149th Street, between 12th Avenue and Cross Island Parkway, Block 4466, Lot 21, Borough of Queens.

COMMUNITY BOARD #7Q

178-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Rebecca Leshkowitz and Naftuli Leshkowitz, owners.

SUBJECT – Application September 13, 2010 – Special Permit (§73-622) for the In-Part Legalization and enlargement of an existing single family home contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 943 East 24th Street, east side of East 24th Street, between Avenue I and Avenue J, Block 7588, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #14BK

179-10-BZ

APPLICANT – Sheldon Lobel, P.C., for E & R Duffield Holding Associates, owner; Duffield Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 16, 2010 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (*Planet Fitness*) located within a C6-4 zoning district.

PREMISES AFFECTED – 249 Duffield Street, east side of Duffield Street, approx. 69' north of the corner of Duffield Street and Fulton Street, Block 146, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #2BK

CALENDAR

182-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, Miriam Kirzner and Martin Kirzner, owners.

SUBJECT – Application September 20, 2010 – Special Permit (§73-622) for the enlargement of a single family home contrary to floor area and open space (ZR §23-141); side yard (ZR §23-461) and less than the required rear yard (ZR §23-47). R-2 zoning district.

PREMISES AFFECTED – 1082 East 23rd Street, west side of East 23rd Street, between Avenue J and Avenue K, Block 7604, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, OCTOBER 26, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

826-86-BZ, 827-86-BZ and 828-86-BZ

APPLICANT – Eric Palatnik, for North Shore Tower Apartment, Inc., owner; Continental Communications, lessee.

SUBJECT – Application August 26, 2010 – Extension of Time to obtain a Certificate of Occupancy which expired on July 26, 2010 for a Special Permit (§73-11) to allow non-accessory radio towers and transmitting equipment on the roof of a 33-story multiple dwelling (*North Shore Towers*). R3-2 zoning district.

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, northeast corner of 267th Street, Block 8489, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for non-accessory radio towers and transmitting equipment on the roofs of three existing 33-story residential buildings, which expired on July 26, 2010; and

WHEREAS, a public hearing was held on this application on September 21, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 19, 2010, and then to decision on October 26, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the site consists of three identical 33-story buildings; one building is located on the eastern portion of the site and is the subject of BSA Cal. No. 828-86-BZ (“Building 1”); a second building is located on the southern portion of the site and is the subject of BSA Cal. No. 827-86-BZ (“Building 2”), and a third building is located on the western portion of the site and is the subject of BSA Cal. No. 826-86-BZ (“Building 3”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 29, 1988 when, under the subject calendar numbers, the Board granted special permits under ZR § 73-30 for the legalization of non-accessory radio towers and transmitting equipment on the roofs of three existing 33-story residential buildings, for a term of ten years each; and

WHEREAS, on March 6, 2001, under the subject calendar numbers, the Board extended the terms of the special permits and granted an amendment to permit the legalization of the 62 existing antennae and the installation of 13 additional antennae on each building, to expire on March 28, 2008; and

WHEREAS, most recently, on January 26, 2010, the Board granted an extension of term, to expire on January 26, 2015, and an extension of time to obtain a temporary certificate of occupancy, which expired on July 26, 2010; and

WHEREAS, the applicant now requests an additional extension of time to obtain a temporary certificate of occupancy; and

WHEREAS, the applicant states that a temporary certificate of occupancy has not been obtained for the subject site due to an outstanding elevator issue requiring certain upgrades which will take approximately six months to implement; and

WHEREAS, at hearing, the Board questioned whether the applicant is in compliance with the Board’s previous grant; specifically with the requirement that a barricade be installed around the area of the rooftop of Building 1 that exceeds the general public standards for emissions, and the condition prohibiting the number of antennas on each building from exceeding 75; and

WHEREAS, in response, the applicant submitted photographs reflecting that the required barrier has been installed on the rooftop of Building 1, and the applicant submitted an affidavit from the principal of Continental Communications, the subject lessee, stating that none of the subject buildings exceed the maximum of 75 antennas permitted on the rooftop; and

WHEREAS, based upon the above, the Board finds that the requested extension of time to obtain a temporary certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolutions, dated March 29, 1988, so that as amended this portion of the resolutions shall read: “to grant an extension of time to obtain a temporary certificate of occupancy to October 26, 2011; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT a temporary certificate of occupancy shall be obtained by October 26, 2011;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other

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relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 410070925)

Adopted by the Board of Standards and Appeals, October 26, 2010.

33-99-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for RCPI Trust, owner; Talla New York Incorporated, lessee.

SUBJECT – Application June 14, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*The Sports Club/LA*) which expired on January 11, 2010; waiver of the rules. C5-3(MID) zoning district.

PREMISES AFFECTED – 630 5th Avenue, block bounded by 5th Avenue, East 50th Street and Rockefeller Plaza, Block 1266, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on January 11, 2010; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, and then to decision on October 26, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on an entire block frontage bounded by West 51st Street to the North, Fifth Avenue to the east, West 50th Street to the south, and Rockefeller Plaza to the west, in a C5-3 zoning district within the Special Midtown District; and

WHEREAS, the site is occupied by a 38-story commercial building; and

WHEREAS, the PCE use is located on portions of the first floor, second floor, and third floor, and occupies a total of 67,931 sq. ft. of floor area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 11, 2000 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on

January 11, 2010; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on January 11, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from January 11, 2010, to expire on January 11, 2020, *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of this grant shall expire on January 11, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 120335814)

Adopted by the Board of Standards and Appeals, October 26, 2010.

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for Randy Lee, owner.

SUBJECT – Application September 9, 2010 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to construct a four-story multiple dwelling which expires on October 17, 2010. R3-2(HS) zoning district.

PREMISES AFFECTED – 908 Clove Road, between Broadway and Bement Avenue, Block 323, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, within an R3-2 (HS) zoning district, the construction of three-story Use Group 2 multiple dwelling for adults age 55 and over, which expired on October 17, 2010; and

WHEREAS, a public hearing was held on this

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application on October 19, 2010, after due notice by publication in *The City Record*, and then to decision on October 26, 2010; and

WHEREAS, the subject site is located on the south side of Clove Road, between Broadway and Bement Avenue, within an R3-2 (HS) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since October 17, 2006 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a three-story, 25-unit Use Group 2 multiple dwelling for adults age 55 and over; and

WHEREAS, substantial construction was to be completed by October 17, 2010, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that it has constructed the entire foundation for the proposed building and has installed the necessary sanitary and storm sewer lines on Clove Road; and

WHEREAS, however, the applicant states that due to funding delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 17, 2006, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years from October 17, 2010, to expire on October 17, 2014; *on condition:*

THAT substantial construction shall be completed by October 17, 2014;

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. 500740665)

Adopted by the Board of Standards and Appeals, October 26, 2010.

242-09-A

APPLICANT – NYC Board of Standards and Appeals
Owner: One for the Money, LLC.

SUBJECT – Application August 13, 2009 – Dismissal for Lack of Prosecution – Appeal seeking a common law vested right to continue construction commenced under the prior R7-2/C2-5 Zoning district. R7-A/C2-5 Zoning District.

PREMISES AFFECTED – 75 First Avenue and 77-81 First Avenue, corner lot on the west side of First Avenue between

East 4th Street and East 5th Street, Block 446, Lots 29, 30, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, October 26, 2010.

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

APPEARANCES –

For Applicant: Elizabeth Safien.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 9, 2010, at 10 A.M., for decision, hearing closed.

1493-61-BZ, 1495-61-BZ, 1497-61-BZ, 1499-61-BZ, 1501-61-BZ

APPLICANT – Bryan Cave LLP, for London Terrace Gardens, owner.

SUBJECT – Application August 12, 2010 – Extension of Term (§11-411) for transient parking in a multiple dwelling building which expired on February 27, 2002; waiver of the rules. R8A zoning district.

PREMISES AFFECTED – 415, 425, 435, 445, 455 West 23rd Street, aka 420, 430, 440, 450, 460 West 24th Street, West 23rd Street, West 24th Street, 125 feet west of Ninth Avenue, 125 feet east of Tenth Avenue. Block 721, Lot 7. Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Frank Chaney.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to

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November 23, 2010, at 10 A.M., for decision, hearing closed.

914-86-BZ

APPLICANT – Stuart A. Klein, Esq., for Union Temple of Brooklyn, owner; Eastern Athletic, Incorporation, lessee.

SUBJECT – Application March 31, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (*Eastern Athletic*) which expired on May 17, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on November 12, 1998; Amendment to the interior layout and the hours of operation; Waiver of the Rules. R8X zoning district.

PREMISES AFFECTED – 1-19 Eastern Parkway, north side of Eastern Parkway, between Plaza Street, east and Underhill Avenue, Block 1172, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Abigale Patterson.

ACTION OF THE BOARD – Laid over to November 23, 2010, at 10 A.M., for continued hearing.

855-87-BZ

APPLICANT – Glen V. Cutrona, AIA, for Michael Beck, owner; Mueller Distributing, lessee.

SUBJECT – Application June 15, 2010 – Amendment to a previously granted Variance (§72-21) to remove the term for a (UG16) warehouse with (UG6) offices on the mezzanine level. R3A zoning district.

PREMISES AFFECTED – 15 Irving Place, bound by Van Duzer Street and Delford Street, Block 639, Lot 10, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Glen V. Cutrona.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 9, 2010, at 10 A.M., for decision, hearing closed.

26-94-BZ

APPLICANT – Rampulla Associates Architects, for Joseph D'Alessio, owner.

SUBJECT – Application July 29, 2010 – Extension of Term of a Special Permit (§73-242) for a (UG6) eating and drinking establishment which expires on June 6, 2011. C3A (SSRD) zoning district.

PREMISES AFFECTED –141 Mansion Avenue, west of McKee Avenue, Block 5201, Lot 33, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Philip Rampulla.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 9, 2010, at 10 A.M., for decision, hearing closed.

214-00-BZ

APPLICANT – Harold Weinberg, for Caliv LLC, owner.

SUBJECT – Application October 10, 2008 – Extension of Time to obtain a Certificate of Occupancy for a Special Permit (§73-242) for an eating and drinking establishment; Extension of Term; Amendment to the site plan; and Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2777 Plumb 2nd Street, northeast corner of Harkness Avenue, Block 8841, Lot 500, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Frank Sellitto and Harold Weinberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 16, 2010, at 10 A.M., for decision, hearing closed.

273-03-BZII thru 285-03-BZII

APPLICANT – Sheldon Lobel, P.C. for 211 Building Corporation, owner.

SUBJECT – Application October 6, 2010 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for proposed two-story, semi-detached two-family residences which expired on December 7, 2008; waiver of the rules. R2, R3-2/C1-2 zoning district.

PREMISES AFFECTED – 211-51/49/45/43/41/54/52/50/48/46/44/42 94th Road, a landlocked lot bounded by 94th Avenue, 212th Street, Jamaica Avenue and Hollis Court Boulevard. Block 10546, Lots 92, 93, 95 thru 104, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Elizabeth Safien.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 23, 2010, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

133-10-A

APPLICANT – Deidre Duffy, P.E., for Breezy Point Cooperative, Inc., owner; Brian Murphy, lessee.

SUBJECT – Application July 29, 2010 – Proposed enlargement of an existing single-family home not fronting a legally mapped street contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 20 Suffolk Walk, west side of Suffolk Walk, 65.10’ south of West End Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Deidre Duffy.

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated July 23, 2010 acting on Department of Buildings Application No. 420178060, reads in pertinent part:

“A1– The street giving access to the existing building to be altered and enlarged is not duly placed on the official map of the City of New York, therefore:

- A) A Certificate of Occupancy may not be issued as per Art. 3, Sect. 36 of the General City Law;
- B) The existing building to be altered and enlarged does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street frontage space contrary to Section 27-291 of the Administrative Code of the City of New York;” and

WHEREAS, a public hearing was held on this application on October 26, 2010 after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated September 10, 2010, the Fire Department states that it has no objection to the subject proposal; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 23, 2010, acting on Department of Buildings Application No. 420178060 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the

decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received July 29, 2010” - one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 26, 2010.

139-10-A

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Marcella and Joseph Freisen, lessee.

SUBJECT – Application August 9, 2010 – Proposed reconstruction and enlargement of an existing single family home not fronting a mapped street, contrary to General City Law 36, and proposed upgrade of an existing non-conforming private disposal system partially in the bed of a service road, contrary to Buildings Department policy. R4 zoning district.

PREMISES AFFECTED – 29 Roosevelt Walk, east side of Roosevelt Walk 490’ north of Breezy Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary D. Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated July 30, 2010, acting on Department of Buildings Application No. 420183376, 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 Art. 3, Sect. 36 of the General City Law;

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- 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 contrary to Section 27-291 of the Administrative Code; and

A2- The proposed upgraded private disposal system is in the bed of the service lane contrary to Department of Buildings Policy;" and

WHEREAS, a public hearing was held on this application on October 26, 2010 after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated September 8, 2010, the Fire Department states that it has no objection to the subject proposal, with the following conditions: (1) the entire building be fully sprinklered in conformance with the sprinkler provisions of Fire Code § 503.8.2, Local Law 10/99, and Reference Standard 17-2B of the Building Code; and (2) interconnected smoke alarms be installed in accordance with Building Code § 907.2.10; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 30, 2010, acting on Department of Buildings Application No. 420183376 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 August 9, 2010"–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 building shall be fully sprinklered in accordance with the BSA-approved plans;

THAT interconnected smoke alarms shall be installed in accordance with the BSA-approved plans;

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, October 26, 2010.

137-08-A thru 139-08-A

APPLICANT – Philip L. Rampulla, for Joseph Noce, owner.
SUBJECT – Application May 5, 2008 – Proposed construction of a one-family residence within the bed of a legally mapped street, contrary to General City Law Section 35. R1-2 zoning district.

PREMISES AFFECTED – 50, 55, 60 Blackhorse Court, south side of Richmond Road, 176.26' south of Blackhorse Court, Block 4332, Lots 34, 28, 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

For Opposition: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over November 9, 2010, at 10 A.M., for continued hearing.

237-09-A & 238-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP for Safet Dzemovski, owner.

SUBJECT – Application July 31, 2009 – Proposed construction in the bed of a mapped street, contrary to General City Law Section 35. R3X zoning district.

PREMISES AFFECTED – 81 & 85 Archwood Avenue, aka 5219 Amboy Road, east side of Archwood Avenue, 198.25' north of Amboy Road, Block 6321, Lot 152 & 151, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 November 23, 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 233rd Street, Block 4972, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto and John Yakavone, Fire Department.

For Opposition: Joel A. Miele.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for continued hearing.

123-10-A & 124-10-A

APPLICANT – Fire Department of the city of New York
OWNER – DiLorenzo Realty Corporation
LESSESS – Flair Display Incorporated
SUBJECT – Application July 6, 2010 – Application to modify Certificate of Occupancy to require automatic wet sprinkler system throughout the entire building.
PREMISES AFFECTED – 3931, 3927 Mulvey Avenue, 301.75' north of East 233rd Street. Block 4972, Lot 60, 62 Borough of the Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –
For Applicant: Anthony Scaduto and John Yakavone, Fire Department.
For Opposition: Joel A. Miele.
THE VOTE TO REOPEN HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for continued hearing.

113-10-BZY

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Plaza Group 36 LLC, owner.
SUBJECT – Application June 22, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning. R5B zoning district.
PREMISES AFFECTED – 30-86 36th Street, west side of 36th Street, 152' north of 31st Avenue, Block 650, Lot 80, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –
For Applicant: Todd Dale.
For Opposition: Donnelly Marks.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 23, 2010, at 10 A.M., for decision, hearing closed.

116-10-BZY

APPLICANT – Steven Sinacori, Esq., for Akerman Senterfitt, LLP, for 3516 Development LLC, owner.
SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 35-16 Astoria Boulevard, south side of Astoria Boulevard between 35th and 36th Streets, Block 633, Lots 39 and 140, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –
For Applicant: Calvin Wong.
ACTION OF THE BOARD – Laid over to November 23, 2010, at 10 A.M., for continued hearing.

132-10-A

APPLICANT – Adam Leitman Bailey, P.C., for N & J Associates, owner; Ariza, LLC, lessee.
SUBJECT – Application July 28, 2010 – Appeal challenging Department of Buildings determination not to reinstate revoked permits and approval based on failure to provide owner authorization in accordance with Section 28-104.8.2 of the Administrative Code. C4-6A zoning district.
PREMISES AFFECTED – 105 West 72nd Street, 68 feet west of corner formed by Columbus Avenue and West 72nd Street. Block 1144, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –
For Applicant: Jeffrey R. Metz.
For Opposition: George S. Locker, John Egnatius Beline and Irving Minkew.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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REGULAR MEETING TUESDAY AFTERNOON, OCTOBER 26, 2010 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

267-09-BZ

CEQR #10-HPD-001X

APPLICANT – NYC Department of Housing Preservation & Development for The City of New York, owner.

SUBJECT – Application September 18, 2009 – Variance (§72-21) to permit one eight-story residential building and two 10-story mixed-use buildings with residential and ground floor retail use, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1155-75 East Tremont Avenue, (aka 1160 Lebanon Street). Block bounded by Lebanon Street to the north, Morris Park Avenue to the east, East Tremont Avenue to the south and Bronx Park Avenue to the west. Block 4007, Lot 15, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 26, 2009, acting on Department of Buildings Application No. 220016792, reads, in pertinent part:

“ZR 42-00. Propose residential use (Use Group 2) is not a permitted use in a manufacturing district;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-1 zoning district, the proposed construction of an eight-story residential building and a ten-story mixed-use residential/commercial building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on September 21, 2010 after due notice by publication in *The City Record*, and then to decision on October 26, 2010; and

WHEREAS, this application is brought by the City of New York on behalf of the project sponsor, Phipps Houses, a not-for-profit entity; and

WHEREAS, Community Board 6, Bronx, recommends approval of this application; and

WHEREAS, City Council Member Joel Rivera recommends approval of this application; and

WHEREAS, New York State Assemblyman Michael Benjamin provided written testimony in support of the proposal; and

WHEREAS, certain neighborhood residents provided testimony in opposition to this application, citing concerns with the environmental impact of the proposed development and the effect of the proposed development on traffic and parking; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is an irregularly-shaped through lot with approximately 110 feet of frontage along Lebanon Street, approximately 108 feet of frontage along East Tremont Avenue, a depth ranging from 210 feet to 250 feet, and a total lot area of 23,986 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct two buildings on the subject site: (1) an eight-story residential building located on the northern portion of the lot (“Building 1”); and (2) a ten-story mixed-use residential/commercial building on the southern portion of the lot (“Building 2”); and

WHEREAS, the applicant states that Building 1 will be entirely residential and will provide 51 affordable housing units (studio, one-bedroom, two-bedroom and three-bedroom), and Building 2 will provide ground floor commercial use and 54 affordable housing units (studio, one-bedroom and two bedroom) on floors two through ten; and

WHEREAS, the applicant notes that the subject proposal is part of a three-building 141-unit affordable housing development (“Phipps East Tremont Avenue”); and

WHEREAS, the third building that comprises Phipps East Tremont Avenue will be located directly across East Tremont Avenue on a site (Block 3909, Lot 8) that is the subject of a separate application under BSA Cal. No. 268-09-BZ, which was granted on the same date as the subject application and is addressed in a separate resolution; and

WHEREAS, since the site is within an M1-1 zoning district, which does not permit residential development as-of-right, the requested use waiver is required; and

WHEREAS, the proposed buildings have the following parameters: a total floor area of 118,279 sq. ft. (4.91 FAR), including 113,409 sq. ft. of residential floor area (4.73 FAR) and 4,374 sq. ft. of commercial floor area (0.18 FAR); a perimeter wall height of 65’-4” for Building 1 and 78’-4” for Building 2; a total height of 74’-8” for Building 1 and 96’-8” for Building 2; and a rear yard with a depth of 77’-9”;

WHEREAS, the applicant states that the following are unique physical conditions which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the site’s subsurface contamination and resultant need for remediation; (2) the site’s high water table; (3) the former use of the site for mass transit; and (4) the programmatic need to provide a sufficient number of units for project viability; and

WHEREAS, as to the contamination at the site, the applicant submitted a Phase II Environmental Site Assessment which indicated that the soil and groundwater at the site

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contains levels of a variety of heavy metals, semi-volatile compounds and pesticides which must be excavated, handled, transported, and disposed of prior to any development and excavation of the site, in accordance with Department of Environmental Protection (“DEP”) requirements; and

WHEREAS, the applicant submitted a construction estimate indicating that the additional labor and expense associated with the remediation of the site is \$973,000; and

WHEREAS, the applicant states that groundwater at the site was measured approximately ten feet below land surface; and

WHEREAS, the applicant further states that the basements of the proposed buildings will be approximately equal to groundwater level, which means small fluctuations in the groundwater level may lead to the submergence of the slabs; and

WHEREAS, the applicant submitted a report from its environmental consultant which states that, as a result of the high water table, it recommends the use of pile supported mat foundation systems and full waterproofing of the basements; and

WHEREAS, the applicant submitted a construction estimate indicating that the additional labor and expense associated with the high water table is approximately \$2,578,103; and

WHEREAS, as to the history of use of the site, the applicant states that the site was developed with elevated railroad tracks as part of the New York, Westchester and Boston Interurban Railway in 1912; and

WHEREAS, the applicant further states that elevated railroad tracks on the site were abandoned in 1937 and left to decay until the Metropolitan Transportation Authority removed them in 2003; and

WHEREAS, however, the applicant states that a small portion of the elevated trestle still remains at the southern portion of the site and seven concrete platforms remain in the ground, and must be removed in association with the proposed development; and

WHEREAS, the applicant submitted a construction estimate indicating that the additional labor and expense associated with the removal of the existing train trestle is \$664,580 and the additional expense associated with the removal of the remaining construction platforms is \$300,898; and

WHEREAS, the applicant states that the premium construction costs associated with remediation of the subsurface contamination, the high water table, and the removal of the construction platforms total approximately \$4.5 million; and

WHEREAS, the Board agrees that these unique physical conditions create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant states that a use variance is also requested based on Phipps Houses’ programmatic need to provide 105 units of affordable housing; and

WHEREAS, the applicant states that Phipps Houses is seeking financing from City and State financing sources, such

as the NYC Housing Development Corporation (“HDC”) LAMP program, the NYC Department of Housing Preservation and Development (“HPD”) Low Income Rental Program and/or Low Income Housing Tax Credit program, and the NYS Division of Housing and Community Renewal Low Income Housing Tax Credit program, to subsidize the proposed development; and

WHEREAS, the applicant submitted a letter dated December 23, 2009 from HDC and a letter dated June 18, 2010 from the HPD Assistant Commissioner confirming that financing of the proposed development is contemplated by the agencies; and

WHEREAS, as discussed above, there are significant expenses on the site relating to the removal of the existing train trestle and concrete piers, remediation of the subsurface contamination, and mitigation of the high water table, which increases the cost of developing this site and the amount of public funding required; and

WHEREAS, the applicant states that HPD and HDC allocate subsidy funding for affordable housing projects on a per unit basis with maximum subsidy caps per unit, and therefore the redevelopment of the subject site requires a minimum number of units to support the high site work costs and make the project financially feasible; and

WHEREAS, therefore, applicant represents that the minimum number of units required in order to provide a project of sufficient scale to receive the city and state funding required to sustain the proposed development is 105; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in conjunction with the programmatic need of the applicant, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

WHEREAS, however, the applicant analyzed two as-of-right alternatives: a two-story industrial building and a two-story and cellar commercial building; and

WHEREAS, the financial analysis indicates that neither of the as-of-right scenarios are financially viable due to the premium costs associated with the unique conditions of the site, while an as-of-right commercial building would be marginally unviable without the premium costs but would not generate a sufficient return to offset the development costs, rendering it economically unviable; 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 neighborhood is characterized by a mix of residential, commercial and manufacturing uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram and land use map reflecting that the area within the immediate vicinity of the subject site is predominantly residential, and there are a number of five- and six-story

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residential buildings located to the east of the site; and

WHEREAS, the applicant states that an R7-1 zoning district is mapped two blocks to the north of the subject site; and

WHEREAS, the applicant states that Building 1 will be eight stories in height and Building 2 will be ten stories in height, both of which are considerably lower than what is permitted in the adjacent R7-1 zoning district; and

WHEREAS, the applicant further states that larger residential buildings can be found along Lebanon Street and East Tremont Avenue near Morris Park Avenue to the east of the subject site, and that Phipps Houses owns and manages a 731-unit affordable residential complex approximately a half-mile from the site at 1005 East 179th Street; and

WHEREAS, the applicant notes that the proposed ground floor commercial space is consistent with the ground floor context of East Tremont Avenue; and

WHEREAS, in response to the concerns raised by members of the community regarding the environmental impacts of the proposed development, the applicant notes that HPD reviewed the Environmental Assessment Statement (“EAS”) prepared for the subject site, and determined that the proposed development will have no significant effect on the quality of the environment; and

WHEREAS, as to the traffic and parking concerns raised by members of the community, the applicant notes that a trip generation analysis was prepared for the project as part of the EAS, which found that the volume of peak vehicular trips expected during peak hours resulted in less than 50 peak hour vehicular trips and that further traffic analysis was not necessary, and the applicant further notes that 11 parking spaces are provided for the subject site notwithstanding the fact that the Zoning Resolution would allow all parking to be waived for the proposed development in an R7-1 or R7X zoning district under ZR § 25-25(e); and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as discussed above, the applicant submitted an analysis of two as-of-right alternatives and determined that neither could be supported financially; and

WHEREAS, the applicant states that the proposed buildings are of the minimum size that can be feasibly developed for their proposed use as affordable housing; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow Phipps Houses to carry out its stated needs; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, HPD has conducted an environmental review of the proposed action and has documented relevant

information about the project in the Final Environmental Assessment Statement, CEQR No. 10HPD001X, dated December 21, 2009; and

WHEREAS, the EAS documents that the proposed housing development would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board concurs with HPD 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 adopts the Negative Declaration issued by HPD August 11, 2010 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 proposed construction of an eight-story residential building and a ten-story mixed-use residential/commercial building, contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received July 29, 2010” – (24) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be: a total floor area of 118,279 sq. ft. (4.91 FAR), including 113,409 sq. ft. of residential floor area (4.73 FAR) and 4,374 sq. ft. of commercial floor area (0.18 FAR); a perimeter wall height of 65’-4” for Building 1 and 78’-4” for Building 2; a total height of 74’-8” for Building 1 and 96’-8” for Building 2; and a rear yard with a depth of 77’-9”;

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;

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,

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October 26, 2010.

268-09-BZ

CEQR #10-HPD-001X

APPLICANT – NYC Department of Housing Preservation & Development for The City of New York, owner.

SUBJECT – Application September 18, 2009 – Variance (§72-21) to permit one eight-story residential building and two 10-story mixed-use buildings with residential and ground floor retail use, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1157-67 East 178th Street, (aka 1176 East Tremont Avenue). Block bounded by East Tremont Avenue to the north, Morris Park Avenue to the east, East 178th Street to the south and Bronx Park Avenue to the west. Block 3909, Lot 8, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 21, 2009, acting on Department of Buildings Application No. 220016783, reads, in pertinent part:

“ZR 42-00. Propose residential use (Use Group 2) is not a permitted use in a manufacturing district;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-1 zoning district, the proposed construction of a ten-story mixed-use residential/commercial building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on September 21, 2010 after due notice by publication in *The City Record*, and then to decision on October 26, 2010; and

WHEREAS, this application is brought by the City of New York on behalf of the project sponsor, Phipps Houses, a not-for-profit entity; and

WHEREAS, Community Board 6, Bronx, recommends approval of this application; and

WHEREAS, City Council Member Joel Rivera recommends approval of this application; and

WHEREAS, New York State Assemblyman Michael Benjamin provided written testimony in support of the proposal; and

WHEREAS, certain neighborhood residents provided testimony in opposition to this application, citing concerns with the environmental impact of the proposed development and the effect of the proposed development on traffic and parking; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is an irregularly-shaped through lot with approximately 80 feet of frontage along East 178th Street, approximately 84 feet of frontage along East Tremont Avenue, a depth ranging from approximately 111 feet to 143 feet, and a total lot area of 10,024 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a ten-story mixed-use residential/ commercial building on the subject site; and

WHEREAS, the applicant proposes to provide ground floor commercial use with 36 affordable housing units (one-bedroom, two bedroom and three-bedroom) on floors two through ten; and

WHEREAS, the applicant notes that the subject proposal is part of a three-building 141-unit affordable housing development (“Phipps East Tremont Avenue”); and

WHEREAS, the other two buildings that comprise Phipps East Tremont Avenue will be located directly across East Tremont Avenue on a site (Block 4007, Lot 15) that is the subject of a separate application under BSA Cal. No. 267-09-BZ, which was granted on the same date as the subject application and is addressed in a separate resolution; and

WHEREAS, since the site is within an M1-1 zoning district, which does not permit residential development as-of-right, the requested use waiver is required; and

WHEREAS, the proposed building has the following parameters: a total floor area of 49,662 sq. ft. (4.95 FAR), including 46,592 sq. ft. of residential floor area (4.64 FAR) and 3,070 sq. ft. of commercial floor area (0.31 FAR); a perimeter wall height of 78’-4”; a total height of 96’-8”; and a rear yard with a depth of 46’-9”; and

WHEREAS, the applicant states that the following are unique physical conditions which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the site’s irregular shape; (2) the site’s subsurface contamination and resultant need for remediation; (3) the site’s high water table; (4) the former use of the site for mass transit; and (5) the programmatic need to provide a sufficient number of units for project viability; and

WHEREAS, as to the site’s shape, the applicant states that the site is an irregularly-shaped through lot, which would constrain the site’s as-of-right development potential as a manufacturing or commercial development would have difficulty complying with certain zoning regulations at the site, such as the rear yard equivalent, parking, and loading berth requirements; and

WHEREAS, as to the contamination at the site, the applicant submitted a Phase II Environmental Site Assessment which indicated that the soil and groundwater at the site contains levels of a variety of heavy metals, semi-volatile compounds and pesticides which must be excavated, handled, transported, and disposed of prior to any development and excavation of the site, in accordance with Department of Environmental Protection (“DEP”) requirements; and

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WHEREAS, the applicant submitted a construction estimate indicating that the additional labor and expense associated with the remediation of the site is \$406,597; and

WHEREAS, the applicant states that groundwater at the site was measured approximately ten feet below land surface; and

WHEREAS, the applicant further states that the basement of the proposed building will be approximately equal to groundwater level, which means small fluctuations in the groundwater level may lead to the submergence of the slab; and

WHEREAS, the applicant submitted a report from its environmental consultant which states that, as a result of the high water table, it recommends the use of a pile supported mat foundation system and full waterproofing of the basement; and

WHEREAS, the applicant submitted a construction estimate indicating that the additional labor and expense associated with the high water table is approximately \$1,077,336; and

WHEREAS, as to the history of use of the site, the applicant states that the site was developed with elevated railroad tracks as part of the New York, Westchester and Boston Interurban Railway in 1912; and

WHEREAS, the applicant further states that elevated railroad tracks on the site were abandoned in 1937 and left to decay until the Metropolitan Transportation Authority removed them in 2003; and

WHEREAS, however, the applicant states that two concrete construction platforms, remnants of the mass transit infrastructure, remain on the site and must be removed in association with the proposed development; and

WHEREAS, the applicant submitted a construction estimate indicating that the additional labor and expense associated with the removal of the remaining construction platforms is \$125,739; and

WHEREAS, the applicant states that the premium construction costs associated with remediation of the subsurface contamination, the high water table, and the removal of the construction platforms total approximately \$1.6 million; and

WHEREAS, the Board agrees that these unique physical conditions create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant states that a use variance is also requested based on Phipps Houses' programmatic need to provide 36 units of affordable housing; and

WHEREAS, the applicant states that Phipps Houses is seeking financing from City and State financing sources, such as the NYC Housing Development Corporation ("HDC") LAMP program, the NYC Department of Housing Preservation and Development ("HPD") Low Income Rental Program and/or Low Income Housing Tax Credit program, and the NYS Division of Housing and Community Renewal Low Income Housing Tax Credit program, to subsidize the proposed development; and

WHEREAS, the applicant submitted a letter dated December 23, 2009 from HDC and a letter dated June 18, 2010

from the HPD Assistant Commissioner confirming that financing of the proposed development is contemplated by the agencies; and

WHEREAS, as discussed above, there are significant expenses on the site relating to the removal of the concrete piers, remediation of the subsurface contamination, and mitigation of the high water table, which increases the cost of developing this site and the amount of public funding required; and

WHEREAS, the applicant states that HPD and HDC allocate subsidy funding for affordable housing projects on a per unit basis with maximum subsidy caps per unit, and therefore the redevelopment of the subject site requires a minimum number of units to support the high site work costs and make the project financially feasible; and

WHEREAS, therefore, applicant represents that the minimum number of units required in order to provide a project of sufficient scale to receive the city and state funding required to sustain the proposed development is 36; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in conjunction with the programmatic need of the applicant, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

WHEREAS, however, the applicant analyzed two as-of-right alternatives: a two-story industrial building and a two-story and cellar commercial building; and

WHEREAS, the financial analysis indicates that neither of the as-of-right scenarios are financially viable due to the premium costs associated with the unique conditions of the site, while an as-of-right commercial building would be marginally unviable without the premium costs but would not generate a sufficient return to offset the development costs, rendering it economically unviable; 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 neighborhood is characterized by a mix of residential, commercial and manufacturing uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram and land use map reflecting that the area within the immediate vicinity of the subject site is predominantly residential, and there are a number of five- and six-story residential buildings located to the east of the site; and

WHEREAS, the applicant states that an R7-1 zoning district is mapped two blocks to the north of the subject site; and

WHEREAS, the applicant states that the proposed building will be ten stories in height, which is considerably lower than what is permitted in the adjacent R7-1 zoning district; and

WHEREAS, the applicant further states that larger

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residential buildings can be found along Lebanon Street and East Tremont Avenue near Morris Park Avenue to the east of the subject site, and that Phipps Houses owns and manages a 731-unit affordable residential complex approximately a half-mile from the site at 1005 East 179th Street; and

WHEREAS, the applicant notes that the proposed ground floor commercial space is consistent with the ground floor context of East Tremont Avenue; and

WHEREAS, in response to the concerns raised by members of the community regarding the environmental impacts of the proposed development, the applicant notes that HPD reviewed the Environmental Assessment Statement (“EAS”) prepared for the subject site, and determined that the proposed development will have no significant effect on the quality of the environment; and

WHEREAS, as to the traffic and parking concerns raised by members of the community, the applicant notes that a trip generation analysis was prepared for the project as part of the EAS, which found that the volume of peak vehicular trips expected during peak hours resulted in less than 50 peak hour vehicular trips and that further traffic analysis was not necessary, and the applicant further notes that 11 parking spaces are provided for the subject site notwithstanding the fact that the Zoning Resolution allows all parking to be waived for the proposed development under ZR § 25-25(e); and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as discussed above, the applicant submitted an analysis of two as-of-right alternatives and determined that neither could be supported financially; and

WHEREAS, the applicant states that the proposed building is of the minimum size that can be feasibly developed for its proposed use as affordable housing; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow Phipps Houses to carry out its stated needs; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, HPD has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10HPD001X, dated December 21, 2009; and

WHEREAS, the EAS documents that the proposed housing development would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront

Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board concurs with HPD 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 adopts the Negative Declaration issued by HPD August 11, 2010 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 proposed construction of a ten-story mixed-use residential/commercial building, contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received July 29, 2010” – (16) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be: ten stories; a total floor area of 49,662 sq. ft. (4.95 FAR), including 46,592 sq. ft. of residential floor area (4.64 FAR) and 3,070 sq. ft. of commercial floor area (0.31 FAR); a perimeter wall height of 78’-4”; a total height of 96’-8”; a rear yard with a depth of 46’-9”; and 11 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;

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, October 26, 2010.

297-09-BZ

CEQR #10-BSA-027M

APPLICANT – Marvin Mitzner, Esq., for 180 Ludlow Development LLC, owner.

SUBJECT – Application October 20, 2009 – Variance (§72-21) to allow for the conversion of a recently constructed commercial building for residential use, contrary to rear yard regulations (§23-47). C4-4A zoning district.

PREMISES AFFECTED – 180 Ludlow Street, east side of

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Ludlow Street approximately 125' south of East Houston Street, Block 412, Lot 48, 49, 50, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, October 26, 2010.

108-10-BZ

CEQR #10-BSA-080Q

APPLICANT – Roberts Organization (LRNC Myrtle Avenue NY LLC) for 5432-50 Myrtle Avenue LLC, owner. SUBJECT – Application June 11, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Lucille Roberts*) in an existing two-story building. C4-3 zoning district.

PREMISES AFFECTED – 54-32 Myrtle Avenue, intersection of Myrtle Avenue and Madison Street, Block 3544, Lot 27, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 28, 2010, acting on Department of Buildings Application No. 420010632, reads in pertinent part:

“Physical culture establishment in zoning district C4-3 not permitted as per ZR Section 32-10. Therefore must be referred to Board of Standards and Appeals for special permit;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C4-3 zoning district, the legalization of a physical culture establishment (PCE) at the first floor and cellar of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, and then to decision on October 26, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast

corner of Myrtle Avenue and Madison Street, within a C4-3 zoning district; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE will occupy 2,650 sq. ft. of floor area on a portion of the first floor, with an additional 14,000 sq. ft. of floor space located in the cellar; and

WHEREAS, the PCE is operated as Lucille Roberts; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 9:00 a.m. to 9:00 p.m.; Friday, from 9:00 a.m. to 8:00 p.m.; and Saturday and Sunday, from 9:00 a.m. to 2:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the site was the subject of a prior grant for the operation of a PCE, under BSA Cal. No. 173-98-BZ, which expired on September 30, 2008; and

WHEREAS, the Board further notes that the applicant elected to file for a new special permit at the site under the subject calendar number; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between September 30, 2008 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA080Q, dated June 7, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous

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Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3 zoning district, the legalization of a physical culture establishment at the first floor and cellar of a two-story commercial building, contrary to ZR § 32-10; on condition that all work shall substantially conform to drawings filed with this application marked "Received June 11, 2010"-(2) sheets, "September 21, 2010"-(1) sheet and "October 6, 2010"-(3) sheets; and on further condition:

THAT the term of this grant shall expire on September 30, 2018;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 26, 2010.

126-10-BZ
CEQR #11-BSA-002K

APPLICANT – Sheldon Lobel, P.C., for Canarsie Plaza, LLC, owner; 1720 Hutchinson River Parkway, lessee.
SUBJECT – Application July 8, 2010 – Special Permit (§73-36) to allow the operation of the proposed physical culture

establishment (*Canarsie Fitness*) in a two-story building under construction. M1-1 zoning district.

PREMISES AFFECTED – 856 Remsen Avenue, south side of Remsen Avenue, Bock 7920, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 27, 2010, acting on Department of Buildings Application No. 302220166, reads in pertinent part:

“Proposed physical culture establishment is not permitted in an M1-1 zoning district and requires special permit by the Board of Standards and Appeals as per Zoning Resolution section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within an M1-1 zoning district, the operation of a physical culture establishment (PCE) at the first floor and second floor of a two-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, and then to decision on October 26, 2010; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Remsen Avenue, between Avenue D and Ditmas Avenue, within an M1-1 zoning district; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE will occupy a total floor area of 12,897 sq. ft. on the first floor and second floor; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 24 hours per day; Friday, from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and

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operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 11-BSA-002K, dated August 26, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-1 zoning district, the operation of a physical culture establishment at the first and second floor of a two-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 1, 2010"- (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 26, 2020;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the

Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 26, 2010.

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 (§ZR 72-21) to allow for a four story mixed use building contrary to use regulations. (ZR §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: Chris Wright.

ACTION OF THE BOARD – Laid over to November 23, 2010, at 1:30 P.M., for deferred decision.

251-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bethany House of Worship Incorporated, owner.

SUBJECT – Application August 28, 2009 – Variance (§72-21) to permit the development of a two-story community facility (*Bethany Church*). The proposal is contrary to §§ 24-34 (front yard) and 25-31 (parking). R3-2 zoning district.

PREMISES AFFECTED – 130-34 Hawtree Creek Road, West side of Hawtree Creek Road, 249.93 feet north of 133rd Avenue. Block 11727, Lot 58, Borough of Queens.

COMMUNITY BOARD #10Q

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 November 23, 2010, at 1:30 P.M., for decision, hearing closed.

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305-09-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, for South Queens Boys & Girls Club, Inc., owner.

SUBJECT – Application November 5, 2009 – Variance (§72-21) to permit the enlargement of an existing community facility building (*South Queens Boys & Girls Club*) contrary to floor area (§33-121) and height (§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

APPEARANCES –

For Applicant: Howard Weiss, Joseph Cursio and Carroll Simon.

ACTION OF THE BOARD – Laid over to November 23, 2010, at 1:30 P.M., for continued hearing.

6-10-BZ

APPLICANT – Sheldon Lobel, P.C. for 2147 Mill Avenue, LLC, owner.

SUBJECT – Application January 8, 2010 – Variance (§72-21) to allow for legalization of an enlargement of a commercial building, contrary to §22-00. R2 zoning 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

APPEARANCES –

For Applicant: Richard Lobel and Robert Pauls.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for continued hearing.

29-10-BZ

APPLICANT – Sheldon Lobel, P.C., for R.A.S. Associates, owner; Mojave Restaurant, lessee.

SUBJECT – Application March 4, 2010 – Special Permit (§73-52) to allow for an outdoor eating and drinking establishment within a residential district. C1-2 and R5 zoning districts.

PREMISES AFFECTED – 22-32/36 31st Street, Ditmas Boulevard and 23rd Avenue, Block 844, Lot 49, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Laid over to December 7, 2010 at 1:30 P.M., for continued hearing.

43-10-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Cammastro Corp./Maria Pilato, owner; First Club One LLC/Spiro Tsadilas, lessee.

SUBJECT – Application March 30, 2010 – Special Permit (§73-244) to allow an eating and drinking establishment without restrictions and no limitation on entertainment and dancing. C2-2/R5 zoning district.

PREMISES AFFECTED – 23-70 Steinway Street, west side of Steinway Street, 17.65’ north of Astoria Boulevard North, Block 803, Lot 75, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to November 23, 2010 at 1:30 P.M., for continued hearing.

68-10-BZ

APPLICANT – Eric Palatnik, P.C., for CDI Lefferts Boulevard, LLC, owner.

SUBJECT – Application May 4, 2010 – Variance (§72-21) to allow a commercial building, contrary to use regulations (§22-00). R5 zoning district.

PREMISES AFFECTED – 80-15 Lefferts Boulevard, between Kew Gardens Road and Talbot Street, Block 3354, Lot 38, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Eric Palatnik and Robert Pauls.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for continued hearing.

89-10-BZ

APPLICANT – Francis R. Angelino, Esq., for National Sculpture Society, owner.

SUBJECT – Application May 13, 2010 – Variance (§72-21) to allow for a commercial use below the floor level of the second story, contrary to §§42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 53 Mercer Street, west side between Grand and Broome Streets, Block 474, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Francis R. Angelino, Gwen Pier and Arthur Pier.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 23, 2010, at 1:30 P.M., for decision, hearing closed.

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92-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Lancaster Incorporated, owners.

SUBJECT – Application May 20, 2010 – Variance (§72-21) to allow for the construction of an elevator in an existing residential building, contrary to floor area, open space (§23-142) and court regulations (§§23-85, 23-87). R7-2 zoning district.

PREMISES AFFECTED – 39 East 10th Street, north side of 10th Street, between University Place and Broadway, Block 562, Lot 38, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jordon Most.

ACTION OF THE BOARD – Laid over November 9, 2010, at 1:30 P.M., for adjourned hearing.

101-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Crosby 54 LLC, owners.

SUBJECT – Application June 4, 2010 – Variance (§72-21) to allow a commercial use below the floor level of the second story, contrary to use (§42-14(D)(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 54 Crosby Street, west side of Crosby Street between Broome and Spring Streets, Block 483, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jordan Most, Robert Pauls and Steve Wygoda.

For Opposition: Howard Zipser, Lawrence F. Flick and Robert Von Anckew.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for continued hearing.

117-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Rhond Mizrahi and Garv Mizrahi, owners.

SUBJECT – Application June 28, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yards (§23-461) and less than the required rear yard (§23-47). R5 zoning district.

PREMISES AFFECTED – 1954 East 14th Street, west side of East 14th Street, between Avenue S and Avenue T, Block 7292, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 16, 2010, at 1:30 P.M., for decision, hearing

closed.

134-10-BZ

APPLICANT – Stuart Beckerman, for Passiv House Xperimental LLC, owner.

SUBJECT – Application July 30, 2010 – Variance (§72-21) to allow a residential building, contrary to floor area (§43-12), height (§43-43), and use (§42-10) regulations. M1-1 zoning district.

PREMISES AFFECTED – 107 Union Street, north side of Union Street, between Van Brunt and Columbia Streets, Block 335, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Weil Weisbard, Herman Galvis and Robert Pauls.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for continued hearing.

148-10-BZ

APPLICANT – Eric Palatnik, P.C., for Giselle E. Salamon, owner.

SUBJECT – Application August 11, 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), side yards (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 1559 East 29th Street, Between Avenue P and Kings Highway. Block 7690, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 23, 2010, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 95, Nos. 45-46

November 18, 2010

DIRECTORY

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DOCKET

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200-10-A

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201-10-BZY

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202-10-BZY

29-11 39th Avenue, North side of 39th Avenue between 29th Street and 30th Street., Block 384, Lot(s) 31 & 32, Borough of **Queens, Community Board: 1**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior M1-3D zoning district. M1-2/R5D zoning district . M1-2/R5D (LIC) district.

203-10-A

1361 Davies Road, Southeast corner of Davies Road and Caffrey Avenue., Block 15622, Lot(s) 14, Borough of **Queens, Community Board: 14**. Appeal seeking a common law vested right to continue construction commenced under the prior R5 zoning district . R4-1 zoning district. R4-1 district.

204-10-A

1365 Davies Road, southeast corner of Davies Road and Caffrey Avenue., Block 15622, Lot(s) 13, Borough of **Queens, Community Board: 14**. Appeal seeking a common law vested right to continue construction commenced under the prior R5 zoning district . R4-1 zoning district. R4-1 district.

205-10-A

1367 Davies Road, Southeast corner of Davies Road and Gaffrey Avenue., Block 15622, Lot(s) 12, Borough of **Queens, Community Board: 14**. Appeal seeking a common law vested right to continue construction commenced under the prior R5 zoning district . R4-1 zoning district. R4-1 district.

206-10-A

3399 Richmond Road, North side of Richmond Road West 490.32' of Hitchcock Avenue and Richmond Road., Block 2260, Lot(s) 24, Borough of **Staten Island, Community Board: 2**. Proposed construction of a single family home located within the bed of a mapped street contrary to General City Law Section 35 . R1-2 zoning district. Series - 206-10-A thru 210-10-A R1-2 district.

207-10-A

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208-10-A

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209-10-A

15 Tupelo Court, North side of Richmond Road West 490.32' of Hitchcock Avenue and Richmond Road., Block 2260, Lot(s) 66, Borough of **Staten Island, Community Board: 2**. Proposed construction of a single family home located within the bed of a mapped street contrary to General City Law Section 35 . R1-2 zoning district. Series - 206-10-A thru 210-10-A R1-2 district.

210-10-A

17 Tupelo Court, North side of Richmond Road West 490.32' of Hitchcock Avenue and Richmond Road., Block 2260, Lot(s) 68, Borough of **Staten Island, Community Board: 2**. Proposed construction of a single family home located within the bed of a mapped street contrary to General City Law Section 35 . R1-2 zoning district. Series - 206-10-A thru 210-10-A R1-2 district.

DOCKET

212-10-A

96 Greenwich Street, West side of Greenwich Street between Rector Street and Carlisle Street., Block 53, Lot(s) 39, Borough of **Manhattan, Community Board: 1**. An appeal to the Department of Buildings Determination that the Applicant Engineer's report violated Building Code Section 28.211.1. (False Statements) . C6-9M Zoning District . C6-9 (LM) district.

213-10-BZ

2071 Clove Road, Clove Road (Grasmere Commons Shopping Center) between Mosel Avenue and Hillcrest Terrace., Block 2921, Lot(s) 6, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment. C8-1 zoning district. C8-1 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

NOVEMBER 23, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 23, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

132-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms Inc., owner.

SUBJECT – Application July 9, 2010 – Extension of Term (§11-411) of a previously approved Automotive Service Station (UG 16B) (Gulf) with accessory uses which expired on June 18, 2010. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 17-45 Francis Lewis Boulevard, aka 17-55 Francis Lewis Boulevard, east side of Francis Lewis Boulevard, between 17th Road and 18th Avenue, Block 4747, Lot 31, Borough of Queens.

COMMUNITY BOARD #7Q

156-73-BZ

APPLICANT – Gary Maranga, R.A., for The Design Alliance, owner.

SUBJECT – Application October 12, 2010 – Extension of Term for surplus transient parking in a multiple dwelling which is accessory to Albert Einstein College of Medicine which expired on June 26, 2008; Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1975 Eastchester Road, west side of Eastchester Road at the intersection of Eastchester Road and Morris Park Avenue, Block 4205, Lot 2, Borough of Bronx.

COMMUNITY BOARD #11BX

66-90-BZ

APPLICANT – Eric Palatnik, P.C., for A.H.G. Realty Corporation, owner.

SUBJECT – Application October 5, 2010 – Extension of Term for a UG16 Gasoline Service Station (*Mobil*) which expired on October 1, 2010. R-5 zoning district.

PREMISES AFFECTED – 43-03 Astoria Boulevard, northeast corner of 43rd Street, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #1Q

APPEALS CALENDAR

114-10-BZY and 115-10-BZY

APPLICANT – Nikolaos Sellas, for HX Holdings LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a major development commenced under the prior R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 26-58 & 26-60 30th Street, north side of 30th Street, 540.78' and 565.80' west of corner formed by Astoria Boulevard and 30th Street, Block 597, Lots 223 and 124, Borough of Queens.

COMMUNITY BOARD #1Q

NOVEMBER 23, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 23, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

122-10-BZ

APPLICANT – Bryan Cave LLP., for Congregation Rodeph Sholom, owner.

SUBJECT – Application July 1, 2010 – Variance (§72-21) to permit the rooftop addition. The proposal is contrary to §23-692. R8B zoning district.

PREMISES AFFECTED – 163 West 78th Street, Between Amsterdam and Columbus Avenues, 134 feet east of Amsterdam Avenue. Block 1150, Lot 6. Borough of Manhattan.

COMMUNITY BOARD #7M

149-10-BZ

APPLICANT – Eric Palatnik, P.C., for Chaya Singer, owner.

SUBJECT – Application August 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and lot coverage ZR §23-141; side yard ZR §23-461 and less than the minimum rear yard ZR §23-47. R-2 zoning district.

PREMISES AFFECTED – 1415 East 29th Street, between Avenue N and Kings Highway, Block 7683, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

150-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Lyle Broochian, owner.

SUBJECT – Application August 16, 2010 –Legalization of a Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area §23-141a; side yard requirements §23-461a and less than the required rear yard §23-47. R2 zoning district.

PREMISES AFFECTED –1124 East 26th Street, west side of East 26th Street, between Avenue K and Avenue L, Block 7625, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

190-10-BZ

APPLICANT –Sheldon Lobel, P.C., for Yeshiva Har Torah, owner.

SUBJECT – Application October 12, 2010 – Variance (§72-21) to permit the addition of a third floor to an existing two-story school building contrary to §24-36 (rear yard) & §24-551 (setback). R3-2 zoning district.

PREMISES AFFECTED – 250-10 Grand Central Parkway, south side of Grand Parkway service road, between Little Neck Parkway and Commonwealth Boulevard, Block 8401, Lot 7501, Borough of Queens.

COMMUNITY BOARD #13Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 9, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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

APPEARANCES –

For Applicant: Carly Bradley.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy, which expired on May 17, 2010; and

WHEREAS, a public hearing was held on this application on July 27, 2010 after due notice by publication in *The City Record*, with continued hearings on August 24, 2010, September 14, 2010, and October 26, 2010, and then to decision on November 9, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the subject site is located on the northwest corner of Linden Boulevard and Euclid Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 1, 1960 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, on January 19, 1999, the Board granted an extension of term and an amendment to allow for the

legalization of an enlargement of the accessory building for use as a convenience store; and

WHEREAS, most recently, on November 17, 2009, the Board granted an extension of term, to expire December 9, 2015, an extension of time to obtain a certificate of occupancy, which expired on May 17, 2010, and an amendment to allow the change in use of portions of the site from Use Group 16 to Use Group 6; and

WHEREAS, the applicant now requests an additional extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant states that a new certificate of occupancy was not obtained within the allotted time period because the Department of Environmental Conservation (“DEC”) required the applicant to conduct soil testing at the site, which showed that the soil and groundwater are contaminated and must be remediated; and

WHEREAS, the applicant states that DEC has directed the owner to excavate the existing blacktop to remove the contaminated soil and install observation wells to monitor ground water contamination, which must be performed prior to obtaining a new certificate of occupancy; and

WHEREAS, the applicant states that in order to remediate the contaminated soil the owner has hired an environmental consultant to perform the work and will also apply for a city grant under the Brownfield Incentive Grant Program; and

WHEREAS, at hearing, the Board questioned whether the applicant had implemented the site improvement conditions from the prior grant, including the removal of a one-story frame enlargement from the existing building which is not reflected on the BSA-approved plans, the removal of graffiti, and the repaving of the parking lot; and

WHEREAS, in response, the applicant submitted photographs reflecting that the graffiti has been removed from the site, and states that, due to the need to excavate the site in connection with the soil remediation, the demolition of the enlargement of the building and the repaving of the parking lot will take place after the remediation work required by DEC is complete; and

WHEREAS, based upon the above, the Board finds that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 1, 1960, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy, to expire on November 9, 2012; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT a new certificate of occupancy shall be obtained by November 9, 2012;

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

MINUTES

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. 320008120)

Adopted by the Board of Standards and Appeals, November 9, 2010.

855-87-BZ

APPLICANT – Glen V. Cutrona, AIA, for Michael Beck, owner; Mueller Distributing, lessee.

SUBJECT – Application June 15, 2010 – Amendment to a previously granted Variance (§72-21) to remove the term for a (UG16) warehouse with (UG6) offices on the mezzanine level. R3A zoning district.

PREMISES AFFECTED – 15 Irving Place, bound by Van Duzer Street and Delford Street, Block 639, Lot 10, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Glen V. Cutrona.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to eliminate the term of a previously granted variance for the operation of a warehouse (UG 16) with offices (UG 6), which expires November 24, 2013; and

WHEREAS, a public hearing was held on this application on September 21, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 26, 2010, and then to decision on November 9, 2010; and

WHEREAS, Community Board 1, Staten Island, recommends that the term of the variance be extended for a term of 20 years; and

WHEREAS, Council Member Debi Rose recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the subject site is located on the north side of Irving Place, between Van Duzer Street and Delford Street, within an R3A zoning district; and

WHEREAS, the site is occupied by a warehouse (UG 16), with offices (UG 6) at the mezzanine level; and

WHEREAS, the Board has exercised jurisdiction over the site since November 24, 1988 when, under the subject calendar number, the Board granted a variance to permit, in an R4 zoning district, the construction of a one-story warehouse, for a term of five years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, on February 14, 2006, the Board granted a ten-year extension of term, to expire on November 24, 2013; and

WHEREAS, the applicant now seeks to eliminate the term of the grant; and

WHEREAS, the applicant represents that the elimination of the term is appropriate because the owner has maintained the warehouse use at the site continuously since the time of the original grant; and

WHEREAS, additionally, the applicant represents that the elimination of the term is necessary in order to refinance the property, as the owner has been unable to find a bank willing to approve a mortgage on the property due to the term associated with the subject variance and the concern that the approved use of the building could expire; and

WHEREAS, in support of this representation, the applicant submitted a letter from a mortgage broker; and

WHEREAS, the applicant states that the warehouse use is consistent with the uses in the immediately surrounding area, which is characterized by a mix of residential, commercial and community facility uses, and includes warehouses adjacent to the east and west of the subject site; and

WHEREAS, at the Board’s direction, the applicant notified all residents within a 200-ft. radius of the site of the subject application; and

WHEREAS, in response to the notification, the applicant received four responses in support of the application and no responses in opposition to the application; and

WHEREAS, at hearing, the Board directed the applicant to plant a street tree in front of the building; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting the addition of a street tree in front of the building; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to eliminate the term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 24, 1988, so that as amended this portion of the resolution shall read: “to eliminate the term of the variance; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘Received June 15, 2010’- (4) sheets and ‘November 3, 2010’-(1) sheet; and *on further condition*:

THAT the hours of operation shall be Monday through Friday, from 8:00 a.m. to 5:00 p.m.;

THAT any change in the use, occupancy, or operator of the site requires review and approval by the Board;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)

MINUTES

and/or configuration(s) not related to the relief granted.”
(DOB Application Nos. 520036611)

Adopted by the Board of Standards and Appeals
November 9, 2010.

26-94-BZ

APPLICANT – Rampulla Associates Architects, for Joseph D'Alessio, owner.

SUBJECT – Application July 29, 2010 – Extension of Term of a Special Permit (§73-242) for a (UG6) eating and drinking establishment which expires on June 6, 2011. C3A (SSRD) zoning district.

PREMISES AFFECTED –141 Mansion Avenue, west of McKee Avenue, Block 5201, Lot 33, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Philip Rampulla.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an extension of term of a previously granted special permit for an eating and drinking establishment (UG 6), which expires on June 6, 2011; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 26, 2010, and then to decision on November 9, 2010; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan, and Commissioner Montanez; and

WHEREAS, the subject site is located on the southeast corner of Mansion Avenue and McKee Avenue, with 10,400 sq. ft. of lot area located in a C3A zoning district, within the Special South Richmond Development District (SSRD); and

WHEREAS, the site consists of a two-story building occupied by an eating and drinking establishment, operated as Marina Grande; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 4, 1984 when, under BSA Cal. No. 826-84-BZ, the Board granted a special permit under ZR § 73-242 for an eating and drinking establishment for a term of five years; this term expired on April 2, 1990; and

WHEREAS, on March 5, 1996, under the subject calendar number, the Board granted a reinstatement of the lapsed special permit, and extended the term for an additional five years to expire on March 5, 2001; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, on June 6, 2006, the Board granted an extension of term for five years, to expire on March 5, 2011; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, at hearing, the Board directed the applicant to remove a storage container located on the site; and

WHEREAS, in response, the applicant submitted photographs reflecting the removal of the storage container; and

WHEREAS, based upon the above, the Board finds the requested extension and amendment appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on March 5, 1996, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for a period of five years from March 5, 2011, to expire on March 5, 2016, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received October 18, 2010’–(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on March 5, 2016;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 500824236)

Adopted by the Board of Standards and Appeals,
November 9, 2010.

575-37-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Duffton Realty, Inc., owner; C & D Service Center, Inc., lessee.

SUBJECT – Application July 16, 2010 – Extension of Term (§11-411) for the continued operation of a gasoline service station (*Gulf*) which expired on February 14, 2008; waiver of the Rules. C1-3/R5B zoning district.

PREMISES AFFECTED – 60-93 Flushing Avenue, northwest corner of 61st Street, Block 2697, Lot 51, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for continued hearing.

MINUTES

15-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker for Columbus Properties, Incorporated, owner; TSI 217 Broadway LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 18, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on June 15, 2009; waiver of the rules. C5-3 (LM) zoning district.

PREMISES AFFECTED – 217 Broadway, Northwest corner of Broadway and Vesey Streets. Block 88, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for continued hearing.

43-99-BZ

APPLICANT – Carl A. Sulfaro, Esq., for White Castle System Inc., owner.

SUBJECT – Application February 25, 2010 – Extension of Term of a Special Permit (§73-243) for the continued operation of a drive-thru accessory to an eating and drinking establishment (*White Castle*) which expired on December 7, 2009; Waiver of the Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 88-02 Northern Boulevard, southwest corner of 88th Street, Block 1436, Lot 001, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for continued hearing.

180-99-BZ

APPLICANT – Michael T. Cetera, AIA, for Geulah, LLC, owner.

SUBJECT – Application June 4, 2010 – Extension of Term of a previously granted Variance (§72-21) for a non-conforming (UG9A) catering establishment which expired on April 4, 2010; waiver of the rules. R6 zoning district.

PREMISES AFFECTED – 564/66 East New York Avenue, south side, 329'-7" east of Brooklyn Avenue, Block 4793, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Michael T. Cetera.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

366-05-A

APPLICANT – Deirdre A. Carson, for Greenberg Traurig, LLP, for Prospect Terrace, LLC, owner.

SUBJECT – Application August 20, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted vesting application under the Common Law which expired on August 22, 2010.

R5 previous zoning districts; R5-B current zoning district.
PREMISES AFFECTED – 1638 8th Avenue, east side of Eighth Avenue, between Windsor Place and Prospect Avenue, Block 1112, Lots 52 & 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Randell Minor.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previous grant to permit an extension of time to complete construction and obtain a certificate of occupancy for a prior Board determination that the owner of the premises obtained the right to complete construction of a two- and three-story residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on October 10, 2010, after due notice by publication in *The City Record*, and then to decision on November 9, 2010; and

WHEREAS, the site was inspected by Chair Srinivasan; and

WHEREAS, the applicant states that the subject site consists of an 18,422 sq. ft. lot on the east side of Eighth Avenue between Windsor Place and Prospect Avenue; and

WHEREAS, the owner proposes to construct a two- and three-story residential building with a floor area ratio ("FAR") of 1.65; and

WHEREAS, the subject site was formerly located within an R5 zoning district; and

WHEREAS, the proposed building complies with the former zoning district parameters; and

WHEREAS, however, on November 16, 2005 (hereinafter, the "Rezoning Date"), the City Council voted to adopt the "Park Slope South Rezoning," which rezoned the site to R5B; and

WHEREAS, the building does not comply with the R5B district parameters as to the maximum permitted FAR; and

WHEREAS, because DOB did not find that work was completed as of the Rezoning Date, the applicant filed a request to continue construction pursuant to the common law doctrine of vested rights; and

WHEREAS, on August 22, 2006, the Board determined that, as of the Rezoning Date, the owner had undertaken

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substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights; and

WHEREAS, the Board granted the applicant four years to complete construction and obtain a certificate of occupancy, which expired on August 22, 2010; and

WHEREAS, accordingly, the applicant is now seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that the building was not completed by the stipulated date due to financing delays; and

WHEREAS, however, the applicant states that the building is substantially complete and that an extension of time is only necessary in order to complete minor finishing work and obtain a certificate of occupancy; and

WHEREAS, the applicant further states the owner has expended \$7,257,416, or 99.5 percent, out of the \$7,674,610 budgeted for the entire project; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site evidencing the amount of work completed, an Application and Certification for Payment sheet, and a DOB construction sign-off related to the applicant's pending application for a temporary certificate of occupancy; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a four-year extension of time to complete construction; and

Therefore it is Resolved that this application to renew DOB Permit No. 301172184, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for four years from the date of this resolution, to expire on November 9, 2014.

Adopted by the Board of Standards and Appeals, November 9, 2010.

184-10-A

APPLICANT – Deidre Duffy, PE, for Breezy Point Cooperative, Incorporated, owner; Mary James Chimenti, lessee.

SUBJECT – Application September 21, 2010 – Proposed construction not fronting a mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 20 Olive Walk, West side of Olive Walk, 230.0 feet north of Breezy Point Boulevard. Block 16350, Lot 400. Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Deidre Duffy.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated August 3, 2010 acting on Department of Buildings Application No. 420199109, reads in pertinent part:

“A1 – The street giving access to the existing building to be altered and enlarged is not duly placed on the official map of the City of New York, therefore:

A) Certificate of Occupancy may not be issued as per Art. 3, Sect. 36 of the General City Law;

B) The existing building to be reconstructed and enlarged does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street frontage space contrary to Section 27-291 of the Administrative Code of the City of New York;” and

WHEREAS, a public hearing was held on this application on November 9, 2010 after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated September 29, 2010, the Fire Department states that it has no objection to the subject proposal; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated August 3, 2010, acting on Department of Buildings Application No. 420199109, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received September 21, 2010”-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 9, 2010.

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43-08-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application February 28, 2008 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35. R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for decision, hearing closed.

3-10-A & 4-10-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application January 5, 2010 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35. R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue and 29-46 145th Street, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for decision, hearing closed.

137-08-A thru 139-08-A

APPLICANT – Philip L. Rampulla, for Joseph Noce, owner.
SUBJECT – Application May 5, 2008 – Proposed construction of a one-family residence within the bed of a legally mapped street, contrary to General City Law Section 35. R1-2 zoning district.

PREMISES AFFECTED – 50, 55, 60 Blackhorse Court, south side of Richmond Road, 176.26’ south of Blackhorse Court, Block 4332, Lots 34, 28, 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

For Opposition: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for decision, hearing closed.

121-10-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 25-50 FLB LLC, owner.

SUBJECT – Application July 1, 2010 – An appeal challenging the Department of Buildings determination that a demolition permit signoff was required before issuance of an alteration permit, as per BC 28-105.3 of the NYC Building Code. R2A zoning district.

PREMISES AFFECTED – 25-50 Francis Lewis Boulevard aka 166-43 168th Street, southwest corner of Francis Lewis Boulevard and 168th Street, Block 4910, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Amanda Derr of DOB, Marc Bresky, Peter Brancazio.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 11, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, NOVEMBER 9, 2010
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

ZONING CALENDAR

210-07-BZ

CEQR #08-BSA-016K

APPLICANT – Eric Palatnik, P.C., for Gasper Nogara,
owner.

SUBJECT – Application August 30, 2007 – Variance (§72-
21) to allow for a residential use in a manufacturing district,
contrary to §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Luquer Street, Northern side
of Luquer Street between Columbia and Hicks Streets,
Block 513, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough
Commissioner, dated January 10, 2008, acting on Department
of Buildings Application No. 302220111, reads:

“Proposed residential building in M1-1 district
zoning is contrary to ZR 42-00 and requires Board of
Standards and Appeals Approval”; and

WHEREAS, this is an application under ZR § 72-21, to
permit, within an M1-1 zoning district, the proposed
construction of a three-family, four-story residential building
on a vacant lot, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this
application on May 8, 2010, after due notice by publication in
the *City Record*, with continued hearings on July 13, 2010 and
October 5, 2010, and then to decision on November 9, 2010;
and

WHEREAS, the site and surrounding area had site and
neighborhood examinations by Chair Srinivasan,
Commissioner Hinkson, Commissioner Montanez, and
Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Brooklyn,
recommends approval of this application; and

WHEREAS, the subject site is located on the north side
of Luquer Street, between Columbia Street and Hicks Street,
within an M1-1 zoning district; and

WHEREAS, the subject premises has 16'-9" of frontage

along Luquer Street, a depth ranging between 97'-7" and 93'-
10", and a lot area of 1,547 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-
story residential building with ground floor parking and three
dwelling units above, a floor area of 3,896 sq. ft. (2.51 FAR), a
total building height of 43'-0", and a rear yard with first floor
depth of 30'-0" along the western lot line and 26'-2 1/2" along
the eastern lot line, and a rear yard depth greater than 30'-0"
above the first floor; and

WHEREAS, because residential use is not permitted in
the subject M1-1 zoning district, the applicant seeks a use
variance to permit construction of the proposed building; and

WHEREAS, the applicant originally proposed a building
with a floor area of 3,969 sq. ft. (2.57 FAR), a total height of
48 feet, a rear yard with a first floor depth of 25'-7 1/2" along
the western lot line and 21'-10" along the eastern lot line; and

WHEREAS, the applicant represents that the following
are unique physical conditions, which create practical
difficulties and unnecessary hardship in developing the subject
lot in conformance with underlying district regulations: (1) the
lot's narrow width and irregular shape; (2) the location on a
narrow street with on-street parking on both sides; and (3) the
history of development of the site; and

WHEREAS, as to the lot width, the applicant states that
the narrow 16'-9" lot does not allow for floor plates of a
sufficient size to support a conforming manufacturing or
commercial use; and

WHEREAS, additionally, the applicant states that any
manufacturing or contractor's establishment requires loading
areas as well as suitable ground level storage, which cannot be
accommodated on the subject site due to the narrow lot width;
and

WHEREAS, as to the uniqueness of this condition, the
applicant submitted a radius diagram which reflects that the
subject lot is the narrowest lot within a 400-ft. radius of the
site; and

WHEREAS, as to the irregular shape of the lot, the
applicant states that the rear portion of the lot has an inverse
triangular shape which further inhibits the as-of-right floor
plates on the site; and

WHEREAS, as to the location of the site on a narrow
street, the applicant states that while Luquer Street is mapped
to a width of 50 feet, it is only built out to a width of 30 feet;
and

WHEREAS, the applicant states that the width of Luquer
Street is further reduced by the provision for on-street parking
on both sides of the street; and

WHEREAS, the applicant represents that the narrowness
of Luquer Street prevents the type of truck access to the site
that is necessary for a conforming manufacturing or
commercial use; and

WHEREAS, the applicant also submitted photographs
reflecting that there are Department of Transportation signs
posted on Luquer Street which prohibit truck traffic on the
street; thus, the applicant states that the inability to bring trucks
onto this portion of Luquer Street impedes the as-of-right use
of the site; and

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WHEREAS, as to the history of development of the lot, the applicant represents that the site was developed with residential uses from 1904 until 1969, and that the lot has remained vacant since that time; and

WHEREAS, in support of this representation, the applicant submitted Sanborn Maps dating back to 1904; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) an as-of-right one-story commercial building without parking; (2) an as-of-right two-story office building with four parking spaces at the first floor; (3) an as-of-right three-story office building with four parking spaces at the first floor; (4) a lesser variance scenario depicting a three-story residential building without parking; and (5) the proposed four-story residential building with three parking spaces at the first floor; and

WHEREAS, the study concluded that the as-of-right and lesser variance scenarios would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the character of the surrounding area is a mix of residential, manufacturing, and community facility uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the subject block consists predominantly of residential uses; and

WHEREAS, the applicant represents that the residential character of the neighborhood is supported by the location of a public school two blocks south of the site, and will be enhanced by a proposed park to be located one block to the east of the site; and

WHEREAS, the applicant notes that the site's history supports the residential use of the site, as it was developed residentially between 1904 and 1969 and has remained vacant since; and

WHEREAS, as to bulk, the 400-ft. radius diagram submitted by the applicant reflects that there is a four-story residential building located directly across Luquer Street from the subject site, and another four-story building located immediately adjacent to the east of the site; and

WHEREAS, the applicant submitted a streetscape which reflects that the proposed building, with a total height of 43'-0", will be lower than the adjacent building, which has a total height of 45'-0"; and

WHEREAS, the applicant notes that the accessory ground floor parking can be exempted from floor area calculations pursuant to ZR § 12-10, which would reduce the FAR from 2.51 to approximately 1.78, making it more consistent with the R5 and R6 districts in the surrounding area; and

WHEREAS, the applicant further notes that the rear of the site will be set back 12'-7 1/2" above the first floor, which will provide additional light and air for the surrounding uses; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, as noted above, the applicant originally proposed a building with a floor area of 3,969 sq. ft. (2.57 FAR), a total height of 48 feet, and a rear yard with a depth of 25'-7 1/2" along the western lot line and 21'-10" along the eastern lot line; and

WHEREAS, at the Board's direction, the applicant reduced the building to its current size, with a floor area of 3,896 sq. ft. (2.51 FAR), a total building height of 43'-0", a rear yard with a depth of 30'-0" along the western lot line and 26'-2 1/2" along the eastern lot line, and a rear yard depth greater than 30'-0" above the first floor; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted Action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08-BSA-016K dated November 3, 2010; 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 Analysis has reviewed the project for potential hazardous materials and air quality impacts; and

WHEREAS, DEP accepts the May 2009 Remedial Action Plan and the Construction Health & Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure

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Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, a site survey and air permits search was conducted for the active industrial/manufacturing facilities for the area within a 400-ft. radius of the proposed project; and

WHEREAS, DEP reviewed the applicant's air quality screening analysis and determined that significant impacts from industrial/manufacturing uses on the proposed project are not anticipated; and

WHEREAS, based on the results of noise monitoring, a minimum of 25 dBA window-wall noise attenuation shall be maintained in order to achieve an interior noise level of 45 dBA; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit, within an M1-1 zoning district, the proposed construction of a four-story residential building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 18, 2010"-(1) sheet and "September 21, 2010" -(12) sheets; and *on further condition*:

THAT the bulk parameters of the proposed buildings shall be as follows: maximum floor area of 3,896 sq. ft. (2.51 FAR); and maximum total height of 43'-0", as illustrated on the BSA-approved plans;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT a minimum of 25 dBA of window-wall noise attenuation shall be provided in the subject building; and

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT all interior layouts and exits shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 9, 2010.

6-09-BZ

CEQR #09-BSA-061R

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.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez4

Negative: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated December 23, 2008, acting on Department of Buildings Application No. 510050837, reads in pertinent part:

“The proposed continued use of an automobile repair establishment (Use Group 16) located within a C4-1 zoning district is contrary to Section 32-10 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located in a C4-1 zoning district within the Special South Richmond Development District and the Special Growth Management District, the legalization of an existing automobile repair establishment (Use Group 16), which does not conform to district use regulations, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 11, 2010, after due notice by publication in *The City Record*, with continued hearings on June 22, 2010, August 3, 2010 and September 14, 2010, and then to decision on November 9, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, Council Member Vincent M. Ignizio recommends approval of this application; and

WHEREAS, State Senator Andrew J. Lanza provided written testimony in support of this application; and

WHEREAS, State Assembly Member Louis R. Tobacco provided written testimony in support of this application; and

WHEREAS, the subject site is located at the southeast

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corner of Giffords Glen and Nelson Avenue, in a C4-1 zoning district within the Special South Richmond Development District and the Special Growth Management District; and

WHEREAS, the site has approximately 105 feet of frontage along Nelson Avenue, 115 feet of frontage along Giffords Glen, and a lot area of 11,064 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story automotive repair establishment, which the applicant proposes to legalize; and

WHEREAS, on June 7, 1955, under BSA Cal. No. 997-54-BZ, the Board granted a variance to permit the construction of a gasoline service station for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, on September 22, 1980, the Board extended the term for ten years from February 2, 1981; and

WHEREAS, on October 28, 1986, under BSA Cal. No. 512-83-BZ, the Board dismissed an application pursuant ZR § 73-211 for the legalization of an enlargement to the existing automotive service station, due to lack of prosecution; and

WHEREAS, subsequently, the Board rescinded the variance granted under BSA Cal. No. 997-54-BZ, and on June 23, 1987 the Board approved an application from the Department of Buildings ("DOB"), under BSA Cal. No. 136-87-A, to revoke the certificate of occupancy for the subject site; and

WHEREAS, because the prior variance has expired and Use Group 16 use is not permitted in the subject C4-1 zoning district, the applicant seeks a use variance to legalize the automobile repair establishment; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the history of use of the site; and (2) the subsurface conditions at the site; and

WHEREAS, as to the history of development at the site, the applicant represents that the subject site has operated as an automotive service establishment since approximately 1955; and

WHEREAS, as noted above, the site was the subject of a Board variance permitting an automotive service station on June 7, 1955, until the variance was rescinded and the certificate of occupancy was revoked on June 23, 1987; and

WHEREAS, the applicant states that after the expiration of the variance, the site continued to operate as an automotive service establishment; and

WHEREAS, the applicant represents that, due to the historic use of the premises as an automotive service establishment, the site has a distinct automotive character and the existing building on the site, which was designed for use as an automotive service establishment, does not lend itself to efficient re-use for an as-of-right commercial use; and

WHEREAS, as to the subsurface conditions at the site, the applicant states that there are 12 550 gallon underground storage tanks located in the middle of the site near the front of the existing building; and

WHEREAS, the applicant states that the underground storage tanks were used to store petroleum products during the

site's previous use as a gasoline service station, but that use of the underground storage tanks was lawfully discontinued in 1982 when all gasoline was removed from the tanks and they were filled with concrete and sealed in compliance with 1982 law; and

WHEREAS, the applicant has submitted evidence reflecting that the underground storage tanks were properly sealed in 1982; and

WHEREAS, the applicant represents that the underground storage tanks may lawfully remain in place if the owner is permitted to maintain the existing automotive service establishment use, but that any new development would necessitate the testing and removal of the underground storage tanks; and

WHEREAS, in support of this representation, the applicant submitted a letter from its environmental consultant stating that a bank loan for new development would require extensive hazardous materials testing of the site and a condition of any loan approval would most likely require the removal of the underground storage tanks; and

WHEREAS, the applicant submitted a financial analysis reflecting that the additional labor and expense associated with the testing and removal of the underground storage tanks is approximately \$215,656; and

WHEREAS, the applicant states that as a result of these additional costs, a conforming development would not be 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 strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) an as-of-right four-story mixed-use residential/commercial building with five dwelling units; (2) the conversion of the existing building to as-of-right retail use; and (3) the existing and proposed automotive service establishment; and

WHEREAS, the study concluded that the as-of-right scenarios would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area consists predominantly of commercial uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the other uses on the subject block consist of parking facilities and commercial buildings; and

WHEREAS, the applicant notes that the subject site has existed as an automotive service establishment since

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approximately 1955; and

WHEREAS, the applicant states that the subject site is also located directly across the street from the Great Kills train station, and that the subject site has historically provided a convenient location for commuters to drop off their cars for repair in the morning before boarding the train to work; and

WHEREAS, at hearing, the Board directed the applicant to remove the two curb cuts closest to the intersection of Giffords Glen and Nelson Avenue, to extend the planting area along the perimeter of the site, and to re-configure the parking layout on the site to improve vehicle circulation; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting the removal of the two curb cuts closest to the intersection, an extended planting along the northern, eastern and southern boundaries of the site, and a revised parking layout; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an unlisted action pursuant to pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-061R, dated December 10, 2008; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site located in a C4-1 zoning district

within the Special South Richmond Development District and the Special Growth Management District, the legalization of an existing automobile repair establishment (Use Group 16), which does not conform to district use regulations, contrary to ZR § 32-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received April 21, 2010' –(2) sheets and 'October 22, 2010' – (1) sheet; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 2,643 sq. ft. (0.23 FAR); a total height of 15'-6"; and six parking spaces, as illustrated on the BSA-approved plans;

THAT the term of this grant shall expire on November 9, 2020;

THAT landscaping shall be provided as per the BSA-approved plans;

THAT the two curb cuts closest to the intersection of Giffords Glen and Nelson Avenue shall be removed, as per the BSA-approved plans;

THAT no sale of cars shall take place on the site;

THAT the signage on the site shall comply with C4 district regulations;

THAT there shall be no public parking on the site;

THAT the hours of operation shall be: Monday through Friday, from 7:00 a.m. to 6:00 p.m.; Saturday, from 7:00 a.m. to 4:00 p.m.; and closed on Sunday;

THAT the above condition shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 9, 2010.

39-10-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) for the legalization of a single-family home, contrary to side yards (§23-461). R-5 zoning district.

PREMISES AFFECTED – 2032 East 17th Street, East 17th Street and Avenue T, Block 7321, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough
Commissioner, dated August 16, 2010, acting on Department
of Buildings Application No. 302156299, reads in pertinent
part:

“Proposed partial legalization of existing structure is
contrary to ZR Section 23-461 and therefore a
variance is required as per ZR 72-21;” and

WHEREAS, this is an application under ZR § 72-21, to
permit, in an R5 zoning district, the proposed construction and
partial legalization of a two-story single-family home that does
not provide the required side yards, contrary to ZR § 23-461;
and

WHEREAS, a public hearing was held on this
application on July 13, 2010, after due notice by publication in
The City Record, with continued hearings on August 24, 2010,
September 21, 2010 and October 19, 2010, and then to decision
on November 9, 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 15, Brooklyn,
recommends approval of this application; and

WHEREAS, an adjacent neighbor provided oral
testimony in opposition to the application; and

WHEREAS, the site is located on the west side of East
17th Street between Avenue T and Avenue U, within an R5
zoning district; and

WHEREAS, the site has a width of 20 feet, a depth of
100 feet, and a total lot area of approximately 2,000 sq. ft.; and

WHEREAS, the site is currently occupied by a partially
constructed two-story single-family home; and

WHEREAS, the applicant proposes to legalize and
complete construction of the two-story single-family home; and

WHEREAS, the proposed home will have the
following complying parameters: 2,259 sq. ft. of floor area
(1.02 FAR); an open space of 60 percent; a lot coverage of
40 percent; a front yard with a depth of 18’-0”;

WHEREAS, however, the applicant proposes to provide
a side yard with a width of 2’-0” along the southern lot line,
and a side yard with a width of 1’-6 ½” along the northern lot
line, (side yards with minimum widths of 5’-0” each are
required); and

WHEREAS, the applicant has provided documentation
establishing that the subject lot is an undersized lot pursuant to
ZR § 23-32; and

WHEREAS, the Board notes that ZR § 23-33 eliminates
lot area and width requirements for single family homes in an
R5 zoning district where the zoning lot was owned separately
and individually from all adjoining tracts of land both on
December 15, 1961 and on the date of the application for a

building permit; and

WHEREAS, the applicant submitted documentation from
a title agency reflecting that the site has existed in its current
configuration since before December 15, 1961 and its
ownership has been independent of the ownership of the two
adjoining lots; and

WHEREAS, the Board notes that ZR § 23-33 would
eliminate a lot area and width requirement for a single-family
home, but not the side yard objection; and

WHEREAS, the applicant states that side yard relief is
necessary, for reasons stated below; thus, the instant
application was filed; and

WHEREAS, the applicant states that the following are
unique physical conditions which create practical difficulties
and unnecessary hardship in developing the subject site in
compliance with underlying district regulations: the narrowness
of the subject site and its history of development; and

WHEREAS, the applicant represents that the requested
side yard waiver is necessary to develop the site with a
habitable home; and

WHEREAS, specifically, the applicant represents that the
pre-existing lot width of 20’-0” cannot feasibly accommodate a
complying development; and

WHEREAS, the applicant states that if both required side
yards were provided, the building would have an exterior width
of only 10’-0”, which would result in narrow and inefficient
floor plates; and

WHEREAS, accordingly, the applicant represents that
the side yard waiver is necessary to create a home of a
reasonable width; and

WHEREAS, the applicant submitted a study of the
surrounding lots reflecting that of the 116 lots in the study area,
35 have lot widths of 20’-0” or less, but only five such lots do
not have an adjacent zero lot line building, such that they
would have to be developed with a detached home comparable
to the subject site; and

WHEREAS, the lot study submitted by the applicant
further reflects that the subject site is the only vacant property
with a lot width of 20’-0” or less within the study area, as the
five comparable lots in the study area are all improved upon
with existing buildings that are non-compliant with respect to
side yards; thus, the subject site is the only undersized lot in the
study area that is subject to the full extent of the R5 district
yard regulations; and

WHEREAS, the applicant states that the requested side
yard relief would provide the subject site with side yards
comparable in width to the other detached homes on the subject
block; and

WHEREAS, as to the history of development, the
applicant states that the owner began the proposed construction
at the site pursuant to an Alteration permit issued on May 16,
2006, which involved an as-of-right enlargement to the existing
home on the site, including the maintenance of the pre-existing
side yards of 2’-0” and 1’-6 ½”, respectively; and

WHEREAS, the applicant states that during construction
it was determined that the exterior walls of the home were in
poor condition and had to be removed; as a result, the side
yards were no longer considered to be pre-existing, and became

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a non-complying condition; and

WHEREAS, the applicant further states that, despite the need to remove the exterior walls of the home, the existing partially-completed home shares the same foundation system as the previously existing home, and therefore has maintained the previously existing side yards of 2'-0" and 1'-6 1/2", respectively; and

WHEREAS, the Board notes that the applicant originally sought relief from the Board by means of a special permit pursuant to ZR § 73-622, but that the applicant determined that it was unable to satisfy the special permit findings and subsequently withdrew that application and filed the subject application under ZR § 72-21; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable side yard regulations; and

WHEREAS, the Board has determined that because of the subject site's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized by single-family homes; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that that it complies with all relevant bulk regulations other than side yards; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R5 zoning district regulations for FAR, open space, lot coverage, front and rear yards, and height; and

WHEREAS, the lot study submitted by the applicant reflects that the other sites in the study area occupied by detached single-family homes with a lot width of 20'-0" or less have comparable side yard widths; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's narrow width; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

WHEREAS, at hearing, the Board directed the applicant to explore a lesser variance scenario which did not utilize the pre-existing foundation on the site and provided greater side yard relief; and

WHEREAS, in response, the applicant submitted an analysis of a home which does not utilize the pre-existing foundation and provides side yards of 3'-0" each; and

WHEREAS, the applicant states that the resulting home would not be feasible because it would have an exterior width

of only 14'-0" and an even more narrow interior width with inefficient floor plates and an inefficient layout; further, such a proposal would result in the need to remove the existing foundation at a cost of approximately \$78,500; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except for side yards is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, in an R5 zoning district, the proposed construction and partial legalization of a two-story single-family home that does not provide the required side yards, contrary to ZR § 23-461; *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 5, 2010"– (15) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 2,259 sq. ft. of floor area (1.02 FAR), a side yard with a width of 2'-0" along the southern lot line; a side yard with a minimum width of 1'6 1/2" along the northern lot line; a front yard with a depth of 18'-0"; a rear yard with a depth of 30'-0"; a wall height of 23'-1"; a total height of 34'-0"; and parking for one car, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be subject to DOB review and approval;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 9, 2010.

91-10-BZ

APPLICANT – Eric Palatnik, P.C., for Lawrence Kimel, owner.

SUBJECT – Application May 17, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to open space, lot coverage and floor area (§23-141); side yard (§23-461); rear yard (§23-47) and perimeter wall height (§23-631). R3-1 zoning district.

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PREMISES AFFECTED –123 Coleridge Street, south of Hampton Street, Block 8735, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 16, 2010, acting on Department of Buildings Application No. 310126510, reads in pertinent part:

- “1. Proposed floor area is contrary to ZR 23-141.
2. Proposed open space ratio is contrary to ZR 23-141.
3. Proposed lot coverage is contrary to ZR 23-141.
4. Proposed side yard is contrary to ZR 23-461.
5. Proposed rear yard is contrary to ZR 23-47.
6. Proposed perimeter wall height is contrary to ZR 23-631;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed legalization and enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, lot coverage, side yards, rear yard and perimeter wall height contrary to ZR §§ 23-141, 23-461, 23-47 and 23-631; and

WHEREAS, a public hearing was held on this application on August 3, 2010, after due notice by publication in *The City Record*, with continued hearings on September 14, 2010 and October 19, 2010, and then to decision on November 9, 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 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application (hereinafter, the “Opposition”); and

WHEREAS, the subject site is located on the east side of Coleridge Street between Hampton Avenue and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 3,665 sq. ft. (0.61 FAR); and

WHEREAS, the applicant states that the subject home was enlarged to its current floor area in 2009; the applicant now proposes to legalize the previous enlargement and construct an additional enlargement of the subject 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 3,665 sq. ft. (0.61 FAR) to 5,049 sq. ft. (0.84 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 63 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 37 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard with a width of approximately 4’-9” along the southern lot line (two side yards with a minimum width of 5’-0” each are required); and

WHEREAS, the proposed enlargement will maintain the existing rear yard with a depth of approximately 21’-3” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant proposes to maintain the existing non-complying perimeter wall height of approximately 23’-9” (a maximum perimeter wall height of 21’-0” is permitted); and

WHEREAS, at hearing, the Board directed the applicant to provide evidence that the current perimeter wall height was existing prior to the owner’s previous enlargement of the home; and

WHEREAS, in response, the applicant provided photographs of the home prior to the construction of the previous enlargement, which reflect that the previously existing perimeter wall height has been maintained; and

WHEREAS, the Opposition contends that the Board should deny the application because the prior enlargement of the home was performed illegally; and

WHEREAS, the Board notes that when an applicant satisfies the findings pursuant to ZR § 73-622, there is no legal basis to deny the special permit merely because it is a partial legalization rather than entirely new construction; and

WHEREAS, the Opposition further contends that the applicant failed to address an objection issued by DOB regarding the proposed attic at the site; and

WHEREAS, in response, the applicant notes that it submitted a reconsideration issued by DOB on March 17, 2010, resolving the attic issue; 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

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outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, lot coverage, side yards, rear yard and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47 and 23-631; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 24, 2010"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 5,049 sq. ft. (0.84 FAR); a minimum open space of 63 percent; a maximum lot coverage of 37 percent; a side yard with a minimum width of approximately 4'-9" along the southern lot line; a side yard with a width of 8'-6" along the northern lot line; a rear yard with a minimum depth of approximately 21'-3"; and a maximum perimeter wall height of approximately 23'-9", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, November 9, 2010.

129-10-BZ

CEQR #11-BSA-005Q

APPLICANT – Andrea M. Harris, for Paul Trinchese, owner; Gustavo Larrea, lessee.

SUBJECT – Application July 16, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Traditional Karate America*). M1-2 zoning district.

PREMISES AFFECTED – 98-18 103rd Avenue, cross street of 103rd Avenue and 99th Street, Block 9121, Lot 9, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Andrea M. Harris.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated July 15, 2010, acting on Department of Buildings Application No. 420006567, reads in pertinent part:

"Proposed change of use to physical culture establishment is contrary to ZR 42-10 and not permitted as of right in M1-2 zoning district and must be referred to the BSA for approval pursuant to ZR 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within an M1-2 zoning district, the legalization of a physical culture establishment (PCE) at the first floor of a one-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 19, 2010, after due notice by publication in *The City Record*, and then to decision on November 9, 2010; and

WHEREAS, Community Board 9, Queens, recommends approval of this application, with the condition that the term be limited to five years and the use of the site be restricted to activities associated with the karate school; and

WHEREAS, the subject site is located on the southwest corner of 99th Street and 103rd Avenue, within an M1-2 zoning district; and

WHEREAS, the site is occupied by a one-story commercial building; and

WHEREAS, the PCE will occupy the entire first floor of the subject building, with a total floor area of 3,504 sq. ft.; and

WHEREAS, the PCE will be operated as Traditional Karate America; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 9:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and

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operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since January 2, 2009, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between January 2, 2009 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 11BSA005Q, dated June 25, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-2 zoning district, the operation of a physical culture establishment at the first floor of a one-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 22, 2010"- (2) sheets; "Received September 20, 2010"- (1) sheet and *on further condition*:

THAT the term of this grant shall expire on January 2, 2019;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 9, 2010.

131-10-BZ CEQR #11-BSA-007M

APPLICANT – The Law Office of Fredrick A. Becker, for 841-853 Broadway Associates, owner; Jivamukti Yoga Center, lessee.

SUBJECT – Application July 21, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Jivamukti Yoga Studio*). C6-4 (US)/C6-1 zoning districts.

PREMISES AFFECTED – 841 Broadway, northwest corner of Broadway and East 13th Street, Block 565, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated September 24, 2010, acting on Department of Buildings Application No. 120372596, reads in pertinent part:

“Proposed ‘physical culture establishment’ is not a permitted use in a C6-1/C6-4 zone and requires a special permit from the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C6-1 zoning district and partially in a C6-4 zoning district

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within the Special Union Square District, the legalization of a physical culture establishment (PCE) at the second floor of an eight-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 19, 2010 after due notice by publication in *The City Record*, and then to decision on November 9, 2010; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Broadway and East 13th Street, partially within a C6-1 zoning district and partially in a C6-4 zoning district within the Special Union Square District; and

WHEREAS, the site is occupied by an eight-story commercial building; and

WHEREAS, the PCE will occupy 9,822 sq. ft. of floor area on the second floor of the subject building; and

WHEREAS, the PCE will be operated as Jivamukti Yoga Center; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 7:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 9:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since June 1, 2006, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between June 1, 2006 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 11BSA007M, dated July 21, 2010; and

WHEREAS, the EAS documents that the operation of

the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C6-1 zoning district and partially in a C6-4 zoning district within the Special Union Square District, the operation of a physical culture establishment at the second floor of an eight-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 14, 2010"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 1, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 9, 2010.

MINUTES

152-10-BZ

APPLICANT – Peter Poruczynski, RA, for Jeannie Kontopirakis, owner.

SUBJECT – Application August 17, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage §23-141. R2 zoning district.

PREMISES AFFECTED – 158 85th Street, 85th Street frontage. Block 6032, Lot 31. Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Peter Zaharatos.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 23, 2010, acting on Department of Buildings Application No. 320168475, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that proposed building exceeds maximum permitted floor area ratio.

Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required open space.

Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted lot coverage;” 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 and lot coverage, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on October 19, 2010, after due notice by publication in *The City Record*, and then to decision on November 9, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Montanez; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of 85th Street between Colonial Road and Ridge Boulevard, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of 2,332 sq. ft. (0.46 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the

floor area from 2,332 sq. ft. (0.46 FAR) to 2,592 sq. ft. (0.52 FAR); the maximum permitted floor area is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 72 percent (75 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 28 percent (25 percent is the maximum permitted); and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space and lot coverage, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received September 29, 2010”-(7) sheets and “October 26, 2010”-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,592 sq. ft. (0.52 FAR); an open space of 72 percent; a lot coverage of 28 percent; a total height of 33’-8””; a front yard with a depth of 22’-2””; a side yard with a width of 5’-11” along the eastern lot line; a side yard with a width of 6’-4” along the western lot line; and a rear yard with a depth of 33’-6””, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure

MINUTES

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 9, 2010.

277-07-BZ

APPLICANT – Miele Associates, LLP, for Barnik Associates LLC & Lama Holdings, LLC, owner.

SUBJECT – Application December 3, 2007 – Variance (§72-21) for the development of a one-story automotive service station with accessory convenience store, contrary to §22-10. R3-1 zoning district.

PREMISES AFFECTED – 165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R, Brewer Boulevard. Block 12318, Lot 10, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Joel Miele, Hiram Rothkrug, Robert Pauls, Adam DeGerling and Walter Beringer.

ACTION OF THE BOARD – Laid over to December 7, 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 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 and Angelo Graci.

ACTION OF THE BOARD – Laid over to December 14, 2010 at 1:30 P.M., for continued hearing.

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.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for adjourned hearing.

35-10-BZ

APPLICATION – Sheldon Lobel, PC for Yuriy Pirov, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to permit the legalization of an existing synagogue (*Congregation Torath Haim Ohel Sara*), contrary to front yard (§24-34), side yard (§24-35) and rear yard (§24-36). R4 zoning district.

PREMISES AFFECTED – 144-11 77th Avenue, approximately 65 feet east of the northeast corner of Main Street and 77th Avenue. Block 6667, Lot 45, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for continued hearing.

60-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Soho Thompson Realty, LLC, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-21) to allow a commercial use below the floor level of the second story, contrary to §42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 54 Thompson Street, northeast corner of Thompson Street and Broome Street, Block 488, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel and Robert Pauls.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for decision, hearing closed.

66-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yury, Aleksandr, Tatyana Dreysler

SUBJECT – Application May 3, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (23-141) and side yards (23-461). R3-1 zoning district.

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PREMISES AFFECTED – 1618 Shore Boulevard, South side of Shore Boulevard between Oxford and Norfolk Streets. Block 8757, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for deferred decision.

92-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Lancaster Incorporated, owners.

SUBJECT – Application May 20, 2010 – Variance (§72-21) to allow for the construction of an elevator in an existing residential building, contrary to floor area, open space (§23-142) and court regulations (§§23-85, 23-87). R7-2 zoning district.

PREMISES AFFECTED – 39 East 10th Street, north side of 10th Street, between University Place and Broadway, Block 562, Lot 38, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for decision, hearing closed.

140-10-BZ thru 147-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Edward Lauria, owner.

SUBJECT – Application August 9, 2010 – Variance (§72-21) to allow four single-family homes on a zoning lot that does not meet the minimum lot width requirements (§23-32), and waiver to the General City Law, Section 36, for development not fronting a mapped street. R1-2 (NA-1) zoning district.

PREMISES AFFECTED – 160, 170, 181, 191, Edinboro Road, south of Meisner Avenue, east of intersection Lighthouse Avenue and Edinboro Road, Block 2267, Lot 55(tent), 50, 197, 168, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale and Edward Lauria.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for continued hearing.

151-10-BZ

APPLICANT – Sheldon Lobel, P.C. for Profile Enterprises, LP, owner; Bamboo Garden Spa, Incorporated, lessee.

SUBJECT – Application August 16, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture

establishment (*Bamboo Garden Spa*). M1-6 zoning district. PREMISES AFFECTED – 224 West 35th Street, South side of West 35th Street, 225 feet west of Seventh Avenue. Block 784, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Layla Law-Gisiko of CB 5M.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for continued hearing.

175-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application September 1, 2010 – Special Permit (§11-411) for an Extension of Term of a previously approved Automotive Service Station (UG 16B) which expired on December 18, 2001; Extension of Time to obtain a certificate of occupancy which expired on September 21, 1994; Waiver of the Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 3400 Baychester Avenue, Norhteast corner of Baychester and Tillotson Avenue, Block 5257, Lot 47, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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November 24, 2010

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Tuesday, November 16, 2010**

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DOCKET

New Case Filed Up to November 16, 2010

214-10-A

97-45 Queens Boulevard, Bounded by Queens Boulevard, 64th Road, and 64th Avenue., Block 2091, Lot(s) 1, Borough of **Queens, Community Board: 6**. Appeal challenging the Department of Buildings determination. C4-2 district.

215-10-A

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216-10-A

1466 Broadway, Southeast corner of Broadway and West 42nd Street., Block 994, Lot(s) 54, Borough of **Manhattan, Community Board: 5**. C6-7 (MiD) district.

217-10-BZ

4009 Bedford Avenue, Bedford Avenue between Avenue S and Avenue T., Block 7304, Lot(s) 82, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family home. R3-2 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

DECEMBER 7, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 7, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

200-24-BZ

APPLICANT – Stephen Ely, for Ebed Realty c/o Shelia Greco, owner.
SUBJECT – Application October 22, 2010 – Extension of Term (§11-411) for the continued operation of a UG6 bookstore and distribution center which expired on September 23, 2010. R8/C8-2 zoning district.
PREMISES AFFECTED – 3030 Jerome Avenue, 161.81' south of East 204th Street, Block 3321, Lot 25, Borough of Bronx.
COMMUNITY BOARD #7BX

230-98-BZ

APPLICANT – Mitchell S. Ross, Esq., for JC's Auto Enterprises, Limited, owners.
SUBJECT – Application July 22, 2010 – Extension of Term of a previously granted Variance (§72-21) for an existing automotive repair shop and car sales which expired on June 22, 2010. R-5 zoning district.
PREMISES AFFECTED – 5820 Bay Parkway, northwest corner of 59th Street, Block 55508, Lot 44, Borough of Brooklyn.
COMMUNITY BOARD #12BK

299-99-BZ

APPLICANT – Carl A. Sulfaro, Esq., for M & V, LLC, owner.
SUBJECT – Application August 4, 2010 – Extension of Term for the continued operation of a gasoline service station (*Getty*) which expired on July 25, 2010. C2-3/R6 zoning district.
PREMISES AFFECTED – 8-16 Malcom X Boulevard, northwest corner of DeKalb Avenue, Block 599, Lot 40, Borough of Brooklyn.
COMMUNITY BOARD #3BK

276-02-BZ

APPLICANT – Eric Palatnik, P.C., for Elad Ryba, owner.
SUBJECT – Application September 13, 2010 – Extension of Time to Complete Construction and an Amendment to a previously approved Special Permit (§73-622) contrary to lot coverage and floor area (ZR §23-141) and side yard (ZR §23-461) to an existing one family dwelling. R3-1 zoning district.

PREMISES AFFECTED – 160 Norfolk Street, west side, 300' north of Oriental Boulevard and south of Shore Boulevard, Block 8756, Lot 22, Borough of Brooklyn.
COMMUNITY BOARD #15BK

118-10-BZ

APPLICANT – NYC Board of Standards and Appeals
OWNER – Arkady Nabatov
SUBJECT – Application June 28, 2010 – Dismissal for lack of Prosecution - Special Permit (§11-411) to permit the reinstatement of a previously approved application permitting the operation of an automotive service station (UG 16B), with accessory uses, located within an R4 zoning district.
PREMISES AFFECTED – 2102/24 Avenue Z aka 2609/15 East 21st Street, Block 7441, Lot 371, Borough of Brooklyn.
COMMUNITY BOARD #15BK

APPEALS CALENDAR

136-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Richard Duenia, lessee.
SUBJECT – Application August 3, 2010 – Proposed reconstruction and enlargement of an existing single family dwelling in the bed of a mapped street contrary to General City Law Section 35 and the proposed upgrade of the existing private disposal system within the bed of a private service road is contrary to Department of Buildings policy. R4 zoning district.
PREMISES AFFECTED – 26 Park End Terrace, east side of Rockaway Point, 20.21 south of mapped Bayside Drive, Block 16340, Lot 50, Borough of Queens.
COMMUNITY BOARD #14Q

153-10-A

APPLICANT – Eric Palatnik, P.C., for 101 01 One Group LLC, owner.
SUBJECT – Application August 19, 2010 – Proposed construction of a three story, five family residential building located within the bed of a mapped street (101street) contrary to General City Law Section 35. R5 Zoning District.
PREMISES AFFECTED – 101-01 39th Avenue, between 101st Street and 102nd Street, Block 1767, Lot 59, Borough of Queens.
COMMUNITY BOARD #3Q

CALENDAR

DECEMBER 7, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 7, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

130-10-BZ

APPLICANT – Sheldon Lobel, P.C., for John Ingravallo, owner.

SUBJECT – Application July 16, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (§23-141) and perimeter wall height (§23-631). R3X zoning district.

PREMISES AFFECTED – 1153 85th Street, north side of 85th Street, between 11th and 12th Avenue, Block 6320, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #10BK

174-10-BZ

APPLICANT – The Briarwood Organization, LLC, for English Evangelical Church of Redeemer, owner.

SUBJECT – Application August 27, 2010 – Special Permit (§73-44) to allow for a reduction in parking for a mixed office and community facility building. R4/C2-2 zoning district.

PREMISES AFFECTED – 36-29 Bell Boulevard, between 36th Avenue and 38th Avenue, Block 6176, Lot 61 p/o 2, Borough of Queens.

COMMUNITY BOARD #11Q

181-10-BZ

APPLICANT – Patrick W. Jones, P.C., for Metroeb Realty Corporation, owner.

SUBJECT – Application September 20, 2010 – Special Permit (§73-46) to waive parking for a proposed residential conversion of an existing building. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 143/155 Roebling Street, aka 314/330 Metropolitan Avenue and 1/10 Hope Street, corner of Roebling Street, Metropolitan Avenue and Hope Street, Block 2368, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, NOVEMBER 16, 2010 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

294-99-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for 521 5th Avenue Partners, LLC, owner; Equinox – 43rd Street, Incorporated, lessee.

SUBJECT – Application June 1, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Equinox*) which expired on May 9, 2010. C5-3(MID) & C5-2.5(MID) zoning district.

PREMISES AFFECTED – 521 5th Avenue, north east corner of 5th Avenue and East 43rd Street, Block 1278, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on May 9, 2010; and

WHEREAS, a public hearing was held on this application on September 14, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 19, 2010, and then to decision on November 16, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 5, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the northeast corner of Fifth Avenue and East 43rd Street, partially in a C5-3 zoning district in the Special Midtown District and partially in a C5-2.5 zoning district within the Special Midtown District; and

WHEREAS, the PCE occupies 1,576 sq. ft. of floor area on the first floor of a 37-story commercial building, with an additional 22,869 sq. ft. of floor space located at the cellar and sub-cellar level; and

WHEREAS, the Board has exercised jurisdiction over the

subject site since May 9, 2000 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on May 9, 2010; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, at hearing, the Board raised concerns about the signage at the site, particularly regarding the flagpole and banner signage which was not shown on the previously approved plans; and

WHEREAS, in response, the applicant states that the signage at the site, including the flagpole and banner signage, was in existence at the time of the Board’s prior approval and is in compliance with C5 district signage regulations; and

WHEREAS, the Board notes that the signage at the site will be subject to Department of Buildings’ (“DOB”) approval; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on May 9, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from May 9, 2010, to expire on May 9, 2020, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received June 1, 2010’-(4) sheets and ‘October 22, 2010’-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on May 9, 2020;

THAT the above condition shall be listed on the certificate of occupancy;

THAT signage at the site shall comply with C5 district regulations;

THAT the flagpole and banner signage shall be subject to DOB review and approval;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 120334012)

Adopted by the Board of Standards and Appeals, November 16, 2010.

MINUTES

214-00-BZ

APPLICANT – Harold Weinberg, for Caliv LLC, owner.
SUBJECT – Application October 10, 2008 – Extension of Time to obtain a Certificate of Occupancy for a Special Permit (§73-242) for an eating and drinking establishment; Extension of Term; Amendment to the site plan; and Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2777 Plumb 2nd Street, northeast corner of Harkness Avenue, Block 8841, Lot 500, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an extension of term of a previously granted special permit for an eating and drinking establishment (UG 6), which expired on March 26, 2010, an extension of time to obtain a certificate of occupancy, which expired on April 10, 2008, and an amendment to the previously approved plans; and

WHEREAS, a public hearing was held on this application on August 24, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 26, 2010, and then to decision on November 16, 2010; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the subject site is located on the northeast corner of Plumb Second Street and Harkness Avenue, within a C3 zoning district; and

WHEREAS, the site has frontage on the Shell Bank Creek; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 27, 1980 when, under BSA Cal. No. 1233-79-BZ, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a two-story enlargement to an existing wholesale and retail fish-packing establishment; and

WHEREAS, on December 1, 1987, under BSA Cal. No. 233-86-BZ, the Board granted a special permit pursuant to ZR § 73-242 to permit a one-story enlargement of the existing building and for a partial conversion of that portion of the building into an eating and drinking establishment, for a term of five years; the fish-packing establishment has been maintained in the portion of the building without frontage on Shell Bank Creek and is not subject to the special permit; and

WHEREAS, the special permit was subsequently extended for a term of five years; and

WHEREAS, on March 26, 2002, under the subject calendar number, the Board permitted the re-establishment of the special permit, for a term of five years; and

WHEREAS, most recently, on July 10, 2007 the Board extended the term for an additional five years, which expires on March 26, 2012, an extension of time to obtain a certificate of occupancy, which expired on April 10, 2008, and an amendment to legalize certain modifications to the site; and

WHEREAS, this application seeks to extend the term of the special permit for an additional five years; and

WHEREAS, the applicant also seeks to extend the time to obtain a certificate of occupancy; and

WHEREAS, additionally, the applicant proposes to amend the site plan to reflect a proposed one-story enlargement of the subject building, which the applicant represents will be constructed as-of-right and will operate independently from the eating and drinking establishment on the site, which is the subject of the special permit; and

WHEREAS, at hearing, the Board directed the applicant to remove a garbage truck, storage container and a trailer located on the site; and

WHEREAS, in response, the applicant submitted photographs reflecting the removal of these items from the site; and

WHEREAS, based upon the above, the Board finds the requested extension and amendment appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on March 26, 2002, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for a period of five years from the date of this grant, to expire on November 16, 2015; to extend the time to obtain a certificate of occupancy for a period of one year, to expire on November 16, 2011; and to amend the plans to permit the noted site modifications; *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received August 11, 2010’–(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 16, 2015;

THAT the above condition shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by November 16, 2011;

THAT DOB shall review the proposed enlargement for compliance with all relevant provisions of the Building Code and Zoning Resolution;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

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laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”
(DOB Application No. 302221619)

Adopted by the Board of Standards and Appeals,
November 16, 2010.

433-65-BZ

APPLICANT – Andrea Claire/Peter Hirshman, for 15 West 72 Owner Corporation, owner; Mafair Garage Corporation, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term for transient parking in a parking garage accessory to a multiple dwelling building which expired on June 22, 2010. R8B/R10A zoning district.

PREMISES AFFECTED – 15 West 72nd Street, 200’-2½ west of Central Park West 72nd Street, Block 1125, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for postponed hearing.

315-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owners.

SUBJECT – Application July 30, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*Gulf*) with accessory convenience store which expires on March 13, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on March 13, 2003; waiver of the rules. C2-2/R4 zoning district.

PREMISES AFFECTED – 82-06 Astoria Boulevard, southeast corner of Astoria Boulevard and 82nd Street, block 1094, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 10 A.M., for continued hearing.

344-03-BZ

APPLICANT – Goldman, Harris LLC, for City of New York, owner; Nick's Lobster House, lessee.

SUBJECT – Application August 11, 2010 – Extension of Term of a Special Permit (§73-242) permitting an eating and drinking establishment which expired on July 12, 2010. C3 zoning district.

PREMISES AFFECTED – 2777 Flatbush Avenue, between Flatbush and Mill Basin, Block 8591, Lot p/o 980, p/o 175, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Vivien Krieger.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

111-10-A

APPLICANT – Victor K. Han, R.A., AIA, for Seungho Kim, owner.

SUBJECT – Application June 18, 2010 – Appeal challenging Department of Building's determination that a proposed hotel does not meet the requirements of §32-14 and is therefore not permitted. C2-2 zoning district.

PREMISES AFFECTED – 211-08 Northern Boulevard, southeast side of Northern Boulevard, southeast of 211th Street, Block 7313, Lot 5, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals,
November 16, 2010.

188-10-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Catherine & Kevin Kelly, lessee.

SUBJECT – Application October 5, 2010 – Proposed construction not fronting on a mapped street, contrary to General City Law Section 36 within an R4 zoning district.

PREMISES AFFECTED – 9 Olive Walk, east side of Olive Walk, 121.6’ south of West End Avenue, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated September 30, 2010, acting on Department of Buildings Application No. 42037103, reads in pertinent part:

“A1 – The street giving access to the existing building to be altered and enlarged is not duly placed

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on the official map of the City of New York, therefore:

- A) A Certificate of Occupancy may not be issued as per Art. 3, Sect. 36 of the General City Law;
- B) The existing building to be reconstructed and enlarged does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street frontage space contrary to Section 27-291 of the Administrative Code of the City of New York;” and

A-2 The proposed upgraded private disposal system is in the bed of the service lane contrary to Department of Buildings Policy;” and

WHEREAS, a public hearing was held on this application on November 16, 2010 after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated November 3, 2010, the Fire Department states that it has no objection to the subject proposal; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 30, 2010, acting on Department of Buildings Application No. 42037103, 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 6, 2010” - one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 16, 2010.

125-10-A

APPLICANT – Simons & Wright, for Sofia Gazgalis & Spyridon Gazgalis, owner.

SUBJECT – Application July 8, 2010 – Appeal challenging the interpretation of ZR §23-22 as it applies to the required density factor for existing buildings in an R5B zoning district.

PREMISES AFFECTED – 346 Ovington Avenue, between 4th and 3rd Avenues, Block 5891, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 10 A.M., for adjourned hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, NOVEMBER 16, 2010

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

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 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue. Block 2582, Lots 10, 11, 110, 111 and 112, Borough of Bronx.

COMMUNITY BOARD # 1BX

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, November 16, 2010.

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117-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Rhond Mizrahi and Garv Mizrahi, owners.

SUBJECT – Application June 28, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yards (§23-461) and less than the required rear yard (§23-47). R5 zoning district.

PREMISES AFFECTED – 1954 East 14th Street, west side of East 14th Street, between Avenue S and Avenue T, Block 7292, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 28, 2010, acting on Department of Buildings Application No. 320166725, reads in pertinent part:

“The proposed enlargement of the existing one family residence in an R5 zoning district:

Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements rear yard, contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on October 26, 2010 after due notice by publication in *The City Record*, and then to decision on November 16, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 14th Street, between Avenue S and Avenue T, within an R5 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 1,980 sq. ft. (0.50 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,980 sq. ft. (0.50 FAR) to 4,113 sq. ft. (1.03 FAR); the maximum permitted floor area is 5,000 sq. ft. (1.25 FAR); and

WHEREAS, the proposed enlargement will provide a

rear yard with a depth of 20’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant’s initial proposal also required a side yard waiver because it provided a side yard with a minimum width of 7’-11” along the northern lot line, a side yard with a minimum width of 5’-0” along the southern lot line, and a total side yard width of only 12’-11”; pursuant to ZR § 23-461 the required total side yard width is 13’-0”; and

WHEREAS, at the Board’s direction, the applicant revised the plans to reflect a side yard with a minimum width of 5’-1” along the southern lot line and a total side yard width of 13’-0”; thereby removing the side yard objection; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for rear yard, contrary to ZR § 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received October 20, 2010”-(9) sheets and “November 4, 2010”-(5) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 4,113 sq. ft. (1.03 FAR); a front yard with a depth of 12’-6”; a side yard with a minimum width of 7’-11” along the northern lot line; a side yard with a minimum width of 5’-1” along the southern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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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, November 16, 2010.

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

APPEARANCES –

For Applicant: Sandy Anagnostou.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for decision, hearing closed.

24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district.

PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9, 11, 12, 23, 24, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most, Saul Greenberger.

For Opposition: Kenneth D. Cohen and Dewin Davis.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for continued hearing.

309-09-BZ

APPLICANT – Harold Weinberg, P.E., for Ralph Stroffolino, owner.

SUBJECT – Application November 20, 2009 – Variance (§72-21) to allow a mixed use building, contrary to lot coverage (§23-145), side yard (§35-541) and height (§35-542) regulations. R6A/C2-3 zoning district.

PREMISES AFFECTED – 2173 65th Street, between Bay Parkway and 21st Avenue, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto.

For Opposition: Domenico Calcagno, Vincenza Calcagno and Angela Calcagno.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for continued hearing.

103-10-BZ

APPLICANT – Law Office of Frederick A. Becker, for Zehava Kraitenberg and Larry Kraitenberg, owners.

SUBJECT – Application June 7, 2010 – Special Permit (§73-622) for the enlargement and in-part legalization of an existing single family home contrary to floor area, open space (§23-141), side yard requirement (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1036 East 24th Street, west side of East 24th Street, between Avenue J and Avenue K, Block 7605, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for decision, hearing closed.

104-10-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Ohr Yisroel Inc., owner.

SUBJECT – Application June 8, 2010 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a synagogue and rectory, contrary to lot coverage and floor area (§24-11) front yard (§24-34), side yard (§24-35) and wall height and sky exposure plane (§24-521). R5 zoning district.

PREMISES AFFECTED – 5002 19th Avenue, aka 1880-1890 50th Street, south side of 50th Street, west of 19th Avenue, Block 5461, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

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Negative:.....0

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for decision, hearing closed.

107-10-BZ

APPLICANT – Akerman Senterfitt, for Associazione Sacchese D’America, owner.

SUBJECT – Application September 10, 2010 – Variance (§72-21) to allow for a community facility use (*Associazione Sacchese D’America*), contrary to side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 12-24 149th Street, between 12th Avenue and Cross Island Parkway, Block 4466, Lot 21, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for continued hearing.

178-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Rebecca Leshkowitz and Naftuli Leshkowitz, owners.

SUBJECT – Application September 13, 2010 – Special Permit (§73-622) for the legalization and enlargement of a single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 943 East 24th Street, east side of East 24th Street, between Avenue I and Avenue J, Block 7588, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for continued hearing.

179-10-BZ

APPLICANT – Sheldon Lobel, P.C., for E & R Duffield Holding Associates, owner; Duffield Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 16, 2010 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (*Planet Fitness*). C6-4 zoning district.

PREMISES AFFECTED – 249 Duffield Street, east side of Duffield Street, approx. 69’ north of the corner of Duffield Street and Fulton Street, Block 146, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for continued hearing.

182-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, Miriam Kirzner and Martin Kirzner, owners.

SUBJECT – Application September 20, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1082 East 23rd Street, west side of East 23rd Street, between Avenue J and Avenue K, Block 7604, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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December 1, 2010

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Tuesday, November 23, 2010**

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DOCKET

New Case Filed Up to November 23, 2010

218-10-BZ

123 East 98th Street, Corner of the intersection of East 98th and blake Avenue between Ralph Avenue & Union Street., Block 3531, Lot(s) 1, Borough of **Brooklyn, Community Board: 16**. Special Permit (73-19) to allow a charter school. C8-2 district.

219-10-A

74-76 Adelphi Street, Location on the west side of Adelphi Street between Park and Myrtle Avenues., Block 2044, Lot(s) 52,53, Borough of **Brooklyn, Community Board: 2**. Appeal for common law vested rights to continued development 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

DECEMBER 14, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 14, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

55-45-BZ

APPLICANT – Walter C. Maffei, AIA, for Donato Passarella, owner.

SUBJECT – Application August 31, 2010 – Pursuant to ZR (§11-411) for an Extension of Term of an existing Gasoline Service Station (*Spirit*) which expired on February 27, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on May 2, 2001; waiver of the rules. C2-4/R6B zoning district.

PREMISES AFFECTED – 51 Kingsland Avenue, Woodpoint Road, Frost Street, Block 2866, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

245-49-BZ

APPLICANT – Simons & Wright LLC, for Alley Pond Owners Corporation, owner.

SUBJECT – Application October 7, 2010 – Amendment/Waiver to legalize the conversion of one residential unit to be used as an accessory residential management office and to eliminate the term. R3-2 zoning district.

PREMISES AFFECTED – 78-09 Springfield Boulevard, east side of Springfield between Kingsbury Avenue and Union Turnpike, Block 7842, Lot 33, Borough of Queens.

COMMUNITY BOARD # 11Q

827-55-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products, Incorporated, owner.

SUBJECT – Application October 5, 2010 – Pursuant to ZR (§11-411) for an Extension of Term for the continued operation of a Gasoline Service Station (*British Petroleum*) which expires on January 31, 2011. R3-2 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, southwest corner of Conduit Avenue, Block 13614, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

758-84-BZ

APPLICANT – David L. Businelli, R.A., for Richard Sgarato, owner.

SUBJECT – Application August 30, 2010 – Extension of Term of a previously approve variance (§72-21) which

permitted the legalization of a two (2) story and cellar commercial building contrary to the use regulations. R3X zoning district.

PREMISES AFFECTED – 1444 Clove Road, 61' North of intersection Tioga Street and Clove Road, Block 658, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

93-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker for Green 19 W44 Owner, LLC, owner; TSI West 44 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 25, 2010 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a physical culture establishment (New York Sports Club) which expired on July 25, 2010. C6-4.5 (MID) zoning district.

PREMISES AFFECTED – 19 West 44th Street, northerly side of West 44th Street, 150' west of 5th Avenue, Block 1260, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #3M

128-00-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for CRP/Capstone 14W Property Owner, LLC c/o CB Richard Ellis, owner; Equinox Wall Street Incorporated, lessee.

SUBJECT – Application September 30, 2010 – Extension of Term of a previously granted Special Permit (ZR §73-36) for the continued operation of a Physical Culture Establishment (*Equinox*) which expired on September 12, 2010. C5-5(LM) zoning district.

PREMISES AFFECTED – 10/16 Wall Street, north west corner of Wall Street and Nassau Street, Block 46, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEALS CALENDAR

135-10-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Incorporated, owner; James McDonough, lessee.

SUBJECT – Application August 3, 2010 – Proposed enlargement of an existing single family home not fronting a legally mapped street contrary to General City Law Section 36 . R4 zoning district.

PREMISES AFFECTED – 107 Beach 216th Street, east side of Beach 216th Street, 120' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

212-10-A

APPLICANT – NYC Board of Standards and Appeals

CALENDAR

OWNER - Augustus H. Lawrence and Company
SUBJECT – Application November 5, 2010 – Dismissal for lack of Prosecution - An appeal to the Department of Buildings Determination that the Applicant Engineer's report violated Building Code Section 28.211.1. (False Statements). C6-9M Zoning District.
PREMISES AFFECTED – 96 Greenwich Street, west side of Greenwich Street between Rector Street and Carlisle Street, Block 53, Lot 39, Borough of Manhattan.
COMMUNITY BOARD #1M

SUBJECT – Application September 20, 2010 – Variance (§72-21) for the construction of a detached two-story, two family residence contrary to the front yard requirements (ZR §23-45) and side yard requirement (ZR §23-461). R5 zoning district.
PREMISES AFFECTED – 873 Belmont Avenue aka 240 Milford Street, northwest corner of Belmont Avenue and Milford Street, Block 4024, Lot 36, Borough of Brooklyn.
COMMUNITY BOARD #5BK

Jeff Mulligan, Executive Director

DECEMBER 14, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 14, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

45-10-BZ

APPLICANT – Sheldon Lobel, PC, for Leemilt's Petroleum, Incorporated, owner.
SUBJECT – Application April 5, 2010 – Pursuant to §11-411 and §11-412 for the reinstatement of an expired Variance for the continued operation of a Gasoline Service Station (*Getty*) which expired on June 23, 1986 and an Amendment for the increase of 425 square feet to the auto laundry; Extension of Time to obtain a Certificate of Occupancy. C1-4/R7-1 zoning district.
PREMISES AFFECTED – 1413-1429 Edward L. Grant Highway, southwest corner of Plimpton Avenue and Edward L. Grant Highway, Block 2521, Lot 15, Borough of Bronx.
COMMUNITY BOARD #4BX

128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagaduyev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.
SUBJECT – Application July 13, 2010 – Variance (§72-21) to permit the proposed synagogue, religious school and Rabbi's residence contrary to floor area and lot coverage (§24-11), height, setback and sky exposure plane (§24-521), front yard (§24-34), side yards (§24-35), side setback (§24-551), and minimum distance between windows (§24-672 and §23-863). R4 zoning district.
PREMISES AFFECTED – 147-58 77th Road, 150th Street and 77th Road, Block 6688, Lot 31, Borough of Queens.
COMMUNITY BOARD #8Q

183-10-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

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**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 23, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

1493-61-BZ, 1495-61-BZ, 1497-61-BZ, 1499-61-BZ, 1501-61-BZ

APPLICANT – Bryan Cave LLP, for London Terrace Gardens, owner.

SUBJECT – Application August 12, 2010 – Extension of Term (§11-411) for transient parking in a multiple dwelling building which expired on February 27, 2002; waiver of the rules. R8A zoning district.

PREMISES AFFECTED – 415, 425, 435, 445, 455 West 23rd Street, aka 420, 430, 440, 450, 460 West 24th Street, West 23rd Street, West 24th Street, 125 feet west of Ninth Avenue, 125 feet east of Tenth Avenue. Block 721, Lot 7. Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Frank Chaney.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a transient parking garage, which expired on February 27, 2002; and

WHEREAS, a public hearing was held on this application on October 26, 2010, after due notice by publication in *The City Record*, and then to decision on November 23, 2010; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application, with the condition that the previously-imposed restrictions on the garage operation remain in effect and that the ramps be certified as ADA-compliant; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on a through lot with frontage on West 23rd Street and West 24th Street, between Ninth Avenue and Tenth Avenue, within an R8A zoning district; and

WHEREAS, the site is occupied by ten 16-story

residential buildings; and

WHEREAS, the cellar is occupied by a 185-space accessory garage; and

WHEREAS, on February 27, 1962, under the subject calendar numbers, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to permit a maximum of 149 surplus parking spaces to be used for transient parking for “pleasure-type” vehicles only, for a term of 20 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on October 27, 1992, the Board granted a ten-year extension of term, which expired on February 27, 2002, with the condition that the West 23rd Street ramp be used as an entrance only and that the West 24th Street ramp be used as an entrance and an exit; and

WHEREAS, the applicant now requests an extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, in response to concerns raised by the Community Board, the applicant submitted a letter from its architect stating that the parking garage access ramps across the sidewalks on West 23rd Street and West 24th Street are ADA-compliant; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution having been adopted on February 27, 1962, so that as amended this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from February 27, 2002, to expire on February 27, 2012; *on condition:*

THAT this term shall expire on February 27, 2012;

THAT signage shall comply with the underlying zoning district regulations;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

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(DOB App. No. 110429803)

Adopted by the Board of Standards and Appeals,
November 23, 2010.

273-03-BZII thru 285-03-BZII

APPLICANT – Sheldon Lobel, P.C. for 211 Building Corporation, owner.

SUBJECT – Application October 6, 2010 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for proposed two-story, semi-detached two-family residences which expired on December 7, 2008; waiver of the rules. R2, R3-2/C1-2 zoning district.

PREMISES AFFECTED – 211-51/49/45/43/41/54/52/50/48/46/44/42 94th Road, a landlocked lot bounded by 94th Avenue, 212th Street, Jamaica Avenue and Hollis Court Boulevard. Block 10546, Lots 92, 93, 95 thru 104, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction for a previously granted variance which permitted, on a site partially within an R2 zoning district and partially within an R3-2 zoning district, the construction of 12 two-story single-family homes, which expired on December 7, 2008; and

WHEREAS, a public hearing was held on this application on October 26, 2010, after due notice by publication in *The City Record*, and then to decision on November 23, 2010; and

WHEREAS, the subject site is located in the center of the block bounded by Jamaica Avenue, 94th Avenue, Hollis Court Boulevard, and 212th Street, partially within an R2 zoning district and partially within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since December 7, 2004 when, under the subject calendar numbers, the Board granted variances to permit the proposed construction of 12 two-story single-family homes; and

WHEREAS, substantial construction was to be completed by December 7, 2008, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to funding delays and delays in securing necessary approvals from the Fire Department and the Department of Environmental Protection, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the

Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 7, 2004, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on November 23, 2014; *on condition*:

THAT substantial construction shall be completed by November 23, 2014;

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. 401632621, 401632612, 401632603, 401632596, 401632587, 401632578, 401632569, 401632550, 401632541, 401632532, 401632523, 401632514)

Adopted by the Board of Standards and Appeals,
November 23, 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 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safien and Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for decision, hearing closed.

132-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms Inc., owner.

SUBJECT – Application July 9, 2010 – Extension of Term (§11-411) of a previously approved automotive service station (UG 16B) (*Gulf*) with accessory uses which expired on June 18, 2010. C1-2/R3-2 zoning district.

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PREMISES AFFECTED – 17-45 Francis Lewis Boulevard, aka 17-55 Francis Lewis Boulevard, east side of Francis Lewis Boulevard, between 17th Road and 18th Avenue, Block 4747, Lot 31, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for continued hearing.

156-73-BZ

APPLICANT – Gary Maranga, R.A., for The Design Alliance, owner.

SUBJECT – Application October 12, 2010 – Extension of Term for surplus transient parking in a multiple dwelling which is accessory to Albert Einstein College of Medicine which expired on June 26, 2008; Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1975 Eastchester Road, west side of Eastchester Road at the intersection of Eastchester Road and Morris Park Avenue, Block 4205, Lot 2, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Gary Maranga.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 7, 2010, at 10 A.M., for decision, hearing closed.

914-86-BZ

APPLICANT – Stuart A. Klein, Esq., for Union Temple of Brooklyn, owner; Eastern Athletic, Incorporation, lessee.

SUBJECT – Application March 31, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (*Eastern Athletic*) which expired on May 17, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on November 12, 1998; Amendment to the interior layout and the hours of operation; Waiver of the Rules. R8X zoning district.

PREMISES AFFECTED – 1-19 Eastern Parkway, north side of Eastern Parkway, between Plaza Street, east and Underhill Avenue, Block 1172, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Abigale Patterson.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December

14, 2010, at 10 A.M., for decision, hearing closed.

66-90-BZ

APPLICANT – Eric Palatnik, P.C., for A.H.G. Realty Corporation, owner.

SUBJECT – Application October 5, 2010 – Extension of Term for a UG16 Gasoline Service Station (*Mobil*) which expired on October 1, 2010. R5 zoning district.

PREMISES AFFECTED – 43-03 Astoria Boulevard, northeast corner of 43rd Street, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 10 A.M., for continued hearing.

175-05-BZ

APPLICANT – Eric Palatnik, P.C., for Athanasios Amaxus, owner.

SUBJECT – Application September 9, 2010 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to construct a four-story multiple dwelling with accessory parking which expires on January 9, 2011. M1-1 zoning district.

PREMISES AFFECTED – 18-24 Luquer Street, between Hicks Street and Columbia Street, Block 520, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 14, 2010, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

237-09-A & 238-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP for Safet Dzemovski, owner.

SUBJECT – Application July 31, 2009 – Proposed construction in the bed of a mapped street, contrary to General City Law Section 35. R3X zoning district.

PREMISES AFFECTED – 81 & 85 Archwood Avenue, aka 5219 Amboy Road, east side of Archwood Avenue, 198.25' north of Amboy Road, Block 6321, Lot 152 & 151, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated July 2, 2009, acting on Department of Buildings Application Nos. 520010666 and 520010657 reads in pertinent part:

“The Proposed project is in the bed of a mapped street, which is contrary to GCL 35 and therefore it is referred to the Board of Standards for review;” and

WHEREAS, this is an application to permit the proposed construction of two single-family homes located within the bed of a mapped street, Archwood Avenue, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on June 15, 2010, after due notice by publication in the *City Record*, with continued hearings on July 27, 2010, September 14, 2010 and October 26, 2010, and then to decision on November 23, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, during the course of the hearing process, the applicant amended its proposal and submitted a revised site plan reflecting that the proposed homes will be located completely outside the proposed lines of Archwood Avenue, which will be paved to its fully mapped width of 38'-0" in front of the proposed homes, thereby limiting the proposed encroachment to a portion of the sidewalk area; and

WHEREAS, Community Board 3, Staten Island, recommended disapproval of the initial version of the application; and

WHEREAS, Borough President James P. Molinaro recommends approval of the revised proposal, with the following conditions: (1) the portions of Archwood Avenue being opened are constructed to a width of 38'-0"; (2) the proper sidewalk treatment for a 60'-0" mapped street be

incorporated into the proposal, such that the sidewalk width is 19'-0" instead of the proposed width of 11'-0"; and (3) a Declaration of Public Use be filed against the properties; and

WHEREAS, in response to the Staten Island Borough President, the applicant states that the requested conditions cannot be accommodated for the following reasons: (1) the plans include paving Archwood Avenue to 38'-0" in width in the areas that the applicant owns all 38'-0" of the roadbed, but there are small areas that are not owned by the applicant and where a 38'-0" width therefore cannot be provided; (2) the plans include a sidewalk with a width of 11'-0", which aligns with the existing sidewalk to the north of the site, and widening the sidewalk to a width of 19'-0" would result in the further reduction in the size of the proposed homes or yards; and (3) maintenance of the proposed homes as a private area as opposed to a public street is critical to the viability of the development, as dedication of the area as a public street would result in additional requirements which would create further delays and expense to the owner; and

WHEREAS, by letter dated September 8, 2009, the Department of Environmental Protection ("DEP") states that: (1) there is an existing ten-inch diameter sanitary sewer, a 24-inch diameter storm sewer, and an eight-inch diameter city water main in Archwood Avenue between Amboy Road and Bennett Avenue; and (2) Drainage Plan No. D-11, sheet 4 of 8, calls for a future ten-inch diameter sanitary sewer and a 12-inch diameter storm sewer in Archwood Avenue between Amboy road and Bennett Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (1) the total width of the mapped street, Archwood Avenue, and the widening portion of the street between Amboy Road and Bennett Avenue; (2) the distance between the northerly lot line of tentative Lot 152 and the terminal manholes of the existing ten-inch diameter sanitary sewer and the 24-inch diameter storm sewer, the distance between the westerly lot line of tentative Lot 152 and the existing eight-inch diameter water main, and the distance from the northerly lot line of tentative Lot 152 to the water main end cap; and (3) a sewer corridor with a width of 33'-0" in the bed of the mapped street, Archwood Avenue, for the installation, maintenance, and/or reconstruction of the future ten-inch diameter sanitary sewer, the 12-inch diameter storm sewer, and the existing eight-inch diameter city water main; and

WHEREAS, in response to DEP's request, on December 1, 2009 the applicant submitted a letter from the architect regarding a meeting with DEP on September 11, 2009, where it was determined that providing a sewer corridor would not be required at the subject location because any such future extensions would pass through the private property and would not benefit any additional lots because the subject site is the last developable lot on Archwood Avenue; and

WHEREAS, additionally, on April 15, 2010 the applicant submitted a revised site plan in response to DEP's September 8, 2009; and

WHEREAS, by letter dated May 17, 2010, DEP stated that it reviewed the revised site plan and that: (1) the applicant must provide an access corridor with a width of 20'-0" along

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the eight-inch city water main in the bed of Archwood Avenue which protrudes inside Lot 152; (2) the applicant's proposal for a skewed connection for Lot 152 is not acceptable; and (3) it may be necessary to form a Homeowners Association to provide sewer connections, water connections and access to Lot 151; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that: (1) an easement will be provided in favor of DEP for the maintenance of the eight-inch city water main in the bed of Archwood Avenue; (2) the existing skewed sewer connection will be replaced with a straight extension; and (3) a Homeowners Association will be filed for the maintenance of DEP facilities, common roadway and a proposed DEP easement for access to the facilities; and

WHEREAS, by letter dated November 22, 2010, DEP states that it reviewed the proposal and has no objection; and

WHEREAS, by letter dated June 8, 2010, in response to the applicant's initial proposal, the Fire Department stated that it objects to the construction of any buildings in the bed of Archwood Avenue; and

WHEREAS, subsequently, the applicant revised its site plan to provide for the current proposal, which does not reflect any buildings in the roadbed; and

WHEREAS, by letter dated July 26, 2010, the Fire Department states that it has reviewed the revised site plan and had the following requirements as conditions for approval of the application: (1) the dwellings must be fully sprinklered in conformity with Local Law 10 of 1999 and Reference Standard 17-2B of the New York City Building Code; (2) interconnected smoke alarms must be designed and installed in the dwelling in compliance with NYC Building Code Section 907.2.10; (3) a fire apparatus access road must be constructed in accordance with the requirements of FDNY FC 503.7; (4) "No Parking" signage shall be posted at the entrance to the fire apparatus access road in accordance with the requirements of FDNY FC 503.7; and (5) the height of the dwelling must not exceed 35 feet above grade plane; and

WHEREAS, in response, the applicant submitted a revised site plan which incorporated all of the Fire Department's requirements; and

WHEREAS, by letter dated February 22, 2010, in response to the applicant's initial proposal, the Department of Transportation ("DOT") stated that it reviewed the project and would prefer an option that does not infringe on the roadbed; and

WHEREAS, subsequently, the applicant revised its site plan to provide for the current proposal, which does not include any buildings in the roadbed; and

WHEREAS, by letter dated November 5, 2010, DOT states that it reviewed the proposal and has no objections; and

WHEREAS, DOT states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated July 2, 2009, acting on Department of Buildings Application Nos. 520010666 and

520010657, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received November 22, 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 fire safety measures shall be installed and maintained in accordance with the BSA-approved plans;

THAT "No Parking" signage shall be posted at the entrance to the fire apparatus access road in accordance with the requirements of FDNY FC 503.7;

THAT this 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, November 23, 2010.

113-10-BZY

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Plaza Group 36 LLC, owner.

SUBJECT – Application June 22, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning. R5B zoning district.

PREMISES AFFECTED – 30-86 36th Street, west side of 36th Street, 152' north of 31st Avenue, Block 650, Lot 80, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR §11-331 to renew a building permit and to extend the time for the completion of the foundation of a four-story residential building; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 26,

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2010, and then to decision on November 23, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 13, Queens, recommends disapproval of this application; and

WHEREAS, City Council Member Peter F. Vallone provided written testimony in opposition to the application; and

WHEREAS, representatives of the Norwood Neighborhood Association provided written and oral testimony in opposition to this application; and

WHEREAS, a number of neighborhood residents also testified in opposition to the application; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the "Opposition;" and

WHEREAS, specifically, the Opposition raised the following concerns: (1) excavation was not completed; (2) construction took place on the site after the Enactment Date; (3) construction took place after working hours; and (4) that the applicant initially filed as a non-asbestos project; and

WHEREAS, the subject site is located on the west side of 36th Street, between 30th Avenue and 31st Avenue; and

WHEREAS, the site has a frontage of 30 feet on 36th Street, a depth of approximately 100 feet; and a total lot area of 3,005 sq. ft.; and

WHEREAS, the site is proposed to be occupied with a four-story residential building with eight dwelling units (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of approximately 6,565 sq. ft. (2.18 FAR); and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, on May 18, 2010, New Building Permit No. 420092278-01-NB (the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, on May 25, 2010 (hereinafter, the "Enactment Date"), the City Council voted to enact the Astoria Rezoning, which changed the zoning district to R5B; and

WHEREAS, the applicant represents that the Building complies with the former R6 zoning district parameters; specifically, the R6 district permitted the proposed floor area ratio ("FAR") of 2.18, the proposed eight dwelling units, no side yard, and no parking spaces; and

WHEREAS, because the site is now within an R5B zoning district, the Building would not comply with the maximum FAR of 1.35, the maximum number of dwelling units of three, the requirement of a side yard with a minimum width of 8'-0", and the minimum number of parking spaces of three; and

WHEREAS, because the Building does not comply with the subject R5B zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order ("SWO") on June 11, 2010 halting work on the

Building; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the parameters of the prior R5B zoning district; and

WHEREAS, ZR § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations"; and

WHEREAS, a threshold requirement in this application is that the Permit is valid; and

WHEREAS, ZR § 11-31(a) provides that "[a] lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution;" and

WHEREAS, the record indicates that on May 18, 2010, the Permit was issued by DOB authorizing construction of the entire Building; and

WHEREAS, by letter dated September 8, 2010, DOB states that the Permit was lawfully issued; and

WHEREAS, thus, the Board finds that the Permit was lawfully issued by DOB on May 18, 2010; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth in ZR § 11-31(a) and that a decision may be rendered provided the other findings are met; and

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of a minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, the applicant states that excavation began on May 18, 2010 and that excavation was completed and substantial progress was made on the foundation as of the

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Enactment Date; and

WHEREAS, the Opposition contends that excavation was not complete as of the Enactment Date, and submitted photographs indicating that the owner continued to remove dirt from the site after the Enactment Date; and

WHEREAS, in response, the applicant states that excavation of the site was completed prior to the Enactment Date and that any dirt remaining on the site after the rezoning was used to provide a ramp for the removal of the large excavation equipment on the site and for the completion of backfill; and

WHEREAS, the applicant submitted photographs reflecting that the site was completely excavated as of the Enactment Date; and

WHEREAS, further, an affidavit of the contractor states that the entire site was excavated as of the Enactment Date; and

WHEREAS, the Board finds that the excavation performed at the site for the foundation of the Building is complete for vesting purposes under ZR § 11-331; and

WHEREAS, as to substantial progress on the foundation, the applicant initially represented that the foundation was 99 percent complete as of the Enactment Date; and

WHEREAS, specifically, the applicant stated that as of the Enactment Date, the owner had poured 82 of the 84 total cubic yards of concrete required for the foundation, and the only portion of the foundation that remained incomplete was the pouring of concrete for three interior footings for steel columns; and

WHEREAS, the applicant notes that DOB originally determined that the foundations were 100 percent complete as of the Enactment Date, based on an inspection conducted on May 27, 2010; and

WHEREAS, however, DOB subsequently audited the plans and issued the SWO based on its determination that the foundation was not complete as of the Enactment Date because the footings for the steel columns were not complete at that time; and

WHEREAS, the applicant submitted a foundation survey reflecting that the entire foundation was complete as of the Enactment Date, except for the three footings for the steel columns; and

WHEREAS, as to the Opposition's argument that construction continued on the site after the Enactment Date, the applicant states that construction did continue on the site pursuant to valid permits between the Enactment Date and the date that the SWO was issued because DOB had initially determined that the foundation was complete; and

WHEREAS, the applicant further states that the construction which took place between the Enactment Date and the issuance of the SWO included the pouring of the three interior footings, the completion of backfill, and the delivery of construction materials, all of which the applicant notes has been omitted from its calculation of foundation work and expenditures; and

WHEREAS, the Board notes that only the work that was performed after the Permit was issued and before the Enactment Date has been considered in its analysis under

ZR § 11-331; and

WHEREAS, at hearing, the Board raised concerns about the concrete pour that took place on the Enactment Date and whether the ten cubic yards of concrete delivered on that date were poured prior to the City Council vote enacting the Astoria Rezoning; and

WHEREAS, in response, the applicant represents that the majority of the ten cubic yards of concrete were poured prior to the City Council vote, but acknowledges that it is unable to provide evidence of the exact timing of the concrete pour; and

WHEREAS, the Board notes that, even if all ten cubic yards of concrete poured on the Enactment Date are excluded from the work considered in its analysis under ZR § 11-331, the applicant has still documented that 72 out of the 84 total cubic yards required for the completion of foundation, or 86 percent, was poured prior to the Enactment Date; and

WHEREAS, in support of this statement, the applicant has submitted copies of concrete pour tickets, a foundation survey, and photographs of the foundation work as of the Enactment Date; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables, which reflect significant expenditure associated with the excavation and foundation work incurred as of the Enactment Date; and

WHEREAS, specifically, the record indicates that the applicant spent \$95,276, or approximately 99 percent, of the total estimated foundation cost of \$96,026 as of the Enactment Date; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, the Board has reviewed all of the applicant's representations and the submitted evidence and agrees that it establishes that substantial progress was made on the required foundation as of the Enactment Date; and

WHEREAS, the Opposition contends that work was performed on the site after the legal hours; and

WHEREAS, in response, the applicant submitted an after-hours variance work permit issued by DOB for the site, authorizing extended construction hours at the site; and

WHEREAS, the Opposition claims that work continued on the site beyond the extended hours authorized by DOB; and

WHEREAS, in response, the applicant submitted complaint reports from DOB reflecting that DOB inspectors visited the site on multiple occasions and did not issue any violations for work being performed beyond the approved hours; and

WHEREAS, the Opposition argues that the architect originally listed the project as a non-asbestos project and that the owner did not perform proper asbestos removal until the community notified DOB of the issue; and

WHEREAS, the Board notes that the architect's mischaracterization of the project as a non-asbestos project is not part of the Board's consideration under ZR § 11-331,

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and that, ultimately, the owner performed the necessary asbestos removal; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under ZR § 11-331 and is entitled to the requested reinstatement of the Permit, and all other related permits necessary to complete construction.

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 420092278-01-NB pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on May 23, 2011.

Adopted by the Board of Standards and Appeals, November 23, 2010.

114-10-BZY and 115-10-BZY

APPLICANT – Nikolaos Sellas, for HX Holdings LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a major development commenced under the prior R6 zoning district. R6B zoning district

PREMISES AFFECTED – 26-58 & 26-60 30th Street, north side of 30th Street, 540.78' and 565.80' west of corner formed by Astoria Boulevard and 30th Street, Block 597, Lots 223 and 124, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Nikolaos Sellas.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 10 A.M., for continued hearing.

116-10-BZY

APPLICANT – Steven Sinacori, Esq., for Akerman Senterfitt, LLP, for 3516 Development LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 35-16 Astoria Boulevard, south side of Astoria Boulevard between 35th and 36th Streets, Block 633, Lots 39 and 140, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for adjourned hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, NOVEMBER 23, 2010

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

129-07-BZ

APPLICANT – Gerald J. Caliendo, R.A., for Angel Gerasimou, owner.

SUBJECT – Application May 21, 2007 – Variance (§72-21) to allow a residential use in a manufacturing district, contrary to use regulations (§42-00). 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

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, November 23, 2010.

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130-07-BZ thru 134-07-BZ

APPLICANT – Gerald J. Caliendo, P.A., Angelo Gerasimou, owner.

SUBJECT – Application May 21, 2007 – Variance (§72-21) to allow a residential use in a manufacturing district, contrary to use regulations (§42-00). M1-4 zoning district. PREMISES AFFECTED – 1501, 1503, 1505, 1507 Cooper Avenue, corner formed by west side of Cooper Avenue and Irving Avenue, Block 3542, Lots 1, 95, 94, 93, 92, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, November 23, 2010.

92-08-BZ

CEQR #08-BSA-082M

APPLICANT – Riker Danzig, for Boquen Realty, LLC, owner.

SUBJECT – Application April 14, 2008 – Variance (§72-21) to allow for Use Group 6 below the floor level of the second story in an existing building, contrary to use, rear yard and floor area regulations (§42-14, 43-12 and 43-26). M1-5B zoning district.

PREMISES AFFECTED –13 Crosby Street, east side of Crosby Street between Grand and Howard Street, Block 233, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Juan D. Reyes.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 8, 2010, acting on Department of Buildings Application No. 110018926, reads in pertinent part:

“Proposed commercial retail use (UG 6) below the floor level of the second story is contrary to ZR 42-14(D)(2)(b); and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot in an M1-5B zoning district within the SoHo-Cast Iron Historic District Extension, the conversion of the first floor and cellar level of an existing six-story building to commercial retail use (Use Group 6), contrary to ZR § 42-14(D)(2)(b); and

WHEREAS, a public hearing was held on this

application on June 8, 2010, after due notice by publication in the *City Record*, with continued hearings on July 27, 2010, September 14, 2010, and October 19, 2010, and then to decision on November 23, 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 2, Manhattan, recommends approval of this application, with the condition no eating and drinking establishment be permitted at the site; and

WHEREAS, City Council Member Margaret Chin recommends approval of this application; and

WHEREAS, the subject premises is located on the west side of Crosby Street between Howard Street and Grand Street, within an M1-5B zoning district; and

WHEREAS, the site has 75 feet of frontage on Crosby Street, a depth of 100 feet, and a total lot area of 7,500 sq. ft.; and

WHEREAS, the site is currently occupied by a six-story building, with two conforming showrooms on the first floor and artists’ studios and offices on the upper floors; and

WHEREAS, the applicant proposes to convert the first floor and cellar level to Use Group 6 use; and

WHEREAS, in addition to the requested conversion to Use Group 6 use below the second floor, the applicant initially proposed to construct an expansion of the building into the rear yard at the cellar and first floor, resulting in an increase in the floor area ratio (“FAR”) from 5.1 to 5.25 (the maximum permitted FAR is 5.0); and

WHEREAS, the Board did not find the need for an enlargement to be substantiated and, at hearing, directed the applicant to modify its proposal; accordingly, the applicant revised its plans to eliminate an increase in FAR and expansion at the cellar level or first floor; and

WHEREAS, because Use Group 6 use is not permitted below the second floor in the subject M1-5B zoning district, the applicant seeks a use variance to permit the proposed conversion of the first floor and cellar level; 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 building has structural problems that primarily are the result of the former hydroponic bean sprout farm, a conforming use that existed in the cellar, as well as the installation of an oversized rooftop water tank related to the operation of the bean sprout farm; and (2) mold and mildew infestation in the lower levels of the building, again as a result of the bean sprout farm; and

WHEREAS, the applicant states that the cellar of the building was used as a hydroponic bean sprout farm for approximately 21 years, which was a legal use as per the certificate of occupancy; and

WHEREAS, the applicant represents that the packaging and distribution operations for the bean sprout farm required the installation of heavy refrigeration equipment and loading machinery in the cellar which caused significant vibration and put excessive stress on the floor, severely damaging the

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concrete slab which eventually had to be replaced by the owner; and

WHEREAS, the applicant states that the beans were watered constantly by means of a sprinkler system fed by a water tank on the roof of the Building, and that the runoff from the sprinklers drained through a system of trenches dug into the sand below the Building which led to water collection tanks; and

WHEREAS, the applicant represents that during the operation of the bean sprout farm, water leaked through the drainage trenches and the cracks in the floor caused by the equipment, requiring the owner to excavate the entire cellar floor and replace it with a new floor 18 inches below the original surface to ensure that the leakage had not undermined the footings of the Building; and

WHEREAS, as to the installation of the water tank, the applicant states that the bean sprout farm relied on an oversized water tank on the roof of the Building in order to feed its sprinkler system; and

WHEREAS, the applicant submitted a report from its engineer stating that the excessive weight of the water tank damaged the load bearing exterior masonry walls of the Building, and confirming that the damage to the southeast corner of the Building is the result of the added water tower load; and

WHEREAS, the engineer's report further states that water tower caused further damage to the roofing joists in the vicinity of the water tank, and that the roofing deck and waterproofing materials need to be replaced and re-flashed once removal of the water tank is complete; and

WHEREAS, the applicant states that the stone lintels beneath the water tower are cracked and that many window frames on the south and east elevations have been bent due to the excessive weight of the water tower; and

WHEREAS, as to the mold and mildew damage, the applicant represents that the humidity levels resulting from the operation of the bean sprout farm created extensive mold and mildew infestation throughout the Building; and

WHEREAS, specifically, the applicant states that the mold and mildew infestation necessitated the removal and replacement of the sheetrock walls and ceiling tiles in the cellar, and caused dry rot in the wooden structural elements comprising the flooring for the ground level, which also had to be completely removed and replaced with steel and concrete; and

WHEREAS, the applicant further states that the mold and mildew permeated the vertical ducts and elevator shafts, causing health concerns throughout the Building and requiring extensive cleaning of the ducts, shafts and elevators; and

WHEREAS, the engineer's report submitted by the applicant estimates that the total cost of the completed and remaining remediation measures related to the operation of the bean sprout farm is \$1,112,600; and

WHEREAS, in addition to the damage caused by the bean sprout farm, the applicant initially claimed the following as bases of unique hardship on the site: (1) the floor plate is interrupted by columns and divided into narrow and irregular spaces; (2) a low floor-to-ceiling height; (3) an antiquated and

undersized freight elevator which is partially blocked by stairs; (4) the lack of a functional loading dock; (5) an antiquated electrical system; (6) antiquated floors unsuitable for heavy loads; (7) the lack of modern fire protection; and (8) the need to renovate the Building's façade per LPC standards; and

WHEREAS, during the course of the hearing process the Board questioned these additional alleged bases of unique hardship, in that the Building has large floor plates which can compensate for many of the alleged hardships and because certain of them appeared to represent mere maintenance issues common to most buildings of comparable age and condition in the neighborhood; and

WHEREAS, additionally, the Board noted that the fact that the Building is fully tenanted indicates that these alleged bases of hardship have not prevented conforming uses from operating below the second floor; and

WHEREAS, further, the Board is not persuaded that any or all of the above conditions are unique to the site; and

WHEREAS, in response, the applicant revised its application to remove the additional conditions claimed as unique hardships, focused on the remediation costs related to the bean sprout farm, and removed the requested FAR waiver by revising the plans to remove the extension of the Building at the cellar level and first floor; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) the existing building; (2) an as-of-right commercial building with conforming commercial/showroom space at the first floor and office uses on the upper floors; and (3) the currently proposed building; and

WHEREAS, the study concluded that the existing building and conforming commercial scenarios would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, in order to demonstrate the need for the requested variance, the applicant also prepared a financial analysis of an alternative as-of-right commercial development unencumbered by the above-mentioned hardship costs; and

WHEREAS, this analysis showed that without the hardship costs, this alternative as-of-right commercial development would in fact be a viable development scenario; however, when the costs of repairs and remediation related to the prior use as a bean sprout farm were included, such a scenario was not viable; 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 applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant submitted a radius diagram

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reflecting that ground floor commercial use (Use Group 6) is a common condition in the surrounding neighborhood; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission approving the proposal, dated October 25, 2010; and

WHEREAS, the applicant represents that the Certificate of No Effect issued by LPC indicates that the proposed change of use below the second floor will not impact the surrounding neighborhood; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant agreed not to have an eating and drinking establishment on the site; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, the applicant initially proposed to extend the cellar and ground floor of the building, thereby increasing the FAR from 5.1 to 5.25; and

WHEREAS, at the request of the Board, the applicant removed the enlargement from its proposal; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 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. 08-BSA-082M dated October 12, 2010; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a lot in an M1-5B zoning district within

the SoHo-Cast Iron Historic District Extension, the conversion of the first floor and cellar level of an existing six-story building to commercial retail use (Use Group 6) 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 7, 2010"- five (5) sheets; and on further condition:

THAT the building shall not be occupied by a Use Group 6 eating and drinking establishment;

THAT the above condition shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 23, 2010.

251-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bethany House of Worship Incorporated, owner.

SUBJECT – Application August 28, 2009 – Variance (§72-21) to permit the development of a two-story community facility (*Bethany Church*). The proposal is contrary to §§ 24-34 (front yard) and 25-31 (parking). R3-2 zoning district.

PREMISES AFFECTED – 130-34 Hawtree Creek Road, West side of Hawtree Creek Road, 249.93 feet north of 133rd Avenue. Block 11727, Lot 58, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 22, 2010, acting on Department of Buildings Application No. 401945393 reads, in pertinent part:

“Proposed house of worship (UG 4) without the required front yard is contrary to Section 24-34 ZR, and without the required parking contrary to Section 25-31 ZR and must be referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R3-2 zoning

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district, a two-story building to be occupied by a church (Use Group 4), which does not comply with front yard or accessory parking requirements for community facilities, contrary to ZR §§ 24-34 and 25-31; and

WHEREAS, a public hearing was held on this application on August 3, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 26, 2010, and then to decision on November 23, 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 10, Queens, recommends disapproval of this application; and

WHEREAS, an adjacent homeowner provided testimony, citing a concern that construction at the site obstructs access to his garage; and

WHEREAS, this application is being brought on behalf of Bethany House of Worship, Inc., a non-profit religious entity (the "Church"); and

WHEREAS, the subject site is located on the west side of Hawtree Creek Road, north of 133rd Avenue with a lot area of 1,948 sq. ft.; and

WHEREAS, the proposed building provides for a two-story church with the following parameters: a first floor with a floor area of 885 sq. ft.; a second floor balcony with a floor area of 325 sq. ft.; a total floor area of 1,240.5 sq. ft. (0.64 FAR); a front yard with a depth of 6'-1" (a front yard with a minimum depth of 15'-0" is required) and without any onsite accessory parking spaces (a minimum of 18 parking spaces are required); and

WHEREAS, the proposal provides for the following uses: (1) dining/meeting space, a kitchen, and an office at the cellar level; (2) a sanctuary on the first floor; and (3) additional seating on a second floor balcony; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: the lot has a shallow depth and an irregular shape; and

WHEREAS, the applicant states that the site is triangular in shape, with a width of 81.88 feet and a range of depths; and

WHEREAS, the applicant represents that, due to the site's configuration, an as-of-right building would be inefficient with a floor plate of only 542 sq. ft., tapering to an interior dimension of 5'-4" at the southern end of the site; and

WHEREAS, as to the uniqueness of the site's configuration, the Board notes that the applicant's radius diagram reflects that there are only two other triangular lots within a 400-ft. radius of the site, both of which are larger than the subject site; and

WHEREAS, in addition to the constraints of the site, the applicant states that the primary programmatic need of the Church, to accommodate the anticipated congregation of approximately 82 people, necessitate the requested variance; and

WHEREAS, the applicant notes that the provision of a

complying front yard or 18 parking spaces would diminish the usable portion of the site and would not be able to support the programmatic needs of the Church; and

WHEREAS, the Board acknowledges that the Church, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the unique site conditions and programmatic needs of the Church create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Church is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant further states that the development of the proposed Church is entirely as-of-right, with the exception of the non-compliant front yard and parking, waivers that are necessary to permit a building that can accommodate the congregation; and

WHEREAS, the applicant states that there is not a context for complying front yards adjacent to the site along Hawtree Creek Road; and

WHEREAS, specifically, the applicant notes that the adjacent site to the north does not have a front yard and also encroaches into the mapped widening line of Hawtree Creek Road and that the sites to the south are through lots with frontage on 120th Street; and

WHEREAS, the applicant notes that the proposed front yard with a depth of 6'-1" is outside of the mapped widening line of Hawtree Creek Road; and

WHEREAS, as to traffic impacts and parking, the applicant states that the Church does not propose to attract new congregants to the area, but is designed to accommodate the existing congregation's needs and the desire of the Church to provide sufficient facilities to fulfill its programmatic needs; and

WHEREAS, the applicant provided a parking study which reflects the available on-street parking within the vicinity of the subject site during times the Church holds services; and

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WHEREAS, the study reflects that there are between 80 and 106 parking spaces available on a weekday evenings and between 71 and 117 available spaces on weekend mornings/early afternoons; and

WHEREAS, the applicant projects that at most ten families would drive to services and, thus, there is sufficient on-street parking at all times to accommodate the Church's parking demand; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Church could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds the requested waivers to be the minimum necessary to afford the Church the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, 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 6 NYCRR Part 617.2 and 617.5; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R3-2 zoning district, a two-story building to be occupied by a church (Use Group 4), which does not comply with front yard or accessory parking requirements for community facilities, contrary to ZR §§ 24-34 and 25-31, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 8, 2010" – Five (5) sheets; and *on further condition*:

THAT the building parameters shall be: a floor area of 1,240 sq. ft. (0.64 FAR) and a front yard with a minimum depth of 6'-1";

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 23, 2010.

89-10-BZ

CEQR #10-BSA-072M

APPLICANT – Francis R. Angelino, Esq., for National Sculpture Society, owner.

SUBJECT – Application May 13, 2010 – Variance (§72-21) to allow for a commercial use below the floor level of the second story, contrary to §§42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 53 Mercer Street, west side between Grand and Broome Streets, Block 474, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Francis R. Angelino and Gwen Pier.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 28, 2010, acting on Department of Buildings Application No. 110296028, reads in pertinent part:

“Proposed commercial use group 6 is not permitted as of right in M1-5B zoning district, per ZR 42-10.

Proposed use is also contrary to ZR 42-14(d)(2)(b) which specifies use regulations for commercial and manufacturing uses below the floor level of the second story in M1-5B.”; and

WHEREAS, this is an application under ZR § 72-21, to permit in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the conversion of the first floor and cellar level of an existing three-story building to a commercial retail use (UG 6), contrary to ZR §§ 42-10 and 42-14(d)(2)(b); and

WHEREAS, a public hearing was held on this application on September 21, 2010, after due notice by publication in the *City Record*, with a continued hearing on October 26, 2010, and then to decision on November 23, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner

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Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, this application was brought on behalf of the National Sculpture Society (“NSS”), a not for profit entity; and

WHEREAS, the subject site is located on the west side of Mercer Street, between Broome Street and Grand Street; and

WHEREAS, the site has 25 feet of frontage on Mercer Street, a depth of 100 feet, and a lot area of 2,500 sq. ft.; and

WHEREAS, the site is currently occupied with a three-story mixed-use building with showroom use at the first floor and cellar, office use on the second floor, and joint living and work quarters for artists (“JLWQA”) on the third floor; and

WHEREAS, the applicant proposes to convert the first floor and cellar space into Use Group 6 retail use; and

WHEREAS, the uses on the upper floors will not change and are not included in the proposal; and

WHEREAS, because Use Group 6 retail is not permitted below the second floor in the subject M1-5B zoning district, the applicant seeks a use variance to permit the proposed conversion of the first floor and cellar level; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the lot is small, narrow and underbuilt; (2) the existing building is obsolete for manufacturing use; and (3) the history of use of the site indicates that the ground floor was never intended or manufacturing use; and

WHEREAS, as to the small size and narrowness, the applicant represents that the site is a uniquely small lot with only 25 feet of frontage and a total lot area of 2,500 sq. ft.; and

WHEREAS, the applicant states that the narrow width and size of the lot results in small, narrow floor plates that are inefficient for conforming uses, such as warehouses and wholesale showrooms; and

WHEREAS, specifically, the applicant states that the overall size of the ground floor is only approximately 2,407 sq. ft., with approximately 1,800 sq. ft. of useable space when stairs and bathrooms are deducted, making it less desirable for conforming uses; and

WHEREAS, further, the existing building is undersized at 6,853 sq. ft. (2.75 FAR), which is significantly less than the 12,500 sq. ft. (5.0 FAR) permitted in the underlying zoning district; and

WHEREAS, the applicant represents that while the building may enlarge as-of-right, an enlargement above the existing building would be structurally infeasible; and

WHEREAS, the applicant represents that, even if an enlargement was structurally feasible, it would be unlikely that LPC would approve an enlargement due to the site’s location in the SoHo-Cast Iron Historic District; and

WHEREAS, the applicant concludes that the inability of the existing building to use the ground floor space for conforming use, in conjunction with the limited amount of income-generating space available on the underbuilt lot, creates a hardship on the subject site; and

WHEREAS, as to the uniqueness of these conditions, the applicant submitted a radius diagram reflecting that within 800 feet of the subject site there are only 18 other lots, or 4 percent of all lots, with similar physical constraints as the subject lot, including a width of 25 feet or less or a floor area ratio of 2.75 or less; and

WHEREAS, the radius diagram submitted by the applicant further reflects that of the other 18 similarly situated lots, five of the lots are vacant and the remainder have ground floor retail uses; thus, the subject lot is the only one of 19 zoning lots with similar characteristics within an 800-ft. radius that does not have existing ground floor retail use; and

WHEREAS, the applicant represents that the other 356 buildings in the 800-ft. radius area benefit from their larger street frontages and multiple, larger floor sizes which give the them greater potential income than can be generated by the subject building’s three small-sized floors; and

WHEREAS, as to the obsolescence of the building for a conforming use, the applicant cites to the following limitations: (1) there is no loading berth or space to install one; (2) there is no elevator; (3) access to the building is limited by small door widths; (4) the ground floor has low floor-to-ceiling heights; and (5) the ground floor load is weak; and

WHEREAS, the applicant represents that the lack of a loading berth and elevator and the small door widths would make it difficult to receive and transfer bulk shipments and to provide adequate access to the building for a conforming use; and

WHEREAS, as to the floor-to-ceiling height, the applicant states that the floor-to-ceiling height for the majority of the first floor is 12 feet with a maximum of 13 feet at the rear of the floor, making it unsuitable as a wholesale showroom, where the typical minimum ceiling height is 14 feet, or for use for warehousing goods, which requires a minimum ceiling height of 25 feet in order to facilitate the stacking of palettes; and

WHEREAS, the applicant further states that the small door widths and ground floor load of only 100 pounds per sq. ft. also restrict NSS from reverting the ground floor to its former use as a sculpture studio, as these inefficiencies would limit any sculptor to making only smaller busts and figures on site, and the limited amount of natural light that enters the ground floor makes it even less desirable for such use; and

WHEREAS, the Board notes that several aspects of the claimed obsolescence of the building are not unique to this building or site, however, in conjunction with the above-noted site conditions the Board acknowledges that these factors contribute to the practical difficulties in using the site in conformance with the applicable zoning regulations; and

WHEREAS, as to the history of use of the site, the applicant submitted a site history from its historic preservation consultants which reflects that the subject building was constructed in 1857 and the ground floor was occupied by retail use for at least its first 70 years of existence; and

WHEREAS, the site history submitted by the applicant further reflects that in over 150 years of existence the site was never used for any manufacturing use; and

WHEREAS, the applicant represents that the history of

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use of the site supports its position that the site is unsuitable for conforming manufacturing use, as the site has never been occupied by such a use, and that the site was constructed for ground floor retail use, consistent with the current proposal; and

WHEREAS, the applicant notes that although the obsolescence affects the entire building, the second and third floors will be maintained as office use and JLVQA, respectively, and the applicant is only seeking relief for the cellar level and ground floor; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board notes that even though NSS is a not for profit organization, the finding under ZR § 72-21(b) must be made in the subject case because NSS will be receiving commercial rents as a result of the proposed variance; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios, both of which include the existing second floor office use and third floor JLVQA use: (1) a conforming showroom on the ground floor; and (2) the proposed ground floor and cellar retail use; and

WHEREAS, the study concluded that the conforming scenario would not result in a reasonable return, but that the proposal would realize a reasonable 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 notes that many of the buildings in the immediate vicinity contain ground floor retail uses; and

WHEREAS, specifically, the radius diagram submitted by the applicant reflects that all other similarly sized buildings have ground floor retail uses, that a majority of the ground floor uses are occupied by retail spaces within a 400-ft. radius of the site, and that on the subject block all of the other ground floor spaces on the block are either occupied by or approved for Use Group 6 retail use on the ground floor; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC"), approving the proposal on May 25, 2009; and

WHEREAS, the Certificate of Appropriateness contemplates the reestablishment of the building's historic storefront, which LPC has determined is in the context of the subject block and historic district, and is consistent in design with neighboring buildings; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, the applicant notes that there is no proposed increase in the bulk of the building; rather, the bulk of the building will be reduced through the removal of the rooftop bulkhead; 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 a Type I action pursuant to 6 NYCRR, 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. 10BSA072M, dated January 21, 2010; 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, in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the conversion of the first floor and cellar of an existing three-story building to a commercial retail use (Use Group 6), contrary to ZR §§ 42-10 and 42-14(d)(2)(b); *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 4, 2010"—five (5) sheets; and *on further*

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condition:

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 23, 2010.

148-10-BZ

APPLICANT – Eric Palatnik, P.C., for Giselle E. Salamon, owner.

SUBJECT – Application August 11, 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), side yards (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED –1559 East 29th Street, Between Avenue P and Kings Highway. Block 7690, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 23, 2010, acting on Department of Buildings Application No. 320155880, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to ZR 23-141(b) in that the proposed Open Space is less than the required 65%.
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage exceeds the maximum required 35%.
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0".
5. Plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0"." and

WHEREAS, this is an application under ZR §§ 73-622

and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, rear yard, and side yard, contrary to ZR §§ 23-141, 23-47, and 23-461; and

WHEREAS, a public hearing was held on this application on October 26, 2010, after due notice by publication in *The City Record*, and then to decision on November 23, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 29th Street, between Avenue P and Kings Highway, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,800 sq. ft., and is occupied by a single-family home with a floor area of 1,748 sq. ft. (0.62 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,748 sq. ft. (0.62 FAR) to 2,414 sq. ft. (0.86 FAR); the maximum permitted floor area is 1,400 sq. ft. (0.5 FAR); and

WHEREAS, the proposed enlargement will provide an open space of 1,490 sq. ft. and a lot coverage of 1,310 sq. ft. (1,820 sq. ft. is the minimum required open space and 980 sq. ft. is the maximum permitted lot coverage); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying front yard with a depth of 8'-4" (a front yard with a minimum depth of 15'-0" is required) and maintain the noncomplying side yard with a width of 3'-0" (5'-0" is the minimum width required); and

WHEREAS, at hearing, the Board inquired about the location of a fence in relation to the lot line; and

WHEREAS, in response, the applicant stated that the fence will be relocated to an appropriate location when construction of the enlargement begins; 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

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the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, rear yard, and side yard, contrary to ZR §§ 23-141, 23-47, and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 23, 2010"-(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 2,414 sq. ft. (0.86 FAR); a front yard with a depth of 8'-4"; a side yard with a minimum width of 3'-0" along the northern lot line; a side yard with a minimum width of 10'-6" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 23, 2010.

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 (§ZR 72-21) to allow for a four story mixed use building contrary to use regulations. (ZR §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 – None.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for deferred decision.

304-09-BZ

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – Variance (§72-21) to allow the erection of a ten-story, mixed-use community facility (*Women In Need*) and commercial building, contrary to floor area (§42-00, 43-12 and 43-122), height and sky exposure plane (§43-43), and parking (§44-21). M1-4 zoning district.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Abigeil Patterson.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for adjourned hearing.

305-09-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, for South Queens Boys & Girls Club, Inc., owner.

SUBJECT – Application November 5, 2009 – Variance (§72-21) to permit the enlargement of an existing community facility building (*South Queens Boys & Girls Club*) contrary to floor area (§33-121) and height (§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

APPEARANCES –

For Applicant: Ron Mandell.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 7, 2010, at 1:30 P.M., for decision, hearing closed.

43-10-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Cammastro Corp./Maria Pilato, owner; First Club One LLC/Spiro Tsadilas, lessee.

SUBJECT – Application March 30, 2010 – Special Permit (§73-244) to allow an eating and drinking establishment without restrictions and no limitation on entertainment and dancing. C2-2/R5 zoning district.

PREMISES AFFECTED – 23-70 Steinway Street, west side of Steinway Street, 17.65' north of Astoria Boulevard North, Block 803, Lot 75, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 14, 2010 at 1:30 P.M., for adjourned hearing.

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47-10-BZ

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Corporation, owner; Airgas-East, Incorporated, lessee.

SUBJECT – Application April 8, 2010 – Variance (§72-21) to allow a manufacturing use in a residential district, contrary to ZR 22-00. M1-1/R3-2 zoning district.

PREMISES AFFECTED – 895 Zerega Avenue, aka 2352 Story Avenue, Block 3698, Lot 36, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for adjourned hearing.

95-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Kohanbash, owner.

SUBJECT – Application May 27, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2216 Quentin Road, south side of Quentin Road between East 22nd Street and East 23rd Street, Block 6805, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for adjourned hearing.

122-10-BZ

APPLICANT – Bryan Cave LLP., for Congregation Rodeph Sholom, owner.

SUBJECT – Application July 1, 2010 – Variance (§72-21) to permit the rooftop addition for a community facility use (*Rodeph Sholom School*), contrary to maximum height regulations (§23-692). R8B zoning district.

PREMISES AFFECTED – 163 West 78th Street, Between Amsterdam and Columbus Avenues, 134 feet east of Amsterdam Avenue. Block 1150, Lot 6. Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Judith M. Gallent, Paul Druzinsky, Jeff Murphy and Stephanie Rein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for decision, hearing closed.

149-10-BZ

APPLICANT – Eric Palatnik, P.C., for Chaya Singer, owner.

SUBJECT – Application August 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and less than the minimum rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1415 East 29th Street, between Avenue N and Kings Highway, Block 7683, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for continued hearing.

150-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Lyle Broochian, owner.

SUBJECT – Application August 16, 2010 – Special Permit (§73-622) for the legalization of the enlargement of an existing single family home, contrary to floor area (23-141); side yard (§23-461) and rear yard regulations (§23-47). R2 zoning district.

PREMISES AFFECTED – 1124 East 26th Street, west side of East 26th Street, between Avenue K and Avenue L, Block 7625, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for continued hearing.

190-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Yeshiva Har Torah, owner.

SUBJECT – Application October 12, 2010 – Variance (§72-21) to permit the addition of a third floor to an existing two-story school building (*Yeshiva Har Torah*), contrary to rear yard (§24-36) and setback (§24-551) regulations. R3-2 zoning district.

PREMISES AFFECTED – 250-10 Grand Central Parkway, south side of Grand Parkway service road, between Little Neck Parkway and Commonwealth Boulevard, Block 8401, Lot 7501, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Richard Lobel and Angelo Francis Corve.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on September 21, 2010, under Calendar No. 325-09-BZ and printed in Volume 95, Bulletin No. 39, is hereby corrected to read as follows:

325-09-BZ

CEQR #10-BSA-033K

APPLICANT – Sheldon Lobel, P.C., for Congregation Yetev Lev 11th Avenue, owner.

SUBJECT – Application December 7, 2009 – Variance (§72-21) to permit the proposed four-story and mezzanine synagogue (*Congregation Yetev Lev*), contrary to lot coverage (§24-11), rear yard (§24-36) and initial setback of front wall (§24-522). R6 zoning district.

PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 1, 2009, acting on Department of Buildings Application No. 302065011, reads in pertinent part:

“Proposed maximum lot coverage, community facility, is contrary to ZR 24-11.

Proposed rear yards, community facility, is contrary to ZR 24-36.

Proposed initial setback of front wall, community facility, is contrary to ZR 24-522;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R6 zoning district, the construction of a four-story and mezzanine community facility building to be occupied by a synagogue (Use Group 4), which does not comply with lot coverage, rear yard, and setback requirements for community facilities, contrary to ZR §§ 24-11, 24-36 and 24-522; and

WHEREAS, a public hearing was held on this application on March 9, 2010, after due notice by publication in *The City Record*, with continued hearings on April 13, 2010, June 15, 2010 and August 3, 2010, and then to decision on September 21, 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 Otley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application, with the condition that the applicant meet with the neighbor to the rear to agree on the back windows and other privacy issues; and

WHEREAS, City Council Member Simcha Felder provided written testimony in support of this application; and

WHEREAS, City Council Member David G. Greenfield provided written testimony in support of this application; and

WHEREAS, certain members of the community provided written and oral testimony in support of this application; and

WHEREAS, an adjacent neighbor, represented by counsel, provided written and oral testimony in opposition to this application (hereinafter, the “Opposition”), with the following primary concerns: (1) the applicant has not demonstrated how the requested relief serves the congregation’s programmatic needs; (2) the applicant did not fully respond to the concerns raised by the Board at hearing; (3) the alleged growth in the congregation from 2007 to the present is not credible; and (4) the work being performed on the site does not conform to the previously approved plans; and

WHEREAS, the Opposition also objected to the Board’s decision to reopen the case on September 21, 2010 solely to accept revised drawings from the applicant prior to the closure and decision of the case on that date, and argues that the Board must postpone the decision date to afford the Opposition time to review the drawings and make an additional submission in response; and

WHEREAS, the Board notes that the revised drawings accepted into the record on September 21, 2010 represent the exact same proposal submitted to the Board for consideration on July 7, 2010, which was provided to the Opposition at that time; and

WHEREAS, further, the Board notes that the only changes to the drawings include an architect’s signature and seal on all drawings, and technical corrections, neither of which substantially changes the subject proposal; and

WHEREAS, accordingly, the Board is not persuaded by the Opposition’s contention that the Board must leave the case open to afford the Opposition additional time to respond to the applicant’s revised drawings; and

WHEREAS, this application is brought on behalf of Congregation Yetev Lev, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the south side of 52nd Street between 13th Avenue and 14th Avenue, within an R6 zoning district; and

WHEREAS, the site has a frontage of 75’-0” on 52nd Street, a depth of 100’-2”, and a total lot area of 7,512.5 sq. ft.; and

WHEREAS, the subject site is currently under construction based on plans for an as-of-right three-story synagogue approved in 2007, pursuant to New Building Permit No. 30231537-01-NB; and

WHEREAS, the applicant proposes to construct a four-story synagogue building with a mezzanine level above the second floor; and

WHEREAS the proposed synagogue will have the following parameters: a floor area of 27,414 sq. ft. (36,060 sq. ft. is the maximum permitted); an FAR of 3.65 (4.8 is the maximum permitted); a lot coverage of 93.5 percent above the first floor, at the second floor and second floor mezzanine; (65

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percent is the maximum permitted); a rear yard of 6'-0" above the first floor, at the second floor and second floor mezzanine (a rear yard of 30'-0" is required); and an initial front setback distance of 4'-0" (a minimum initial setback of 20'-0" is required at a height of 60'-0"); and

WHEREAS, the applicant initially proposed to construct a synagogue with a floor area of 28,597 sq. ft. (3.8 FAR), 100 percent lot coverage at the second floor and second floor mezzanine, and no rear yard at the second floor and second floor mezzanine; and

WHEREAS, in response to concerns raised by the Board and the Opposition, the applicant submitted revised plans reflecting the current proposal, with a floor area of 27,414 sq. ft. (3.65 FAR), a lot coverage of 93.5 percent at the second floor and second floor mezzanine and 65 percent at the third and fourth floor, a rear yard with a depth of six feet at the second floor and second floor mezzanine and 35'-0" at the third and fourth floor, and a 6'-0" reduction in the height of a portion of the building that encroaches into the rear yard; and

WHEREAS, the proposal provides for the following uses: (1) two mikvahs and a study hall at the cellar level; (2) accessory prayer rooms and space for the congregation on the first floor; (3) the main sanctuary on the second floor; (4) an observatory/prayer area for female members of the congregation on the second floor mezzanine; (5) accessory study rooms on the third floor; and (6) a library, Rabbi's office and administrative offices on the fourth floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the current congregation and the future growth in the congregation's membership; (2) to locate the accessory prayer rooms at the first floor level; (3) to provide separate areas of prayer for men and women; and (4) to accommodate the Synagogue's religious services and community outreach programs; and

WHEREAS, the applicant further states that the congregation currently worships in a rented space in a building located one block west of the subject site, at 1245 52nd Street, which is inadequate to serve the current congregation and meet the programmatic needs of the Synagogue; and

WHEREAS, the applicant represents that the requested waivers are necessary to accommodate the size of the congregation, which consists of over 1,000 dues paying families and is expected to grow steadily over the next few years; and

WHEREAS, the applicant further represents that the Synagogue anticipates approximately 400-450 daily visitors, with approximately 500 male members and 200 female members attending each Sabbath during the service and on Jewish holidays and celebrations; and

WHEREAS, the Opposition argues that the number of congregants alleged by the Synagogue is not credible, given that the as-of-right three-story synagogue proposed in 2007 had a smaller capacity, and the applicant's initial submissions listed a smaller number of congregants; and

WHEREAS, the Board notes that the applicant has submitted a list of congregants which supports the applicant's

representation regarding the number of members of the Synagogue; and

WHEREAS, the applicant states that the Synagogue will be open seven days a week from 4:30 a.m. to 12:00 a.m., hosting routine daily religious services and study programs divided into morning, mid-day, and evening services; and

WHEREAS, the applicant states that the Synagogue also provides important programs to the community, serving children, teenagers and adults in religious services and educational classes daily; and

WHEREAS, the applicant represents that the Synagogue has an additional programmatic need to locate its accessory prayer rooms at the first floor level; and

WHEREAS, the applicant states that the Synagogue requires accessory prayer rooms to accommodate daily prayers; the prayer rooms are designed to accommodate 35 to 75 people, and upwards of 100 people on the Sabbath and Jewish holidays; and

WHEREAS, the applicant states that new services in the prayer rooms begin every 15 to 20 minutes, therefore there is a programmatic need to place the prayer rooms in an efficient location for circulation purposes, as there will be a large number of congregants entering and exiting the prayer rooms at any given time; and

WHEREAS, the applicant represents that the prayer rooms must be located on the first floor because many congregants use the mikvahs in the cellar on a daily basis prior to attending the prayer sessions, and locating the prayer rooms above the first floor would create difficulties in circulation as congregants would enter the synagogue at the first floor, descend the stairs to the cellar to utilize the mikvahs, then climb up multiple flights of stairs to the prayer rooms, before ultimately exiting back on the first floor; and

WHEREAS, the applicant notes that the main sanctuary at the second floor can hold 489 occupants, which is barely sufficient to satisfy the Synagogue's programmatic needs; therefore, it is unable to place both the main sanctuary and the smaller prayer rooms on the same floor while accommodating the size of the congregation; and

WHEREAS, the applicant states that, since the prayer rooms must be located at the ground floor level, the main sanctuary must be located at the second floor; and

WHEREAS, in support of its programmatic need regarding the location of the prayer rooms and sanctuary, the applicant submitted a number of examples of other synagogues where the prayer rooms are located at or below ground level and the sanctuary space is above; and

WHEREAS, the applicant notes that the requested lot coverage and rear yard waivers are necessary in order to provide sufficient space at the second floor to accommodate the male congregants in the main sanctuary while also providing the DOB-required safe area at that level; and

WHEREAS, the applicant states that Jewish Law requires the Synagogue to have separate, private prayer spaces for the men and women of the congregation; and

WHEREAS, therefore, the Synagogue has an additional programmatic need to place the women's observatory/prayer area at the mezzanine level above the main sanctuary on the

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second floor; and

WHEREAS, the applicant represents that the requested lot coverage and rear yard waivers are required at the mezzanine level in order to both accommodate for the separate women's prayer area and the DOB-required safe area at that level, as well as to provide a large opening with a double height space above the main sanctuary that is befitting of a large sanctuary; and

WHEREAS, in support of the need for a double height space in the main sanctuary, the applicant submitted photographs of other sanctuaries with double height spaces, and provided a letter from a Rabbi regarding the religious need for the double height space in the main sanctuary; and

WHEREAS, the applicant states that the Synagogue has an additional programmatic need of accommodating its religious and educational services, as well as its community outreach programs; and

WHEREAS, the applicant represents that the requested front setback waiver is necessary in order to create a more efficient building by providing a floor plate large enough to accommodate the Kollel program and other offices used for religious and educational services at the fourth floor, rather than constructing an inefficient fifth floor and providing an additional setback to accommodate these programs; and

WHEREAS, the applicant represents that the proposed building can accommodate the religious services and programs of the Synagogue and will better accommodate the size of its congregation; and

WHEREAS, the Opposition contends that the applicant has not demonstrated a nexus between the programmatic needs of the Synagogue and the requested relief, and that the applicant has not provided the Board with all of the information requested during the hearing process; and

WHEREAS, based upon the above, the Board finds that the applicant has submitted sufficient evidence to demonstrate how the requested relief serves the Synagogue's programmatic needs, and further finds that the applicant has satisfied the concerns raised by the Board during the hearing process; and

WHEREAS, in response to concerns raised by the Board and the Opposition at hearing, the applicant submitted plans for an as-of-right scenario, as well as a lesser variance scenario in which the women's prayer room on the mezzanine level is relocated from the rear of the building to the front; the plans reflected that neither the as-of-right nor lesser variance scenarios could accommodate the programmatic needs of the Synagogue; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an

application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed use and floor area are permitted in the subject zoning district; and

WHEREAS, the Board notes that the requested waivers allow the Synagogue to accommodate its program within a four-story and mezzanine building, rather than providing additional program space in a five- or six-story building; and

WHEREAS, the applicant notes that although the first floor of the proposed synagogue is built to the rear lot line, because a community facility is a permitted obstruction up to a height of 23 feet and because the building is setback above the mezzanine level, the requested lot coverage and rear yard waivers are only necessary for the second floor and second floor mezzanine portion of the building; and

WHEREAS, specifically, the applicant notes that the building is set back at the rear yard six feet at the second floor and second floor mezzanine, and 35 feet at the third and fourth floors; and

WHEREAS, the applicant provided a shadow analysis which studied the effect of the proposal on the adjacent properties to the rear and to the west of the subject site; and

WHEREAS, the shadow analysis submitted by the applicant reflects that the proposed synagogue does not result in any potentially adverse significant shadow impacts on the adjacent properties; and

WHEREAS, the Opposition argues that the applicant has failed to explain why the Synagogue now requires a building with a greater bulk than the three-story as-of-right synagogue reflected in the approved 2007 plans for the subject site; and

WHEREAS, the Board notes that the applicant has submitted sufficient evidence to demonstrate how the Synagogue's programmatic needs necessitate the relief requested in the current proposal; and

WHEREAS, the Board further notes that the applicant's prior consideration of an as-of-right building is not relevant to the Board's analysis of the current proposal; and

WHEREAS, the Opposition also contends that work on the site does not conform to the approved plans; and

WHEREAS, in response, the applicant submitted letters from the architect and engineer confirming that the work on the site conforms with the approved plans; and

WHEREAS, the Board notes that the proposed plans are signed and sealed by a registered architect and that the

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conformance of the construction at the site to the approved plans is subject to Department of Buildings (“DOB”) review; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board notes that the development of the proposed Synagogue is entirely as-of-right, with the exception of the non-compliant lot coverage, front setback, and rear yard; and

WHEREAS, as noted above, the applicant initially proposed to construct a synagogue with a floor area of 28,597 sq. ft. (3.8 FAR), 100 percent lot coverage at the second floor and second floor mezzanine, and no rear yard at the second floor and second floor mezzanine; and

WHEREAS, in response to concerns raised by the Board and the Opposition, the applicant submitted revised plans reflecting the current proposal, with a floor area of 27,414 sq. ft. (3.65 FAR), a lot coverage of 93.5 percent at the second floor and second floor mezzanine and 65 percent at the third and fourth floor, a rear yard with a depth of six feet at the second floor and second floor mezzanine and 35’-0” at the third and fourth floor, and a 6’-0” reduction in the height of a portion of the building that encroaches into the rear yard; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10BSA033K, dated December 7, 2009; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, 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 R6 zoning district, the construction of a four-story and mezzanine community facility building to be occupied by a synagogue (Use Group 4), which does not comply with lot coverage, rear yard, and setback requirements for community facilities, contrary to ZR §§ 24-11, 24-36 and 24-522, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received September 17, 2010”–(13) sheets and “Received September 20, 2010”–(1) sheet and *on further condition*:

THAT the building parameters shall be: a floor area of 27,414 sq. ft.; an FAR of 3.65; lot coverage of 93.5 percent above the first floor; a rear yard with a depth of 6’-0” above the first floor; and an initial front setback of 4’-0” at a height of 60’-0”, as indicated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 21, 2010.

***The resolution has been revised to correct the plan count, which read: “Received September 17, 2010”–(12) sheets and “Received September 20, 2010”–(1) sheet, now reads: “Received September 17, 2010”–(13) sheets and “Received September 20, 2010”–(1) sheet. Corrected in Bulletin No. 48, Vol. 95, dated December 1, 2010.**

BULLETIN

OF THE
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AND APPEALS

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Volume 95, Nos. 49-50

December 16, 2010

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DOCKET

New Case Filed Up to December 7, 2010

221-10-A

123 87th Street, North side of 87 Street 480 feet, westerly from the northwest corner of 87 Street and Ridge Boulevard., Block 6042, Lot(s) 67, Borough of **Brooklyn, Community Board: 10**. Appeal for a final determination of the Department of Buildings R3-1 district.

222-10-A

97 Saint Marks Avenue, 392 feet West of the intersection of Saint Marks Avenue and Carlton Avenue., Block 1143, Lot(s) 80, Borough of **Brooklyn, Community Board: 8**. Appeal for a final determination of the Department of Building, R6B district.

223-10-A

161 East 7th Street, Southeast corner of Kermit Place., Block 5321, Lot(s) (tent) lot 73, Borough of **Brooklyn, Community Board: 7**. Appeal for common law vested rights to continue development under the prior zoning district. R5B district.

224-10-A

173 Reid Avenue, East side of Reid Avenue 245.0 north of Breezy Point Boulevard., Block 16359, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction not fronting and within a mapped street, contrary to General City Law. R4 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

JANUARY 11, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 11, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1095-64-BZ

APPLICANT – Garo Gumusvan, R.A., for 605 Apartment Corporation, owner; Park & 65 Garage Corporation, lessee. SUBJECT – Application August 31, 2010 – Extension of Term permitting the use of no more than 20 unused and surplus tenant parking spaces, within an accessory garage, for transient parking granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law (MDL) which is set to expired on March 9, 1980. R8B & R-10 zoning district. PREMISES AFFECTED – 605 Park Avenue, south east corner of Park Avenue and East 65th Street, Block 1399, Lot 74, Borough of Manhattan.

COMMUNITY BOARD #4M

749-65-BZ

APPLICANT – Sheldon Lobel, P.C., for Henry Koch, owner. SUBJECT – Application October 14, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG16 Gasoline Service Station (*Getty*) with accessory uses which expired on November 3, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on December 19, 2002; Waiver of the Rules. R3X zoning district. PREMISES AFFECTED – 1820 Richmond Road, southeast corner of Richmond Road and Stobe Avenue, Block 3552, Lot 39, Borough of Staten Island.

COMMUNITY BOARD #2SI

119-07-BZ

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner. SUBJECT – Application November 15, 2010 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) permitting a (UG4A) four-story community facility building which expires on January 27, 2011. M1-2 zoning district. PREMISES AFFECTED – 443 39th Street, rectangular mid-block lot with 35' of frontage on the north side of 39th Street, 275' west of 5th Avenue, Bloc 705, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEALS CALENDAR

216-10-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 1466 Broadway LP c/o Highgate Holdings, Incorporated, owner.

SUBJECT – Application November 12, 2010 – Appeal filed pursuant to Section 310(2) of the Multiple Dwelling Law seeking a variance of the court requirements under Section 26 of the Multiple Dwelling Law. C6-7 Zoning District.

PREMISES AFFECTED – 1466 Broadway, southeast corner of Broadway and West 42nd Street, Block 994, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

JANUARY 11, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 11, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

COMMUNITY BOARD #4Q

127-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aleksandr Goldshmidt and Inna Goldshmidt, owners.

SUBJECT – Application July 12, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space, lot coverage (§23-141), exceeds the maximum perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 45 Coleridge Street, east side of Coleridge Street, between Shore Boulevard and Hampton Avenue, Block 8729, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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173-10-BZ

APPLICANT – Nasir J. Khanzada, for Olympia Properties, LLC., owner.

SUBJECT – Application August 26, 2010 – Special Permit (§73-30) to legalize the operation of a physical culture establishment (*Olympia Spa*) located in a C2-4/R6B zoning district.

PREMISES AFFECTED – 65-06 Fresh Pond Road, west side of Fresh Pond Road, 45.89' south of corner of Linden Street and Fresh Pond Road, Block 3526, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, DECEMBER 7, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

156-73-BZ

APPLICANT – Gary Maranga, R.A., for The Design Alliance, owner.

SUBJECT – Application October 12, 2010 – Extension of Term for surplus transient parking in a multiple dwelling which is accessory to Albert Einstein College of Medicine which expired on June 26, 2008; Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1975 Eastchester Road, west side of Eastchester Road at the intersection of Eastchester Road and Morris Park Avenue, Block 4205, Lot 2, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a transient parking garage, which expired on June 26, 2008; and

WHEREAS, a public hearing was held on this application on November 23, 2010, after due notice by publication in *The City Record*, and then to decision on December 7, 2010; and

WHEREAS, Community Board 11, Bronx, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the northwest corner of Eastchester Road and Morris Park Avenue, within an R6 zoning district; and

WHEREAS, the site is occupied by three 27-story residential buildings; and

WHEREAS, the accessory parking garage consists of three levels which are occupied by a total of 691 accessory parking spaces, including 113 transient parking spaces; and

WHEREAS, on June 26, 1973, under the subject calendar number, the Board granted a variance pursuant to Section 60(3)

of the Multiple Dwelling Law (“MDL”) to permit the unused and surplus tenant parking spaces to be used for transient parking for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on December 22, 1998, the Board granted a ten-year extension of term, which expired on June 26, 2008; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution having been adopted on June 26, 1973, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from June 26, 2008, to expire on June 26, 2018; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans and that all work shall substantially conform to drawings filed with this application and marked ‘Received November 30, 2010’-(3) sheets; and *on further condition*:

THAT this term shall expire on June 26, 2018;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 220068432)

Adopted by the Board of Standards and Appeals, December 7, 2010.

180-99-BZ

APPLICANT – Michael T. Cetera, AIA, for Geulah, LLC, owner.

SUBJECT – Application June 4, 2010 – Extension of Term of a previously granted Variance (§72-21) for a non-

MINUTES

conforming (UG9A) catering establishment which expired on April 4, 2010; waiver of the rules. R6 zoning district.

PREMISES AFFECTED – 564/66 East New York Avenue, south side, 329’-7” east of Brooklyn Avenue, Block 4793, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued operation of catering establishment (Use Group 9A), which expired on April 4, 2010; and

WHEREAS, a public hearing was held on this application on October 19, 2010, after due notice by publication in *The City Record*, with a continued hearing on November 9, 2010, and then to decision on December 7, 2010; and

WHEREAS, Community Board 9, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the south side of East New York Avenue between Kingston Avenue and Brooklyn Avenue, within an R6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1932 when, under BSA Cal. No. 573-31-BZ, the Board granted a variance to permit a public garage for the storage of motor vehicles (Use Group 16) on the site; and

WHEREAS, most recently, on April 4, 2000, under the subject calendar number, the Board granted a change in use under ZR § 11-413, from a vehicle storage establishment to a non-conforming catering/food preparation establishment (Use Group 9A) for a term of ten years, which expired on April 4, 2010; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, at hearing, the Board raised concerns about the ventilation pipes extending into the sidewalk on the north side of the building; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the vents will be relocated from the north façade to the roof; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated April 4, 2000, so that as amended this portion of the resolution shall read: “to extend the term for ten years from April 4, 2010, to expire on April

4, 2020; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked ‘Received September 17, 2010’-(2) sheets and ‘October 22, 2010’-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on April 4, 2020;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 300793461)

Adopted by the Board of Standards and Appeals, December 7, 2010.

344-03-BZ

APPLICANT – Goldman, Harris LLC, for City of New York, owner; Nick's Lobster House, lessee.

SUBJECT – Application August 11, 2010 – Extension of Term of a Special Permit (§73-242) permitting an eating and drinking establishment which expired on July 12, 2010. C3 zoning district.

PREMISES AFFECTED – 2777 Flatbush Avenue, between Flatbush and Mill Basin, Block 8591, Lot p/o 980, p/o 175, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Vivien Krieger.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an extension of term of a previously granted special permit for an eating and drinking establishment (Use Group 6), which expired on July 12, 2010; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with continued hearings on October 19, 2010 and November 16, 2010, and then to decision on December 7, 2010; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the subject site is located on the east side of Flatbush Avenue between Hendrickson Place and Shore Parkway, with a lot area of 93,525 sq. ft. within a C3 zoning district; and

WHEREAS, the site consists of a one-story building occupied by an eating and drinking establishment, operated as

MINUTES

Nick's Lobster; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 12, 2005 when, under the subject calendar number, the Board granted a special permit under ZR § 73-242 for an eating and drinking establishment for a term of five years, which expired on July 12, 2010; and

WHEREAS, the subject special permit was granted in conjunction with an application under BSA Cal. No. 345-03-A, to permit portions of the restaurant and parking lot to occupy a mapped street, pursuant to Section 35 of the General City Law; and

WHEREAS, the applicant now requests an extension of term; and

WHEREAS, at hearing, the Board questioned why the applicant had not obtained a certificate of occupancy since the initial grant; and

WHEREAS, in response, the applicant states that a certificate of occupancy has not been obtained because it was determined that it would not be practicable to bring the existing building into compliance due to its poor condition; accordingly, the applicant is in the process of obtaining financing to reconstruct the building; and

WHEREAS, at hearing, the Board questioned whether there was excess signage on the site; and

WHEREAS, in response, the applicant submitted photographs reflecting the removal of the excess signage; and

WHEREAS, based upon the above, the Board finds the requested extension is appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on July 12, 2005, so that as amended this portion of the resolution shall read: "to extend the term for a period of five years from July 12, 2010, to expire on July 12, 2015, *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of this grant shall expire on July 12, 2015;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT 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. 2003141)

Adopted by the Board of Standards and Appeals, December 7, 2010.

200-24-BZ

APPLICANT – Stephen Ely, for Ebed Realty c/o Shelia Greco, owner.

SUBJECT – Application October 22, 2010 – Extension of Term (§11-411) for the continued operation of a UG6 bookstore and distribution center which expired on September 23, 2010. R8/C8-2 zoning district.

PREMISES AFFECTED – 3030 Jerome Avenue, 161.81' south of East 204th Street, Block 3321, Lot 25, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Stephen Ely.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for decision, hearing closed.

575-37-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Duffton Realty, Inc., owner; C & D Service Center, Inc., lessee.

SUBJECT – Application July 16, 2010 – Extension of Term (§11-411) for the continued operation of a gasoline service station (*Gulf*) which expired on February 14, 2008; waiver of the Rules. C1-3/R5B zoning district.

PREMISES AFFECTED – 60-93 Flushing Avenue, northwest corner of 61st Street, Block 2697, Lot 51, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for decision, hearing closed.

230-98-BZ

APPLICANT – Mitchell S. Ross, Esq., for JC's Auto Enterprises, Limited, owners.

SUBJECT – Application July 22, 2010 – Extension of Term of a previously granted Variance (§72-21) for an automotive repair shop and car sales which expired on June 22, 2010. R-5 zoning district.

PREMISES AFFECTED – 5820 Bay Parkway, northwest corner of 59th Street, Block 55508, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Mitchell S. Ross.

ACTION OF THE BOARD – Laid over to January

MINUTES

11, 2011, at 10 A.M., for continued hearing.

15-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker for Columbus Properties, Incorporated, owner; TSI 217 Broadway LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 18, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on June 15, 2009; waiver of the rules. C5-3 (LM) zoning district.

PREMISES AFFECTED – 217 Broadway, Northwest corner of Broadway and Vesey Streets. Block 88, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for decision, hearing closed.

43-99-BZ

APPLICANT – Carl A. Sulfaro, Esq., for White Castle System Inc., owner.

SUBJECT – Application February 25, 2010 – Extension of Term of a Special Permit (§73-243) for the continued operation of a drive-thru accessory to an eating and drinking establishment (*White Castle*) which expired on December 7, 2009; Waiver of the Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 88-02 Northern Boulevard, southwest corner of 88th Street, Block 1436, Lot 001, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for decision, hearing closed.

299-99-BZ

APPLICANT – Carl A. Sulfaro, Esq., for M & V, LLC, owner.

SUBJECT – Application August 4, 2010 – Extension of Term for the continued operation of a gasoline service station (*Getty*) which expired on July 25, 2010. C2-3/R6 zoning district.

PREMISES AFFECTED – 8-16 Malcom X Boulevard,

northwest corner of DeKalb Avenue, Block 599, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Laid over to January 25, 2011, at 10 A.M., for continued hearing.

276-02-BZ

APPLICANT – Eric Palatnik, P.C., for Elad Ryba, owner.

SUBJECT – Application September 13, 2010 – Extension of Time to Complete Construction and an Amendment to a previously approved Special Permit (§73-622) to an existing one family dwelling, contrary to lot coverage and floor area (§23-141) and side yard (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 160 Norfolk Street, west side, 300' north of Oriental Boulevard and south of Shore Boulevard, Block 8756, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Susan Klapper.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for continued hearing.

118-10-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER – Arkady Nabatov

SUBJECT – Application June 28, 2010 – Dismissal for lack of prosecution – Special Permit (§11-411) to re-establish a variance for an auto-related use. R4 zoning district.

PREMISES AFFECTED – 2102/24 Avenue Z aka 2609/15 East 21st Street, Block 7441, Lot 371, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 10 A.M., for dismissal continued hearing.

APPEALS CALENDAR

43-08-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application February 28, 2008 – Proposed construction in the bed of mapped street, contrary to General City Law Section 35. R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

MINUTES

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough
Commissioner, on December 10, 2009, and on acting on
Department of Buildings Application Nos. 420039425,
420039434, and 420039416 reads in pertinent part:

1. Proposed construction within the bed of a mapped
street, requires BSA approval pursuant to GCL
35; and
2. Proposed construction of building with less than
eight percent of the total perimeter of the building
not fronting directly upon a street of frontage
space requires BSA approval pursuant to GCL
36; and

WHEREAS, this is a proposal for the construction of
three single-family homes located within the bed of a mapped
street, 145th Street, (Tentative Lot 43 & 48) and not fronting on
a mapped street Bayside Avenue (Tentative Lot 52) contrary
to Section 35 and Section 36 of the General City Law; a fourth
home, which fronts directly onto Bayside Avenue (Tentative
Lot 46) is not part of the application; and

WHEREAS, a public hearing was held on this
application on May 11, 2010, after due notice by publication in
the *City Record*, with continued hearings on June 8, 2010,
September 21, 2010, and November 9, 2010 and then to
decision on December 7, 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 7, Queens,
recommended approval of the application; and

WHEREAS, by letter dated February 2, 2010, the
Department of Environmental Protection (“DEP”) states that:
(1) there is an existing 12- inch diameter private combined
sewer and an eight-inch City water main in the bed of 145th
Street between Bayside Avenue and 29th Road (north of Lot
41); (2) an existing 15–inch combined sewer and an existing
six-inch City water main in the bed of Bayside Avenue
between Parsons Boulevard and 146th Street; and (3) the
Amended Drainage Plan No. 30B (1) calls for a future 12-inch
diameter combined sewer in the bed of 145th Street between
Bayside Avenue and 29th Road and for a future 15–inch
diameter combined sewer in the bed of Bayside Avenue
between Parsons Boulevard and 146th Street; and

WHEREAS, DEP further states that it requires the
applicant to submit a revised survey/plan showing the
following: (1) the total width of Bayside Avenue and the width
of the widening portion of the street between Parsons
Boulevard and 146th Street; (2) the distance between the lot
lines of the proposed development and existing sewer and
water mains; and (3) distance from the terminal manhole of the
12-inch diameter private combined sewer in 145th Street and
from the end cap of the eight–inch diameter City water main in

145th Street to the northerly lot line of Lot 48; and

WHEREAS, in response to DEP’s request, on March 12,
2010, the applicant submitted a revised Topographical Survey;
and

WHEREAS, by letter dated April 12, 2010, DEP stated
that it reviewed the revised survey and that the revised survey
shows: (1) that 50 feet of the total width of 145th Street between
Bayside Avenue (north of Lot 41) and 29th Road will be
available for maintenance and/or reconstruction of the 12-inch
diameter private combined drain and the eight-inch City water
main; and (2) an irregular width of 70 feet for Bayside Avenue
between Parsons Boulevard and 146th Street and that the
remaining approximately 58 feet will be available for the
installation, maintenance and/or reconstruction of the future 15-
inch diameter combined sewer, existing 12-inch diameter
private combined sewer and the six-inch diameter City water
main; and

WHEREAS, DEP further notes that since the area is
completely developed and all of the existing homes are either
connected or fronting existing sewers/drains, the future 12-inch
diameter combined sewer is not necessary in 145th Street;
therefore, the applicant must file to amend the Drainage Plan;
DEP also requires the applicant to provide a Certified Check in
the amount of \$5,000, payable to the NYC Water Board which
will be released when the amendment is accepted; and

WHEREAS, in response to DEP’s request, the applicant
has agreed to amend the Drainage Plan; and

WHEREAS, by letter dated June 16, 2010, in response to
the applicant’s proposal, the Department of Transportation
(“DOT”) stated that it has reviewed the application and
conducted a site visit which found several curb cuts for the
immediately adjacent developments on both sides of 145th
Street; and the current proposal shows a new driveway at the
dead end shared by two residential units; and

WHEREAS, therefore, due to safety concerns, DOT
objects to the construction of any buildings in the bed of 145th
Street between 29th Road and Bayside Avenue; and

WHEREAS, in response, the applicant has set up a
meeting with DOT and the Fire Department to address DOT’s
safety concerns; and

WHEREAS, as a result of the meetings, the applicant
submitted a revised site plan which incorporated all of the Fire
Department’s requirements; and

WHEREAS, by letter dated September 16, 2010, the
Fire Department states that it has reviewed the revised site plan
and had the following requirements as conditions for approval
of the application: (1) the dwellings must be fully sprinklered
in conformity with Local Law 10 of 1999 and Reference
Standard 17-2B of the New York City Building Code; (2)
interconnected smoke alarms must be designed and installed in
the dwelling in compliance with NYC Building Code Section
907.2.10; (3) the dwellings shall maintain an unobstructed
frontage space as per Rule 502.1 of the NYC Fire Code; and
(4) hydrants must be within 250 feet of the main entrances to
buildings and must be connected to an eight-inch or greater
main; and (5) the request for a variance of curb cuts from 20
feet to 12 feet is granted due to the unsafe vehicle/pedestrian
condition that a 20-ft. curb cut would create; and

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WHEREAS, by letter dated September 29, 2010, DOT states that it reviewed the revised site plan and the approval letter from the Fire Department and has no further objections; and

WHEREAS, DOT states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated December 10, 2009, acting on Department of Buildings Application Nos. 420039425, 420039434, and 420039416 is modified by the power vested in the Board by Section 35 and Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received December 1, 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 fire safety measures shall be installed and maintained in accordance with the BSA-approved plans;

THAT Drainage Plan No. 30B (1) be amended to the satisfaction of DEP prior to the issuance of the Certificate of Occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution; and

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant 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 7, 2010.

3-10-A & 4-10-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application January 5, 2010 – Proposed construction in the bed of mapped street, contrary to General City Law Section 35. R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue and 29-46 145th Street, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, on December 10, 2009, and on acting on Department of Buildings Application Nos. 420039425, 420039434, and 420039416 reads in pertinent part:

1. Proposed construction within the bed of a mapped street, requires BSA approval pursuant to GCL 35; and
2. Proposed construction of building with less than eight percent of the total perimeter of the building not fronting directly upon a street of frontage space requires BSA approval pursuant to GCL 36; and

WHEREAS, this is a proposal for the construction of three single-family homes located within the bed of a mapped street, 145th Street, (Tentative Lot 43 & 48) and not fronting on a mapped street Bayside Avenue (Tentative Lot 52) contrary to Section 35 and Section 36 of the General City Law; a fourth home, which fronts directly onto Bayside Avenue (Tentative Lot 46) is not part of the application; and

WHEREAS, a public hearing was held on this application on May 11, 2010, after due notice by publication in the *City Record*, with continued hearings on June 8, 2010, September 21, 2010, and November 9, 2010 and then to decision on December 7, 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 7, Queens, recommended approval of the application; and

WHEREAS, by letter dated February 2, 2010, the Department of Environmental Protection ("DEP") states that: (1) there is an existing 12- inch diameter private combined sewer and an eight-inch City water main in the bed of 145th Street between Bayside Avenue and 29th Road (north of Lot 41); (2) an existing 15–inch combined sewer and an existing six-inch City water main in the bed of Bayside Avenue between Parsons Boulevard and 146th Street; and (3) the Amended Drainage Plan No. 30B (1) calls for a future 12-inch diameter combined sewer in the bed of 145th Street between Bayside Avenue and 29th Road and for a future 15–inch diameter combined sewer in the bed of Bayside Avenue between Parsons Boulevard and 146th Street; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (1) the total width of Bayside Avenue and the width of the widening portion of the street between Parsons Boulevard and 146th Street; (2) the distance between the lot lines of the proposed development and existing sewer and water mains; and (3) distance from the terminal manhole of the 12-inch diameter private combined sewer in 145th Street and from the end cap of the eight–inch diameter City water main in 145th Street to the northerly lot line of Lot 48; and

WHEREAS, in response to DEP's request, on March 12,

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2010, the applicant submitted a revised Topographical Survey; and

WHEREAS, by letter dated April 12, 2010, DEP stated that it reviewed the revised survey and that the revised survey shows: (1) that 50 feet of the total width of 145th Street between Bayside Avenue (north of Lot 41) and 29th Road will be available for maintenance and/or reconstruction of the 12-inch diameter private combined drain and the eight-inch City water main; and (2) an irregular width of 70 feet for Bayside Avenue between Parsons Boulevard and 146th Street and that the remaining approximately 58 feet will be available for the installation, maintenance and/or reconstruction of the future 15-inch diameter combined sewer, existing 12-inch diameter private combined sewer and the six-inch diameter City water main; and

WHEREAS, DEP further notes that since the area is completely developed and all of the existing homes are either connected or fronting existing sewers/drains, the future 12-inch diameter combined sewer is not necessary in 145th Street; therefore, the applicant must file to amend the Drainage Plan; DEP also requires the applicant to provide a Certified Check in the amount of \$5,000, payable to the NYC Water Board which will be released when the amendment is accepted; and

WHEREAS, in response to DEP's request, the applicant has agreed to amend the Drainage Plan; and

WHEREAS, by letter dated June 16, 2010, in response to the applicant's proposal, the Department of Transportation ("DOT") stated that it has reviewed the application and conducted a site visit which found several curb cuts for the immediately adjacent developments on both sides of 145th Street; and the current proposal shows a new driveway at the dead end shared by two residential units; and

WHEREAS, therefore, due to safety concerns, DOT objects to the construction of any buildings in the bed of 145th Street between 29th Road and Bayside Avenue; and

WHEREAS, in response, the applicant has set up a meeting with DOT and the Fire Department to address DOT's safety concerns; and

WHEREAS, as a result of the meetings, the applicant submitted a revised site plan which incorporated all of the Fire Department's requirements; and

WHEREAS, by letter dated September 16, 2010, the Fire Department states that it has reviewed the revised site plan and had the following requirements as conditions for approval of the application: (1) the dwellings must be fully sprinklered in conformity with Local Law 10 of 1999 and Reference Standard 17-2B of the New York City Building Code; (2) interconnected smoke alarms must be designed and installed in the dwelling in compliance with NYC Building Code Section 907.2.10; (3) the dwellings shall maintain an unobstructed frontage space as per Rule 502.1 of the NYC Fire Code; and (4) hydrants must be within 250 feet of the main entrances to buildings and must be connected to an eight-inch or greater main; and (5) the request for a variance of curb cuts from 20 feet to 12 feet is granted due to the unsafe vehicle/pedestrian condition that a 20-ft. curb cut would create; and

WHEREAS, by letter dated September 29, 2010, DOT states that it reviewed the revised site plan and the approval

letter from the Fire Department and has no further objections; and

WHEREAS, DOT states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated December 10, 2009, acting on Department of Buildings Application Nos. 420039425, 420039434, and 420039416 is modified by the power vested in the Board by Section 35 and Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received December 1, 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 fire safety measures shall be installed and maintained in accordance with the BSA-approved plans;

THAT Drainage Plan No. 30B (1) be amended to the satisfaction of DEP prior to the issuance of the Certificate of Occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution; and

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant 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 7, 2010.

137-08-A thru 139-08-A

APPLICANT – Philip L. Rampulla, for Joseph Noce, owner.
SUBJECT – Application May 5, 2008 – Proposed construction of a one-family residence within the bed of a mapped street, contrary to General City Law Section 35. R1-2 zoning district.

PREMISES AFFECTED – 50, 55, 60 Blackhorse Court, south side of Richmond Road, 176.26' south of Blackhorse Court, Block 4332, Lots 34, 28, 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough
Commissioner, dated October 7, 2010, acting on Department of
Buildings Application Nos. 510033811 and 510033839 reads
in pertinent part:

“Proposed construction of a one family residence
building within bed of a map street is contrary to
general city law 35 and requires a special permit by
the New York City Board of Standards and
Appeals;” and

WHEREAS, this is an application to permit, as part of a
proposed development consisting of the construction of seven
single-family homes, the proposed construction of two single-
family homes located within the bed of a mapped street,
Morton Street, contrary to Section 35 of the General City Law;
and

WHEREAS, a public hearing was held on this
application on September 21, 2010, after due notice by
publication in the *City Record*, with continued hearings on
October 26, 2010 and November 9, 2010, and then to decision
on December 7, 2010; and

WHEREAS, the premises and surrounding area had site
and neighborhood examinations by Chair Srinivasan,
Commissioner Montanez, and Commissioner Ottley-Brown;
and

WHEREAS, the applicant initially proposed to construct
three single-family homes in the bed of a mapped street,
however, the application was amended such that only two
single-family homes are now proposed in the bed of a mapped
street; the application filed for the third home, under BSA Cal.
No. 139-08-A, has been withdrawn; and

WHEREAS, Community Board 2, Staten Island,
recommended approval of the initial version of the application;
and

WHEREAS, by letter dated June 16, 2008, in response to
the applicant’s initial proposal, the Department of
Environmental Protection (“DEP”) states that: (1) there is an
existing ten-inch diameter sanitary sewer and an eight-inch
diameter water main in Morton Street between Wilder Avenue
and Maplewood Avenue, and an existing ten-inch diameter
sanitary sewer and an eight-inch diameter water main in
Maplewood Avenue between Morton Street and Ardsley
Street; and (2) as per Drainage Plan No. D-3, sheet 2 of 7, there
is a future ten-inch diameter sanitary sewer and an 18-inch
diameter storm sewer in Morton Street between Wilder Avenue
and Maplewood Avenue, and a future ten-inch diameter
sanitary sewer and a 12-inch diameter storm sewer in
Maplewood Avenue between Morton Street and Ardsley
Street; and

WHEREAS, DEP further states that it requires the
applicant to submit a survey/plan showing the following: (1)
the mapped width of the street in Morton Street between
Wilder Avenue and Maplewood Avenue and a 32-ft. wide
“Sewer Corridor” in Morton Street between Wilder Avenue
and Maplewood Avenue for the installation, maintenance

and/or reconstruction of the future ten-inch diameter sanitary
sewer and 18-inch diameter storm sewer; and (2) the distance
from existing water main, sewers, sewer manholes and water
main caps to the lot lines in Morton Street between Wilder
Avenue and Maplewood Avenue; and

WHEREAS, in response to DEP’s request, the applicant
submitted a revised survey dated May 4, 2010; and

WHEREAS, by letter dated June 11, 2010, DEP states
that it reviewed the proposal and has no objection; and

WHEREAS, by letter dated December 17, 2009,
addressing the adequacy of the newly created street,
Blackhorse Court, for Fire Department access, the Fire
Department stated that it approved the creation of Blackhorse
Court with the following conditions: (1) interconnected smoke
alarms be designed and installed in compliance with NYC
Building Code Section 907.2.10 (2) a fire apparatus access
road shall be constructed in accordance with the requirements
of FDNY FC 503.2.1; (3) the height of the homes shall not
exceed 35 feet above grade plane; and (4) Morton Street is to
be opened fully to a curb to curb width of 34 feet; and

WHEREAS, by letter dated November 3, 2010,
addressing the applicant’s proposal to construct two homes in
the bed of Morton Street, the Fire Department states that it
objects to the construction of any buildings in the bed of
Morton Street because Morton Street should be opened as a
Final Mapped street to improve emergency response in the area
of Richmond Road and surrounding areas; and

WHEREAS, by letter dated September 22, 2010, the
Department of Transportation (“DOT”) states that the current
development plan will hinder traffic circulation to the general
Richmond Road area and prevent DOT from any future
construction of Morton Street to provide mobility within the
area; therefore, DOT objects to the proposed construction
within the bed of the mapped street; and

WHEREAS, in response to the objections raised by the
Fire Department and DOT, the applicant notes that Morton
Street was mapped on March 22, 1962, and that the City has
made no attempt to acquire the bed of Morton Street in the
intervening 48 years; and

WHEREAS, the applicant represents that constructing
the unbuilt portion of Morton Street would not improve any
existing traffic patterns or alleviate any existing traffic
problems, as Morton Street is merely a tertiary street and has
no impact on the surrounding street system; and

WHEREAS, the applicant submitted a tax map reflecting
that a portion of the unbuilt bed of Morton Street is owned by
the adjacent neighbor; therefore, even if the applicant opened
the portion of Morton Street over which it has ownership,
Morton Street would still result in a dead-end due to the
intervening portion of the street that is owned by the neighbor;
and

WHEREAS, the applicant states that there is a 12-ft.
change in grade at Morton Street to the west of the site, and
that in order to open and improve this portion of Morton Street
large retaining walls would have to be built on both sides of the
street, the cost of which would make the project financially
infeasible; and

WHEREAS, in support of this statement, the applicant

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submitted two alternative site plans for a development scenario where the portion of Morton Street owned by the applicant is built out to a width of 34 feet, and a cost estimate indicating that constructing the retaining walls alone would cost between \$342,000 and \$388,000; and

WHEREAS, at the Board's direction, the applicant also submitted two alternative site plans for a development scenario in which Morton Street remained unopened, but where no development was proposed in the mapped bed of Morton Street; and

WHEREAS, the alternative plans submitted by the applicant reflect that a development in which no homes are built in the mapped bed of Morton Street reduces the number of homes that can be constructed from seven to six, thereby significantly restricting the development potential of the site; and

WHEREAS, the applicant states that the proposed development of seven single-family homes yields a floor area ratio ("FAR") of 0.36, and is therefore already well below the maximum permitted FAR of 0.50 in the subject R1-2 zoning district; and

WHEREAS, the applicant further states that Blackhorse Court, a newly created street, has already been constructed, including the installation of curbs, asphalt paving, an eight-inch water main, a fire hydrant and sanitary sewers, and that the alternative plans in which no homes are built in the mapped bed of Morton Street would result in the partial removal of the street and utilities that were recently installed for Blackhorse Court; and

WHEREAS, the Board acknowledges that the objections raised by the Fire Department and DOT were based on legitimate policy considerations, however, based upon the above, the Board has determined that the applicant has submitted sufficient evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated October 7, 2010, acting on Department of Buildings Application Nos. 510033811 and 510033839, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received December 1, 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 interconnected smoke alarms shall be designed and installed in compliance with NYC Building Code Section 907.2.10;

THAT a fire apparatus access road shall be constructed in accordance with the requirements of FDNY FC 503.2.1;

THAT the height of the homes shall not exceed 35 feet above grade plane;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure

compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 7, 2010.

38-10-A

APPLICANT – Jack Lester, Esquire for Anthony Naletlic.
OWNER – K.J. Chung/Jesus Covent Church.

SUBJECT – Application March 22, 2010 – Appeal challenging the Department of Building's issuance of a building permit to allow for the waiver of parking per §25-35 for a house of worship/community facility. R2A zoning district.

PREMISES AFFECTED – 26-18 210th Street, corner lot on 27th Avenue and 210th Street, Block 5992, Lot 36, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to the determination of the Queens Borough Commissioner of the Department of Buildings ("DOB"), dated February 19, 2010, to uphold the approval of New Building Permit No. 410146881-01-NB (the "Permit"), for the construction of a house of worship at the subject site (the "Final Determination"); and

WHEREAS, the Final Determination reads, in pertinent part:

Section 25-33 of the ZR provides for a waiver of the parking requirements of Section 25-31 in R2 districts in the event that the total number of accessory off-street parking spaces is less than ten (10). In this case, the total number of accessory off-street parking spaces for this House of Worship, pursuant to the parking calculations provided in Section 25-31 of the ZR, is nine (9)...Since the total number of required accessory off-street parking is less than ten (10) spaces, the Subject Premises qualifies for a parking waiver pursuant to Section 25-33 of the ZR.

Based on the fact that this is a corner lot within 100' of the corner, which does not contain a rear yard per the ZR, the Subject Premises is not

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required to meet the rear yard requirements of Section 24-36 or 24-391 of the ZR.

Finally, you state that the Subject Premises is not in compliance with Section 27-526 of the Administrative Code of the City of New York (the "Administrative Code") based on its proximity to a Con-Edison sub-station which you claim contains explosive content . . . The Department has not been provided with any basis to support your assertion that the Con-Edison sub-station stores or contains explosive contents

Based on the fact that the applicant has cured all outstanding objections and that your claims of non-compliance with the ZR and the Construction Code are not supported, the Department has determined that Permit No. 410146881-01-NB was lawfully issued. This is a Final Determination of the Department that may be appealed to the Board of Standards and Appeals; and

WHEREAS a public hearing was held on this application on October 19, 2010 after due notice by publication in *The City Record*, and then to decision on December 7, 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, City Council Member Daniel J. Halloran, III, submitted testimony in support of this appeal; and

WHEREAS, New York State Senator Frank Padavan submitted testimony in support of this appeal; and

WHEREAS, the Bayside Preservation Association, and the Auburndale Improvement Association, provided testimony in support of this appeal; and

WHEREAS, the subject site is located at 26-18 210th Street, within an R2 zoning district; and

WHEREAS, the instant appeal concerns whether the subject house of worship qualifies for a waiver of the requirement for accessory off-street parking spaces pursuant to ZR § 25-33; and

WHEREAS, this appeal is brought on behalf of the owner of 209-40 27th Avenue (the "Appellant"); the Appellant was represented by counsel in this proceeding; and

WHEREAS, DOB and the owner of 26-18 210th Street (the "Owner") have been represented by counsel throughout this appeal; and

PROCEDURAL HISTORY

WHEREAS, on June 18, 2009, DOB approved construction of the subject house of worship pursuant to DOB Application No. 410146881; and

WHEREAS, on July 8, 2009, counsel for the Appellant wrote to the Queens Borough Commissioner requesting a final determination from DOB regarding whether the subject site: (1) meets the parking requirements of the Zoning Resolution; (2) meets the rear yard requirements of the Zoning Resolution; and (3) complies with Administrative Code § 27-526, based on the proximity

of the site to a Con-Edison sub-station which purportedly contains explosive content; and

WHEREAS, in response, DOB conducted an audit of the Permit and issued an Intent to Revoke Approval and Permit letter, along with a Notice of Objections, dated July 14, 2009; and

WHEREAS, DOB conducted a second audit of the Permit and issued another Intent to Revoke Approval and Permit letter and another Notice of Objections dated December 14, 2009; and

WHEREAS, the Owner subsequently amended the plans for the subject site in response to the objections issued by DOB; and

WHEREAS, on January 28, 2010, DOB determined that all objections had been cured and that the Permit was lawfully issued; accordingly, on February 5, 2010, DOB issued a Rescind Notice of Intent to Revoke Approval and Permit letter; and

WHEREAS, on February 19, 2010, the Queens Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

WHEREAS, on March 22, 2010, the Appellant filed the instant appeal at the BSA seeking a revocation of the Permit; and

WHEREAS, the Board notes that the Final Determination on which the instant appeal is based addresses the Appellant's arguments regarding the site's compliance with rear yard requirements and its proximity to a Con-Edison substation; however, these arguments were not pursued by the Appellant subsequent to DOB's issuance of the Final Determination, and therefore are not addressed by the Board as part of the subject appeal; and

ISSUES PRESENTED

WHEREAS, the Appellant contends that the Permit should be revoked for the following reasons: (i) the site does not qualify for a waiver of the parking requirement under ZR § 25-33, and DOB arbitrarily and capriciously allowed the owner to amend the application from a place of assembly with no fixed seating to a place of assembly with fixed seating in order to qualify for the waiver; (ii) an alternate seating plan in which the wheelchair seats are converted to temporary seats must be provided in accordance with Construction Code § 1024.1.3; (iii) the seating plan fails to include at least four statutorily mandated companion seats adjacent to the four wheelchair spaces provided; and (iv) the approved plans do not comply with the accessibility requirements of the Construction Code; and

(i) The Calculation of the Parking Requirement

WHEREAS, the Appellant contends that the subject site does not meet the requirements for an accessory off-street parking waiver pursuant to ZR § 25-33 because the building has space to accommodate more than 100 occupants; and

WHEREAS, in response, DOB states that pursuant to ZR § 25-31, the number of required parking spaces for a house of worship is based on a calculation of the rated capacity of a space, which "shall be determined by the Commissioner of Buildings;" and

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WHEREAS, DOB states that it determines the rated capacity of a space by calculating the occupant load according to Construction Code § BC 1004, and that Construction Code § BC 1004.1 states that the occupant load shall be established by the largest number computed in accordance with Construction Code §§ BC 1004.1.1 through BC 1004.1.3; and

WHEREAS, DOB further states that Construction Code § BC 1004.1.1, which computes the occupant load of a space by using the actual number of occupants for which a space is designated, accounts for the largest number among Construction Code §§ BC 1004.1.1 through BC 1004.1.3 and is therefore the appropriate standard for determining the occupant load at the site; and

WHEREAS, DOB further states that the approved plans indicate that the place of assembly space will consist of 80 seats fixed to the floor, four wheelchair spaces, and a raised platform which has space for ten movable chairs, for a total of 94 occupants; and

WHEREAS, on November 12, 2010, DOB issued a Certificate of Occupancy (the "CO") for the subject site which allows a maximum of 94 persons in the space, and on June 23, 2010 DOB issued a Place of Assembly Certificate of Operation (the "PACO") in association with the approved plans, which also allows a maximum of 94 persons in the space; and

WHEREAS, DOB states that ZR § 25-31 requires that a house of worship in an R2 zoning district provide one accessory off-street parking space for every ten occupants; therefore, the subject site is required to have nine accessory off-street parking spaces based on its occupant load of 94; and

WHEREAS, accordingly, DOB concludes that pursuant to ZR § 25-33, the subject site is eligible for a waiver of the parking requirements of ZR § 25-31 because the total number of accessory off-street parking spaces is less than ten; and

WHEREAS, as to the calculation of the parking requirement, the Board agrees with DOB that based on the parking calculations of ZR § 25-31, the subject site qualifies for a waiver of the accessory off-street parking regulations pursuant to ZR § 25-33; and

WHEREAS, the Appellant also argues that the plans for the proposed house of worship originally included a non-fixed seating plan with space for 121 people, based on a calculation using square feet per occupant, and that DOB arbitrarily and capriciously allowed the owner to amend the plans on January 27, 2010 from a place of assembly with non-fixed seating to a place of assembly with fixed seats in order to qualify for a waiver of the parking requirements; and

WHEREAS, in response, DOB states that there is no Construction Code or other provision which restricts the Owner from amending its seating plan from non-fixed seating to fixed seating; and

WHEREAS, DOB further states that the CO and PACO allow a maximum occupancy of 94 persons at the subject site and if the number of occupants exceeds the

legally permissible number DOB would handle such an event as an enforcement issue, however, it would not have been permissible for DOB to deny a CO or PACO based on a complaint that more than the legally permissible number of occupants could potentially occupy the subject site at a given time; and

WHEREAS, the Board agrees with DOB that the Owner has the right to amend its seating plan from non-fixed seating to fixed seating, and notes that the layout of the approved seating plan appears to be rational and appropriate; and

WHEREAS, the Appellant also contends that the owner has failed to comply with Administrative Code § BC 1004.1.5, which requires that the occupant load be established by a registered design professional, subject to the approval of the Commissioner; and

WHEREAS, in response, DOB states that Construction Code § BC 1004.1.5 requires the registered design professional to establish an occupant load only when the per person occupancy is not listed in Administrative Code Table 1004.1.2; and

WHEREAS, accordingly, DOB argues that Administrative Code § 1004.1.5 is not applicable to the subject site because Table 1004.1.2 specifically includes a use of space as a place of assembly with fixed seats and refers to Administrative Code § 1004.7 to determine the occupant load; and

WHEREAS, the Board agrees with DOB that the occupant load did not have to be established by a registered design professional in the instant case; and

(ii) *Whether an Alternate Seating Plan is Necessary*

WHEREAS, the Appellant contends that the approved plans do not provide for an alternate seating plan as required by Construction Code § BC 1024.1.3, which provides that for "every place of assembly providing seating or other moveable furnishings, copies of approved plans and *approved alternate plans* shall be kept on the premises [emphasis added];" and

WHEREAS, the Appellant further argues that the alternate seating plan must show the maximum number of occupants for the site, which in this case would involve an alternate seating plan that shows the conversion of each wheelchair seat into multiple temporary seats; and

WHEREAS, specifically, the Appellant states that Construction Code § BC 1108.2.2 provides that wheelchair spaces and seats which are unsold 24 hours prior to an event shall be permitted to be released for sale to the public, including to persons without physical disabilities; and

WHEREAS, the Appellant argues that the removal of wheelchair spaces will create additional seats because each wheelchair space can be converted into multiple temporary seats, thereby increasing the parking requirement such that the site would not be eligible for the parking waiver pursuant to ZR § 25-33; and

WHEREAS, in response, DOB contends that there is no Construction Code or other DOB requirement for more than one place of assembly seating plan and the Appellant's claim that Construction Code § BC 1024.1.3 requires an

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alternate seating plan at the subject site is erroneous; and

WHEREAS, DOB represents that the purpose of Construction Code § BC 1024.1.3 is to require that all approved place of assembly seating plans be available at the premises for inspection and that they contain the pertinent information; and

WHEREAS, DOB states that where a place of assembly operates without fixed seats and where the building owner would like to utilize multiple seating arrangements, more than one seating plan may be submitted to DOB for approval, however, since the subject site has fixed seats it is appropriate that only one seating plan has been approved, and an alternate seating plan is not required; and

WHEREAS, DOB further states that in the event that the approved seating plan is not complied with, DOB will take appropriate enforcement action at that time; and

WHEREAS, the Board agrees with DOB that the Appellant has not provided any Construction Code or other provision that requires more than one place of assembly seating plan for the site, and that Construction Code § BC 1024.1.3 only requires that an alternate seating plan be located on the premises if such an alternate seating plan exists; as noted above, the subject house of worship is only approved for one seating plan; and

WHEREAS, in response to the Appellant's claim that the approved plans do not comply with Construction Code § BC 1108.2.2 with respect to potential unsold seats being released for sale to the public, DOB states that the approved plans do comply because all four wheelchair spaces will be available at all times and Construction Code § BC 1108.2.2 does not mandate any change in the total number of seating or occupants legally permitted, nor does it require an additional calculation to the number of seats based on unsold seats; and

WHEREAS, the Owner argues that the wheelchair seating at the subject site is permanently established and will not be converted to temporary seating in any circumstance, and that even if such a conversion were contemplated, the site is limited to a maximum occupancy of 94 persons by the CO and PACO; and

WHEREAS, the Owner further argues that Construction Code § BC 1108.2.2, which discusses the release of unsold wheelchair seats for sale to the public, is only meant to apply to certain places of assembly, such as theaters, arenas or stadiums, and that it does not apply to the subject house of worship because it does not sell seats to the public; and

WHEREAS, the Board agrees with DOB and the Owner that, to the extent that it even applies to a house of worship, Construction Code § BC 1108.2.2 does not impose a requirement that the Owner release unused wheelchair seats to the public, nor does it permit the Owner to convert each wheelchair space into multiple temporary seats for persons without physical disabilities, which would not be permitted by the CO or PACO, both of which limit the occupancy of the site to 94 persons; and

WHEREAS, the Board notes that even if an alternate

seating plan were required, there is no basis for providing an alternate seating plan that lacks the required wheelchair spaces and would therefore not comply with the Construction Code, as suggested by the Appellant; and

(iii) Whether the Necessary Companion Seats are provided on the Seating Plan

WHEREAS, the Appellant states that Construction Code § BC 1108.2.5 provides that "at least one companion seat complying with ICC A117.1, including Section 802.7 (Companion Seat) shall be provided for each wheelchair space required by Section 1108.2.2;" and

WHEREAS, the Appellant contends that the seating plan fails to provide the four companion seats required to accompany the four required wheelchair spaces; and

WHEREAS, the Appellant further contends that the addition of the companion seats raises the number of required seats to 98, which increases the parking requirement from nine spaces to ten spaces, thereby making the site ineligible for the parking waiver under ZR § 25-33; and

WHEREAS, in response, DOB stated that the four required companion seats are provided within the total number of seats (94), not in addition to the total number of seats; and

WHEREAS, DOB further states that International Council Code/American National Standard Institute ("ICC/ANSI") A117.1, Section 802.7 governs the type and alignment of companion seats, and that each companion seat at the subject site complies with the type and alignment requirements of ICC/ANSI A117.1, Section 802.7; and

WHEREAS, the Appellant subsequently argued that the companion seating is not compliant because it was not specifically delineated on the seating plan; and

WHEREAS, in response, DOB states that an amended seating plan was approved on November 17, 2010 which specifically delineates the location of the companion seating; and

WHEREAS, accordingly, the Board agrees with DOB that the necessary companion seats have been provided at the site and are properly delineated in the approved seating plan; and

(iv) Whether the Seating Plan Satisfies Accessibility Requirements

WHEREAS, the Appellant argues that the plans do not meet the accessibility requirements of the Construction Code because the companion seats block the aisle accessway and therefore the egress to the aisle; and

WHEREAS, DOB states that Construction Code § BC 1002 defines an aisle accessway as "that portion of an exit access that leads to an aisle," which at the subject site is the space between the fixed seating; and

WHEREAS, DOB notes that the approved seating plan reflects that the width of the aisle accessway is 12 inches, as required under Construction Code § BC 1024.10; and

WHEREAS, DOB states that Construction Code § BC 1024.10.2 specifies that the maximum number of seats in a single access row is eight, and that because the aisle where the wheelchair space is located has fewer than eight seats,

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single access to an aisle is all that is required under the Construction Code; and

WHEREAS, DOB argues that the approved seating plan reflects that dual access is provided to the aisles where the wheelchair seats are located and therefore the Construction Code requirement for egress to an aisle is exceeded because occupants of the row have the ability to access multiple egress routes in the event of an emergency; and

WHEREAS, the Appellant also contends that the location of the wheelchair seating on the approved seating plan blocks the aisle and creates a fire hazard; and

WHEREAS, in response, DOB states that the location of the wheelchair seating is not considered an obstruction to the aisle, nor does it violate the minimum aisle widths prescribed in Construction Code § BC 1024.9 because wheelchairs are mobile, are operated by individuals as a personal device for mobility, and are removed by the users of the wheelchairs upon exiting; therefore, wheelchairs are not stationary building fixtures or elements and, as such, are not subject to aisle widths requirements; and

WHEREAS, the Board agrees with DOB that the approved seating plan satisfies the accessibility requirements of the Construction Code as to aisle access and the location of the wheelchair seats; and

WHEREAS, during the course of the hearing, the Appellant provided alternate plans showing 106 seats at the site, which would increase the required number of parking spaces such that the site would not be eligible for a waiver under ZR § 25-33; the Appellant contends that these plans reflect that DOB erroneously waived the parking requirement; and

WHEREAS, the Board finds no merit in the alternate plans submitted by the Appellant because the Appellant has failed to establish that the approved seating plan does not comply with the Construction Code or that the alternate plans do comply with the Construction Code; and

WHEREAS, the Board notes that the Appellant's final submission raised additional arguments which were not part of the initial appeal filed by the Appellant and which the Board finds are not part of the subject appeal; and

WHEREAS, specifically, the Appellant's final submission argues that the CO was wrongfully issued and that the approved seating plan does not reflect the minimum aisle width required by the Construction Code; and

WHEREAS, notwithstanding the fact that these issues are not properly before the Board under the subject appeal, the Board finds that the Appellant failed to provide sufficient evidence to establish that the CO was wrongfully issued or that the approved seating plan does not comply with the Construction Code as to aisle widths; and

WHEREAS, therefore, the Board finds that DOB properly waived the parking requirement for the subject house of worship pursuant to ZR § 25-33 because the site has a total occupant load of 94 persons and a corresponding parking requirement of nine spaces under ZR § 25-31; and

WHEREAS, accordingly, the Board agrees with DOB and the Owner that there is no basis for the revocation of the

Permit.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated February 19, 2010, is hereby denied.

Adopted by the Board of Standards and Appeals, December 7, 2010.

132-10-A

APPLICANT – Adam Leitman Bailey, P.C., for N & J Associates, owner; Ariza, LLC, lessee.

SUBJECT – Application July 28, 2010 – Appeal challenging Department of Buildings determination not to reinstate revoked permits and approval based on failure to provide owner authorization in accordance with Section 28-104.8.2 of the Administrative Code. C4-6A zoning district. PREMISES AFFECTED – 105 West 72nd Street, 68 feet west of corner formed by Columbus Avenue and West 72nd Street. Block 1144, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Courtney K Merca.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a Final Determination letter dated June 29, 2010 by the Manhattan Borough Commissioner of the NYC Department of Buildings (“DOB”) (the “Final Determination”) addressed to the owner of the commercial condominium unit at 105 West 72nd Street (the “Appellant” and the “Building”), with respect to DOB Application Nos. 110255991 and 110359594; and

WHEREAS, the Final Determination states, in pertinent part:

By letter dated December 18, 2008, the Department of Buildings (“the Department”) notified you of its intent to revoke the approvals and permits associated with the above-captioned applications. The intent to revoke was based on an audit of the plans by the Department and on a complaint that owner’s authorization for the applications had not been submitted in accordance with Section 27-1401 of the

1 Section 27-140 of the Administrative Code of the City of New York (“AC”) has been re-codified as Section 28-104.8.2, effective July 1, 2008, and the latter is the appropriate provision in effect at all relevant periods discussed herein, rather than Section 27-140, which DOB erroneously cited in the Final Determination. The language of the new provision varies slightly from Section 27-140, but DOB states that its interpretation of the requirement created by both sections is the same.

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Administrative Code of the City of New York (“AC”).

By letter dated March 29, 2009, the Department revoked the permits. On or about April 12, 2010, a Department examiner determined that all technical objections raised during the above-referenced audit had been cured. Aspects of this determination were also reviewed and affirmed by Technical Affairs.

Notwithstanding that acceptable cures have been received, the Department hereby declines to reinstate the permit, rescind the revocation of the approvals and permits, or rescind the Stop Work Order in effect because there continues to be a failure to comply with AC § 27-140. Pursuant to that section, the condominium board must authorize the applications.

The Department will not issue a work permit unless and until such authorization has been submitted; and

WHEREAS, a public hearing was held on this appeal on October 26, 2010, after due notice by publication in *The City Record*, and then to decision on December 7, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, representatives of the Board of Managers of the 105 West 72nd Street Condominium (the “Managers”) provided written and oral testimony in opposition to the appeal; and

WHEREAS, DOB, the Appellant, and the Managers have been represented by counsel throughout this appeal; and

WHEREAS, the appeal concerns the authorization requirement in the AC, which DOB invoked when it audited Appellant’s alteration permit to construct a daycare center in its cellar level condominium unit (the “Unit”) of a 12-story primarily residential building; and

PROCEDURAL HISTORY

WHEREAS, on September 24, 2008, the Appellant filed an alteration permit application, under DOB Application No. 110255991 to renovate the Unit under DOB’s professional certification program, and the initial work permit was issued on November 1, 2008; and

WHEREAS, on October 24, 2008, the Appellant filed DOB Application No. 110359594 to obtain a new Certificate of Occupancy, which was required for the change in use of the cellar from boiler room and storage to a daycare center; and

WHEREAS, in the owner’s information section of both applications, the Appellant provided: “Nader Ohebshalom” and the business name “N&J Associates, LLC,” which reflects the condominium unit owner/Appellant; the owner type selected was “Partnership,” rather than “Condo Unit Owner,” which was left blank; and

WHEREAS, pursuant to the application form, when “Condo Unit Owner” is selected, applicants are then directed to have their Condo/Co-op Board complete the next section of the application; and

WHEREAS, DOB received a complaint from the

Managers that owner’s authorization had not been submitted in accordance with the AC, and then conducted a special audit of the approval, and concluded that the Managers’ authorization was required, pursuant to the AC; and

WHEREAS, accordingly, on December 18, 2008, DOB issued an Intent to Revoke Approval(s) based on the Appellant’s failure to provide the Managers’ authorization to the applications; and

WHEREAS, DOB rejected the Appellant’s subsequent attempts to establish that it did not need the Managers’ authorization to make the application and, thus, on March 25, 2009, DOB revoked the permits and approvals for both applications; and

WHEREAS, in April 2009, the Appellant (and its tenant) commenced (1) an Article 78 proceeding (to challenge the March 25, 2009 decision to revoke the permits) against the City of New York, and (2) a declaratory judgment action (seeking an order declaring that the Managers did not have to sign the application) against the City of New York and the Managers; and

WHEREAS, DOB moved to dismiss the Article 78 proceeding based on the Appellant’s failure to exhaust its administrative remedies; and

WHEREAS, by order dated June 9, 2009, the court (“Justice Friedman’s Decision”) agreed with the City that the interpretation of the Building Code falls within DOB’s expertise and the Appellant must exhaust its administrative remedies by appealing DOB’s determination to the BSA and, thus dismissed the Article 78 proceeding in its entirety; and

WHEREAS, the City then moved to dismiss the declaratory judgment action on the grounds of *res judicata* and collateral estoppel; and

WHEREAS, by order dated, September 16, 2009, the court granted the motion and dismissed DOB from the declaratory judgment action; and

WHEREAS, the remainder of the declaratory judgment action was before Justice Edmead; by order dated February 18, 2010, Justice Edmead decided a number of issues including those related to the ownership rights of the Unit as well as holding that the Managers were not required to authorize the renovations, which she concurred were legal, pursuant to AC § 28-104.8.2; and

WHEREAS, Justice Edmead’s decision stated “since the Plan specifically states the Board’s approval for renovations to a commercial unit is not required, it follows that a commercial unit owner’s signature on the permit application, as authorized by the Plan and the Administrative Code, is sufficient;” and

WHEREAS, the Appellant returned to DOB with Justice Edmead’s order and DOB rejected the order in place of the Managers’ authorization; and

WHEREAS, on June 29, 2010, the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal, which states that it requires the condominium association (the Managers’) authorization before it will grant the requested approvals; and THE PROVISION OF THE BUILDING CODE RELEVANT

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TO THIS APPEAL

WHEREAS, AC § 28-104.8.2 reads as follows:

The application shall contain a signed statement by the owner, cooperative owners' corporation, or condominium owners' association stating that the applicant is authorized to make the application and, if applicable, acknowledging that construction documents will be accepted with less than full examination by the department based on the professional certification of the application. Such statement shall list the owner's full name and address, as well as the names of the principal officers, partners or other principals if a corporation, partnership or other entity. Principal officers of a corporation shall be deemed to include the president, vice presidents, secretary and treasurers; and

WHEREAS, as discussed in more detail below, the Final Determination is based on DOB's interpretation of AC § 28-104.8.2 that applications involving work to be performed in condominium buildings must include authorization from the condominium owners' association and that authorization from a single condominium unit owner is insufficient; and

DISCUSSION

A. The Interpretation of New York City Administrative Code Section 28-104.8.2

WHEREAS, the Appellant asserts that AC § 28-104.8.2 permits either the owner of the unit or the condominium association to sign the application and that DOB misinterprets the text by requiring the condominium association's (the Managers, here) authorization; and

WHEREAS, the Appellant relies on Justice Edmead's analysis of AC § 28-104.8.2, which concludes that the code section creates a distinction in that it permits either the owner of the unit or the condominium association to sign the application and, in order to determine which signature is required on a specific application, one must look to the governing documents of the condominium; and

WHEREAS, the Appellant asserts that in order to determine whether to require the signature of the owner of the unit or the condominium association, one must look to the governing documents of the condominium and that, according to the condominium plan and the by-laws of the Building, the Managers must approve renovations to individual residential units, but not to commercial units and, thus, the Appellant's authorization on the DOB permit application complies with AC § 28-104.8.2; and

WHEREAS, the Appellant cites to Justice Edmead's February 22, 2010 order to support its assertion that the Managers' signature is not required:

[the Appellant] is the lawful owner of the unit, that the Board has no ownership interest in the Unit; that [the Tenant] is the lawful lessee of the Unit, that pursuant to zoning laws, the Unit may be used as a child care facility and that the Board's consent to lawful alterations in the Unit is unnecessary; and

WHEREAS, the Appellant contends that Justice Edmead determined that based on the governing documents of the condominium that the Appellant is the owner for purposes of AC § 28-104.8.2 and the Board's signature was not required; and

WHEREAS, in response, DOB asserts that AC § 28-104.8.2 requires the Managers' authorization based on (1) statutory interpretation principles and (2) DOB precedent, and that the Board's review in the subject appeal should be limited to this subject matter; and

WHEREAS, as to statutory interpretation, DOB disagrees with the Appellant that the AC allows for either the "owner" or the "condominium owner's association" to authorize the application; and

WHEREAS, specifically, DOB disagrees that the disjunctive "or" reflects that there is an option other than having the Managers' authorization; and

WHEREAS, instead, DOB asserts that the Building Code, when read as a whole, compels a different interpretation; and

WHEREAS, DOB cites to AC § 28-101.5 and the definition of "Owner" as "any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises" and finds that a broad reading of "owner" would then allow for a mortgagee or remainderman to authorize an application at DOB, pursuant to AC § 28-104.8.2; and

WHEREAS, DOB finds the broad reading to lead to an absurd result and, instead, argues that AC § 28-104.8.2 be read in light of its purpose to (1) reference the three predominant forms of real estate ownership in New York City and (2) to establish who must authorize work; and

WHEREAS, DOB asserts that the three entities – owner, condominium association, and cooperative corporation - represent the three common ways a building's ownership is organized; and

WHEREAS, specifically, DOB states that (1) for a building owned by a fee owner, only the owner must authorize the application, and (2) for a building that is established as a condominium or as a cooperative, the condominium owners' association or cooperative owners' corporation, respectively, must authorize the work; and

WHEREAS, DOB concludes that because the Building is organized as a condominium, the condominium owners' association must authorize the work; and

WHEREAS, as to precedent, DOB states that it relies on its well-established requirement for condominium board authorization, which it states has withstood administrative and judicial scrutiny; and

WHEREAS, further, DOB cites to AC § 27-140 in the 1968 Building Code, which required "... a signed statement of the owner, condominium board of managers or cooperative board stating that the applicant is authorized to make the application" and the 1938 Code, which required "... a statement ... describing the proposed work ... accompanied by a further statement in writing ... giving the full name and

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residence of each of the owners of the structure, proposed structure or premises” (Code 26-161.0); and

WHEREAS, thus, DOB contends that even before the advent of condominium ownership, DOB required all parties with an ownership stake to authorize work; and

WHEREAS, DOB asserts that the requirement for the Managers, who represent and speak on behalf of the Building’s multiple owners, to authorize the applications follows a 70-year-old policy to require authorization from all owners; and

WHEREAS, DOB cites to two prior BSA cases to support its interpretation of the 1968 provision; in BSA Cal Nos. 1048-86-A and 480-83-A, the Board determined that DOB may properly revoke permits when a landlord-tenant dispute calls into question whether an applicant has authorization; and

WHEREAS, DOB notes that the Appellate Division upheld BSA’s determination in BSA Cal. No. 480-83-A at Bun & Burger of Rockefeller Plaza v. City of New York, 489 N.Y.S.2d 517 (DOB acted properly in revoking permit when fee owner objected to net lessee’s application for permit); Bun & Burger will be discussed in more detail below; and

WHEREAS, DOB adds that its policy on owner’s authorization is set forth in DOB Operational Policy and Procedure Notice #17/1987, which states that a condominium association must authorize an application by a unit owner; and

WHEREAS, finally, DOB asserts that the policy of requiring a condominium board’s signature makes practical sense because it serves to acknowledge three facts: (1) any work on a condominium unit has the potential to legally and physically affect all other units in the building; (2) condominium agreements vary; and (3) DOB does not possess the jurisdiction to apply the law or expertise to interpret a condominium agreement; and

WHEREAS, DOB states that its policy avoids the requirement that it determine on a case-by-case basis which unit owners could file and which could not and which boards could object to unit filings and which could not, which would result in an untenable position creating uncertainty and undue burdens on all parties; and

WHEREAS, the Board finds that New York State courts support the conclusion that a government agency is not required to enforce a private agreement, which may conflict with its own ordinance, and finds that the case law does not prohibit an agency from considering a private agreement, but it does not require the agency to enforce it; and

WHEREAS, the Board cites to Friends of Shawangunks v. Knowlton, in which the court states that an agency is not required to consider a private agreement in the context of a government approval because a zoning ordinance “is a legislative enactment and the easement or covenant a matter of private agreements” 64 N.Y. 2d 387, 392 (1985) See also Isenbarth v. Barnett, 206 A.D. 546 (N.Y. App. Div. 2d Dep’t 1923); and

WHEREAS, the Board notes that the rule cited in Friends of Shawangunks, which distinguishes a governmental ordinance from a private real property agreement, has been

applied in cases involving the Board See Lacitra v. Foley, 20 Misc.2d 922 (N.Y. Sup. Ct. Bronx Co. 1959), Gersten v. Cullen, 203 A.D.2d 744 (N.Y. App. Div. 3d Dep’t 1994), Nemet v. Edgemere Garage & Sales Co., 73 N.Y.S.2d 921 (N.Y. Sup. Ct. Queens Co. 1947); and

WHEREAS, accordingly, the Board does not find that there is any practical or legal requirement that DOB contemplate private agreements when seeking authorization for the purposes of AC § 28-104.8.2, nor is there a basis to require DOB to follow another forum’s determination based in part on its reading of a private agreement and in part on its interpretation of the AC, when it is not a party to the action; and

WHEREAS, the Board recognizes that DOB is a land use agency with a mandate to insure construction safety, which may be distinctly different from a mandate set forth within a condominium’s offering plan and by-laws; thus, the rights that DOB seeks to protect through its AC are not meant to be made in consultation with the terms of private agreements; and

WHEREAS, the Board concludes that, just as DOB is not required to resort to or rely on private agreements, which come in many forms and may be difficult to interpret, it should not be required to interpret court orders which, similarly, may not clearly set forth the court’s direction, when DOB is not a party; and

WHEREAS, the Board, thus, finds that Justice Edmead’s order, that the Appellant (an individual condominium unit owner) may authorize the DOB applications, rather than the Managers (the condominium association), reflects a waiver of the AC since the AC requires that the Managers must authorize the applications; and

WHEREAS, the Board recognizes that DOB does not have the ability to waive the AC and nor does the Board, within the context of the subject appeal; therefore, among the reasons that the Board finds that DOB cannot act on Justice Edmead’s determination that the Managers’ authorization is not required, is the fact that it would result in DOB exceeding its authority by waiving a provision of the AC; and

B. The Bun & Burger Decision

WHEREAS, DOB introduced a prior BSA case (BSA Cal. No. 480-83-A [16 West 48th Street, Manhattan] and the associated Article 78 proceeding, Bun & Burger), which concerned DOB’s revocation of permits issued to a net lessee after the building’s owner complained that the net lessee lacked its authorization to obtain a permit, in support of DOB’s position that the court is the appropriate venue for resolving disputes between parties who assert ownership rights; and

WHEREAS, the Board notes that after DOB revoked the permits, which led to the appeal at the center of Bun & Burger, the lessee initially went directly to court with an Article 78 proceeding to seek the reinstatement of the permits, which was dismissed for failure to exhaust administrative remedies and, thus, the net lessee filed an appeal before the Board to review DOB’s Code interpretation; and

WHEREAS, ultimately, the Board upheld DOB’s interpretation and the lessee subsequently filed an Article 78

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proceeding against DOB and the Board; the Supreme Court upheld the Board's decision that DOB's interpretation of "owner" under the Code, finding it was reasonable; and

WHEREAS, the Supreme Court added that "[t]he purpose of the Board of Standards and Appeals is to protect the public, not resolve landlord-tenant disputes" Bun & Burger v. City of New York, Index No. 2880/84 (Blyn, J.); and

WHEREAS, the Appellate Division, First Department sustained, agreeing that DOB and the Board had "correctly construed" the AC and were not arbitrary or capricious in revoking the net lessee's application absent the fee owner's authorization; and

WHEREAS, the Appellant has asserted that Bun & Burger is analogous to the subject case and that Bun & Burger requires DOB to follow a court's determination, which resolves a dispute between parties regarding owner's authorization; and

WHEREAS, DOB distinguishes Bun & Burger by considering the differences between the rolls of parties under a lease in which a lessee acts as an owner with similar rights and obligations as opposed to a condominium owner who has markedly different rights and obligations than those of a condominium association including that a unit owner is only responsible for part of a building whereas the association is responsible for the entire building; and

WHEREAS, DOB submitted departmental memoranda which reflect a consideration that there may be circumstances where a net lessee, with authorization from the owner, could file an application; however, DOB maintains that a condominium unit owner could never replace a condominium association; the condominium association is always required, regardless of whether a private agreement requires such authorization; and

WHEREAS, DOB asserts that Bun & Burger should not be applied to eliminate the authorization requirement set forth at AC § 28-104.8.2 other than for the principle that the court is the appropriate forum for resolving disputes between parties about private agreements which set forth property rights; and

WHEREAS, DOB concludes that the rule in Bun & Burger is that where there is a dispute between a condominium unit owner and a condominium association, a court must determine that the condominium association, through its condominium plan and by-laws, conferred the legal right to undertake alterations upon the condominium unit owners and thus the condominium association must authorize the application; and

WHEREAS, the Appellant asserts that Bun & Burger requires that the court determine which party may authorize DOB applications and that DOB is held to that determination; and

WHEREAS, the Appellant contends that, although the form of the contracts in Bun & Burger and the subject case is different, the principle is the same: that when there is a dispute, the answer to who qualifies as "owner" under the statute must be determined by the courts based on a reading of the statute with the contract; and

WHEREAS, the Board disagrees with the Appellant and

finds that the question in Bun & Burger was whether a broad reading of "owner" and a grant of authorization outside of the scope of the application could allow a net lessee to stand in the shoes of the fee owner and file the application without additional authorization, and that the question in the subject appeal is whether the statute reflects the requirement that all applications submitted by condominium unit owners include authorization from the condominium association; in the subject appeal, there is no dispute about who the owner is, but rather whether a condominium unit owner as "owner" is a substitute for the "condominium association," cited as required authorization in AC § 28-104.8.2; and

WHEREAS, further, the Board notes that in Bun & Burger, there was a question about whether or not the fee owner had authorized the work because, DOB accepted the applicant's representation that the owner had authorized the application; but, here, as reflected on the DOB application, the condominium unit owner must identify Condominium Unit as the type of ownership and include the condominium association's authorization directly on the application, which was not done; and

WHEREAS, the Board notes that in Bun & Burger, there was no question about one entity fitting one definition of a required party and another entity fitting another definition; rather, the case was about both entities vying for the same title as owner under a broad reading of the definition of owner (which includes "control of property") and authorization (under the lease rather than under an individual application); and

WHEREAS, DOB practice acknowledges that at the time of the Bun & Burger decision, it memorialized its policy by departmental memoranda, which includes allowing lessees to provide notarized statements that they have owner's authorization; the Board notes that no such exception exists for condominium unit owners, as condominium associations are clearly identified on the application form; and

WHEREAS, in the subject case, the Board notes that the Appellant claims to be "the owner" – one party named in AC § 28-104.8.2 and the Managers claim to be "the condominium owners' association" – another party named in the section; thus, the issue here is DOB's longstanding interpretation of the AC to require the condominium association's authorization; and

WHEREAS, the Board distinguishes Bun & Burger because DOB does not require the resolution of a dispute between the parties to read the section in conformance with its longstanding interpretation of "owner" – a fee owner of an individual building and "condominium owners' association" – the representative body for any and all condominium unit owners in a condominium building; and

WHEREAS, the Board notes that DOB disagrees with the meaning of "owner" proffered by the Appellant; DOB accepts that the Appellant is an owner, just not the right kind of owner – one in a non-condominium building; thus, because all parties agree that the ownership structure is a condominium and DOB has interpreted that only one signator is listed for authorization purposes of such ownership structure under the

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section, the condominium association's authorization is required; and

WHEREAS, the Board notes that private contracts may allow for the condominium unit owner/Appellant to file at DOB, but a private contract cannot disturb or overwrite the AC, which requires the Managers' authorization; and

WHEREAS, additionally, the Board does not find that Justice Edmead or the court in Bun & Burger holds that DOB must redefine the AC based on the terms of a private agreement; and

WHEREAS, finally, the Board notes that the court in Bun & Burger upheld DOB and the Board's statutory interpretation that the lessee was not the owner under the Code and sustained its rejection of the lessee's application in the absence of the fee owner's authorization and the Board notes that the Appellant's suggestion that Bun & Burger requires DOB and the Board to follow a court's determination of ownership relies on *dicta* and thus is not binding precedent; and

WHEREAS, the Board finds that in the subject case, DOB has made a statutory interpretation that the Appellant, itself, cannot provide the required authorization under the Code and, as in Bun & Burger, the parties must adjudicate until DOB obtains the required authorization from the condominium association, which is the only permitted authorization within the context of the subject statute; and

C. The Effect of Prior Related Litigation on the Question of Owner's Authorization

WHEREAS, additionally, the Appellant asserts three arguments about the effect of the related litigation on the question of the Managers' authorization and DOB's position that Justice Edmead's decision is not binding on it: (1) DOB is collaterally stopped from re-litigating the issue of whether the Managers' approval is required; (2) a collateral attack on the Court's orders is not permissible under the law; and (3) the law of the case must be enforced; and

WHEREAS, the portion of Justice Edmead's decision which is at issue within the context of this appeal is her determination that the Managers' authorization is not required for DOB applications, pursuant to AC § 28-104.8.2; and

WHEREAS, Justice Edmead states: "In this case, the statute permits either the owner or the condominium association to sign the application. In order to determine which signature is required on an individual application, one must read the condominium plan and by-laws in conjunction with the regulation;" and

WHEREAS, the Appellant asserts that the doctrine of collateral estoppel precludes DOB from arguing the issue of owner's authorization before the Board because (1) the issue was raised in a prior action or proceeding decided against it, (2) the issues are identical, (3) the issue was decided in the first action, and (4) the parties had a full and fair opportunity to litigate the issue in the earlier action, citing to Ryan v. New York Tel. Co., 62 N.Y.2d 494 (1984) and Sam v. Metro-North Commuter Railroad, 287 A.D. 2d 378 (1st Dept. 2001); and

WHEREAS, specifically, the Appellant asserts that DOB

had an opportunity to litigate the issue and that DOB cannot collaterally attack the Court's rulings, and that DOB must follow the Court's determination because it is the "law of the case" which is the doctrine requiring a lower court, on remand, to follow the mandate of the higher court, citing to People v. Evans, 94 N.Y.2d 499, 504 (2000); and

WHEREAS, DOB asserts that Justice Edmead's decision does not have any bearing on DOB's determination regarding the interpretation of AC § 28-104.8.2; and

WHEREAS, DOB asserts that the Appellant's arguments regarding DOB's duties or obligations with respect to Justice Edmead's order, which does not name DOB, are not within the jurisdiction of the Board and that only the question of DOB's interpretation of AC § 28-104.8.2 is before it; and

WHEREAS, DOB disagrees with the Appellant about whether Justice Edmead decided on February 22, 2010 in Ariza, LLC v. City of New York, Index No. 105548/09 that DOB must accept permit applications from the Appellant without the Managers' authorization; and

WHEREAS, DOB notes that the doctrine of collateral estoppel precludes a party from re-litigating in a subsequent action or proceeding, an issue clearly raised in a prior action or proceeding and decided against the party, provided (1) the issues are identical, (2) the issue was necessarily decided in the first action, and (3) the parties had a full and fair opportunity to litigate the issue in the earlier action; and

WHEREAS, DOB asserts that the question of whether it has the authority under AC § 28-104.8.2 to require a condominium board to sign an application for work was not "clearly raised" and "decided against" DOB because DOB had already been dismissed from the declaratory judgment action when Justice Edmead determined that "[t]he (Condo) Board's consent to lawful alterations in [Appellant's Unit] is unnecessary;" and

WHEREAS, further, DOB states that Justice Edmead may have decided the meaning of the Building's offering plan, but such decision does not compel DOB to modify its interpretation of AC § 28-104.8.2 and, accordingly, DOB is not required to accept an application from any party, without authorization from the Managers; and

WHEREAS, DOB asserts that the issues – the subject of the Article 78 proceeding and of the subject appeal – are not identical because the court "read the condominium plan and by-laws in conjunction with the regulation" whereas the Board's review in the subject appeal is limited to the interpretation of AC § 28-104.8.2 pursuant to its Charter Authority; and

WHEREAS, DOB also asserts that it did not have a full and fair opportunity to litigate the issue because the subject matter of AC § 28-104.8.2 would have required an appeal to the Board, as was held in Matter or Ariza, d/b/a Early Days Childcare Center and N&J Associates, LLC v. The City of New York, Index No. 105546/09 (M. Friedman, J.) and Ariza, LLC v. City of New York, Index No. 105548/09 (E. Rakower, J.) and then, if necessary, an Article 78 proceeding; and

WHEREAS, DOB asserts that a full and fair opportunity

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presumes that all parties litigating are properly before the reviewing tribunal, which was not the case in the two Ariza cases because administrative remedies against DOB had not yet been exhausted; and

WHEREAS, the Board agrees with DOB that the matter before it is whether DOB appropriately interpreted AC § 28-104.8.2 and it refrains from taking a position on the host of arguments concerning the litigation process except that (1) it concurs with Justice Friedman's Decision that the interpretation of the AC was not ripe for review by the court until the matter had been reviewed by the Board, pursuant to the exhaustion of remedies doctrine and (2) accordingly, that Justice Edmead's holding, in so much as it includes an interpretation of the AC, is not binding on DOB; and

WHEREAS, since the Board's authority to review DOB's interpretation of the AC is distinct from the court's authority, the Board does not find that the "law of the case" doctrine is applicable; and

WHEREAS, therefore, the Board rejects the Appellant's argument that DOB is collaterally estopped, that there is a collateral attack on the court, or that there is a "law of the case" to apply; and

THE BOARD OF MANAGERS' POSITION

WHEREAS, the Board of Managers, who agree with DOB's interpretation of the code and support DOB's determination to deny reinstatement of the approvals, assert the following arguments: (1) the proposed daycare use is unlawful as the space does not comply with the Multiple Dwelling Law; (2) Judge Edmead did not have the authority to act on the dispute with DOB regarding the interpretation of AC § 28-104.8.2 absent the exhaustion of administrative remedies; (3) DOB was not a party to the action at the time of Justice Edmead's decision and thus had no opportunity to litigate the issue; (4) the conditions that are required for collateral estoppel are not present; (5) the Board and DOB are not bound by Justice Edmead's decision; (6) Justice Edmead did not consider the legality of the proposed use of the Unit; (7) Justice Edmead did not direct DOB to accept the Appellant's signature; and (8) Bun & Burger is not applicable because the facts are different in that there is not a lease between the parties; and

WHEREAS, the Managers argue that the proposed use of the Unit as a daycare center is unlawful and, thus, by the terms of the Building's by-laws and offering plan, they are not required to provide authorization; and

WHEREAS, the Managers request that DOB and the Board inspect the Unit to determine whether it complies with egress requirements, since the permit was submitted under the self-certification process; and

WHEREAS, the Managers assert that the Building Code is not subject to a governing document of any housing association and that the intention of the Building Code is not to provide more entities with the right to authorize applications to DOB, but to limit the number of entities with the power to authorize submissions, following the decision in Bun & Burger; the Managers state that the court's decision provided that no owner of a unit within a building could undertake

irreversible waste to the detriment of the entire building; and

WHEREAS, in response to the Managers' opposition, the Appellant states that the issue before the Board is whether DOB must follow Justice Edmead's order and also notes that the Managers' invocation of safety concerns is misplaced because (1) Justice Edmead determined that the Unit may be used for the proposed use and (2) DOB has determined that all technical issues have been cured; and

WHEREAS, the Appellant also rejects the Managers' claims that Bun & Burger is inapplicable because the Appellant's proposed use of the space is unlawful; and

WHEREAS, as to the Managers' supplementary arguments not discussed earlier, the Board notes that the appeal is brought by the Appellant and concerns the question of whether the condominium owners' association's authorization is required; no issues related to fire safety, zoning, or anything else related to the proposed use of the space is before the Board; and

CONCLUSION

WHEREAS, the Board agrees with DOB's statutory interpretation that the "owner" identified in AC § 28-104.8.2 is an owner of a building, not a condominium unit owner as condominiums and cooperatives are addressed by the identification of their boards; the Board agrees that the spirit of the text is to seek authorization from someone representing the entire building, as the entire building may be affected when work is proposed anywhere within it; an owner, simply, is the authority for his own (or his co-owners') building, a condominium association is the authority for the entire condominium building, and the cooperative corporation is the authority for a cooperative building; and

WHEREAS, the Board also agrees with DOB that it would be untenable and lead to inconsistent results if DOB were to sometimes accept a condominium unit owner's authorization and sometimes require the condominium association's authorization and recognizes that DOB has a long-standing sound policy and practice in interpreting and enforcing AC § 28-104.8.2 to require authorization from the condominium association; and

WHEREAS, the Board agrees with DOB's position about seeking authorization from a representative of an entire condominium building and fails to see any logic in allowing for the choice between a condominium unit owner or the condominium association, finding it difficult to imagine a situation in which a condominium unit owner would opt to seek out the condominium association's authorization rather than simply providing its own authorization directly to DOB; and

WHEREAS, finally, the Board recognizes that DOB's policy for requiring the condominium association's authorization is rooted in practical public policy concerns about construction practices and safety, while a condominium's private agreement as set forth in its by-laws and offering plan addresses a different set of individual property interests other than technical construction matters, which are implicated when an owner of a portion of a building with multiple owners seeks

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to make changes that require DOB approval; and

WHEREAS, therefore, the Board accepts DOB's policy and reasoning for requiring condominium association authorization for applications involving condominium units even when it conflicts with the rights set forth in a private condominium agreement; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated June 29, 2010, determining that the Managers' authorization is required for the noted approvals, is hereby denied.

Adopted by the Board of Standards and Appeals, December 7, 2010.

136-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Richard Duenia, lessee.
SUBJECT – Application August 3, 2010 – Proposed reconstruction and enlargement of a single family dwelling in the bed of a mapped street, contrary to General City Law Section 35, and upgrade of private disposal system within the bed of a private service road, contrary to Department of Buildings policy. R4 zoning district.

PREMISES AFFECTED – 26 Park End Terrace, east side of Rockaway Point, 20.21 south of mapped Bayside Drive, Block 16340, Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated July 27, 2010, acting on Department of Buildings Application No. 420126508, reads in pertinent part:

“A1 – The site and building are located in the bed of a mapped street therefore, no permit or Certificate of Occupancy can be issued as per Art 3, Sect 35 of the General City Law; and

A2 – The private disposal system is in the bed of the service lane contrary to Department of Buildings Policy;” and

WHEREAS, a public hearing was held on this application on December 7, 2010 after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letters dated October 27, 2010 and November 15, 2010, the Fire Department states that it has no objection to the subject proposal; and

WHEREAS, by letter dated September 2, 2010, the Department of Environmental Protection states that it has no

objection to the subject proposal; and

WHEREAS, by letter dated December 2, 2010, the Department of Transportation states that it has no objection to the subject proposal; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 27, 2010, acting on Department of Buildings Application No. 420126508, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 5, 2010” - one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 7, 2010.

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 233rd Street, Block 4972, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto.

For Opposition: Joel A. Miele Sr.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for decision, hearing closed.

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123-10-A & 124-10-A

APPLICANT – Fire Department of the city of New York
OWNER – DiLorenzo Realty Corporation
LESSEES – Flair Display Incorporated
SUBJECT – Application July 6, 2010 – Application to modify Certificate of Occupancy to require automatic wet sprinkler system throughout the entire building.
PREMISES AFFECTED – 3931, 3927 Mulvey Avenue, 301.75' north of East 233rd Street. Block 4972, Lot 60, 62 Borough of the Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

For Opposition: Joel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for decision, hearing closed.

153-10-A

APPLICANT – Eric Palatnik, P.C., for 101 01 One Group LLC, owner.

SUBJECT – Application August 19, 2010 – Proposed construction of a three story, five family residential building located within the bed of a mapped street (101st Street), contrary to General City Law Section 35. R5 Zoning District.

PREMISES AFFECTED – 101-01 39th Avenue, between 101st Street and 102nd Street, Block 1767, Lot 59, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, DECEMBER 7, 2010

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

305-09-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, for South Queens Boys & Girls Club, Inc., owner.

SUBJECT – Application November 5, 2009 – Variance (§72-21) to permit the enlargement of an existing community facility building (*South Queens Boys & Girls Club*) contrary to floor area (§33-121) and height (§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

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 6, 2009, acting on Department of Buildings Application No. 410004953, reads in pertinent part:

“Proposed enlargement to community facility building in C2-2/R5 zoning district is contrary to the following Zoning Resolution Sections:

Zoning Resolution Section 33-121 regarding community facility floor area ratio;

Zoning Resolution Section 33-431 regarding wall height;

Zoning Resolution Section 33-431 regarding sky exposure plane;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C2-2 (R5) zoning district, an enlargement to an existing community facility building, which does not comply with floor area, wall height, and sky exposure plane regulations, contrary to ZR §§ 33-121 and 33-431; and

WHEREAS, a public hearing was held on this application on July 27, 2010, after due notice by publication in the *City Record*, with continued hearings on October 26, 2010, November 23, 2010, and then to decision on December 7, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair

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Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, City Council Member Eric Ulrich recommends approval of this application; and

WHEREAS, New York State Senator Joseph P. Addabbo, Jr., provided testimony in support of this application; and

WHEREAS, New York State Assembly Member Michael G. Miller provided testimony in support of this application; and

WHEREAS, the application is brought on behalf of the South Queens Boys & Girls Club (the "Boys & Girls Club"), a nonprofit institution; and

WHEREAS, the site is located on the southeast corner of Atlantic Avenue and 110th Street; and

WHEREAS, the site has 150 feet of frontage along Atlantic Avenue and 100 feet of frontage along 110th Street, with a lot area of approximately 15,000 sq. ft.; and

WHEREAS, the site is occupied by an "L"-shaped two-story building with a mezzanine and penthouse; and

WHEREAS, the building was built in 1928 and last altered in the early 1970s; and

WHEREAS, the Boys & Girls Club occupies the entire two-story building for community facility (Use Group 4) purposes; and

WHEREAS, the building has a floor area of approximately 24,151 sq. ft. (1.61 FAR); and

WHEREAS, the applicant states that the western portion of the building has a legal non-complying wall height of approximately 41'-0"; and

WHEREAS, the building is currently occupied as follows: (1) the cellar - an exercise room, after school/senior center, computer room, kitchen and accessory storage and mechanical space; (2) the first floor - a pre-teen center, art and crafts room, computer rooms, library, office space, wood shop, and accessory storage; (3) the second floor - a teen center, conference room, gymnasium/performing arts space, and accessory storage; (4) the third floor - a project room, office, and accessory storage; and (5) the penthouse - a caretaker's apartment; and

WHEREAS, the applicant states that there was formerly another building occupied by a pool on the now vacant 48'-0" by 95'-0" portion of the lot, which has been demolished; and

WHEREAS, the applicant now proposes to enlarge and renovate the existing building, which includes the demolition of the eastern portion of the building and the construction of a three-story portion on the remainder of the lot to align with the western portion of the existing building; and

WHEREAS, the applicant proposes the following non-complying conditions: (1) an increase in the floor area from the existing 24,151 sq. ft. (1.61 FAR) to 34,560 sq. ft. (2.3 FAR) (30,000 sq. ft. [2.0 FAR] is the maximum permitted); (2) a front wall height of 45'-0" (a maximum front wall height of 35'-0" is permitted); and (3) encroachment into the

sky exposure plane; and

WHEREAS, the applicant initially proposed to construct a building with a floor area of 37,488 sq. ft. (2.5 FAR) and, at the Board's direction, the applicant revised its plans to reduce the floor area waiver, resulting in the current proposal; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the programmatic needs of the Boys & Girls Club; (2) the constraints of the existing building; and (3) the subsurface conditions at the site; and

WHEREAS, the applicant states that the existing building lacks sufficient space to accommodate the programming of the Boys and Girls Club, which includes education, physical education, technology education, youth development, and social recreation; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the Boys & Girls Club which require the requested waivers: (1) a need to accommodate a regulation size basketball court; (2) a need to accommodate an increase in attendance; (3) a need to separate different age groups of attendees; and (4) a need to provide adequate administrative space; and

WHEREAS, as to the need to expand and enlarge the activity space, the applicant represents that the creation of a regulation size basketball court will make possible a complete physical education program for the members of the Boys & Girls Club; and

WHEREAS, specifically, the applicant states that the new gymnasium space will allow proper instruction and competition in a full array of sports activities, provide separate locker room facilities, accommodate roll-out bleacher seats, and allow the existing combined gymnasium/performing arts space to function more appropriately for instruction in the performing arts; and

WHEREAS, the applicant states that the requested floor area waiver is necessary to alleviate the space constraints of the existing building, and the requested wall height and sky exposure plane waivers are required in order for the reconstructed eastern portion of the building to align with the western portion of the building, thereby extending the existing legal non-complying street wall further west along Atlantic Avenue; and

WHEREAS, as to attendance, the applicant states that the Boys & Girls Club currently has approximately 235 members, and the proposal will allow it to increase its membership and accommodate 325 members daily; and

WHEREAS, the applicant further states that the requested waivers will alleviate the need to schedule incompatible activities in the same program rooms involving different age groups due to the lack of program space at the existing facility; and

WHEREAS, the applicant states that the current situation, in which various age groups are located in the same space, is inappropriate for educational, childhood development, and safety reasons; and

WHEREAS, the applicant represents that the proposal will allow members to be properly assigned to groups based

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on their age, school grade or academic abilities, and enable each group to be assigned to a different portion of the building and rotate throughout the facility hourly to ensure that they have the opportunity to participate in each planned activity; and

WHEREAS, the applicant states that the proposed enlargement will also allow the Boys & Girls Club to improve its administrative facilities, which currently do not provide program directors with adequate space to conduct confidential discussions and carry out the daily conduct of business activities; and

WHEREAS, the applicant further states that the proposal will provide necessary office space for administrative personnel and a conference room to accommodate staff and parent meetings; and

WHEREAS, the applicant further states that the programmatic needs cannot be accommodated within a conforming development based on the unique conditions on the lot, including (1) the constraints of the existing building and (2) the subsurface conditions; and

WHEREAS, as to the constraints of the existing building, the applicant states that the building was constructed more than 80 years ago for use by the Knights of Columbus and has been subject to various alterations, including the adaptation of the building for use as a printing factory, which have left the existing building functionally obsolete for use by the Boys & Girls Club; and

WHEREAS, the constraints of the existing building include the inefficient floor plates and layout, resulting from the construction and adaptation of the building for different uses, and the inability to demolish the entire existing building and construct a new building; and

WHEREAS, the applicant states that the configuration of the existing two-story and mezzanine community facility building resembles an odd "L"-shape, and the resulting inefficient floor plates and layout create space constraints for which the requested waivers are necessary to provide relief; and

WHEREAS, specifically, the applicant states that the existing building (1) lacks traditional classrooms such that many educational programs typically take place in open spaces that are inappropriate and inadequate for a proper learning environment; (2) is designed similar to a "railroad apartment," such that attendees often must pass through various rooms in order to reach their destination; and (3) combines the gymnasium with a performing arts center that has a large fixed stage for performing arts activities, rendering the space inadequate as a gymnasium; and

WHEREAS, the applicant represents that it is impractical and economically infeasible to demolish and reconstruct the entire building due to the need to keep the programs at the Boys & Girls Club in continuous operation; and

WHEREAS, the applicant represents that, while it may be able to demolish a portion of the building and construct an enlargement that would conform to the underlying zoning district, the resulting building would not meet their programmatic needs; and

WHEREAS, as to the subsurface conditions, the applicant states that the soil conditions on the site are not suitable for development due to its low bearing capacity; and

WHEREAS, the applicant further states that it examined various development alternatives, including the option of placing the required program and ancillary space below grade so as not to trigger the proposed floor area non-compliance; and

WHEREAS, the applicant submitted a geotechnical report and a letter from its construction consultant stating that constructing a sub-cellar level to accommodate the proposed development is infeasible because it would require a complex and cost prohibitive foundation system; and

WHEREAS, the Board notes that the applicant also asserts that the Boys and Girls Club is an educational institution, and as such is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application, pursuant to Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986); and

WHEREAS, the Board finds that the applicant did not submit sufficient evidence into the record to establish that the Boys and Girls Club is an educational institution as contemplated by the courts, and as such, it cannot rely solely on the programmatic needs of the Boys and Girls Club to support the subject variance application; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the existing building and the soil conditions, when considered in conjunction with the programmatic needs of the Boys & Girls Club, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Boys & Girls Club is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding area is characterized by a mix of residential and commercial uses and that the community facility use is as of right; and

WHEREAS, the applicant asserts that the proposed building is compatible with the context of the immediate area, which is occupied by residential buildings, garages, automobile sales yards, restaurants and catering halls, and local retail; and

WHEREAS, the applicant notes that the Boys & Girls Club has existed at the subject site since 1976 and that the building's proposed non-complying height will match the existing non-complying height; and

WHEREAS, as to bulk, the applicant states that the proposed building height and bulk are compatible with the

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surrounding neighborhood; and

WHEREAS, specifically, the applicant states that there is a catering hall located directly across 111th Street which is compatible in height with the proposed building, and submitted a 400-ft. radius diagram reflecting that there is a three-story building located directly across Atlantic Avenue from the subject site; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Boys & Girls Club could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, the applicant initially proposed to construct a building with a floor area of 37,488 sq. ft. (2.5 FAR); and

WHEREAS, at the Board's direction, the applicant submitted revised plans reflecting the current proposal, with a floor area of 34,560 sq. ft. (2.3 FAR); and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Boys & Girls Club 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 6 NYCRR, 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. 10BSA030Q, dated May 18, 2010; 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, within a C2-2 (R5) zoning district, an enlargement to an existing community facility building, which does not comply with FAR, wall height and sky exposure plane regulations, contrary to ZR §§ 33-121 and 33-431, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 12, 2010"- nine (9) sheets; and *on further condition*:

THAT the total building floor area post-enlargement shall not exceed 34,560 sq. ft. (2.3 FAR) and the front wall height shall not exceed 45'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant 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 7, 2010.

60-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Soho Thompson Realty, LLC, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-21) to allow a commercial use below the floor level of the second story, contrary to §42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 54 Thompson Street, northeast corner of Thompson Street and Broome Street, Block 488, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 20, 2010, acting on Department of Buildings Application No. 120290489, reads in pertinent part:

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“Proposed commercial use (Use Group 6) in M1-5B zoning district below the level of the second story in an M1-5B zoning district is not permitted pursuant to ZR 42-14(D)(2)(b) of the Zoning Resolution”; and

WHEREAS, this is an application under ZR § 72-21, to permit within an M1-5B zoning district, the conversion of the first floor of an existing seven-story mixed-use commercial/residential building to an eating and drinking establishment (UG 6), with accessory storage at the cellar level, contrary to ZR § 42-14(d)(2)(b); and

WHEREAS, a public hearing was held on this application on August 17, 2010, after due notice by publication in the *City Record*, with continued hearings on October 5, 2010 and November 9, 2010, and then to decision on December 7, 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 2, Manhattan, recommends approval of this application, with the following conditions: (1) maximum capacity does not exceed 200 persons; (2) the hours of operation be limited to Sunday through Thursday, from 11:30 a.m. to 12:30 a.m., and Friday and Saturday, from 11:30 a.m. to 1:30 a.m.; (3) no sound system or music of any kind is permitted in the exterior space; (4) the applicant comply with relevant NYC codes and requirements if heated lamps are used in the exterior space; (5) umbrellas are provided in the exterior space to reduce noise; (6) the exterior space is closed at 12:00 a.m. daily; (7) no catered or private events are allowed in the exterior space; (8) there is no bar in the exterior space; and (9) the existing perimeter wall around the exterior space be retained; and

WHEREAS, the subject site is located on the northeast corner of Thompson Street and Broome Street, within an M1-5B zoning district; and

WHEREAS, the site has 106 feet of frontage along Thompson Street, 40 feet of frontage along Broome Street, and a lot area of 7,276 sq. ft.; and

WHEREAS, the site is currently occupied with a seven-story mixed-use building with an unoccupied gymnasium at the first floor (UG 9), office use on the second floor through fifth floor, and joint living and work quarters for artists (“JLWQA”) on the sixth and seventh floor; and

WHEREAS, the applicant proposes to convert the first floor into an eating and drinking establishment (UG 6) with accessory storage in the cellar; and

WHEREAS, the uses on the upper floors will not change and are not included in the proposal; and

WHEREAS, because a Use Group 6 eating and drinking establishment is not permitted below the second floor in the subject M1-5B zoning district, the applicant seeks a use variance to permit the proposed conversion of the first floor and cellar level; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in

conformance with underlying district regulations: (1) the existing building is obsolete for manufacturing use; and (2) the surrounding traffic and parking conditions preclude a manufacturing use at the site; and

WHEREAS, as to the obsolescence of the building for a conforming use, the applicant cites to the following limitations: (1) the existing building is underbuilt with floor plates too small to support a conforming manufacturing use; (2) the existing structural elements of the building cannot support a conforming manufacturing use; and (3) there is no loading dock or space to install one; and

WHEREAS, the applicant states that although the zoning lot is 7,276 sq. ft., it has an “L”-shaped configuration and the footprint of the building is limited to 5,031 sq. ft.; and

WHEREAS, further, the ground floor provides only 3,640 sq. ft. of useable floor area for manufacturing use, making it undersized for such a conforming use; and

WHEREAS, the applicant submitted an area survey reflecting that of the 250 lots with an area of 5,000 sq. ft. or greater in Community Districts 2 and 3, only nine of the lots, or 3.6 percent, are occupied by conforming manufacturing uses, and only four such lots contain buildings with floor plates less than 5,000 sq. ft.; and

WHEREAS, the area survey submitted by the applicant further reflects that of the four lots occupied by conforming manufacturing uses with a floor plate less than 5,000 sq. ft. in the study area, two such sites are accessory attendant booths for outdoor parking and one is a convenience store for a gasoline service station; and

WHEREAS, the applicant represents that, based on the findings of the area study, the small size of the floor plate at the first floor of the site is unique in the surrounding area and creates a hardship in providing a conforming use at the first floor; and

WHEREAS, the applicant also performed a structural examination of the building, and represents that this also establishes that conforming manufacturing use is not feasible; and

WHEREAS, specifically, the applicant submitted a floor vibration analysis performed by an engineering consultant, which studied the vibrations that would be caused by (1) a light industrial use with machinery-induced vibration at the first floor, and (2) the proposed restaurant use with human-induced vibration at the first floor; and

WHEREAS, the vibration analysis submitted by the applicant indicates that the use of the first floor for light manufacturing use would cause vibrations to exceed the standard acceleration criteria, while the vibrations caused by the proposed first floor use as a restaurant would fall below the standard acceleration criteria; and

WHEREAS, at the Board’s direction, the applicant’s engineering consultant conducted a further study examining the vibrations that would be caused at the upper floors; specifically at the sixth floor, where the JLWQA use is located; and

WHEREAS, the updated study submitted by the applicant indicated that use of the first floor for conforming manufacturing use would cause vibrations at the sixth floor, which contains JLWQA use, that would be double of what is

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considered the upper limit of acceptable acceleration, and would therefore result in vibrations permeating the entire building, effecting both the commercial office occupants on the second through fifth floors and the JLWQA tenants in the sixth and seventh floors; and

WHEREAS, accordingly, the applicant states that a conforming manufacturing use utilizing standard industry equipment is not feasible at the subject site, given the existing structural elements of the building coupled with the existing uses within the building; and

WHEREAS, the applicant states that the obsolescence of the existing building also stems from the absence of a loading dock and the inability to install one; and

WHEREAS, the applicant submitted letters from its architect and engineer regarding the inability to install a loading berth at the site; and

WHEREAS, the letters from the architect and engineer state that a loading berth cannot be provided at the site because, pursuant to ZR § 44-582, loading berths cannot be installed less than 50 feet from the intersection of two street lines, and because the building lacks the necessary dimensions for a loading berth, specifically with regards to the ZR § 44-581 requirement that loading berths have a vertical clearance of 14 feet; and

WHEREAS, the applicant represents that the absence of a loading berth and the inability to install one contributes to the infeasibility of a conforming manufacturing use at the site because it would make it difficult for such a use to receive and transfer bulk shipments; and

WHEREAS, as to the traffic and parking conditions at the site, the applicant represents that the unique traffic and parking conditions in the surrounding area make use of the site for a conforming manufacturing use infeasible; and

WHEREAS, the applicant submitted a traffic and parking study which indicates that the parking regulations on Thompson Street result in only a single travel lane of ten feet in width on most days, which is unique in the surrounding area, thereby narrowing the width of Thompson Street adjacent to the site; and

WHEREAS, the traffic and parking study submitted by the applicant also indicates that Thompson Street is a preferred route for southbound traffic into the Holland Tunnel, which would result in the street being congested at peak periods; and

WHEREAS, the applicant represents that the surrounding traffic and parking conditions would create operational difficulties for a conforming use at the site, further contributing to the infeasibility of such use; and

WHEREAS, the applicant also submitted an affidavit and marketing agreements which indicate that the owner has undertaken marketing efforts to rent or lease the site since 2006, and that the first floor of the site has remained unoccupied for over five years; and

WHEREAS, the Board is not persuaded by the applicant's argument regarding the inability to provide a loading berth since there is no requirement that loading berth be installed should conforming use occupy the first floor, and the applicant hasn't proven that the lack of a loading berth is unique in the surrounding area, as the Board observes that a

significant number of buildings in the area similarly lack a loading berth; and

WHEREAS, similarly, the Board finds that the traffic and parking conditions along Thompson Street are not unique to the subject site, and therefore the Board has not considered these conditions as part of the finding under ZR § 72-21(a); and

WHEREAS, however, the Board agrees that the unique physical conditions cited above, specifically the obsolescence of the building related to the floor plates and physical structure, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) a conforming scenario with ground floor warehouse/storage use; (2) a conforming scenario with ground floor business service use; and (3) the currently proposed building; and

WHEREAS, the study concluded that the conforming scenarios would not result in a reasonable return, but that the proposal would realize a reasonable 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 conformance 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 notes that many of the buildings in the immediate vicinity contain ground floor retail uses; and

WHEREAS, the applicant states that a C1-5 overlay covers the northern end of the subject block, permitting Use Group 6 use of the first floor as-of-right; and

WHEREAS, the applicant further states that a ground floor Use Group 6 restaurant is located adjacent to the north of the site; and

WHEREAS, the applicant has agreed to all of the conditions stipulated by the Community Board; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site, and notes that there is no proposed increase in the bulk of the building; 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 a Type I action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6

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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. 10BSA067M, dated April 23, 2010; 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, in an M1-5B zoning district, the conversion of the first floor of an existing seven-story mixed-use building to an eating and drinking establishment (Use Group 6) with accessory storage at the cellar level, contrary to ZR § 42-14(d)(2)(b); *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 3, 2010"–five (5) sheets; and *on further condition*:

THAT the maximum capacity of the eating and drinking establishment shall not exceed 200 persons;

THAT the hours of operation for the eating and drinking establishment shall be: Sunday through Thursday, from 11:30 a.m. to 12:30 a.m.; and Friday and Saturday, from 11:30 a.m. to 1:30 a.m.;

THAT with regard to the exterior space of the eating and drinking establishment: (1) no sound system or music of any kind shall be permitted; (2) the applicant shall comply with relevant NYC codes and requirements if heated lamps are used; (3) umbrellas shall be provided to reduce noise; (4) it shall be closed at 12:00 a.m. daily; (5) no catered and private events shall be permitted; (6) there shall be no bar located in the exterior space; and (7) the existing perimeter wall around the exterior space shall be retained;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant 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 7, 2010.

66-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yury, Aleksandr, Tatyana Dreysler

SUBJECT – Application May 3, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (23-141) and side yards (23-461). R3-1 zoning district.

PREMISES AFFECTED – 1618 Shore Boulevard, South side of Shore Boulevard between Oxford and Norfolk Streets. Block 8757, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 10, 2010, acting on Department of Buildings Application No. 320141173, reads in pertinent part:

1. Proposed floor area ratio is contrary to ZR 23-141(a).
2. Proposed open space is contrary to ZR 23-141(a).
3. Proposed lot coverage is contrary to ZR 23-141.
4. Proposed side yards is contrary to ZR 23-461.
5. Proposed rear yard is contrary to ZR 23-47, 23-541;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47 and 23-541; and

WHEREAS, a public hearing was held on this application on July 13, 2010, after due notice by publication in *The City Record*, with continued hearings on August 3, 2010, September 14, 2010, October 19, 2010 and November 9, 2010, and then to decision on December 7, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan,

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Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application (hereinafter, the "Opposition"); and

WHEREAS, the subject site is located on the south side of Shore Boulevard between Norfolk Street and Oxford Street, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 2,267 sq. ft., and is occupied by a single-family home with a floor area of 1,032 sq. ft. (0.45 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,032 sq. ft. (0.45 FAR) to 2,247 sq. ft. (0.99 FAR); the maximum permitted floor area is 1,134 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 58 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 42 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard with a width of 2'-11" along the eastern lot line and no side yard along the western lot line (two side yards with a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will maintain the existing rear yard with a depth of 20'-1" at the first floor, a depth of 24'-7" at second floor, and a depth of 28'-2" at the attic level (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, at hearing, the Board directed the applicant to submit evidence documenting that the footprint of the home, including the side yard encroachment, existed prior to December 15, 1961; and

WHEREAS, in response, the applicant submitted a Tax Department form dating back to 1943 which includes a photograph showing the side yard encroachment, as well as a 1973 survey and a 1980 Department of Finance photograph reflecting the existence of the side yard encroachment, and photographs of a number of other homes in the area with similar side yard encroachments; and

WHEREAS, the Opposition raised the following concerns regarding the proposed enlargement: (1) the existing home encroaches upon an easement for light and air in favor of the adjoining neighbor to the west, over the westerly 3'-0" of the site; (2) the applicant has not provided evidence regarding how much of the existing home will be retained and that the proposal should have been filed as a New Building application rather than an Alteration application; (3) the proposed attic contains living space and a bathroom, which are prohibited pursuant to Building Code

§ 26-254; (4) the applicant's survey indicates that the cellar floor will be below the flood plain; (5) a portion of the proposed parking area will be located on the City-owned sidewalk; and (6) there is a discrepancy between the survey and the plans submitted by the applicant regarding the calculation of the front yard depth; and

WHEREAS, as to the easement over the westerly portion of the site, the applicant states that the deeds associated with the easement do not state the dimensions of the subject home, and therefore it is unclear whether the side yard encroachment pre-existed the establishment of the easement; and

WHEREAS, the Board notes that the portion of the home being enlarged under the subject special permit does not include any portion of the home located within the easement, and therefore the propriety of the encroachment into the easement area is not before the Board under the subject application; and

WHEREAS, in response to the Opposition's concerns regarding which portions of the home are being retained, the applicant submitted revised plans indicating that portions of the first floor and cellar walls will remain, as well as the majority of the existing first floor, and states that the proposal is properly classified as an Alteration application because more than 50 percent of the existing exterior walls are being retained, as required by TPPN # 1/02; and

WHEREAS, the Board notes that compliance with TPPN #1/02 is subject to Department of Buildings ("DOB") review and approval, and is not a required finding of the subject special permit; and

WHEREAS, as to the Opposition's contention that the proposed attic cannot contain living space or a bathroom, the Board notes that the Opposition has not provided any statutory evidence to support this claim, and that Building Code § 26-254, which the Opposition relies on, is a section of the repealed 1968 Building Code relating to the "Regulation of Outdoor Signs;" and

WHEREAS, the Board further notes that it is not waiving any requirements related to the use of the attic, and that the drawings will be subject to DOB review for compliance with all ZR and Building Code regulations; and

WHEREAS, as to the flood plain and the proposed parking on the site, the Board similarly notes that it is not waiving any requirements related to the flood plain or the parking area, which are subject to DOB review and approval; and

WHEREAS, the Board further notes that it is DOB's role, and not the Board's, to review construction and enforce compliance with the approved plans and with relevant zoning and Building Code regulations; and

WHEREAS, as to the Opposition's concerns regarding the calculation of the front yard depth, the Board notes that the discrepancy between the survey and the proposed plans results from the fact that the applicant proposes to increase the depth of the front yard of the subject home from 14'-11" to 18'-0"; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter

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the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board therefore is not persuaded that there is any basis to deny the subject application, as the required findings have been met; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47 and 23-541; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 23, 2010"- (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 2,247 sq. ft. (0.99 FAR); a minimum open space of 58 percent; a maximum lot coverage of 42 percent; a side yard with a minimum width of 2'-11" along the eastern lot line; and a rear yard with a minimum depth of 20'-1" at the first floor, 24'-7" at the second floor, and 28'-2" at the attic level, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, December 7, 2010.

151-10-BZ

APPLICANT – Sheldon Lobel, P.C. for Profile Enterprises, LP, owner; Bamboo Garden Spa, Incorporated, lessee.

SUBJECT – Application August 16, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Bamboo Garden Spa*). M1-6 zoning district. PREMISES AFFECTED – 224 West 35th Street, South side of West 35th Street, 225 feet west of Seventh Avenue. Block 784, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, December 7, 2010.

189-09-BZ

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February 15, 2011, at 1:30 P.M., for continued hearing.

190-09-A

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February

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15, 2011, at 1:30 P.M., for continued hearing.

192-09-BZ

APPLICANT – Richard Lobel, for Leon Mann, owner.
SUBJECT – Application June 16, 2009 – Special Permit (§72-52) to allow for the construction of a commercial building with accessory parking. R6 and R6/C2-3 zoning districts.

PREMISES AFFECTED – 912 Broadway, northeast corner of the intersection of Broadway and Stockton Street, Block 1584, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 8, 2011, at 1:30 P.M., for decision, hearing closed.

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.

ACTION OF THE BOARD – Laid over to January 25, 2011, at 1:30 P.M., for continued hearing.

6-10-BZ

APPLICANT – Sheldon Lobel, P.C. for 2147 Mill Avenue, LLC, owner.

SUBJECT – Application January 8, 2010 – Variance (§72-21) to allow for legalization of an enlargement of a commercial building, contrary to §22-00. R2 zoning 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

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to January

25, 2011, at 1:30 P.M., for adjourned hearing.

29-10-BZ

APPLICANT – Sheldon Lobel, P.C., for R.A.S. Associates, owner; Mojave Restaurant, lessee.

SUBJECT – Application March 4, 2010 – Special Permit (§73-52) to allow for an outdoor eating and drinking establishment within a residential district. C1-2 and R5 zoning districts.

PREMISES AFFECTED – 22-32/36 31st Street, Ditmas Boulevard and 23rd Avenue, Block 844, Lot 49, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Laid over to January 25, 2011, at 1:30 P.M., for continued hearing.

35-10-BZ

APPLICATION – Sheldon Lobel, PC for Yuriy Pirov, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to permit the legalization of an existing synagogue (*Congregation Torah Haim Ohel Sara*), contrary to front yard (§24-34), side yard (§24-35) and rear yard (§24-36). R4 zoning district.

PREMISES AFFECTED – 144-11 77th Avenue, approximately 65 feet east of the northeast corner of Main Street and 77th Avenue. Block 6667, Lot 45, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to January 11, 2010, at 1:30 P.M., for adjourned hearing.

68-10-BZ

APPLICANT – Eric Palatnik, P.C., for CDI Lefferts Boulevard, LLC, owner.

SUBJECT – Application May 4, 2010 – Variance (§72-21) to allow a commercial building, contrary to use regulations (§22-00). R5 zoning district.

PREMISES AFFECTED – 80-15 Lefferts Boulevard, between Kew Gardens Road and Talbot Street, Block 3354, Lot 38, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Eric Palatnik, Robert Pauls, Dominique Pistone, Murray Burgher and Sylvia Hack.

ACTION OF THE BOARD – Laid over to February 1, 2011, at 1:30 P.M., for continued hearing.

130-10-BZ

APPLICANT – Sheldon Lobel, P.C., for John Ingravallo,

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owner.

SUBJECT – Application July 16, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) regulations. R3X zoning district.

PREMISES AFFECTED – 1153 85th Street, north side of 85th Street, between 11th and 12th Avenue, Block 6320, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Jordan Most and Felix Tambasco.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for continued hearing.

134-10-BZ

APPLICANT – Stuart Beckerman, for Passiv House Xperimental LLC, owner.

SUBJECT – Application July 30, 2010 – Variance (§72-21) to allow a residential building, contrary to floor area (§43-12), height (§43-43), and use (§42-10) regulations. M1-1 zoning district.

PREMISES AFFECTED – 107 Union Street, north side of Union Street, between Van Brunt and Columbia Streets, Block 335, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Neil Weisbard, Herman Galvis and Robert Pauls.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for continued hearing.

174-10-BZ

APPLICANT – The Briarwood Organization, LLC, for English Evangelical Church of Redeemer, owner.

SUBJECT – Application August 27, 2010 – Special Permit (§73-44) to allow for a reduction in parking for a mixed office and community facility building. R4/C2-2 zoning district.

PREMISES AFFECTED – 36-29 Bell Boulevard, between 36th Avenue and 38th Avenue, Block 6176, Lot 61 p/o 2, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eldad Gothelf and Carrie O’Farrell.

For Opposition: Henry Euler, Christina Scherer and Jason Devore.

ACTION OF THE BOARD – Laid over to January 25, 2011, at 1:30 P.M., for continued hearing.

175-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application September 1, 2010 – Special Permit (§11-411) for an Extension of Term of a previously approved Automotive Service Station (UG 16B) which

expired on December 18, 2001; Extension of Time to obtain a certificate of occupancy which expired on September 21, 1994; Waiver of the Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 3400 Baychester Avenue, Northeast corner of Baychester and Tillotson Avenue, Block 5257, Lot 47, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for continued hearing.

181-10-BZ

APPLICANT – Patrick W. Jones, P.C., for Metroeb Realty Corporation, owner.

SUBJECT – Application September 20, 2010 – Special Permit (§73-46) to waive parking for a proposed residential conversion of an existing building. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 143/155 Roebling Street, aka 314/330 Metropolitan Avenue and 1/10 Hope Street, corner of Roebling Street, Metropolitan Avenue and Hope Street, Block 2368, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Patrick W. Jones and Jim Hyneman.

For Opposition: Mike Schlegel, Mark Gibian, Lisa Steiner and Conroy D. Symister.

ACTION OF THE BOARD – Laid over to January 25, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on November 23, 2010, under Calendar Nos. 237-09-A & 238-09-A and printed in Volume 95, Bulletin No. 48, is hereby corrected to read as follows:

237-09-A & 238-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP for Safet Dzemovski, owner.

SUBJECT – Application July 31, 2009 – Proposed construction in the bed of a mapped street, contrary to General City Law Section 35. R3X zoning district.

PREMISES AFFECTED – 81 & 85 Archwood Avenue, aka 5219 Amboy Road, east side of Archwood Avenue, 198.25' north of Amboy Road, Block 6321, Lot 152 & 151, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated July 2, 2009, acting on Department of Buildings Application Nos. 520010666 and 520010657 reads in pertinent part:

“The Proposed project is in the bed of a mapped street, which is contrary to GCL 35 and therefore it is referred to the Board of Standards for review;” and

WHEREAS, this is an application to permit the proposed construction of two two-family homes located within the bed of a mapped street, Archwood Avenue, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on June 15, 2010, after due notice by publication in the *City Record*, with continued hearings on July 27, 2010, September 14, 2010 and October 26, 2010, and then to decision on November 23, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, during the course of the hearing process, the applicant amended its proposal and submitted a revised site plan reflecting that the proposed homes will be located completely outside the proposed lines of Archwood Avenue, which will be paved to its fully mapped width of 38'-0" in front of the proposed homes, thereby limiting the proposed encroachment to a portion of the sidewalk area; and

WHEREAS, Community Board 3, Staten Island, recommended disapproval of the initial version of the application; and

WHEREAS, Borough President James P. Molinaro recommends approval of the revised proposal, with the following conditions: (1) the portions of Archwood Avenue being opened are constructed to a width of 38'-0"; (2) the proper sidewalk treatment for a 60'-0" mapped street be incorporated into the proposal, such that the sidewalk width is 19'-0" instead of the proposed width of 11'-0"; and (3) a Declaration of Public Use be filed against the properties; and

WHEREAS, in response to the Staten Island Borough President, the applicant states that the requested conditions cannot be accommodated for the following reasons: (1) the plans include paving Archwood Avenue to 38'-0" in width in the areas that the applicant owns all 38'-0" of the roadbed, but there are small areas that are not owned by the applicant and where a 38'-0" width therefore cannot be provided; (2) the plans include a sidewalk with a width of 11'-0", which aligns with the existing sidewalk to the north of the site, and widening the sidewalk to a width of 19'-0" would result in the further reduction in the size of the proposed homes or yards; and (3) maintenance of the proposed homes as a private area as opposed to a public street is critical to the viability of the development, as dedication of the area as a public street would result in additional requirements which would create further delays and expense to the owner; and

WHEREAS, by letter dated September 8, 2009, the Department of Environmental Protection ("DEP") states that: (1) there is an existing ten-inch diameter sanitary sewer, a 24-inch diameter storm sewer, and an eight-inch diameter city water main in Archwood Avenue between Amboy Road and Bennett Avenue; and (2) Drainage Plan No. D-11, sheet 4 of 8, calls for a future ten-inch diameter sanitary sewer and a 12-inch diameter storm sewer in Archwood Avenue between Amboy road and Bennett Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (1) the total width of the mapped street, Archwood Avenue, and the widening portion of the street between Amboy Road and Bennett Avenue; (2) the distance between the northerly lot line of tentative Lot 152 and the terminal manholes of the existing ten-inch diameter sanitary sewer and the 24-inch diameter storm sewer, the distance between the westerly lot line of tentative Lot 152 and the existing eight-inch diameter water main, and the distance from the northerly lot line of tentative Lot 152 to the water main end cap; and (3) a sewer corridor with a width of 33'-0" in the bed of the mapped street, Archwood Avenue, for the installation, maintenance, and/or reconstruction of the future ten-inch diameter sanitary sewer, the 12-inch diameter storm sewer, and the existing eight-inch diameter city water main: and

WHEREAS, in response to DEP's request, on December 1, 2009 the applicant submitted a letter from the architect regarding a meeting with DEP on September 11, 2009, where it was determined that providing a sewer corridor would not be required at the subject location because any such future extensions would pass through the private property and would not benefit any additional lots because the subject site is the last developable lot on Archwood Avenue; and

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WHEREAS, additionally, on April 15, 2010 the applicant submitted a revised site plan in response to DEP's September 8, 2009; and

WHEREAS, by letter dated May 17, 2010, DEP stated that it reviewed the revised site plan and that: (1) the applicant must provide an access corridor with a width of 20'-0" along the eight-inch city water main in the bed of Archwood Avenue which protrudes inside Lot 152; (2) the applicant's proposal for a skewed connection

for Lot 152 is not acceptable; and (3) it may be necessary to form a Homeowners Association to provide sewer connections, water connections and access to Lot 151; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that: (1) an easement will be provided in favor of DEP for the maintenance of the eight-inch city water main in the bed of Archwood Avenue; (2) the existing skewed sewer connection will be replaced with a straight extension; and (3) a Homeowners Association will be filed for the maintenance of DEP facilities, common roadway and a proposed DEP easement for access to the facilities; and

WHEREAS, by letter dated November 22, 2010, DEP states that it reviewed the proposal and has no objection; and

WHEREAS, by letter dated June 8, 2010, in response to the applicant's initial proposal, the Fire Department stated that it objects to the construction of any buildings in the bed of Archwood Avenue; and

WHEREAS, subsequently, the applicant revised its site plan to provide for the current proposal, which does not reflect any buildings in the roadbed; and

WHEREAS, by letter dated July 26, 2010, the Fire Department states that it has reviewed the revised site plan and had the following requirements as conditions for approval of the application: (1) the dwellings must be fully sprinklered in conformity with Local Law 10 of 1999 and Reference Standard 17-2B of the New York City Building Code; (2) interconnected smoke alarms must be designed and installed in the dwelling in compliance with NYC Building Code Section 907.2.10; (3) a fire apparatus access road must be constructed in accordance with the requirements of FDNY FC 503.7; (4) "No Parking" signage shall be posted at the entrance to the fire apparatus access road in accordance with the requirements of FDNY FC 503.7; and (5) the height of the dwelling must not exceed 35 feet above grade plane; and

WHEREAS, in response, the applicant submitted a revised site plan which incorporated all of the Fire Department's requirements; and

WHEREAS, by letter dated February 22, 2010, in response to the applicant's initial proposal, the Department of Transportation ("DOT") stated that it reviewed the project and would prefer an option that does not infringe on the roadbed; and

WHEREAS, subsequently, the applicant revised its site plan to provide for the current proposal, which does not include any buildings in the roadbed; and

WHEREAS, by letter dated November 5, 2010, DOT states that it reviewed the proposal and has no objections; and

WHEREAS, DOT states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated July 2, 2009, acting on Department of Buildings Application Nos. 520010666 and 520010657, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received November 22, 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 fire safety measures shall be installed and maintained in accordance with the BSA-approved plans;

THAT "No Parking" signage shall be posted at the entrance to the fire apparatus access road in accordance with the requirements of FDNY FC 503.7;

THAT this 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, November 23, 2010.

***The resolution has been corrected in the 2nd WHEREAS, portion which read: "...proposed construction of two single-family home...;" now reads: "...proposed construction of two two-family homes...;". Corrected in Bulletin Nos. 49-50, Vol. 95, dated December 16, 2010.**

MINUTES

*CORRECTION

This resolution adopted on November 9, 2010, under Calendar No. 91-10-BZ and printed in Volume 95, Bulletin Nos. 45-46, is hereby corrected to read as follows:

91-10-BZ

APPLICANT – Eric Palatnik, P.C., for Lawrence Kimel, owner.

SUBJECT – Application May 17, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to open space, lot coverage and floor area (§23-141); side yard (§23-461); rear yard (§23-47) and perimeter wall height (§23-631). R3-1 zoning district.

PREMISES AFFECTED –123 Coleridge Street, south of Hampton Street, Block 8735, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 16, 2010, acting on Department of Buildings Application No. 310126510, reads in pertinent part:

- “1. Proposed floor area is contrary to ZR 23-141.
2. Proposed open space ratio is contrary to ZR 23-141.
3. Proposed lot coverage is contrary to ZR 23-141.
4. Proposed side yard is contrary to ZR 23-461.
5. Proposed rear yard is contrary to ZR 23-47.
6. Proposed perimeter wall height is contrary to ZR 23-631;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed legalization and enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, lot coverage, side yards, rear yard and perimeter wall height contrary to ZR §§ 23-141, 23-461, 23-47 and 23-631; and

WHEREAS, a public hearing was held on this application on August 3, 2010, after due notice by publication in *The City Record*, with continued hearings on September 14, 2010 and October 19, 2010, and then to decision on November 9, 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 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application (hereinafter, the “Opposition”); and

WHEREAS, the subject site is located on the east side of Coleridge Street between Hampton Avenue and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 3,665 sq. ft. (0.61 FAR); and

WHEREAS, the applicant states that the subject home was enlarged to its current floor area in 2009; the applicant now proposes to legalize the previous enlargement and construct an additional enlargement of the subject 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 3,665 sq. ft. (0.61 FAR) to 5,049 sq. ft. (0.84 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 63 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 37 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard with a width of approximately 4’-9” along the southern lot line (two side yards with a minimum width of 5’-0” each are required); and

WHEREAS, the proposed enlargement will maintain the existing rear yard with a depth of approximately 21’-3” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant proposes to maintain the existing non-complying perimeter wall height of approximately 23’-9” (a maximum perimeter wall height of 21’-0” is permitted); and

WHEREAS, in support of the requested waiver for perimeter wall height, the applicant provided a survey establishing the height of the adjacent building; and

WHEREAS, the Board notes that the adjacent single family home at 129 Coleridge Street has a perimeter wall height of 23’-9”; and

WHEREAS, at hearing, the Board directed the applicant to provide evidence that the current perimeter wall height was existing prior to the owner’s previous enlargement of the home; and

WHEREAS, in response, the applicant provided photographs of the home prior to the construction of the previous enlargement, which reflect that the previously existing perimeter wall height has been maintained; and

WHEREAS, the Opposition contends that the Board should deny the application because the prior enlargement of the home was performed illegally; and

WHEREAS, the Board notes that when an applicant satisfies the findings pursuant to ZR § 73-622, there is no

MINUTES

legal basis to deny the special permit merely because it is a partial legalization rather than entirely new construction; and

WHEREAS, the Opposition further contends that the applicant failed to address an objection issued by DOB regarding the proposed attic at the site; and

WHEREAS, in response, the applicant notes that it submitted a reconsideration issued by DOB on March 17, 2010, resolving the attic issue; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, lot coverage, side yards, rear yard and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47 and 23-631; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 24, 2010"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 5,049 sq. ft. (0.84 FAR); a minimum open space of 63 percent; a maximum lot coverage of 37 percent; a side yard with a minimum width of approximately 4'-9" along the southern lot line; a side yard with a width of 8'-6" along the northern lot line; a rear yard with a minimum depth of approximately 21'-3"; and a maximum perimeter wall height of approximately 23'-9", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief

granted;

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, November 9, 2010.

***The resolution has been corrected to add WHEREAS 17th & 18th clauses. Corrected in Bulletin Nos. 49-50, Vol. 95, dated December 16, 2010.**

BULLETIN

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225-10-A

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226-10-BZ

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DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JANUARY 25, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 25, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

95-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 700 West 178th Street Associates, LLC, owner; TSI Forest Hills LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 14, 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 May 1, 2007; Waiver of the Rules. C4-5X zoning district.

PREMISES AFFECTED – 69-47 Austin Street, northwest corner of Austin Street and 70th Avenue, Block 3237, Lot 30, Borough of Queens.

COMMUNITY BOARD #6Q

215-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.

SUBJECT – Application October 20, 2010 – Extension of Term of an existing Gasoline Service Station (Gulf) with accessory convenience store which expires on July 24, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on June 17, 2010; Waiver of the Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 202-06 Hillside Avenue, southeast corner of Hillside Avenue and 202nd Street, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #12Q

APPEALS CALENDAR

155-80-A

APPLICANT – Raymond J. Irrera, for Dr. Jerold Blatt, owner.

SUBJECT – Application August 11, 2010 – Extension of term to allow the continued operation of a medical office (UG4) in an existing frame structure which expired on June 10, 2000. Extension of time to obtain a Certificate of Occupancy. Waiver of the Rules. R2A Zoning District.

PREMISES AFFECTED – 75-72 185th Street aka 184-17 Union Turnpike, northwest corner of 185th Street and Union Turnpike, Block 7201, Lot 42, Borough of Queens.

COMMUNITY BOARD #8Q

264-08-A

APPLICANT – Slater & Beckerman, LLP, for Wilshire Hospitality, LLC, owner.

SUBJECT – Application December 22, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted vesting application under the Common Law which expired on February 3, 2011.

M1-3D previous zoning districts; M1-3/R7X current zoning district.

PREMISES AFFECTED – 29-23 40th Road, aka 30-02 40th Avenue, through lot, bounded by 40th Road to the south, 40th Avenue to the north, 29th Street to the west, Northern Boulevard to the east. Block 402, Lots 12 & 35. Borough of Queens.

COMMUNITY BOARD #1Q

154-10-A

APPLICANT – Isaac Rosenberg, for Congregation Yetev Lev D'Satmar, owner.

SUBJECT – Application August 25, 2010 – Appeal challenging a determination by Department of Buildings not to reinstate revoked permits and approvals based on failure to provide owner authorization in accordance with §28-104.8.2 of the Administrative Code. R7-1 Zoning District.

PREMISES AFFECTED – 540 Bedford Avenue, between Ross and Wilson Streets, Block 2181, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #1BK

201-10-BZY

APPLICANT - Law Offices of Marvin B. Mitzner, for LES Realty Group LLC, owner.

SUBJECT – Application October 29, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 180 Orchard Street, through lot extending from Orchard Street to Ludlow Street. Block 412, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #3M

CALENDAR

JANUARY 25, 2011, 2010, 1:30 P.M.

Jeff Mulligan, Executive Director

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 25, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

187-07-BZ

APPLICANT – Dennis D. Dell’Angelo, for Michael Modatsos, owner.

SUBJECT – Application August 1, 2010 – Variance (§72-21) to permit the increase in the size of the zoning lot for an existing eating and drinking establishment contrary to the prior approval (in BSA Cal. No. 63-96-BZ). The proposal is contrary to the residential use regulations (§22-00). R3X zoning district.

PREMISES AFFECTED – 4677 Hylan Boulevard, North side of Hylan Boulevard 175.03 feet west of Arden Avenue. Block 5408, Lot 43, Borough of Staten Island.

COMMUNITY BOARD #12Q

186-10-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospital Center, owner; New York University, lessee.

SUBJECT – Application September 28, 2010 – Variance (§72-21) to allow for the construction of two community facility buildings (NYU Langone Medical Center) contrary to rear yard (§24-36), rear yard equivalent (§24-382), height and setback (§24-522), rear yard setback (§24-552), tower coverage (§24-54), maximum permitted parking (§13-132), minimum square footage per parking space (§25-62), and curb cut requirements (§13-142). R8 zoning district.

PREMISES AFFECTED – 400-424 East 34th Street, aka 522-566 & 596-600 First Avenue, East 34th Street, Franklin D. Roosevelt Drive, East 30th Street, and First Avenue, Block 962, Lot 80, 108 & 1001-1107, Borough of Manhattan.

COMMUNITY BOARD #6M

217-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Elizabeth Kopolovich & Harry Kopolovich, owner.

SUBJECT – Application November 15, 2010 – Special Permit (§73-622) for the enlargement of an existing single home contrary to floor area and lot coverage (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 4009 Bedford Avenue, Bedford Avenue between Avenue S and Avenue T. Block 7304, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #15BK

MINUTES

**REGULAR MEETING
TUESDAY MORNING, DECEMBER 14, 2010
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

914-86-BZ

APPLICANT – Stuart A. Klein, Esq., for Union Temple of Brooklyn, owner; Eastern Athletic, Incorporation, lessee.
SUBJECT – Application March 31, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (*Eastern Athletic*) which expired on May 17, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on November 12, 1998; Amendment to the interior layout and the hours of operation; Waiver of the Rules. R8X zoning district.

PREMISES AFFECTED – 1-19 Eastern Parkway, north side of Eastern Parkway, between Plaza Street, east and Underhill Avenue, Block 1172, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Abigale Patterson.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on May 17, 2009, an extension of time to obtain a certificate of occupancy, which expired on November 12, 1998, and an amendment to reflect modifications to the previously-approved plans and for a change in the hours of operation; and

WHEREAS, a public hearing was held on this application on July 13, 2010, after due notice by publication in *The City Record*, with continued hearings on August 24, 2010, September 21, 2010 and November 23, 2010, and then to decision on December 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Brooklyn, recommends approval of this application; and

WHEREAS, the PCE is located on the north side of Eastern Parkway between Underhill Avenue and Plaza Street

East, within an R8X zoning district; and

WHEREAS, the site is occupied by an 11-story mixed-use commercial/community facility building at 17 Eastern Parkway which consists of the PCE on the upper floors and a synagogue on the lower floors (the “Temple Building”), and a 15-story condominium building at 1 Eastern Parkway (the “Condo Building”); and

WHEREAS, the applicant notes that, at the time of the original Board grant, 1 Eastern Parkway and 17 Eastern Parkway were located within the same zoning and tax lot (Block 1172, Lot 6); 1 Eastern Parkway was formerly a parking lot for Union Temple (the “Temple”), which is the synagogue that occupies a portion of 17 Eastern Parkway, but it was subsequently subdivided into current Lot 12, and is now occupied by the Condo Building; and

WHEREAS, the applicant further notes that Lot 12 has been further subdivided into individual tax lots for all of the condominium units; the Temple owns one of the first floor condominium units (Lot 1101) (the “Temple Condo Unit”), which is occupied by Temple offices as well as the proposed PCE entrance; and

WHEREAS, the PCE is operated as Eastern Athletic; and

WHEREAS, the PCE use is currently located on the sixth through 11th floors and occupies a total floor area of 27,325 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 19, 1987 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, which expired on May 19, 2007; and

WHEREAS, most recently, the Board granted an extension of term, which expired on May 19, 2007; a condition of the grant was that a certificate of occupancy be obtained by November 12, 1998; and

WHEREAS, the applicant now seeks an extension of the term of the special permit for an additional ten years, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant also seeks an amendment to allow minor changes to the interior layout, and to allow for the expansion of certain portions of the PCE to improve services to club members and the flow of foot traffic, and to enable the Temple and the PCE to operate with greater independence and privacy; and

WHEREAS, specifically, the applicant proposes to increase the floor area of the PCE by approximately 5,300 sq. ft., for a total floor area of 32,624 sq. ft., in order to accommodate the installation of: (1) two new elevators in the Temple Building to access the PCE; (2) a new entrance with a reception area, elevator lobby, lounge, office, bathroom and kitchen within the Temple Condo Unit; (3) new fire escapes to provide an additional means of egress from the Temple Building; (4) a new mezzanine on the ninth floor of the PCE; and (5) the addition of an extended elevator bulkhead and hoistway at the 11th floor; and

WHEREAS, the applicant represents that the requested modifications are necessary because the configuration of the Temple Building and its outdated building elements present a hardship to the operation of both the Temple

MINUTES

and the PCE; and

WHEREAS, the applicant states that the existing elevator in the southeast portion of the Temple Building has presented an ongoing problem for the PCE because the maintenance of the elevator is the Temple's responsibility under the terms of the lease agreement with the PCE, and the elevator has not been maintained in good working condition with any consistency; and

WHEREAS, the applicant further states that the one elevator serves the entire building and must be shared by Temple attendees and PCE members alike, and when the elevator is broken PCE members must climb several flights of stairs to reach the PCE; and

WHEREAS, the applicant further states that, in addition to problems with the elevator, the entrance at the east side of the site is currently shared by both the Temple and the PCE, resulting in interference with Temple services by PCE members entering and exiting the PCE, and presenting security problems for the Temple; and

WHEREAS, the applicant represents that the proposed amendment to the plans solves these problems by providing an additional means of ingress and egress to the PCE through the addition of a new entrance, as well as providing two new elevators for the PCE; and

WHEREAS, the applicant further represents that these modifications will allow for greater separation of the two functions and greater overall building security; and

WHEREAS, the applicant also requests an amendment to change the hours of operation of the PCE; and

WHEREAS, the approved hours of operation of the PCE are Sunday through Thursday, from 7:00 a.m. to 12:00 a.m.; Friday, from 7:00 a.m. to 6:00 p.m.; and Saturday, from 1:00 p.m. to 12:00 a.m.; and

WHEREAS, the applicant proposes to increase the hours of operation to: Saturday through Thursday, from 6:00 a.m. to 12:00 a.m.; and Friday, from 6:00 a.m. to 11:30 p.m.; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on May 19, 1987, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from May 19, 2007, to expire on May 19, 2017; to extend the time to obtain a certificate of occupancy for one year from the date of this grant, to expire on December 14, 2011; and to permit the noted modifications to the approved plans and the change in the hours of operation, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 7, 2010"- (8) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 19, 2017;

THAT the hours of operation shall be: Saturday through Thursday, from 6:00 a.m. to 12:00 a.m.; and Friday, from 6:00 a.m. to 11:30 p.m.;

THAT the above conditions shall be listed on the

certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by December 14, 2011;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

(DOB Application No. 302190108)

Adopted by the Board of Standards and Appeals, December 14, 2010.

66-90-BZ

APPLICANT – Eric Palatnik, P.C., for A.H.G. Realty Corporation, owner.

SUBJECT – Application October 5, 2010 – Extension of Term for a UG16 Gasoline Service Station (*Mobil*) which expired on October 1, 2010. R5 zoning district.

PREMISES AFFECTED – 43-03 Astoria Boulevard, northeast corner of 43rd Street, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #1Q

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 January 25, 2011, at 10 A.M., for decision, hearing closed.

315-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owners.

SUBJECT – Application July 30, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*Gulf*) with accessory convenience store which expires on March 13, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on March 13, 2003; waiver of the rules. C2-2/R4 zoning district.

PREMISES AFFECTED – 82-06 Astoria Boulevard, southeast corner of Astoria Boulevard and 82nd Street, block 1094, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

MINUTES

Negative:.....0
ACTION OF THE BOARD – Laid over to January 25, 2011, at 10 A.M., for decision, hearing closed.

55-45-BZ

APPLICANT – Walter C. Maffei, AIA, for Donato Passarella, owner.

SUBJECT – Application August 31, 2010 – Extension of Term (§11-411) for an existing Gasoline Service Station (*Spirit*) which expired on February 27, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on May 2, 2001; waiver of the rules. C2-4/R6B zoning district.

PREMISES AFFECTED – 51 Kingsland Avenue, Woodpoint Road, Frost Street, Block 2866, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Walter C. Maffei.

ACTION OF THE BOARD – Laid over to February 1, 2011, at 10 A.M., for decision, hearing closed.

245-49-BZ

APPLICANT – Simons & Wright LLC, for Alley Pond Owners Corporation, owner.

SUBJECT – Application October 7, 2010 – Amendment of previous approval to legalize the conversion of one residential unit to be used as an accessory residential management office and elimination of the term; waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 78-09 Springfield Boulevard, east side of Springfield between Kingsbury Avenue and Union Turnpike, Block 7842, Lot 33, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Emily Simons.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 25, 2011, at 10 A.M., for decision, hearing closed.

827-55-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products, Incorporated, owner.

SUBJECT – Application October 5, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expires on January 31, 2011. R3-2 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, southwest corner of Conduit Avenue, Block 13614, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to January 25, 2011, at 10 A.M., for continued hearing.

758-84-BZ

APPLICANT – David L. Businelli, R.A., for Richard Sgarato, owner.

SUBJECT – Application August 30, 2010 – Extension of Term of a variance (§72-21) to legalize a two-story and cellar commercial building contrary to use regulations. R3X zoning district.

PREMISES AFFECTED – 1444 Clove Road, 61' North of intersection Tioga Street and Clove Road, Block 658, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: David L. Businelli.

ACTION OF THE BOARD – Laid over to January 25, 2011, at 10 A.M., for decision, hearing closed.

93-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker for Green 19 W44 Owner, LLC, owner; TSI West 44 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 25, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on July 25, 2010. C6-4.5 (MID) zoning district.

PREMISES AFFECTED – 19 West 44th Street, northerly side of West 44th Street, 150' west of 5th Avenue, Block 1260, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to February 1, 2011, at 10 A.M., for continued hearing.

128-00-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for CRP/Capstone 14W Property Owner, LLC c/o CB Richard Ellis, owner; Equinox Wall Street Incorporated, lessee.

SUBJECT – Application September 30, 2010 – Extension of Term of a Special Permit (ZR §73-36) for the continued operation of a physical culture establishment (*Equinox*) which expired on September 12, 2010. C5-5(LM) zoning district.

PREMISES AFFECTED – 10/16 Wall Street, north west corner of Wall Street and Nassau Street, Block 46, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to January 25, 2011, at 10 A.M., for continued hearing.

MINUTES

175-05-BZ

APPLICANT – Eric Palatnik, P.C., for Athanasios Amaxus, owner.

SUBJECT – Application September 9, 2010 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to construct a four-story multiple dwelling with accessory parking which expires on January 9, 2011. M1-1 zoning district.

PREMISES AFFECTED – 18-24 Luquer Street, between Hicks Street and Columbia Street, Block 520, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to January 25, 2011, at 10 A.M., for deferred decision.

118-10-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER – Arkady Nabatov

SUBJECT – Application June 28, 2010 – Dismissal for lack of prosecution – Special Permit (§11-411) to re-establish a variance for an auto-related use. R4 zoning district.

PREMISES AFFECTED – 2102/24 Avenue Z aka 2609/15 East 21st Street, Block 7441, Lot 371, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February 8, 2010, at 1:30 P.M., for new BZ public hearing.

APPEALS CALENDAR

135-10-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Incorporated, owner; James McDonough, lessee.

SUBJECT – Application August 3, 2010 – Proposed enlargement of an existing single family home not fronting a legally mapped street, contrary to General City Law, Section 36. R4 zoning district.

PREMISES AFFECTED – 107 Beach 216th Street, east side of Beach 216th Street, 120’ south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 22, 2010, acting on Department of Buildings Application No. 420193141, reads in pertinent part:

“A1 – The street giving access to the existing building to be altered is not duly placed on the map of the City of New York.; and

A) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law; and

B) Existing dwelling to be altered does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code;” and

WHEREAS, a public hearing was held on this application on December 14, 2010, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated October 11, 2010, the Fire Department states that it has no objection to the subject proposal; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 22, 2010, acting on Department of Buildings Application No. 420193141, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received December 6, 2010” - one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 14, 2010.

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114-10-BZY and 115-10-BZY

APPLICANT – Nikolaos Sellas, for HX Holdings LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a major development commenced under the prior R6 zoning district. R6B zoning district

PREMISES AFFECTED – 26-58 & 26-60 30th Street, north side of 30th Street, 540.78’ and 565.80’ west of corner formed by Astoria Boulevard and 30th Street, Block 597, Lots 223 and 124, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Nikolaos Sellas.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for decision, hearing closed.

125-10-A

APPLICANT – Simons & Wright, for Sofia Gazgalis & Spyridon Gazgalis, owner.

SUBJECT – Application July 8, 2010 – Appeal challenging the interpretation of ZR §23-22 as it applies to the required density factor for existing buildings in an R5B zoning district.

PREMISES AFFECTED – 346 Ovington Avenue, between 4th and 3rd Avenues, Block 5891, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 25, 2011, at 10 A.M., for continued hearing.

212-10-A

APPLICANT – NYC Board of Standards and Appeals

OWNER – Augustus H. Lawrence and Company

SUBJECT – Application November 5, 2010 – Dismissal for lack of Jurisdiction – Appeal of a determination by the Department of Buildings that an engineer's report violated Building Code Section 28.211.1. (False Statements). C6-9M Zoning District.

PREMISES AFFECTED – 96 Greenwich Street, west side of Greenwich Street between Rector Street and Carlisle Street, Block 53, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for dismissal calendar.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, DECEMBER 14, 2010

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

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 (ZR §72-21) to allow for a four story mixed use building contrary to use regulations. (ZR §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: Chris Wright.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 13, 2009, acting on Department of Buildings Application No. 320003474, reads in pertinent part:

“The proposed residential dwellings in C8-2 and M1-1 districts are contrary to sections 32-00 and 42-00 of the Zoning Resolution and require a variance from the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR § 72-21, to permit the conversion of an existing three-story building to a four-story mixed-use commercial/residential building with 33 affordable housing units, contrary to ZR §§ 32-00 and 42-00; and

WHEREAS, a public hearing was held on this application on April 13, 2010 after due notice by publication in the *City Record*, with continued hearings on May 25, 2010, August 3, 2010 and August 24, 2010, and then to decision on December 14, 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

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WHEREAS, Community Board 4, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of Park Street and Broadway, partially within a C8-2 zoning district and partially within an M1-1 zoning district; and

WHEREAS, the subject zoning lot has 150 feet of frontage on Broadway, a depth of 100 feet and a total lot area of 15,000 sq. ft., with 10,000 sq. ft. of lot area located within the C8-2 zoning district and 5,000 sq. ft. of lot area located within the M1-1 zoning district; and

WHEREAS, the site is currently occupied by an approximately 30,000 sq. ft. three-story commercial building and a parking lot; and

WHEREAS, the applicant proposes to alter the building and provide a one-story enlargement to create a four-story mixed-use commercial/residential building with retail located on the first floor and 33 affordable housing units located above; and

WHEREAS, the proposed building has a floor area of 49,920 sq. ft. (3.0 FAR) and a height of 45 feet; and

WHEREAS, the applicant originally proposed to construct a seven-story mixed-use commercial/residential building with a floor area of 60,000 sq. ft. (4.0 FAR), and a total height of 80 feet; and

WHEREAS, the applicant's initial proposal contemplated the demolition of the existing building, the removal of the foundations, and the construction of a new building on the site; and

WHEREAS, during the course of the hearing process, the applicant revised the project at the Board's direction to reflect the current proposal; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the subject building and zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the history of development of the site; and (2) the existing building is obsolete for conforming uses; and

WHEREAS, as to the history of development of the site, the applicant states that a conforming use is infeasible at the subject site due to the building's age and years of uncoordinated alterations; and

WHEREAS, the applicant states that the subject building was originally constructed approximately 100 years ago as three separate residential buildings, and that the building has since undergone alterations on each floor to accommodate various commercial uses; and

WHEREAS, the applicant states that the history of development of the site has resulted in the functional obsolescence of the building; and

WHEREAS, the applicant submitted a report from an engineering firm which supported the applicant's representation that the following problems contribute to the functional obsolescence of the building: (i) the building was originally three separate structures; (ii) each floor has a different layout and demising walls; (iii) portions of the lower floors connect to portions of the upper floors in a random pattern; (iv) the floor plate elevations on the second and third

floor are inconsistent; (v) the floor plate for the third floor is smaller than the floor plates for the first and second floors; (vi) there is no central core, and there is a random pattern of stairs connecting the floors; (vii) there is inconsistent construction and support columns between the original buildings; (viii) there are open floor plates from prior retail uses as well as remnants of old tenements in portions of the upper floors; (ix) the amount of space converted to retail and the amount that retains the old tenement improvements varies on each floor; and (x) there are clear signs of age deterioration throughout the building; and

WHEREAS, as to the uniqueness of this condition, the applicant states that the subject site is the only site in the surrounding area with the above-mentioned physical constraints; and

WHEREAS, the applicant states that any conforming use would require floor plates with consistent elevations, size and column spacing, as well as a central core and lobby; and

WHEREAS, therefore, due to the physical condition of the building the applicant states that there is no practical conforming reuse of the site; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create practical difficulties and unnecessary hardships in developing the site in strict conformity with current zoning; and

WHEREAS, the applicant provided a financial analysis for (1) use of the existing building for an as-of-right commercial use; and (2) the proposed four-story mixed-use commercial/residential building; and

WHEREAS, the study concluded that the as-of-right scenario would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, as further evidence of the infeasibility of commercial use throughout the site, the applicant submitted a letter from a real estate broker stating that the building has been marketed for commercial uses for more than two-and-one-half years, and while ground floor retail may be viable, they were unable to find tenants for the upper two floors; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance, if granted, will not negatively impact the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a mix of residential, commercial, manufacturing, and community facility uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that the majority of the subject block is dominated by residential uses, and that there are residential uses located in the surrounding area in every direction from the subject site; and

WHEREAS, specifically, the applicant states that more than 60 percent of the lots within the surrounding area are developed with residential uses; and

WHEREAS, as to bulk, the applicant states that the

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height of the proposed building is lower than many developments in the area; and

WHEREAS, the 400-ft. radius diagram submitted by the applicant reflects that there is a seven-story affordable housing development directly across from the site on Broadway, and there are multiple four-story residential buildings on the subject block facing Locust Street and on the subject block frontage on the corner of Broadway and Locust Street; and

WHEREAS, the applicant states that there is also a large affordable housing presence in the area and that the subject site will provide a different and complementary type of affordable housing in the community; and

WHEREAS, the applicant further states that the portion of the building that will extend 50 feet into the M1-1 zoning district on Park Street will be set back 26'-6" from the sidewalk at the fourth floor, in order to maintain the three-story context of the midblock; and

WHEREAS, accordingly, the Board finds that the variance, if granted, will not negatively impact the character of the neighborhood; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted above, the applicant originally proposed to construct a seven-story mixed-use commercial/residential building with a floor area of 60,000 sq. ft. (4.0 FAR), and a total height of 80 feet, which would have required demolishing the existing building and constructing a new building on the site; and

WHEREAS, at the Board's direction, the applicant revised the project to reflect the current proposal; and

WHEREAS, based upon the above, 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 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. 09BSA111K dated December 7, 2010; 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 Analysis has reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP accepts the December 2009 ground-penetrating radar report and determined there would not be any

hazardous materials impacts due to the proposal; and

WHEREAS, a site survey and air permits search was conducted for the active industrial/manufacturing facilities for the area within a 400-ft. radius of the proposed project; and

WHEREAS, DEP reviewed the applicant's air quality screening analysis and determined that no significant impacts are anticipated from industrial/manufacturing uses on the proposed project; and

WHEREAS, DEP reviewed the applicant's stationary source screening analysis conducted for the HVAC system and determined that no significant impacts from the proposed project are anticipated; and

WHEREAS, DEP reviewed the results of noise monitoring and determined that a minimum of 40 dBA of window-wall noise attenuation and an alternate means of ventilation shall be maintained in order to achieve an interior noise level of 45 dBA; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit the conversion of an existing three-story building to a four-story mixed-use commercial/residential building, contrary to ZR §§ 32-00 and 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 27, 2010" – eight (8) sheets and "Received November 5, 2010" – one (1) sheet; and *on further condition*;

THAT the following shall be the bulk parameters of the building: a floor area of 44,920 sq. ft. (3.0 FAR); a total height of 45 feet; and up to 33 affordable housing units, as illustrated on the BSA-approved plans;

THAT the bulk of the building shall comply with R6A zoning district regulations;

THAT prior to DOB's issuance of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain a Notice of Satisfaction from DEP;

THAT a minimum of 40 dBA of window-wall noise attenuation and an alternate means of ventilation shall be provided in the subject building;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

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compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 14, 2010.

92-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Lancaster Incorporated, owners.

SUBJECT – Application May 20, 2010 – Variance (§72-21) to allow for the construction of an elevator in an existing residential building, contrary to floor area, open space (§23-142) and court regulations (§§23-85, 23-87). R7-2 zoning district.

PREMISES AFFECTED – 39 East 10th Street, north side of 10th Street, between University Place and Broadway, Block 562, Lot 38, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated April 20, 2010, acting on Department of Buildings Application No. 110364089, reads in pertinent part:

- “1. ZR 23-87 – Proposed elevator enclosure is not permitted obstruction in the court. It is contrary to ZR 23-87.
2. ZR 54-31 – Elevator enclosure is floor area as per ZR 12-10. Existing floor area of the building is exceeding the maximum allowable per ZR 23-142. Therefore proposed elevator enclosure is increasing the degree of non-compliance. It is contrary to ZR 54-31.
3. ZR 54-31 – Existing open space is contrary to ZR 23-142. Proposed elevator enclosure is increasing the degree of non-compliance. It is contrary to ZR 54-31.
4. ZR 23-852 – Dimension of inner court is contrary to ZR 23-852. Proposed elevator enclosure creates two inner court recesses with dimension contrary to ZR 23-852.
5. ZR 23-851 and ZR 54-31 – Existing inner court dimensions and area are contrary to ZR 23-851. Proposed elevator enclosure increases the degree of non-compliance. It is contrary to ZR 54-31;”
and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R7-2 zoning district, an enlargement to an existing building to accommodate an elevator, which does not

comply with floor area, open space, and inner court regulations, contrary to ZR §§ 23-87, 54-31, 23-852, and 23-851; and

WHEREAS, a public hearing was held on this application on September 21, 2010, after due notice by publication in the *City Record*, with a continued hearing on November 9, 2010, and then to decision on December 14, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the site is located on the north side of East 10th Street, between University Place and Broadway; and

WHEREAS, the site is rectangular and has a lot area of approximately 4,255 sq. ft.; and

WHEREAS, the site is occupied by a five-story multiple dwelling with an interior courtyard measuring approximately 29’-8” by 12’-7”; and

WHEREAS, the building was built in the 1870s and is occupied by ten residential units; and

WHEREAS, the applicant proposes to construct an elevator and elevator enclosure within the inner court, with exterior dimensions of 6’-6” by 10’-2”, which increases the building footprint by 82 sq. ft. and which would increase the pre-existing non-compliance of the (1) floor area, (2) lot coverage, and (3) inner court conditions, thus necessitating a variance; and

WHEREAS, the proposal reflects the following: (1) an increase in the pre-existing non-complying floor area from approximately 17,040 sq. ft. (4.0 FAR) (14,637 sq. ft. [3.44 FAR] is the maximum permitted) to 17,380 sq. ft. (4.08 FAR); (2) an increase in the lot coverage from 80 percent to 82 percent (65 percent is the maximum permitted); and (3) a reduction in the size of the pre-existing non-complying inner court from 373 sq. ft. to 291 sq. ft. (1,200 sq. ft. is the minimum required area for an inner court; and

WHEREAS, the applicant represents that the proposed enlargement will increase the noted pre-existing non-complying conditions but not create any new non-compliances; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: the obsolescence and constraints of the existing building, which has a height of 55 feet without a passenger elevator; and

WHEREAS, the applicant represents that the existing building is constrained and suffers a hardship based on the fact that it is one of only two buildings within a radius of more than 400-ft. from the site that are five stories or more that does not have an elevator; and

WHEREAS, further, the applicant represents that the absence of the elevator creates a financial hardship for the building; and

WHEREAS, as to the uniqueness of the building conditions, the applicant performed a survey of all buildings within 400 feet of the existing building, between East 8th

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Street and East 14th Street and University Place and Fourth Avenue and found that of the 125 lots analyzed, the subject site is one of only two sites occupied by a building with five or more stories without an elevator; and

WHEREAS, further, the applicant notes that, at 55 feet, the subject building has a greater height than the other five-story building (45 University Place) without an elevator, at 53 feet; and

WHEREAS, the applicant provided a chart and a land use map, which identifies (1) buildings with five or more stories and (2) buildings with five or more stories that do not have elevators; and

WHEREAS, the applicant also states that the building's height of 55 feet, with a distance of more than 11 feet between floors, is more typical of a six-story building and six-story buildings are required to have elevators, by code; and

WHEREAS, the applicant states that of the 16 sites with frontage on East 10th Street between Broadway and University Place, the subject building is (1) one of only three that does not have an elevator and (2) the tallest building without a passenger elevator since the two other buildings without elevators are four-story buildings; and

WHEREAS, further, the applicant represents that installing an elevator within the existing building envelope and thus complying with the applicable zoning creates a hardship; and

WHEREAS, specifically, the applicant represents that the building was built approximately 140 years ago and that the wood joists and masonry bearing wall construction make reconfiguration of the building to accommodate a passenger elevator within the existing envelope infeasible; and

WHEREAS, the applicant asserts that the installation of an elevator within the existing building envelope would require the modification of five of the ten apartment units, which would be logistically and economically problematic; and

WHEREAS, the applicant also represents that the existing building core, which includes a single interior staircase cannot also accommodate an elevator and that in order to accommodate an elevator within the existing building envelope, the applicant would be required to carve out portions of and reconfigure five existing cooperatively owned and occupied apartment units; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the existing building create unnecessary hardship and practical difficulty in continued use of the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) the existing condition, (2) a complying scenario with the elevator within the existing building envelope; and (3) the proposal for an elevator within the inner courtyard; and

WHEREAS, based on the analysis, the applicant concludes that the existing condition of a five-story building without an elevator suffers a hardship specifically since it is at a disadvantage to all other five-story and taller buildings within the study area; and

WHEREAS, the study also concluded that due to the premium costs associated with reconfiguring the existing building, the complying scenario would not result in a reasonable return, but the proposal would realize a reasonable return; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant asserts that the existing building, which will remain, is compatible with the context of the immediate area; and

WHEREAS, the applicant notes that the increase in lot coverage and reduction of the courtyard is limited to a fully enclosed interior of the building, which is not visible from the street or adjacent buildings; and

WHEREAS, the applicant also notes that the only change to the building's envelope will be the infill of the courtyard; 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 it is rather attributed to the unique physical conditions of the historic building; 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, which reflect increases to pre-existing non-complying conditions, are the minimum necessary to accommodate the elevator enclosure; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary; and

WHEREAS, 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 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 § 72-21 and grants a variance to permit, within an R7-2 zoning district, an enlargement to an existing building to accommodate an elevator, which does not comply with floor area, open space, and inner court regulations, contrary to ZR §§ 23-87, 54-31, 23-852, and 23-851, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 12, 2010" – four (4) sheets; and *on further condition*:

THAT the lot coverage post-enlargement shall not exceed 82 percent and the floor area shall not exceed 17,380 sq. ft., as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the

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Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant 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 14, 2010.

103-10-BZ

APPLICANT – Law Office of Frederick A. Becker, for Zehava Kraitenberg and Larry Kraitenberg, owners.

SUBJECT – Application June 7, 2010 – Special Permit (§73-622) for the enlargement and in-part legalization of an existing single family home contrary to floor area, open space (§23-141), side yard requirement (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1036 East 24th Street, west side of East 24th Street, between Avenue J and Avenue K, Block 7605, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 6, 2010, acting on Department of Buildings Application No. 300352838, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space ratio

Proposed plans are contrary to ZR 23-461 in that the proposed straight line extension of the side yard provides less than the minimum required side yard

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than that of the minimum required rear yard;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements

for floor area ratio (“FAR”), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on October 19, 2010, after due notice by publication in *The City Record*, with a continued hearing on November 16, 2010, and then to decision on December 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 24th Street, between Avenue J and Avenue K, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,390 sq. ft., and is occupied by a single-family home with a floor area of 3,500 sq. ft. (0.80 FAR); and

WHEREAS, the applicant states that the subject home was enlarged pursuant to plans approved by the Department of Buildings in 1994, which permitted a second floor extension at the front, a two-story extension at the side, a new interior layout, air conditioning, plumbing, windows, stucco and porches; and

WHEREAS, the applicant further states that the owner subsequently performed additional alterations, including the enlargement of the dining room through the enclosure of an approved porch, the addition of a small den at the rear of the home, and the enlargement of the kitchen; these additional alterations resulted in non-compliances associated with FAR, open space ratio and rear yard depth, which the owner now proposes to legalize; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 3,500 sq. ft. (0.80 FAR) to 3,967 sq. ft. (0.90 FAR); the maximum permitted floor area is 2,195 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 61 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 4’-8½” along the northern lot line (a minimum width of 5’-0” is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement and partial legalization 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

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and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 7, 2010"- (10) sheets and ; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,967 sq. ft. (0.90 FAR); a minimum open space ratio of 61 percent; a side yard with a minimum width of 4'-8½" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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, December 14, 2010.

104-10-BZ

CEQR #10-BSA-077K

APPLICANT – Moshe M. Friedman, P.E., for Congregation Ohr Yisroel Inc., owner.

SUBJECT – Application June 8, 2010 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a synagogue and rectory, contrary to lot coverage and floor area (§24-11) front yard (§24-34), side yard (§24-35) and wall height and sky exposure plane (§24-521). R5 zoning district.

PREMISES AFFECTED – 5002 19th Avenue, aka 1880-1890 50th Street, south side of 50th Street, west of 19th Avenue, Block 5461, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant:

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 13, 2010, acting on Department of Buildings Application No. 320152213 reads, in pertinent part: "Proposed house of worship (UG 4) in an R5 district

is contrary to:

- ZR 24-11 Floor Area & Lot Coverage
- ZR 24-521 Height
- ZR 23-34 Front Yard
- ZR 24-35 Side Yard
- ZR 23-521 Sky Exposure Plane

And requires a variance from the Board of Standards and Appeals as per Section 72-21;" and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R5 zoning district, the conversion and enlargement of an existing residential building to a synagogue (Use Group 4), which does not comply with floor area, lot coverage, front yard, side yard, height and sky exposure plane requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35 and 24-521; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with a continued hearing on November 16, 2010, and then to decision on December 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application; and

WHEREAS, certain neighborhood residents provided written testimony in support of this application; and

WHEREAS, this application is being brought on behalf of Congregation Ohr Yisroel, a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject site is located on the southwest corner of 19th Avenue and 50th Street, within an R5 zoning district; and

WHEREAS, the subject lot has a width of 20'-2", a depth of 100'-0", and a lot area of 2,081 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story residential building with a floor area of 3,464 sq. ft. (1.72 FAR); and

WHEREAS, the proposed building provides for a

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three-story synagogue with the following parameters: a floor area of 5,696 sq. ft. (the maximum permitted floor area is 4,162 sq. ft.), an FAR of 2.82 (the maximum permitted FAR is 2.0); lot coverage of 94 percent (the maximum permitted lot coverage is 60 percent); a front yard with a depth of 5'-0" along the eastern lot line and no front yard along the northern lot line (a front yard with a minimum depth of 10'-0" is required); no side yards (two side yards with minimum depths of 8'-0" and 9'-6", respectively, are required); a front wall height of 40'-0" (the maximum permitted front wall height is 35'-0"); and encroachment into the sky exposure plane; and

WHEREAS, the proposal provides for the following uses: (1) a synagogue at the cellar level and first floor; (2) a women's balcony on the second floor; and (3) a library and rabbinical study room on the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate its growing congregation; and (2) to provide a separate space for men and women during religious services; and

WHEREAS, the applicant states that the congregation currently has a membership of 60 families and there are approximately 60 congregants who worship at the current rented facility on the Sabbath, between 30 and 40 congregants who attend daily services, and approximately 115 congregants who attend holiday services; and

WHEREAS, the applicant further states that the congregation currently worships in rented space and has to rent out additional space for holiday services, which attract a larger number of worshippers; and

WHEREAS, the applicant represents that the size, layout and design of the subject building is inadequate to serve the current congregation; and

WHEREAS, the applicant represents that the congregation is made up of many young families and has been growing steadily since its inception, and that the proposed synagogue is necessary to accommodate the future growth of the congregation; and

WHEREAS, the applicant states that the proposed building can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to provide adequate space for worship services in the cellar synagogue, first floor synagogue, and the women's balcony; and

WHEREAS, the applicant represents that worship space which separates men and women is critical to its religious practice; and

WHEREAS, the applicant further represents that the third floor study space is necessary to accommodate the religious traditions of the congregation, which require that the congregation set aside a study period during prayer times for the study of the Torah, Talmud, and other Jewish religious texts; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant

deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, however, the applicant also represents that the narrow width of the site creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the subject lot has a width of 20'-2"; and

WHEREAS, the applicant states that the site is too narrow to accommodate a complying synagogue building, as providing complying side yards would reduce the width of the building to 4'-9"; and

WHEREAS, the applicant represents that, therefore, the required floor area cannot be accommodated within the as-of-right lot coverage, floor area, and yard parameters and allow for efficient floor plates that accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical condition, when considered in conjunction with the programmatic needs of the Synagogue, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed use is permitted in the subject zoning district; and

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram reflecting that the residential character of the surrounding neighborhood includes one-, two- and three-family homes and three- and four-story apartment buildings; and

WHEREAS, the applicant states that the proposed three-story building is consistent with the surrounding area, as three-story residential buildings are permitted in the subject zoning district; and

WHEREAS, at hearing, the Board questioned whether the applicant needed the requested front yard waiver, and the effect it would have on the surrounding residences; and

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WHEREAS, in response, the applicant submitted plans for a lesser variance alternative that eliminated the front yard waiver; and

WHEREAS, the plans submitted by the applicant reflect that the lesser variance scenario would limit the occupancy of both the proposed synagogue and balcony to 63 people, and would limit the occupancy of the cellar synagogue to 38 people; and

WHEREAS, the applicant states that while the lesser variance scenario would provide a temporary reprieve to the Synagogue's space requirements for weekday and Sabbath services, it would not meet the programmatic needs of the Synagogue because it would not provide adequate space to accommodate the current congregation during holiday services, and would not provide space to accommodate the anticipated growth of the congregation; and

WHEREAS, the applicant also submitted letters from the adjacent neighbors on 19th Avenue in support of the proposal, including the extension of the building into the front yard; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, the applicant submitted plans for a lesser variance scenario which was unable to meet the programmatic needs of the Synagogue; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed to meet 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 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA077K, dated September 15, 2010; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R5 zoning district, the conversion and enlargement of an existing residential building to a synagogue (Use Group 4), which does not comply with floor area, lot coverage, front yard, side yard, height and sky exposure plane requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35 and 24-521, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 8, 2010" – (3) sheets, "Received September 15, 2010" – (2) sheets and "Received November 3, 2010" – (5) sheets and *on further condition*:

THAT the building parameters shall be: a floor area of 5,696 sq. ft. (2.82 FAR); lot coverage of 94 percent; a front yard with a depth of 5'-0" along the eastern lot line; and a front wall height of 40'-0", as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 14, 2010.

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122-10-BZ

APPLICANT – Bryan Cave LLP., for Congregation Rodeph Sholom, owner.

SUBJECT – Application July 1, 2010 – Variance (§72-21) to permit the rooftop addition for a community facility use (*Rodeph Sholom School*), contrary to maximum height regulations (§23-692). R8B zoning district.

PREMISES AFFECTED – 163 West 78th Street, Between Amsterdam and Columbus Avenues, 134 feet east of Amsterdam Avenue. Block 1150, Lot 6. Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Judith M. Gallent.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated June 14, 2010, acting on Department of Buildings Application No. 110379055, reads in pertinent part:

“Proposed 6th floor exceeds the Community Facility Height and Setback regulations contrary to ZR 24-522, ZR 23-633, ZR 24-592 and ZR 23-692;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site in an R8B zoning district within the Upper West Side/Central Park West Historic District, the construction of a rooftop enlargement of an existing five-story school building, which does not comply with zoning regulations for height and setback, contrary to ZR §§ 24-522, 23-633, 24-592 and 23-692; and

WHEREAS, a public hearing was held on this application on November 23, 2010, after due notice by publication in the *City Record*, and then to decision on December 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 7, Manhattan, recommends approval of the application; and

WHEREAS, a resident of the community provided oral testimony in support of this application; and

WHEREAS, this application is brought on behalf of The Rodeph Sholom School (the “School”), a not for profit educational institution affiliated with Congregation Rodeph Sholom; and

WHEREAS, the site is located on the north side of West 78th Street, between Columbus Avenue and Amsterdam Avenue, in an R8B zoning district within the Upper West Side/Central Park West Historic District; and

WHEREAS, the site has 19 feet of frontage on West 78th Street, a depth of approximately 102 feet, and a lot area of 1,941 sq. ft.; and

WHEREAS, the site is occupied by a five-story building which is operated by the School; and

WHEREAS, the applicant notes that the School operates out of three facilities on the Upper West Side of Manhattan: the Congregation Rodeph Sholom synagogue, located at 7 West 83rd Street, which houses the nursery school; 10 West 84th Street, which houses the pre-Kindergarten through first grade; and 168 West 79th Street (aka, 165-167 West 78th Street) (the “West 78th/West 79th Street Building”), which, together with the subject building, houses second grade through eighth grade students (the “Upper Elementary and Middle School Divisions”); and

WHEREAS, the applicant further notes that the West 78th/West 79th Street Building (located on Block 1150, Lot 59) is located adjacent to the subject building on a separate zoning lot, and that the buildings are separate buildings with openings between them, as approved by the Department of Buildings (“DOB”); and

WHEREAS, on February 26, 2002, under BSA Cal. No. 258-01-BZ, the Board granted a variance to permit the enlargement of the West 78th/West 79th Street Building; and

WHEREAS, the applicant states that the enlargement facilitated by the 2002 variance was not sufficient to accommodate the growing student population of the School, and as a result, the School purchased the subject site in 2008; and

WHEREAS, the applicant now proposes to construct a 930 sq. ft. sixth floor penthouse addition to the subject building, which will increase the total building height to 75’-0” (the maximum permitted total building height is 60’-0”); and

WHEREAS, the proposed penthouse addition will be occupied by recreation space; and

WHEREAS, the applicant states that the proposed penthouse addition is necessary to meet the School’s programmatic needs of providing additional recreation space for the Upper Elementary and Middle School Divisions; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant states that the Upper Elementary and Middle School Divisions consist of 342 students, who are accommodated in just 48,589 sq. ft. of space, which provides only 142 sq. ft. of space per student and only 12.7 sq. ft. of active recreation space per student; and

WHEREAS, the applicant submitted a memorandum from its architect indicating that competing New York City independent schools provide an average of 193 sq. ft. of space per student and 30.7 sq. ft. of active recreation space per student; and

WHEREAS, the applicant represents that the size of the gymnasium for the Upper Elementary and Middle School Divisions is substandard at 2,207 sq. ft., as the minimum size for a gymnasium to hold a middle school basketball court is 4,128 sq. ft.; and

WHEREAS, the applicant states that the gymnasium and an 809 sq. ft. movement studio are programmed for physical education classes throughout the day, which leaves a 1,315 sq. ft. outdoor play area as the only space dedicated to recess; and

WHEREAS, the applicant represents that the lack of

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additional indoor recreation space makes it impossible for the School to meet its programmatic needs in the following ways: (1) there is no dedicated recess space for inclement weather, which leaves many children without any active play time during recess in such conditions; (2) even when the weather is cooperative, the School is unable to meet national recommended standards for weekly physical education and recess; (3) the quality of recess time that the students do have is compromised by the need for mixed-grade recess, where children of varying developmental levels are required to share space and facilities; and (4) certain physical activities, such as basketball, crowd out other forms of physical activity in the 1,315 sq. ft. outdoor play area, making it difficult for other students to engage in alternative forms of physical activity; and

WHEREAS, therefore, the applicant states that the requested height and setback waiver is necessary to provide the school with the required sixth floor penthouse play space addition; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the School create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, in addition to the School's programmatic needs, the applicant states that the unique physical conditions on the site, specifically the shallow depth to groundwater and bedrock, create practical difficulties and unnecessary hardship in strictly complying with the applicable bulk regulations; and

WHEREAS, the applicant represents that the School has explored a complying enlargement to accommodate the indoor play space that is necessary to meet its programmatic needs and that, due to space constraints on the small site, the only place where the proposed play space could be located as-of-right would be below grade; and

WHEREAS, however, the applicant states that the shallow depth to both groundwater and bedrock at the site make the cost of constructing such space below grade cost prohibitive; and

WHEREAS, the applicant states that the existing cellar is only 7'-0" deep and that in order to make the cellar habitable for active recreation use, it would need an additional depth of 4'-4" in order to allow for the needed ceiling height of 11'-6"; and

WHEREAS, as to the depth of bedrock, the applicant submitted a report from an engineering consultant stating that bedrock is located just 8'-6" below the surface of the site, and that providing the necessary ceiling height would require

excavating approximately 5'-5", of which 4'-6" would be bedrock; and

WHEREAS, the engineer's report further states that the estimated cost of removing the bedrock and associated monitoring would be approximately \$477,350; and

WHEREAS, as to the depth of the groundwater at the site, the engineer's report states that, due to the existence of an underground stream, groundwater is encountered at 12 feet below the surface, which is just one foot below the existing cellar slab; and

WHEREAS, the engineer's report further states that excavation to extend the cellar would require both temporary removal of groundwater during construction and permanent groundwater control, which was estimated to cost approximately \$1,277,488; and

WHEREAS, the applicant states that, even if these unique physical conditions associated with the shallow depth to both bedrock and groundwater were not cost prohibitive, the resulting subterranean play space, with no access to natural light or air, would not adequately meet the School's programmatic needs, as it is widely accepted that children need access to light and air; and

WHEREAS, accordingly, the additional recreation space that is required to meet the School's programmatic needs must be located above grade, necessitating the requested waiver of the 60-ft. height limit imposed by ZR § 23-692; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of the School, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the two buildings to the west of the site (165 and 167 West 78th Street), which are part of the School, have existing sixth floor rooftop additions which bring the height of those buildings to 75'-2 1/2"; and

WHEREAS, the applicant further states that the adjacent building to the east of the site is a residential building undergoing renovation, which has an approved 12'-0" high penthouse addition atop the existing five-story building, which will bring the height of the building to 70'-0"; and

WHEREAS, the applicant represents that, since the buildings to the immediate east and west of the site have existing or approved sixth floor additions, the proposed penthouse addition at the subject site will improve the view of the roofscape on West 78th Street for surrounding upper-floor properties by filling in the missing sixth floor space

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between the buildings to the east and west; and
WHEREAS, the applicant states that the proposed penthouse addition would replace a previous penthouse addition that existed on the rooftop of the subject building prior to its demolition in connection with the renovation of the building; and

WHEREAS, the applicant further states that the proposed penthouse addition is setback from the streetwall and would not be visible from the street; and

WHEREAS, the applicant notes that the subject application only seeks a waiver for total building height, and that the proposed building will comply with all other bulk requirements of the underlying zoning district; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission approving the proposed enlargement, dated December 4, 2008; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waiver is the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

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 and grants a variance to permit, on a site in an R8B zoning district within the Upper West Side/Central Park West Historic District, the construction of a rooftop enlargement of an existing five-story school building (Use Group 3), which does not comply with zoning regulations for height and setback, contrary to ZR §§ 24-522, 23-633, 24-592 and 23-692, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 1, 2010" – (5) sheets and "Received September 29, 2010" – (2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: a floor area of 7,764 sq. ft. (4.0 FAR); and a maximum total building height of 75'-0";

THAT any change in the use, occupancy, or operator of

the school requires review and approval by the Board;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 14, 2010.

190-10-BZ

CEQR #11-BSA-031Q

APPLICANT – Sheldon Lobel, P.C., for Yeshiva Har Torah, owner.

SUBJECT – Application October 12, 2010 – Variance (§72-21) to permit the addition of a third floor to an existing two-story school building (*Yeshiva Har Torah*), contrary to rear yard (§24-36) and setback (§24-551) regulations. R3-2 zoning district.

PREMISES AFFECTED – 250-10 Grand Central Parkway, south side of Grand Parkway service road, between Little Neck Parkway and Commonwealth Boulevard, Block 8401, Lot 7501, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Richard Lobel and Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 4, 2010, acting on Department of Buildings Application No. 420206137, reads in pertinent part:

“Proposed enlargement of existing Use Group 3 school building:

1. Does not provide the minimum rear yard required under ZR 24-36.
2. Does not provide the side setback required under ZR 24-551;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, the construction of a third floor to an existing two-story school building, which does not comply with zoning regulations for rear yard and side setback, contrary to ZR §§ 24-36 and 24-551; and

WHEREAS, a public hearing was held on this

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application on November 23, 2010, after due notice by publication in the *City Record*, and then to decision on December 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Queens, recommends approval of the application; and

WHEREAS, this application is brought on behalf of Yeshiva Har Torah (the "School"), a not for profit religious educational institution; and

WHEREAS, the site is located on the south side of Grand Central Parkway, between Little Neck Parkway and Commonwealth Boulevard, within an R3-2 zoning district; and

WHEREAS, the site has a lot area of 46,292 sq. ft.; and

WHEREAS, the site is occupied by a two-story building with a floor area of 32,630 sq. ft. (0.70 FAR), which is operated by the School; and

WHEREAS, on June 10, 1958, under BSA Cal. No. 207-58-A, the Board granted an appeal from an order of the Fire Commissioner to allow the storage of liquefied chlorine at the site in connection with the operation of a country club with an accessory swimming pool at the site; and

WHEREAS, the applicant notes that when the School purchased the premises in 2001 it was occupied by an abandoned hotel building, which was demolished in order to construct the subject building, and that liquefied chlorine is no longer stored at the site; and

WHEREAS, the applicant now proposes to construct a 15,513 sq. ft. third floor to the subject building; and

WHEREAS, the proposed building will have the following complying parameters: a floor area of 48,143 sq. ft. (1.04 FAR); a lot coverage of 36 percent; a wall height of 15'-0"; a total height of 47'-3"; a front yard of 30'-0"; a side yard of 16'-7" along the eastern lot line; and a side yard of 18'-11" along the western lot line; and

WHEREAS, however, the proposed third floor will create the following non-compliances: a rear yard with a depth of 29'-6" (a rear yard with a minimum depth of 30'-0" is required); and side setbacks of 16'-7" along the eastern lot line and 18'-11" along the western lot line (a minimum side setback of 23'-8" is required); and

WHEREAS, the proposed third floor will be occupied by 11 classrooms including a computer lab, three instructional rooms, restrooms, storage and office space; and

WHEREAS, the applicant states that the proposed third floor is necessary to meet the School's programmatic need of accommodating the current enrollment while allowing for future growth; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant states that the School currently has 502 students enrolled for the 2010-2011 academic year, which is an increase from the 2009-2010 school year, when 474 students were enrolled; and

WHEREAS, the applicant represents that the School expects to grow to a maximum projected enrollment of 612

students, with an anticipated addition of 12 to 15 new staff members to accommodate the increased enrollment; and

WHEREAS, the applicant states that the existing building is already overburdened and inadequate for the current enrollment, and that the requested waivers are necessary to relieve the current space constraints and accommodate the anticipated growth of the student body; and

WHEREAS, the applicant states that currently, students are forced to meet in the library and in the synagogue for classes due to inadequate classroom space; and

WHEREAS, the applicant states that the proposed third floor layout would not only provide additional classroom space for the students, but would also allow the library and synagogue to be used for their intended purposes and not as makeshift classrooms; and

WHEREAS, the applicant represents that the requested rear yard and side setback waivers are necessary to allow the applicant to match the proposed third floor with the existing building footprint, thereby allowing for a more uniform building design; and

WHEREAS, the applicant states that in order to provide a complying third floor, the footprint of the proposed addition would be reduced on both sides by more than 7'-6" and critical program space would be decreased; and

WHEREAS, specifically, if the third floor were set back on each side as required, the overall floor area of the third floor would be decreased by 1,400 sq. ft., and due to the location of the two stairwells in the existing building, the rooms on either side of the floor would need to be reduced in size by approximately 150-200 sq. ft. each; and

WHEREAS, the applicant submitted alternative plans reflecting that an as-of-right third floor would result in several classrooms that are one-third smaller than proposed and would provide inadequate space to accommodate the anticipated growth in enrollment; and

WHEREAS, therefore, the applicant states that the requested rear yard and setback waivers are necessary to provide the School with the required amount of program space to accommodate the current enrollment and allow for future growth; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the School create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission,

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the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the lots immediately adjacent to the site are occupied by a health care facility and several two-story multiple dwelling buildings; and

WHEREAS, the radius diagram submitted by the applicant reflects that a six-story, three building residential development is located south of the site, on the subject block; and

WHEREAS, the applicant notes that the requested rear yard and side setback waivers are minimal, and that the proposed building will comply with all other bulk requirements of the underlying zoning district; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waiver is the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 11BSA031Q, dated October 12, 2010; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise;

Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-2 zoning district, the construction of a third floor to an existing two-story school building, which does not comply with zoning regulations for rear yard and side setback, contrary to ZR §§ 24-36 and 24-551, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 22, 2010" – (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: a floor area of 48,143 sq. ft. (1.04 FAR); a side setback of 18'-11" along the eastern lot line; a side setback of 16'-7" along the western lot line; and a rear yard with a depth of 29'-6", as illustrated on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 14, 2010.

277-07-BZ

APPLICANT – Miele Associates, LLP, for Barnik Associates LLC & Lama Holdings, LLC, owner.

SUBJECT – Application December 3, 2007 – Variance (§72-21) for the development of a one-story automotive service station with accessory convenience store, contrary to §22-10. R3-1 zoning district

PREMISES AFFECTED – 165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R, Brewer Boulevard. Block 12318, Lot 10, Borough of Queens.

COMMUNITY BOARD #12Q

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APPEARANCES –

For Applicant: Joel Miele Sr., Hiram Rothkrug, Robert Pauls and Adam DeGerling

ACTION OF THE BOARD – Laid over to January 25, 2011, at 1:30 P.M., for continued hearing.

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

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for deferred decision.

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 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.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 25, 2011, at 1:30 P.M., for decision, hearing closed.

43-10-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Cammastro Corp./Maria Pilato, owner; First Club One LLC/Spiro Tsadilas, lessee.

SUBJECT – Application March 30, 2010 – Special Permit (§73-244) to allow an eating and drinking establishment without restrictions and no limitation on entertainment and dancing. C2-2/R5 zoning district.

PREMISES AFFECTED – 23-70 Steinway Street, west side of Steinway Street, 17.65' north of Astoria Boulevard North, Block 803, Lot 75, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 25, 2011, at 1:30 P.M., for decision, hearing closed.

45-10-BZ

APPLICANT – Sheldon Lobel, PC, for Leemilt's Petroleum, Incorporated, owner.

SUBJECT – Application April 5, 2010 – Special Permit (§11-411 and §11-412) for the reinstatement of a Variance for the continued operation of a gasoline service station (*Getty*) which expired on June 23, 1986; Amendment to increase the size of the auto laundry; Extension of Time to obtain a Certificate of Occupancy. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 1413-1429 Edward L. Grant Highway, southwest corner of Plimpton Avenue and Edward L. Grant Highway, Block 2521, Lot 15, Borough of Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to February 1, 2011, at 1:30 P.M., for continued hearing.

55-10-BZ

APPLICANT – Eric Palatnik, P.C., for FAS Main Street Family Limited Partnership, owner.

SUBJECT – Application April 19, 2010 – Special Permit (§73-44) to permit a reduction in required parking for an ambulatory or diagnostic treatment center. C4-2/C4-3 zoning districts.

PREMISES AFFECTED – 40-22 Main Street, northwest corner of Main Street, northwest corner of Main Street and 40th Street, Block 5036, Lot 42, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 8, 2011, at 1:30 P.M., for decision, hearing closed.

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101-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Crosby 54 LLC, owners.

SUBJECT – Application June 4, 2010 – Variance (§72-21) to allow a commercial use below the floor level of the second story, contrary to use (§42-14(D)(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 54 Crosby Street, west side of Crosby Street between Broome and Spring Streets, Block 483, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: David Reck, Matt Viggiano, Howard Weiss, Joshua Simons, and Maryann Mahloudji.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 15, 2011, at 1:30 P.M., for decision, hearing closed.

107-10-BZ

APPLICANT – Akerman Senterfitt, for Associazione Sacchese D’America, owner.

SUBJECT – Application September 10, 2010 – Variance (§72-21) to allow for a community facility use (*Associazione Sacchese D’America*), contrary to side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 12-24 149th Street, between 12th Avenue and Cross Island Parkway, Block 4466, Lot 21, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for decision, hearing closed.

128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagaduyev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application July 13, 2010 – Variance (§72-21) to permit proposed synagogue, religious school and Rabbi’s residence (*Jewish Center of Kew Gardens*) contrary to floor area and lot coverage (§24-11), height, setback and sky exposure plane (§24-521), front yard (§24-34), side yards (§24-35), side setback (§24-551), and minimum distance between windows (§24-672 and §23-863). R4 zoning district.

PREMISES AFFECTED – 147-58 77th Road, 150th Street

and 77th Road, Block 6688, Lot 31, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik and Ilyazhk Yagudayeu.

ACTION OF THE BOARD – Laid over to February 15, 2011, at 1:30 P.M., for continued hearing.

140-10-BZ thru 147-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Edward Lauria, owner.

SUBJECT – Application August 9, 2010 – Variance (§72-21) to allow four single-family homes on a zoning lot that does not meet the minimum lot width requirements (§23-32), and waiver to the General City Law, Section 36, for development not fronting a mapped street. R1-2 (NA-1) zoning district.

PREMISES AFFECTED – 160, 170, 181, 191, Edinboro Road, south of Meisner Avenue, east of intersection Lighthouse Avenue and Edinboro Road, Block 2267, Lot 55(tent), 50, 197, 168, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale and Edward Lauria.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to January 25, at 1:30 P.M., for continued hearing.

178-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Rebecca Leshkowitz and Naftuli Leshkowitz, owners.

SUBJECT – Application September 13, 2010 – Special Permit (§73-622) for the legalization and enlargement of a single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 943 East 24th Street, east side of East 24th Street, between Avenue I and Avenue J, Block 7588, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to January 25, 2010, at 1:30 P.M., for continued hearing.

179-10-BZ

APPLICANT – Sheldon Lobel, P.C., for E & R Duffield Holding Associates, owner; Duffield Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 16, 2010 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (*Planet Fitness*). C6-4 zoning district.

PREMISES AFFECTED – 249 Duffield Street, east side of Duffield Street, approx. 69’ north of the corner of Duffield Street and Fulton Street, Block 146, Lot 2, Borough of Brooklyn.

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COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for decision, hearing closed.

182-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, Miriam Kirzner and Martin Kirzner, owners.

SUBJECT – Application September 20, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1082 East 23rd Street, west side of East 23rd Street, between Avenue J and Avenue K, Block 7604, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to January 25, 2010, at 1:30 P.M., for continued hearing.

183-10-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application September 20, 2010 – Variance (§72-21) for the construction of a detached two-story, two family residence, contrary to front yard (§23-45) and side yard requirements (§23-461). R5 zoning district.

PREMISES AFFECTED – 873 Belmont Avenue, aka 240 Milford Street, northwest corner of Belmont Avenue and Milford Street, Block 4024, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Todd Dale.

For Opposition:

ACTION OF THE BOARD – Laid over to February 1, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

*CORRECTION

This resolution adopted on November 23, 2010, under Calendar Nos. 1493-61-BZ, 1495-61-BZ, 1497-61-BZ, 1499-61-BZ, 1501-61-BZ and printed in Volume 95, Bulletin No. 48, is hereby corrected to read as follows:

1493-61-BZ, 1495-61-BZ, 1497-61-BZ, 1499-61-BZ, 1501-61-BZ

APPLICANT – Bryan Cave LLP, for London Terrace Gardens, owner.

SUBJECT – Application August 12, 2010 – Extension of Term (§11-411) for transient parking in a multiple dwelling building which expired on February 27, 2002; waiver of the rules. R8A zoning district.

PREMISES AFFECTED – 415, 425, 435, 445, 455 West 23rd Street, aka 420, 430, 440, 450, 460 West 24th Street, West 23rd Street, West 24th Street, 125 feet west of Ninth Avenue, 125 feet east of Tenth Avenue. Block 721, Lot 7. Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Frank Chaney.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a transient parking garage, which expired on February 27, 2002; and

WHEREAS, a public hearing was held on this application on October 26, 2010, after due notice by publication in *The City Record*, and then to decision on November 23, 2010; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application, with the condition that the previously-imposed restrictions on the garage operation remain in effect and that the ramps be certified as ADA-compliant; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on a through lot with frontage on West 23rd Street and West 24th Street, between Ninth Avenue and Tenth Avenue, within an R8A zoning district; and

WHEREAS, the site is occupied by ten 16-story residential buildings; and

WHEREAS, the cellar is occupied by a 185-space accessory garage; and

WHEREAS, on February 27, 1962, under the subject

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calendar numbers, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to permit a maximum of 149 surplus parking spaces to be used for transient parking for “pleasure-type” vehicles only, for a term of 20 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on October 27, 1992, the Board granted a ten-year extension of term, which expired on February 27, 2002, with the condition that the West 23rd Street ramp be used as an entrance only and that the West 24th Street ramp be used as an entrance and an exit; and

WHEREAS, the applicant now requests an extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, in response to concerns raised by the Community Board, the applicant submitted a letter from its architect stating that the parking garage access ramps across the sidewalks on West 23rd Street and West 24th Street are ADA-compliant; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution having been adopted on February 27, 1962, so that as amended this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional fifteen (15) years from February 27, 2002, to expire on February 27, 2017; *on condition:*

THAT this term shall expire on February 27, 2017;

THAT signage shall comply with the underlying zoning district regulations;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB App. No. 110429803)

Adopted by the Board of Standards and Appeals, November 23, 2010.

***The resolution has been corrected to change the term of the grant from *ten years to fifteen years* Corrected in Bulletin No. 51, Vol. 95, dated December 22, 2010.**