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DOCKET

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93-08-BZ

112-12 Astoria Boulevard, Southwest of the intersection of 112th Place and Astoria Boulevard., Block 1706, Lot(s) 5,9,11, Borough of **Queens, Community Board: 3.** Variance to allow a six-story hotel, contrary to use regulations.

94-08-BZ

1501 Pitkin Avenue, Between Legion and Saratoga Avenue., Block 3494, Lot(s) 1, Borough of **Brooklyn, Community Board: 16.** Variance to allow the conversion of a vacant theater into a mixed use building.

95-08-A

6701 Bay Parkway, Southeast corner of the intersection of Bay Parkway and West 8th Street., Block 6576, Lot(s) 10, Borough of **Brooklyn, Community Board: 11.** Common law vested rights

96-08-A

208 Oceanside Avenue, North side of Oceanside Avenue 49.27' east of mapped Beach 203rd Street., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14.** Construction within mapped street, contrary to Article 3, Section 35 of the General City Law.

97-08-BZ

84 Sanford Street, Between Park Avenue and Myrtle Avenue., Block 1736, Lot(s) 14, Borough of **Brooklyn, Community Board: 3.** Special Permit (73-19) to allow legalization of existing (UG3) Yeshiva.

98-08-BZ

583 Franklin Avenue, 583 Franklin Avenue distant 160' of the corner of Atlantic Avenue and Franklin Avenue., Block 1199, Lot(s) 3, Borough of **Brooklyn, Community Board: 8.** Variance to permit the construction of four-family multiple dwelling, contrary to use regulations.

99-08-BZ

102 Drumgoole Road, South side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue., Block 5613, Lot(s) 221, Borough of **Staten Island, Community Board: 3.** Variance to allow construction of a cellar and three-story, one-family residential building, contrary to use regulations.

100-08-BZ

205 Wolverine Street, Northwest of intersection of Wolverine Street and Thomas Street., Block 4421, Lot(s) 167, Borough of **Staten Island, Community Board: 3.** Variance to allow non-compliance with a front yard requirement, contrary to use regulations.

101-08-A

205 Wolverine Street, Northwest of the intersection of Wolverine Street and Thomas Street., Block 4421, Lot(s) 167, Borough of **Staten Island, Community Board: 3.** Construction within mapped street, contrary to Section 35 of the General City Law.

102-08-BZ

103 Beachview Avenue, 40 feet west of the intersection of Beachview Avenue and Idlease Place., Block 3724, Lot(s) 30, Borough of **Staten Island, Community Board: 2.** Variance to allow non-compliance with side yard and parking requirements, contrary to use regulations.

103-08-BZY

208 Grand Street, South side of Grand Street between Bedford Avenue and Driggs Avenue., Block 2393, Lot(s) 24, Borough of **Brooklyn, Community Board: 1.** Extension of Time (11-331) to complete construction under prior zoning district.

104-08-BZY

15 Carmela Court, Block 4690, Lot(s) 129, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

105-08-BZY

17 Carmela Court, Block 4690, Lot(s) 129, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

106-08-BZY

23 Carmela Court, Block 4690, Lot(s) 129, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

DOCKET

107-08-BZY

25 Carmela Court, Block 4690, Lot(s) 129, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

108-08-BZY

605 Mill Road, Block 4690, Lot(s) 120, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

109-08-BZY

607 Mill Road, Block 4690, Lot(s) 121, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

110-08-BZY

609 Mill Road, Block 4690, Lot(s) 122, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

111-08-BZY

611 Mill Road, Block 4690, Lot(s) 123, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

112-08-BZY

615 Mill Road, Block 4690, Lot(s) 124, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

113-08-BZY

617 Mill Road, Block 4690, Lot(s) 125, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

114-08-BZY

589 Mill Road, Block 4690, Lot(s) 110, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

115-08-BZY

591 Mill Road, Block 4690, Lot(s) 111, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

116-08-BZY

593 Mill Road, Block 4690, Lot(s) 112, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

117-08-BZY

595 Mill Road, Block 4690, Lot(s) 113, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

118-08-BZY

597 Mill Road, Block 4690, Lot(s) 114, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

119-08-BZY

599 Mill Road, Block 4690, Lot(s) 115, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

120-08-A

186 Grand Street, South side of Grand Street between Bedford Avenue and Driggs Avenue., Block 2393, Lot(s) 14, Borough of **Brooklyn, Community Board: 1**. Appeal for common law vested to continued development under the prior zoning.

121-08-A

80 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 102, Borough of **Staten Island, Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning

122-08-A

70 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 104, Borough of **Staten Island, Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning.

DOCKET

123-08-A

60 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 106, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning

124-08-A

59 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 108, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning

125-08-A

79 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 110, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning

126-08-A

15 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 112, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning

127-08-A

25 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 114, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning

128-08-A

39 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 116, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning

129-08-A

55, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 118, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning

130-08-A

50 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 120, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning

131-08-A

40 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 122, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning

135-08-BZ

71-52 172nd Street, Located at the northwest corner of the intersection of 73rd Avenue and 172nd Avenue and 172nd Street, Block 6959, Lot(s) 1, Borough of **Queens**, **Community Board: 8**. Variance to allow proposed community facility use, contrary to bulk regulations

132-08-A

30 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 124, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning

133-08-BZ

1601 Bronxdale Avenue, Northeast side of Bronxdale Avenue between Pierce and Van Nest Avenues., Block 4042, Lot(s) 200, Borough of **Bronx**, **Community Board: 11**. Special Permit (73-48,73-49) to allow rooftop parking and waive limitation on number of vehicles in a group parking facility.

134-08-BZ

34 Lawrence Avenue, Lawrence Avenue, 80 feet west of McDonald Avenue., Block 5441, Lot(s) 17, Borough of **Brooklyn**, **Community Board: 12**. Variance to allow enlargement to an existing two-story building; contrary to bulk regulations.

136-08-A

846 70th Street, Between 8th Avenue and Fort Mamilton Parkway., Block 5896, Lot(s) 25, Borough of **Brooklyn**, **Community Board: 10**.

DOCKET

137-08-A

50 Blackhorse Court, South side of Richmond Road, 176.26'
South on Blackhorse Court., Block 4332, Lot(s) 34,
Borough of **Staten Island, Community Board: 2.**
Construction within mapped street, contrary to Section 35 of
the General City Law.

138-08-A

55 Richmond Road, South side of Richmond Road, 176.26'
South on Blackhorse Court., Block 4332, Lot(s) 28,
Borough of **Staten Island, Community Board: 2.**
Construction within mapped street, contrary to Section 35 of
the General City Law.

139-08-A

60 Richmond Road, South side of Richmond Road, 176.26'
South on Blackhorse Court., Block 4332, Lot(s) 30,
Borough of **Staten Island, Community Board: 2.**
Construction within mapped street, contrary to Section 35 of
the General City Law.

140-08-BZY

1016 East 13th Street, Between Avenue J and K., Block
6714, Lot(s) 11, Borough of **Brooklyn, Community Board:
14.** Extension of Time (11-332) to complete construction
under the prior district.

**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 13, 2008, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 13, 2008, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

718-56-BZ

APPLICANT – Walter T. Gorman, for Exxon/Mobil Corporation
SUBJECT – Application March 31, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Mobil) which expired on July 2, 2002; an Extension of Time to obtain a Certificate of Occupancy which expired on July 27, 2000 and an Amendment to legalize the conversion of one restroom to office space and office/sales area to an accessory convenience store in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 741 Forest Avenue, northwest corner of North Burgher Avenue, Block 183, Lot 52, Borough of Staten Island.

COMMUNITY BOARD #1SI

1334-66-BZ

APPLICANT – Sheldon Lobel, PC, for ACP Lincoln Garages, LLC, owners.

SUBJECT – Application March 3, 2008 – Reopening for an extension of term for a variance, which was originally granted under Section 60(3) of the Multiple Dwelling Law, which permits the operation of a transient parking garage in the cellar and sub-cellar of a building. R8 zoning district.

PREMISES AFFECTED – 150 West End Avenue, east side of West End Avenue between West 66th and West 70th Streets, Block 1158, Lot 80, Borough of Manhattan.

COMMUNITY BOARD #7M

1098-83-BZ

APPLICANT – Walter T. Gorman, P.E., Joseph M. Mattone, Estate of James J. Mannix, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application March 21, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Mobil), in C1-2/R5 zoning district, which expired on April 3, 2004 and an Amendment to legalize the conversion of the sales area to an accessory convenience store, the installation of planters, public telephone, chain link fencing atop a portion of a brick wall and the elimination of bollards on Northern Boulevard.

PREMISES AFFECTED – 147-10 Northern Boulevard, south east corner of 147th Street. Block 5016, Lot 18, Borough of Queens.

COMMUNITY BOARD #7Q

340-03-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, by Howard S. Weiss, Esq., for 408

SUBJECT – Application February 20, 2008 – Reopening for an Amendment to allow in a mixed use building the change of the use on the fifth floor from commercial use (UG6) to residential use (UG2).

PREMISES AFFECTED – 408 Greenwich Street, a/k/a 22-24 Hubert Street, northwest corner of Hubert and Greenwich Street, Block 217, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #1M

80-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Clover Housing Development Fund Corp., owner.

SUBJECT – Application April 12, 2007 – Variance (§72-21) to permit a nine-story and cellar not-for-profit institution with sleeping accommodations and accessory supportive social service space. The proposal is contrary to wall height, setback, and sky exposure plane (§24-522), rear yard (§24-36), and the permitted reconstruction to allow the construction of a nine-story community facility building (§54-41). R8 zoning district.

PREMISES AFFECTED – 319 West 94th Street, West 94th Street between Riverside Drive and West End Avenue. Block 1253, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEALS CALENDAR

194-07-A

APPLICANT – Rothkrug Rothkrug & Spector, for Elite III Contractor's Inc., owner.

SUBJECT – Application August 8, 2007 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue development commenced under the prior R6 Zoning District. R5 Zoning District.

PREMISES AFFECTED – 1447 Rosedale Avenue, Cross Bronx Expressway Service Road N and Rosedale Avenue, Block 3895, Lot 77, Borough of Bronx.

COMMUNITY BOARD #9BX

230-07-BZY

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

SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on September 10, 2007. R4-1

CALENDAR

zoning district.

PREMISES AFFECTED – 90-22 176th Street, between Jamaica and 90th Avenues, Block 9811, Lot 61, Borough of Queens.

COMMUNITY BOARD #12Q

28-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, owner; TJ & Meaghan Healey, lessee.

SUBJECT – Application February 14, 2008 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36 and the upgrade of an existing non-conforming private disposal system partially in the bed of the service road contrary to Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 11 Devon Walk, east side Devon Walk, 44.84' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

MAY 13, 2008, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 13, 2008, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

268-07-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Adath Jacob, owner.

SUBJECT – Application March 21, 2008 – Variance (§72-21) to permit the development of a new Use Group 4 synagogue with two accessory Use Group 4 apartments (for Rabbi and visiting dignitaries). The proposal is contrary to §24-11 (Total Floor Area and Lot Coverage), §24-35 (Side Yard), §24-36 (Rear Yard), §24-551 (Setback), and §25-31 (Community facility parking). R5 district.

PREMISES AFFECTED – 1644 48th Street, south side of 48th Street, between 16th and 17th Avenues, Block 5448, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

274-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Abdo Balikcioglu, owner.

SUBJECT – Application November 29, 2007 – Special Permit (§73-522) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141) and side yards (§23-461) in an R3X zoning district.

PREMISES AFFECTED – 1157 83rd Street northern side of 83rd Street between 11th Avenue and 12th Avenue, Block 6301, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #10BK

24-08-BZ

APPLICANT – Omnipoint Communications, Inc., for Village Greens Shopping Center, LLC., owner.

SUBJECT – Application February 5, 2008 – Special Permit (§73-30) seek approval for a proposed 90-foot non-accessory radio tower and related equipment at grade. C1-3 overlay within R3-2 and SRD district.

PREMISES AFFECTED – 230-262 Arden Avenue, south side Arden Avenue and Tarbes Avenue, Block 6025, Lot 35, Borough of Staten Island.

COMMUNITY BOARD #3SI

31-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Mark Lauria, Thomas DeVito, Henry Setaro, owners; Northop Grumman Info. Tech. Inc., lessees.

SUBJECT – Application February 19, 2008 – Special Permit (§73-30) to allow a 110- foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 2043 Richmond Avenue, between Ashworth Avenue and Rockland Avenue, Block 2015, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #2SI

456-85-BZ

APPLICANT – Slater & Beckerman, LLP, for Mark Lauria, Thomas DeVito, Henry Setaro, owners; Northop Grumman Info. Tech. Inc., lessees.

SUBJECT – Application February 19, 2008 – Amendment to reopen for minor change to the site to include a non-accessory radio tower pursuant to ZR §73-30 and file under separate BSA application.

PREMISES AFFECTED – 2043 Richmond Avenue, between Ashworth Avenue and Rockland Avenue, Block 2015, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #2SI

37-08-BZ

CALENDAR

APPLICANT – Slater & Beckerman, LLP, for Catholic High School Association of N.Y., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 21, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network. R3X zoning district.

PREMISES AFFECTED – 100 Merrill Avenue, between Arlene Street and Richmond Avenue, Block 2236, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

38-08-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for 40 Broad LLC, owner; 40 Broad Commercial LLC, lessee. SUBJECT – Application February 22, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing 25-story commercial building. The proposal is contrary to §32-10. C5-5 within the Historic & Commercial Core Area of the Special Lower Manhattan District.

PREMISES AFFECTED – 40 Broad Street (a/k/a 34-40 New Street) lot fronting Broad Street and New Street, south of Exchange Place, north of Beaver Street, Block 24, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

MAY 20, 2008, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 20, 2008, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

206-61-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Alrose 3039, LLC, owner.

SUBJECT – Application March 24, 2008 – Extension of Term/Waiver filed pursuant to §11-411 for an existing six story office building located in an R8-B zoning district. The term of the variance expired on July 11, 2006.

PREMISES AFFECTED – 30 East 39th Street, south side, 189' east of Madison Avenue, Block 868, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #6M

788-89-BZ

APPLICANT – Dominick Salvati & Son Architects, for Anna Mastromihalis, owner.

SUBJECT – Application June 25, 2007 – Extension of Term/waiver for a UG16 automobile repair shop and automobile sales which expired on November 19, 2006 and Extension of Time to obtain a Certificate of Occupancy which expired on November 18, 1998 in a C2-2 zoning district.

PREMISES AFFECTED – 187-17 Jamaica Avenue, northeast corner of intersection of Jamaica Avenue and 187th Place, Block 9910, Lot 11, Borough of Queens.

COMMUNITY BOARD #12Q

APPEALS CALENDAR

266-07-A

APPLICANT – Stuart A. Klein, for 1610 Ave S LLC, owner.

SUBJECT – Application November 21, 2007 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

CALENDAR

33-08-A

APPLICANT – Yury Menzak, for Robert M. Scarano Jr., owner.

SUBJECT – Application February 20, 2008 – Proposed construction of a six story multi-family home not fronting a legally mapped street contrary to General City Law Section 36. R6/Ocean Parkway Zoning District.

PREMISES AFFECTED – 67 Brighton 1st lane, aka 209-213 Brighton 1st Lane, north side of Brighton 1st lane, 63.19'W of Brighton 1st Street, Block 8670, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #13BK

MAY 20, 2008, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 20, 2008, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

282-07-BZ & 283-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 774 Schenck Properties, LLC, owner.

SUBJECT – Application December 17, 2007 – Variance (§72-21) to allow two (2) two-family, two-story detached homes; contrary to front yard requirements (§ 23-45). R5 district.

PREMISES AFFECTED – 774 Schenck Avenue, aka 764 Schenck Avenue and 825 Hendrix Street, Linden Boulevard and Hendrix Avenue, Block 4330, Lot 28C, Borough of Brooklyn.

COMMUNITY BOARD #5BK

27-08-BZ

APPLICANT – Slater & Beckerman, LLP for JDK Hylan Properties, LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 13, 2008 – Special Permit (§73-30) to permit in an R3X district, a 50-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network.

PREMISES AFFECTED – 4845 Hylan Boulevard, northwest corner of Barclay Avenue, Block 6401, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

29-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Hebrew Free Burial Association, owner; Northrop Grumman Info., Tech., Inc., lessee.

SUBJECT – Application February 14, 2008 – Special Permit (§73-30) to permit a 50-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless. R3-2 zoning district.

PREMISES AFFECTED – 422 Clarke Avenue, south side of Clarke Avenue between St. Patricks Place and Tysen Court, Block 4467, Lot 23, Borough of Staten Island.

COMMUNITY BOARD #3SI

30-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Hylan Richmond Realty LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 15, 2008 – Special Permit (§73-30) to permit in an R3-1 district a 50 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network.

PREMISES AFFECTED – 4360 Hylan Boulevard, between Oceanic Avenue and Richmond Avenue, Block 5322, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

457-65-BZ

APPLICANT – Slater & Beckerman, LLP, for Hylan Richmond Realty LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 15, 2008 – Amendment to reopen for minor change to the site to include a non-accessory radio tower pursuant to ZR 73-30 and file under separate BSA application.

PREMISES AFFECTED – 4360 Hylan Boulevard, between Oceanic Avenue and Richmond Avenue, Block 5322, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

58-08-BZ

APPLICANT – Fried, Frank Harris, Shriver & Jacobson LLP, Waldo Hutchins & J.P. Morgan Chasebank Trustee for Estate of Francis S. Appleby, owner; The Durst Organization, lessee.

SUBJECT – Application March 14, 2008 – Special Permit (§73-19) to allow the development of a six-story school (U.G 3) on a vacant site. The proposal is contrary to section 42-12. M1-5 and C4-7 districts.

PREMISES AFFECTED – 614-632 West 58th Street, Twelfth Avenue, West 57th Street, West 58th Street, Eleventh Avenue, Block 1105, Lots 5, 14, 19, 43, Borough of Manhattan.

CALENDAR

COMMUNITY BOARD #4M

66-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Manic Friendland, owner.

SUBJECT – Application March 28, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (23-141(a)) and less than the required rear yard (23-47) in an R2 zoning district.

PREMISES AFFECTED – 1497 East 21st Street, east side of East 21st Street, between Avenue N and Avenue M, Block 7657, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 6, 2008
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

546-70-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, River York Stratford LLC c/o Glenwood Management Corporation, owners.

SUBJECT – Application February 21, 2008 – Extension of Term (60(3)) of the MDL to permit transient parking for the unused and surplus parking spaces, not to exceed 50 cars, for a term of 15 years, located in a R10 zoning district.

PREMISES AFFECTED – 1377-1391 York Avenue, West side of York Avenue between East 73rd and East 74th Streets, Block 1458, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: James P. Power.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a transient parking garage, which expired on March 23, 2006; and

WHEREAS, a public hearing was held on this application on April 15, 2008, after due notice by publication in *The City Record*, and then to decision on May 6, 2008; and

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

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

WHEREAS, the subject premises is located on the west side of York Avenue between East 73rd Street and East 74th Street; and

WHEREAS, the site is located within an R10 zoning district and is occupied by a 22-story mixed-use building with medical offices on the ground floor and residential use on the upper floors; and

WHEREAS, the cellar and basement are occupied by a 77-space accessory garage, with 47 spaces in the cellar and 30

spaces in the basement; and

WHEREAS, on March 23, 1971, the Board granted a variance, under the subject calendar number, to permit a maximum of 23 surplus parking spaces to be used for transient parking for a term of 15 years; and

WHEREAS, on July 1, 1986, under the subject calendar number, the Board granted a ten-year extension of term; and

WHEREAS, most recently, on October 16, 1996, the Board granted a ten-year extension of term, which expired on March 23, 2006; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

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

Therefore it is Resolved that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution having been adopted on March 23, 1971, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from March 23, 2006, to expire on March 23, 2016; *on condition* that that all work shall substantially conform to drawings filed with this application and marked 'Received February 21, 2008'-(2) sheets; and *on further condition*:

THAT this term shall expire on March 23, 2016;

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

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

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

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

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

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

(DOB Application No. 104678092)

Adopted by the Board of Standards and Appeals, May 6, 2008.

MINUTES

590-70-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 85th Realty LLC c/o Glenwood Management Corporation, owners.

SUBJECT – Application February 21, 2008 – Extension of Term (60(3) of the MDL to permit transient parking for the unused and surplus spaces not to exceed 23 cars, for a term of 15 years, located in a R10 zoning district.

PREMISES AFFECTED – 1596-1608 York Avenue East side of York Avenue, between East 84th and East 85th Streets, Block 1581, Lot 49, Borough of Manhattan.

COMMUNITY BOARD # 8M

APPEARANCES –

For Applicant: James P. Power.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a transient parking garage, which expired on March 23, 2006; and

WHEREAS, a public hearing was held on this application on April 15, 2008, after due notice by publication in *The City Record*, and then to decision on May 6, 2008; and

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

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

WHEREAS, the subject premises is located on the east side of York Avenue between East 84th Street and East 85th Street; and

WHEREAS, the site is located within an R10 zoning district and is occupied by a 22-story mixed-use building with medical offices on the ground floor and residential use on the upper floors; and

WHEREAS, the cellar and basement are occupied by a 77-space accessory garage, with 47 spaces in the cellar and 30 spaces in the basement; and

WHEREAS, on March 23, 1971, the Board granted a variance, under the subject calendar number, to permit a maximum of 23 surplus parking spaces to be used for transient parking for a term of 15 years; and

WHEREAS, on July 9, 1986, under the subject calendar number, the Board granted a ten-year extension of term; and

WHEREAS, most recently, on October 16, 1996, the Board granted a ten-year extension of term, which expired on March 23, 2006; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to

recapture the surplus parking spaces; and

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

Therefore it is Resolved that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution having been adopted on March 23, 1971, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from March 23, 2006, to expire on March 23, 2016; *on condition* that that all work shall substantially conform to drawings filed with this application and marked 'Received February 21, 2008'-(2) sheets; and *on further condition*:

THAT this term shall expire on March 23, 2016;

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

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

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

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

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

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

(DOB Application No. 104637074)

Adopted by the Board of Standards and Appeals, May 6, 2008.

66-90-BZ, Vol. II

APPLICANT – Walter T. Gorman, P.E., P.C., for A.H. G. Realty Corporation, owner.

SUBJECT – Application January 31, 2008 – Extension of Time to obtain a Certificate of Occupancy, which expired on November 14, 2002, for an Automotive Service Station (Mobil) in an R5 zoning district and a waiver of the rules.

PREMISES AFFECTED – 43-07 Astoria Boulevard, northeast corner of 43rd Street, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

MINUTES

Commissioner Montanez.....5
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to reflect a change in signage, and an extension of the time to obtain a certificate of occupancy for an automotive service station, which expired on November 14, 2002; and

WHEREAS, a public hearing was held on this application on March 4, 2008, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2008, and then to decision on May 6, 2008; and

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

WHEREAS, the site is located on the northeast corner of Astoria Boulevard and 43rd Street, within an R5 zoning district; and

WHEREAS, in 1959, under BSA Cal. No. 525-58-BZ, the Board granted a variance to permit the construction and modification of a gasoline service station at the site; and

WHEREAS, the grant was subsequently extended at various times under the subject calendar number, but ultimately expired; and

WHEREAS, on October 1, 1991, under the subject calendar number, the Board permitted the re-establishment of the variance for a term of ten years, to expire on October 1, 2001; and

WHEREAS, on November 14, 2000, under the subject calendar number, the Board granted an extension of the term of the variance, to expire on October 1, 2010, and permitted the renovation of the existing accessory building to include a convenience store and the construction of a new metal canopy; and

WHEREAS, one of the conditions of the grant was that substantial construction be completed and a new certificate of occupancy obtained within two years from the date of the grant, by November 14, 2002; and

WHEREAS, the applicant represents that the owner was unable to complete the construction and obtain the new certificate of occupancy within the prescribed time frame; and

WHEREAS, however, the applicant represents that the construction is now complete; and

WHEREAS, the Board notes that the site is the subject of a padlock petition and closure action pursuant to Administrative Code § 26-127.2, and that the applicant executed a stipulation with DOB, dated January 14, 2008, which allows for operation of the site while the applicant pursues the subject application for an extension of time to secure a new certificate of occupancy; and

WHEREAS, the stipulation states that the applicant must either receive a positive final decision on the application from the Board by December 1, 2008 or agree to discontinue operations at the site by December 31, 2008; and

WHEREAS, the applicant has requested until December 31, 2008 to obtain a new certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant

to (1) remove storage trailers located on site and (2) eliminate excess signage that is not reflected on the Board-approved plans; and

WHEREAS, in response, the applicant provided photographs reflecting the removal of (1) the two storage sheds and (2) the sign, which had been located on top of the canopy; and

WHEREAS, the applicant seeks an amendment to reflect a change in signage and provided a signage analysis reflecting compliance with C1 zoning district regulations; and

WHEREAS, based upon its review of the record, the Board finds that the proposed change in signage and extension of time to obtain a certificate of occupancy until December 31, 2008 is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 14, 2000, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to December 31, 2008 and to permit the noted signage modifications; *on condition* that that all signage shall substantially conform to the drawing filed with this application and marked ‘Received March 17, 2008’ –(1) sheet; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by December 31, 2008;

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

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

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

(DOB Application Nos. 400998444, 401096504, and 401114968)

Adopted by the Board of Standards and Appeals, May 6, 2008.

141-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Lloyd Coy, owner.
SUBJECT – Application July 19, 2007 – Extension of term/Amendment/Waiver-permitting the operation of a motor vehicle repair shop (use group 16) in an R5/C2-2 zoning district and amend the previously approved variance allowing minor changes to the layout and legalization of existing non-complying signage. The Term of the variance expired May 20, 2007.

PREMISES AFFECTED – 638-40 Utica Avenue, located on the west side of Utica Avenue between Winthrop Street and Clarkson Avenue, Block 4617, Lot 15, Borough of Brooklyn.

MINUTES

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to permit certain site changes, and an extension of the term for a previously granted variance for an automotive repair station, which expired on May 20, 2007; and

WHEREAS, a public hearing was held on this application on March 18, 2008, after due notice by publication in *The City Record*, with a continued hearing on April 15, 2008, and then to decision on May 6, 2008; and

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

WHEREAS, Community Board 9, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the west side of Utica Avenue, between Winthrop Street and Clarkson Avenue; and

WHEREAS, the site is located within a C2-2(R5) zoning district and is occupied by a one-story automotive repair building with 2,965 sq. ft. of floor area; and

WHEREAS, on November 29, 1960, under BSA Cal. No. 267-60-BZ, the Board granted a variance to permit an automotive repair station at the site for a period of ten years; and

WHEREAS, on November 10, 1970, under BSA Cal. No. 267-60-BZ, the grant was extended for a term of ten years to expire on November 29, 1980; the grant was not renewed; and

WHEREAS, on May 20, 1997, under the subject calendar number, the Board reinstated the variance and permitted the legalization and enlargement of the existing automotive repair use for a term of ten years, to expire on May 20, 2007; and

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

WHEREAS, additionally, the applicant requests an amendment to allow for the following changes to the site: (1) the subdivision of the front office; (2) an increase in the width of the roll-down door; (3) a reduction in the size of the storage rooms; (4) the installation of a platform for the storage of tires; (5) the replacement of the brick rear yard wall with a steel fence; and (6) an increase in the floor area by 12.5 sq. ft.; and

WHEREAS, as to the increase in floor area, the applicant represents that the 12.5 sq. ft. in question had formerly been considered a floor area deduction and that a survey revealed a minor difference in the distribution of the total floor area and

the inclusion of the additional square feet; and

WHEREAS, the applicant submitted an architect's analysis detailing the appropriate floor area allocation; and

WHEREAS, at hearing, the Board asked the applicant if vehicle sales were conducted at the site, contrary to the grant; and

WHEREAS, in response, the applicant stated that any vehicle sales at the site had been terminated; and

WHEREAS, additionally, the Board directed the applicant to remove all graffiti and to revise signage so that it complies with C1 zoning district regulations; and

WHEREAS, in response, the applicant removed the graffiti; one of the non-complying signs; and tires, which had been stored at the rear of the building; and

WHEREAS, the applicant submitted photographs reflecting these changes; and

WHEREAS, the applicant notes that the remaining signage does not comply with C1 zoning district regulations but is consistent with what was approved by the Board under prior grants; and

WHEREAS, finally, the applicant confirmed that the hours of operation of the site are Monday through Friday, 8:00 a.m. to 6:00 p.m. and Saturday, 8:00 a.m. to 4:00 p.m., with no hours on Sunday; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated May 20, 1997, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of ten years from the expiration of the prior grant, to expire on May 20, 2017, and to permit the noted site modifications; *on condition* that the use shall substantially conform to the drawings filed with the application marked "Received April 8, 2008"- (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 20, 2017;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB App. No. 300519918)

Adopted by the Board of Standards and Appeals, May 6, 2008.

MINUTES

265-98-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for Milford Tile, Incorporated, owner.

SUBJECT – Application November 19, 2007 – Extension of Term of a previously granted Variance (§72-21) to permit the operation of an existing contractor's yard for storage, sales and display of tiles with accessory parking (UG17) in an R5 zoning district which expired on November 29, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on June 22, 2000 and a waiver of rules.

PREMISES AFFECTED – 950 Glenmore Avenue, southwest corner of the intersection of Glenmore Avenue and Crystal Avenue, Block 4210, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a variance for a contractor's yard and tile business, which expired on November 29, 2007, and for an extension of time to obtain a certificate of occupancy, which expired on June 22, 2000; and

WHEREAS, a public hearing was held on this application on March 11, 2008 after due notice by publication in *The City Record*, with a continued hearing on April 8, 2008, and then to decision on May 6, 2008; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of the application; and

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

WHEREAS, the subject premises is located on the southwest corner of Glenmore Avenue and Crystal Avenue; and

WHEREAS, the site is in an R5 zoning district and is occupied by a two-story commercial building, occupied by a contractor's yard and tile business, with accessory parking; and

WHEREAS, on July 12, 1966, under BSA Cal. No. 336-66-BZ, the Board granted a variance to permit a business for the storage, sale, and display of tiles for a term of ten years; and

WHEREAS, the grant was subsequently extended and amended, under BSA Cal. No. 336-66-BZ, one two occasions; and

WHEREAS, on June 22, 1999, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the legalization of the existing contractor's yard at the site, for a term to expire on November 29, 2007; and

WHEREAS, one of the conditions of the grant was that a new certificate of occupancy be obtained by June 22, 2000; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional 15 years, to allow the continued operation of the existing contractor's yard and tile business at the site; and

WHEREAS, the applicant also seeks a period of one year to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that an updated certificate of occupancy was not obtained within the requisite time period due to financial constraints and administrative delay; and

WHEREAS, at hearing, the Board directed the applicant to (1) remove graffiti from the site, (2) remove barbed wire fencing, and (3) confirm that all signage complies with C1 zoning district regulations; and

WHEREAS, in response, the applicant provided (1) photographs reflecting the removal of the graffiti, barbed wire, and excess signage and (2) a revised signage analysis reflecting the proposed signage in compliance with C1 zoning district regulations; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated June 22, 1999, so that as amended this portion of the resolution shall read: “to permit an extension of the variance for a term of fifteen years from the expiration of the last grant, and to grant an extension of time to obtain a certificate of occupancy for one year from the date of this grant; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; *on condition* that that all work shall substantially conform to drawings filed with this application and marked ‘Received April 28, 2008’–(1) sheet; and *on further condition*:

THAT this grant shall be limited to a term of fifteen years, to expire on November 29, 2022;

THAT all signage shall comply with C1 zoning district regulations;

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

THAT a certificate of occupancy shall be obtained by May 6, 2009;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 310006409)

MINUTES

Adopted by the Board of Standards and Appeals, May 6, 2008.

370-02-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for New York Hospital Medical Center of Queens, owner.

SUBJECT – Application February 1, 2008 – Extension of Time to obtain a Certificate of Occupancy for a (UG4) Medical Offices, in an R5B zoning district, which expired on May 20, 2007, and a waiver of the rules.

PREMISES AFFECTED – 56-14 Main Street, between 56th and Booth Memorial Avenue, Block 5133, Lot 40, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to June 17, 2008, at 10 A.M., for deferred decision.

373-02-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for New York Hospital Medical Center of Queens, owner.

SUBJECT – Application February 1, 2008 – Extension of Time to obtain a Certificate of Occupancy for a (UG4) Medical Offices, in an R5B zoning district, which expired on May 20, 2007, and a waiver of the rules.

PREMISES AFFECTED – 56-44 Main Street, between 56th and Booth Memorial Avenue, Block 5133, Lot 55, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to June 17, 2008, at 10 A.M., for deferred decision.

774-55-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for FGP West Street LLC c/o Citibank, N.A., owner.

SUBJECT – Application February 26, 2008 – Extension of Term/Waiver of the rules for a previously granted variance to permit the operation of a (UG8) parking lot, for more than five cars, for employees and customers of a bank (Citibank) on the adjoining lot which expired on January 31, 2003 in R-5 and C1-2 zoning district.

PREMISES AFFECTED – 2155-2159 Newbold Avenue, north side of Newbold Avenue between Olmstead and Castle Hill Avenues, Block 3814, Lot 59, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Elizabeth Larsen.

ACTION OF THE BOARD – Laid over to May 20, 2008, at 10 A.M., for continued hearing.

120-01-BZ

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

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

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

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to June 17, 2008, at 10 A.M., for decision, hearing closed.

85-02-BZ, Vol. II

APPLICANT – Mothiur Rahman, for Alan G. Markopoulos, owner; G H Parking, lessee.

SUBJECT – Application February 20, 2008 – Extension of Term of a previously granted variance (§72-21) for the operation of a (UG8) parking lot in an R-7 zoning district which expired on February 4, 2008.

PREMISES AFFECTED – 850 East 181st Street, south side of East 181st Street and east side of Crotona Parkway, Block 3119, Lot 16, Borough of Bronx.

COMMUNITY BOARD #16BX

APPEARANCES –

For Applicant: Mothiur Rahman.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 20, 2008, at 10 A.M., for decision, hearing closed.

164-94-BZII

APPLICANT – Jeffrey A. Chester, Esq., for Tuckahoe Realty, owner; LLC Lucille Roberts Health Club Parkchester, lessee.

SUBJECT – Application March 28, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for a Physical Culture Establishment (Lucille Roberts), in a C1-2/R-6 zoning district, which expired on April 19, 2006.

PREMISES AFFECTED – 84 Hugh Grant Circle, south side of Hugh Grant Circle, 95.69’ west of Cross Bronx

MINUTES

Expressway, Block 3794, Lot 109, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to June 3, 2008, at 10 A.M., for continued hearing.

184-94-BZ

APPLICANT – Renanim Manhattan, Incorporated, for Vertical Properties, LLC, owner.

SUBJECT – Application March 20, 2007 – Extension of Term/Waiver to permit a (UG3) nursery school on the ground floor of a five story and cellar mixed use building in a C8-4 zoning district which expired on June 13, 2005.

PREMISES AFFECTED – 336 East 61st Street, south side of East 61st Street, between First and Second Avenues, Block 1435, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant:

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 20, 2008, at 10 A.M., for decision, hearing closed.

24-96-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Leonard Franzblau, owner.

SUBJECT – Application January 23, 2008 – Application filed pursuant to §§ 11-411 & 11-413 to extend the term of a variance, which expired on October 7, 2007, permitting commercial use in an R7-2 residential zoning district and non-compliance regarding lot coverage and rear yard requirements, and to amend the variance to permit a change in use from a retail store (use group 6) to an eating and drinking establishment (use group 6).

PREMISES AFFECTED – 213 Madison Street, North side of Madison Street between Jefferson Street and Essex Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to June 24, 2008, at 10 A.M., for continued hearing.

APPEALS CALENDAR

247-07-A

APPLICANT – Soho Alliance Community Group, for

Bayrock/Sapir Organization, LLC, owner.

SUBJECT – Application October 30, 2007 – Appeal seeking to revoke permits and approvals to construct a residential condominium hotel in an M1-6 zoning district. Applicant argues that the residential use of the premises violates the underlying M1-6 zoning district prohibitions.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, Block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Stuart A. Klein, Council Member Tony Avella, Matthew Schnew, Carole DeSarm, Andy Neale, Leah Archibald, Phaedra Thomas, Cassandra Smith, Tobi Berman, Doris Duter, Andrew Berman, Sezu Sweeney, Kathleen Treat, Magda Aoulfadi, Gary Tomei, Bill Borocer, Jennifer Barrett, Melissa Baldock, Gregg Levine, Katie Kendall, Zaen Winestne, Elizabeth Adam, Lora Tenenbaum, Lorraine Bourie.

For Opposition: Paul Selver.

For Administration: Mark Davis, Department of Buildings.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION:1

WHEREAS, the instant appeal comes before the Board in response to a Final Determination letter dated September 28, 2007 by the Manhattan Borough Commissioner of the NYC Department of Buildings (DOB) (the “Final Determination”) addressed to Stuart Klein, Esq., with respect to New Building Application No. 104403334; and

WHEREAS, the Final Determination reads, in pertinent part:

“This letter is to confirm that the permits issued to date by the Department of Buildings to construct a proposed Use Group 5 transient hotel at the above-referenced premises which is located in an M1-6 zoning district are proper.

“The permits authorize a transient use, a use that is permitted as-of-right in the Manufacturing District. This is my determination”; and

WHEREAS a public hearing was held on this application on February 27, 2008 after due notice by publication in *The City Record*, and then to decision on May 6, 2008; and

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

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought on behalf of the SoHo Alliance, a membership organization of persons who

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

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live and work in the SoHo community (the “Appellant”); the Appellant was represented by counsel in this proceeding; and

WHEREAS, DOB and the owner of 246 Spring Street (the “Sponsor”) have been represented by counsel throughout this Appeal; and

WHEREAS, Council Member Tony Avella provided testimony in support of the instant appeal; and

WHEREAS, representatives of Manhattan Community Boards 2 and 5 provided testimony in support of the instant appeal; and

WHEREAS, representatives of several civic and neighborhood associations and a number of neighborhood residents also testified at hearing in support of the instant appeal; and

PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns the construction of a 42-story building with 420 individual units in an M1-6 zoning district (the “Building”); and

WHEREAS, on May 17, 2007, DOB issued New Building Permit No. 104403334 (the “building permit”) for a proposed transient hotel (J-1 occupancy) at the subject site; and

WHEREAS, counsel for the Appellant wrote (by undated letter) to the Manhattan Borough Commissioner requesting reconsideration of DOB’s approval; and

WHEREAS, on September 28, 2007, the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal, which was delivered to the Appellant on October 4, 2007; and

WHEREAS, on October 30, 2007, the Appellant filed the instant appeal at the BSA; and

PROPOSED BUILDING

WHEREAS, the premises is located at 246 Spring Street and is proposed to be occupied by a 42-story Use Group 5 building; and

WHEREAS, the owner proposes the Building to be a condominium hotel, pursuant to an offering plan filed with the New York State Attorney General (the “Offering Plan”); and

WHEREAS, the Sponsor proposes for the Building to be occupied by 413 transient hotel units and seven commercial units; and

WHEREAS, of the Building’s 413 transient hotel units, the plans reflect 407 furnished units with baths and six furnished units with baths, ranges and dishwashers; and

WHEREAS, the Building is proposed to have a large lobby area with a front desk for registration by unit owners and guests, eating and drinking areas, function and conference facilities and daily maid service; and

WHEREAS, the subject site is within an M1-6 zoning district which permits a Use Group 5 transient hotel as of right and prohibits residential use; and

RESTRICTIVE DECLARATION

WHEREAS, a Restrictive Declaration was executed by the Sponsor as of April 26, 2007 and recorded against the subject site restricting its use as a transient hotel Class B

multiple dwelling as defined by the New York State Multiple Dwelling Law (the “MDL”) classified within Occupancy Group J-1 under the New York City Building Code (the “Restrictive Declaration” or “Declaration”); and

WHEREAS, the Restrictive Declaration sets forth restrictions on the occupancy of individual units by unit owners (the “Occupancy Restrictions”); and

WHEREAS, the Occupancy Restrictions state that “[n]o Unit may be occupied by its Unit Owner or by any other individual: (i) for a continuous period of more than 29 days in any 36 day period; or (ii) for a total of more than 120 days in any calendar year” (Declaration ¶ 2.02(a)); and

WHEREAS, the Occupancy Restrictions further provide that when a unit is not occupied by the unit owner, it shall be made available for rental by or on behalf of the management of the Building (Declaration ¶ 2.02(b)); and

WHEREAS, the Restrictive Declaration also sets forth a series of enforcement measures intended to ensure compliance with the Occupancy Restrictions; and

WHEREAS, the Declaration specifically authorizes the levy of financial penalties on unit owners who violate the Occupancy Restrictions, one-half of which must be paid to the City of New York; the financial penalties are added to common charges and become a lien on the unit if unpaid (Declaration ¶¶ 2.07(b) and (c), 2.08); and

WHEREAS, the Declaration also requires the Building to file with DOB annually an occupancy report certified by an independent certified public accountant indicating exceedence of the length of stay restrictions (Declaration ¶ 2.04); and

WHEREAS, these occupancy reports, together with supporting documentation, are to be kept for no less than three years and to be made available for review by DOB or the City on request (Declaration ¶ 2.05); and

WHEREAS, DOB is also authorized by the Restrictive Declaration to conduct audits of the occupancy records of the Building (Declaration ¶ 2.05); and

WHEREAS, DOB or the City may bring an enforcement action for default in the performance of obligations required by the Restrictive Declaration (Declaration ¶ 4.02(a)); and

WHEREAS, if DOB or the City finds that violations in the Occupancy Restrictions meet a certain specified threshold, or if DOB or the City have a reasonable basis to suspect that information in an occupancy report is false or fraudulent, an independent private sector inspector general may be appointed at the Condominium’s expense to conduct an investigation (Declaration ¶ 4.10); and

ISSUES PRESENTED

WHEREAS, the Appellant makes the following primary arguments in support of its position that DOB should revoke the permit for the Building: (i) the length of stay permitted to unit owners violates the Zoning Resolution and the New York City Administrative Code (the “Administrative Code”); (ii) individual ownership of units violates the Zoning Resolution; (iii) DOB and the City cannot enforce against illegal residential use of the

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condominium hotel units; and (iv) that DOB acted inconsistently in approving the permit for the Building; and

WHEREAS, these four arguments are addressed below; and

Length of stay by unit owners

WHEREAS, the Appellant argues that the ability of individuals to regularly occupy their units for as many as 29 consecutive days and up to 120 days within a calendar year is a residential use in violation of the Zoning Resolution; and

WHEREAS, Section 12-10 of the Zoning Resolution defines a transient hotel as a building or part of a building in which: (a) living or sleeping accommodations are used primarily for transient occupancy, and may be rented on a daily basis; (b) one or more common entrances serve all such living or sleeping units; and (c) twenty-four hour desk service is provided, in addition to one or more of the following services: housekeeping, telephone, or bellhop service, or the furnishing or laundering of linens; and

WHEREAS, the Appellant does not dispute that the Building satisfies the requirements of Section 12-10 (b) and (c) of the Zoning Resolution, but contends that DOB erred in issuing the building permit because the phrase “may be rented on a daily basis” in Section 12-10 (a) requires that transient hotels shall be rented only on a daily basis and cannot be occupied for 29 consecutive days; and

WHEREAS, DOB argues, and the Board agrees, that such a construction is contradicted by the ordinary legal construction of the word “may,” which “is employed to imply permissive, optional or discretionary, and not mandatory action or conduct,” (citing Black’s Law Dictionary 676 (6th ed. 1991); and GE Capital Corp. v. NYS Div. of Tax Appeals, 2 N.Y.3d 249, 255 (2004) (“[w]e will not presume that the Legislature meant ‘shall’ when it said may”)); and

WHEREAS, the Appellant also argues that the length of stay provisions of the Restrictive Declaration violate the Administrative Code; and

WHEREAS, the DOB permit application lists the occupancy group of the Building as J-1, which is defined by Section 27-264 of the Administrative Code as including “buildings and spaces that are primarily occupied for the shelter and sleeping accommodations of individuals on a day-to-day or week-to-week basis;” and

WHEREAS, the Appellant states that the ability of owners to remain in their units for 29 consecutive days allows them to live in them in excess of one month, because they could occupy their units from February 1 until March 1, thereby constituting a month-to-month occupancy which is inconsistent with the J-1 classification of the Building; and

WHEREAS, DOB contends, and the Board agrees, that the ability of an occupant to stay for an entire month is due merely to the calendar system that makes February a uniquely short month and that this fact alone cannot convert a transient occupancy to a month-to-month occupancy when, for the other eleven months of the year, the occupant cannot even remain for a full month at a time; and

WHEREAS, the Appellant also contends that an owner can in fact occupy its unit for 240 days within a 12-month period, because the Restrictive Declaration imposes a 120-day limit on occupancy on a calendar year basis, rather than a 365 day basis; and

WHEREAS, DOB states that measurement by calendar year is the common standard among statutes that measure and determine residency, such as the New York State Rent Stabilization Code (“Rent Stabilization Code”) (9 NYCRR § 2520(u)); and

WHEREAS, DOB further states that that the requirement of the Restrictive Declaration that an owner vacate its unit for at least one week during each 36-day period would be unaffected by the fact that the 120-day limit were on a calendar basis, and would operate to ensure that all occupancy were transient; and

WHEREAS, DOB further states that the Occupancy Restrictions are consistent with the common legal meaning of the term “transient,” as well as with laws regulating hotel occupancy and construction that define transient versus “permanent occupancy” or “residence;” and

WHEREAS, the Board agrees with DOB that the Restrictive Declaration requires an owner to vacate its unit for at least one week during each 36-day period, irregardless of whether the 120-day limit were on a calendar basis or a 365-day basis, and would operate to ensure that all occupancy was transient; and

WHEREAS, further, the Board agrees that the Occupancy Restrictions are consistent with the common legal meaning of the term “transient,” as well as with laws regulating hotel occupancy and construction that define transient versus “permanent occupancy” or “residence” and, therefore, is not persuaded by the Appellant’s arguments; and

WHEREAS, in support of its contention that the Building is a transient hotel, DOB cites to the distinction between transient and permanent hotel occupancy in the New York City hotel room occupancy tax law (“hotel occupancy tax law,” 19 RCNY §12 et. seq.); and

WHEREAS, the hotel occupancy tax law defines a “permanent resident” who is exempt from the tax as a person who has occupied a hotel room for 180 consecutive days or more (19 RCNY § 12.01); and

WHEREAS, persons who occupy a room for less than 180 consecutive days are referred to by the hotel occupancy tax law as “transient” occupants; and

WHEREAS, DOB notes that under the hotel occupancy tax law, the Building’s unit owners, whose continuous occupancy cannot exceed 29 days, would be construed to be transient occupants; and

WHEREAS, DOB also cites to the definition of “transient” in the New York State Multiple Dwelling Law (“MDL”) in further support of its claim that the unit owners would qualify as transient occupants of the Building; and

WHEREAS, the MDL groups hotels among class B multiple dwellings, which are defined to be “occupied, as a rule transiently, as the more or less temporary abode of

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individuals or families who are lodged with or without meals. This class shall include hotels, lodging houses, rooming houses, boarding houses, boarding schools, furnished room houses, lodgings, club houses, colleges and school dormitories . . ." (MDL § 4(9)); and

WHEREAS, DOB notes that dormitories, though defined as transient, are generally occupied for months without a break for the greater portion of a year, a period far in excess of the 29 consecutive days permitted by the Occupancy Restrictions; and

WHEREAS, in further support of its argument that occupancy of the Building would be transient in character, DOB also cites to the definitions of "primary residence" and "permanent [hotel] resident" used in determining the types of occupancies that are subject to rent stabilization laws; and

WHEREAS, according to the Rent Stabilization Code, an occupancy of less than 183 days per calendar year is construed as evidence that a housing accommodation is not a "primary residence" and an individual who occupies a hotel, or has the right to occupy a hotel, for less than six months is not a "permanent tenant" as defined by the code (9 NYCRR §§ 2520.6(j) and 2520(u)); and

WHEREAS, in further support of its interpretation that occupancy of the Building would be transient, DOB also cites to residency definitions in the federal and New York State tax codes; and

WHEREAS, the Appellant argues that reliance on State and federal law to interpret the limit to a "transient" occupancy is "misplaced" and that the Board should look instead only to the "four corners" of the Zoning Resolution for help interpreting the term; and

WHEREAS, the Appellant further argues that Section 11-22 of the Zoning Resolution, concerning selection among overlapping or contradictory regulations, "demands a restrictive interpretation of the word 'transient';" and

WHEREAS, the Board finds that Section 11-22 is unhelpful and irrelevant to the instant case, in which the Zoning Resolution is silent concerning the specific parameters of a transient occupancy, while a range of other regulations are not; and

WHEREAS, the Appellant further states that the Board's decision in BSA Cal. No. 67-07-A (relying on Raritan Dev. Corp. v. Silva, 91 N.Y.2d (1997)) stands for the proposition that when a provision in the Zoning Resolution is ambiguous, reliance on external statutes or sources is erroneous; and

WHEREAS, the Board notes that BSA Cal. No. 67-07-A, involving a penthouse built in violation of the "sliver law," instead concerns whether ambiguous provisions of the Administrative Code can supersede specific provisions of the Zoning Resolution, while Raritan involved a challenged interpretation of the Zoning Resolution which was contrary to its plain meaning; and

WHEREAS, neither case is applicable to an instance in which the Zoning Resolution lacks a definition of a contested term (i.e., "transient"); and

WHEREAS, however, the Board notes that where the

meaning of a statutory term is undefined, "resort may be had to any authoritative source of information" to interpret its meaning (McKinney's Statutes § 120); and

WHEREAS, the Board concludes that DOB's determination that the proposed use of the Building is transient is supported by the definition of "transient hotel" in the Zoning Resolution, by the definitions of "transient" found in the NYC hotel occupancy tax law and the MDL, and by the definitions of "residency" in the Rent Stabilization Code, and New York and federal tax codes; and

WHEREAS, the Board further concludes that the length of stay provisions in the Restrictive Declaration violate neither the Zoning Resolution nor the Administrative Code; and

Individual ownership of transient hotel units

WHEREAS, the Appellant argues that the ability of individuals to own their units means that the units are not "used primarily for transient occupancy" and violates the Zoning Resolution; and

WHEREAS, DOB contends, however, that the Zoning Resolution contains neither explicit nor implicit support for this position, and further contends that such a position would be contrary to the fundamental common law principle that "zoning deals basically with land use and not with the person who owns or occupies it" (FGL & L Prop. Corp. v. City of Rye, 66 N.Y.2d 111, 116 (1985)); and

WHEREAS, DOB also states that if ownership alone were sufficient to make a unit residential, the unit would be considered residential even if it were occupied by other transient guests 365 days per year, an outcome that would be illogical; and

WHEREAS, the Board concludes that individual ownership of the Building's units is not, in and of itself, evidence of illegal residential occupancy; and

WHEREAS, in the alternative, the Appellant argues that individual ownership, while perhaps not illegal, may induce illegal residential occupancy of the units and discourage their legal transient use; and

WHEREAS, the Appellant contends that the Sponsor's marketing of the Building evidences its intent to permit residential use; and

WHEREAS, in dispute of the Appellant's claims, the Sponsor submitted materials supporting its claimed transient use of the Building, including a disclaimer from the Building's website indicating its transient nature, and a "Special Risks" section from the Offering Plan highlighting the Occupancy Restrictions; and

WHEREAS, the Sponsor further stated that the Appellant submitted no current materials showing allegedly misleading sales promotions; and

WHEREAS, the Appellant failed to rebut the Sponsor's assertions; and

WHEREAS, the Appellant argues that the Building's permit can be revoked based on a presumption of future illegal use, citing the recent decision in Matter of 9th and 10th St. LLC v. Bd. of Stds. and Appeals, 10 N.Y. 3d 264 (2008);

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2008 NY Slip Op. 02678 (upholding DOB's denial of a building permit for a proposed dormitory that lacked an established connection to a school based on reasonable doubt that the building would be used lawfully); and

WHEREAS, at hearing, DOB contended that the agency is prohibited from denying a permit based on a speculative future illegal use (citing Matter of Di Milia v. Bennett, 149 A.D.2d 592, 593 (2d Dep't 1989) ("[t]he standard to be applied herein is the actual use of the building in question, not its possible future use"); and

WHEREAS, the Board finds that the Appellant's reliance on 9th and 10th St. LLC is misplaced, because in that case, the denial of a permit by DOB was upheld based on the applicant's failure to proffer evidence to DOB establishing an intent to use the building in a manner consistent with the permitted use; and

WHEREAS, in the instant case, the Board agrees that the marketing materials and Offering Plan excerpt submitted by the Sponsor evidence an intent by the Sponsor to use the Building in a manner consistent with the zoning; and

WHEREAS, the Appellant also argues that an "owner's secure closet" shown in the building plans in which owners may store personal items in their units when they are not in occupancy is a "hallmark of residential use" evidencing an intent to contravene the Zoning Resolution; and

WHEREAS, DOB counters that the presence of a locked storage closet in a unit is instead evidence of the transient nature of the unit, contending that no need for a secure storage closet would exist if the unit were indeed used as a permanent residence, because a unit owner who had unrestricted access and control of the unit's occupancy would not require a secure place to store personal effects; and

WHEREAS, according to DOB and the Sponsor, the intent to develop a transient hotel is further demonstrated by the proposed building plans, which include: (i) common areas not found in a typical residence, such as a front desk for check in and check out, eating and drinking areas, function and conference facilities; (ii) a Class J fire safety system; and (iii) the absence of kitchens, individual mailboxes, or rubbish chutes; and

WHEREAS, DOB additionally asserts that the lack of cooking facilities in all but six of the units makes it impossible to legally use the units for Class A/J-2 residential occupancies and limits their use to Class B/J-1 occupancy; and

WHEREAS, the Sponsor states that additional indicia of transient use is demonstrated by the proposed Building operations set forth in the Restrictive Declaration which include: (1) requirements that unit owners check in and check out at the front desk at the beginning and end of each stay; (2) prohibitions on personal keys and on the installation of personal furnishings and decorations in individual units; and (3) compliance mechanisms and sanctions for violations of the Ownership Restrictions; and

WHEREAS, in the instant case, the Board agrees with

DOB that the marketing materials, building plans and proposed mode of operation evidence an intent to use the Building as a transient hotel; and

Enforceability of the Occupancy Restrictions

WHEREAS, the Appellant additionally argues that DOB cannot enforce the Occupancy Restrictions either because: (i) the Restrictive Declaration is invalid; or (ii) the agency's enforcement powers are limited by the Restrictive Declaration; and

WHEREAS, the Appellant contends that the Restrictive Declaration is invalid because it omits language conditioning the certificate of occupancy on its compliance, as required by Legal Policy and Procedure Notice ("LPPN") #1/05, governing the execution of restrictive declarations by DOB; and

WHEREAS, because approval of the permit was purportedly conditioned on the Sponsor's execution of an invalid restrictive declaration, the Appellant asserts that the approval is consequently invalid and must be revoked; and

WHEREAS, DOB, as a threshold matter, disagrees that the Restrictive Declaration was required and disputes that that the permit was conditioned on its execution; and

WHEREAS, DOB asserts that because the Building complies with the Zoning Resolution and its proposed occupancy is lawful, the Restrictive Declaration was not required to legalize its occupancy; and

WHEREAS, DOB states that, by its terms, LPPN #1/05 applies only to restrictive declarations that are required "for alternate means of compliance with code requirements when such development would otherwise be foreclosed by various statutory restrictions or requirements;" and

WHEREAS, DOB contends and the Board agrees that the Restrictive Declaration simply provides additional assurances by the Sponsor, not required by law, that the Building will be occupied as a transient use and conform to the requirements of the Zoning Resolution; and

WHEREAS, DOB states that because the Restrictive Declaration was not required, its validity has no bearing on the ability of DOB to enforce the Occupancy Restrictions using its existing enforcement powers under the Building Code; and

WHEREAS, the Appellant also asserts that the Restrictive Declaration is invalid because DOB was not granted the authority to enter into it by either Section 643 or Section 645 of the New York City Charter, which enumerate DOB's powers and duties; and

WHEREAS, DOB states that the Restrictive Declaration was executed unilaterally by the Sponsor and, as the agency has no written agreement with the Sponsor, the question of whether it had the power to execute one is irrelevant; and

WHEREAS, the Appellant argues that the Restrictive Declaration constrains DOB's enforcement powers by calling for monetary penalties to the exclusion of other penalties; and

WHEREAS, in response, DOB asserts, as evidence to

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the contrary, that the Restrictive Declaration categorically states that “nothing in this Declaration precludes DOB or the City from prosecuting an action or proceeding to enforce this Declaration under any law, rule or regulation giving DOB or the City authority to bring such an action or proceeding” (Declaration, section 4.02(c) as evidence that the agency’s enforcement powers are unaffected by the Declaration; and

WHEREAS, DOB further states that since the Sponsor executed the Restrictive Declaration unilaterally and DOB is not a signatory, it would therefore be legally impossible for the document to bind the agency or limit its enforcement powers over the Building, even if the Restrictive Declaration were interpreted to contain such language; and

WHEREAS, DOB contends that the Building is therefore subject to the enforcement applicable to all buildings, including revocation of the certificate of occupancy, as well as to the penalty provisions of the Restrictive Declaration, and that any putative limitations on the enforceability of the Restrictive Declaration would therefore have no bearing on the ability of DOB to use the full range of its enforcement powers under the Building Code; and

WHEREAS, the Board concludes that DOB’s enforcement powers have not been curtailed by the Restrictive Declaration; and

Consistency with DOB precedent

WHEREAS, the Appellant contends that DOB’s approval of the permit for the Building is inconsistent with the agency’s prior withdrawal of its approval of 848 Washington Avenue, a proposed mixed-use building in an M1-5 zoning district in which 49 percent of the floor area was proposed for residential use and 51 percent of the floor area was proposed for transient hotel use; and

WHEREAS, because the plans for 848 Washington indicated that more than half the floor area would be devoted to transient hotel use and the Zoning Resolution defines a “transient hotel”, in pertinent part, as a “building or part of a building in which living or sleeping accommodations are used primarily for transient occupancy” (Section 12-10), DOB had initially ruled that the plans complied with the definition of a transient hotel; and

WHEREAS, DOB subsequently concluded that to qualify as a transient use, all units had to be available on a transient basis and issued a determination, dated April 19, 2004, stating that “in order to develop a transient hotel in an M1-5 zoning district, units may not be made subject to lease, sale or other arrangements under which they would not be available for transient occupancy,” thereby reversing its prior approval; and

WHEREAS, the Appellant contends that DOB’s decision to revoke approval of 848 Washington Avenue was based instead on the proposed sale of individual units in a transient hotel, in violation of the Zoning Resolution; and

WHEREAS, as discussed above, DOB contends that the determination as to whether a building is transient, pursuant to the Zoning Resolution, is based on the use of the

units in question, rather than on their proposed ownership, and states that the permit for 848 Washington Avenue was revoked, not because units were to be sold but, instead, because 49 percent of the units were proposed for impermissible residential use; and

WHEREAS, the Appellant contends that the instant case similarly involves a proposed residential use which would not be permitted as of right in the subject zoning district, and that DOB should therefore follow its decision in 848 Washington Avenue and revoke the permit for the Building; and

WHEREAS, however, DOB states instead that the permit for 848 Washington Avenue was properly revoked because a portion of the units in that building were to be operated as residential use with no limitation for occupancy; and

WHEREAS, DOB distinguishes the subject building in which all units are proposed to be used for transient occupancy; and

WHEREAS, the Board notes that DOB revoked the permit for 848 Washington Avenue because a percentage of the proposed units were residential, without any restriction on occupancy duration; and

WHEREAS, the Board notes that the facts in 848 Washington Avenue can be clearly distinguished from those respecting the Building, in which the only occupancy permitted by the Occupancy Restrictions is transient; and

WHEREAS, the Board finds DOB’s determinations concerning these two buildings to be consistent; and

WHEREAS, the Board notes that the Appellant raised additional issues, but failed to provide case law or Board precedent to support them, so they are not addressed within this resolution; and

WHEREAS, the Board agrees with DOB that the Building, as proposed, complies with all legal requirements for the issuance of a building permit for a transient hotel in an M1-6 zoning district and there is therefore no basis for the revocation of the permit; and

Therefore it is resolved that the instant appeal is denied.

Adopted by the Board of Standards and Appeals, May 6, 2008.

1-08-A thru 8-08-A

APPLICANT – Rampulla Associates Architects, for Bay Properties, owner.

SUBJECT – Application January 3, 2008 – Proposed construction of eight, one- family homes not fronting a legally mapped street contrary to Section 36 of the General City Law. R1-2 SRD, SGMD.

PREMISES AFFECTED – 65, 69, 73, 77, 83, 87, 91, 93 Giegerich Avenue, west side 154.75’ to Minerva Avenue, Block 7792, Lot 242 (ten. 286), Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Philip Rampulla.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated December 13, 2007, acting on Department of Buildings Application Nos. 510021673, 510021664, 510021682, 510021655, 510021646, 510021628, 510021637, and 510021619, reads in pertinent part:

“No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map. Therefore, Board of Standards and Appeals approval is required;” and

WHEREAS, the applicant requests to build eight single-family detached homes which do not front on a mapped street; and

WHEREAS, this portion of the site is part of a larger 33-unit residential development located within the Special South Richmond District and the Lower Density Growth Management Area within an R1-2 zoning district; and

WHEREAS, a public hearing was held on this application on April 15 2008, after due notice by publication in the *City Record*, and then to decision on May 6, 2008; and

WHEREAS, by letter dated, March 27, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

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

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated December 13, 2007, acting on Department of Buildings Application Nos. 510021673, 510021664, 510021682, 510021655, 510021646, 510021628, 510021637, and 510021619, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received February 25, 2008” - two (2) sheets; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

THAT the proposed lot subdivisions shall be reviewed and approved by DOB;

THAT the Department of Buildings shall review and approve the application for compliance with all relevant Special South Richmond District and Lower Density Growth Management Area provisions, prior to the issuance of any

permits;

THAT the City Planning Commission shall review and approve any required applications for compliance with all relevant Special South Richmond District and Lower Density Growth Management Area provisions under its jurisdiction, and issue required approvals prior to the issuance of any permits;

THAT any revisions to the BSA-approved site plan shall be submitted to the Board for review; and

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

Adopted by the Board of Standards and Appeals, May 6, 2008.

306-05-BZY

APPLICANT – Stuart A. Klein, Esq., for Manuel Scharf, owner.

SUBJECT – Application October 12, 2005 – Extension of Time to complete construction (11-331) of a major/minor development under the prior Zoning District regulations.

PREMISES AFFECTED –206A Beach 3rd Street, Block 15604, Lot 34, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant:

ACTION OF THE BOARD – Laid over to June 24, 2008, at 10 A.M., for continued hearing.

162-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed construction of a single family home located partially within the bed of a mapped street (Edgewater Road) contrary to General City Law Section 35. R2 Zoning district.

PREMISES AFFECTED – 2852 Faber Terrace, intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 161, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to June 24, 2008, at 10 A.M., for continued hearing.

165-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed construction of a single family home located partially within the bed of a mapped street (Edgewater Road) contrary to

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General City Law Section 35. R2 Zoning district.
PREMISES AFFECTED – 2848 Faber Terrace, intersection
of Faber Terrace and Proposed Edgewater Road, Block
15684, Lot 61, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to June 24,
2008, at 10 A.M., for continued hearing.

163-07-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Sea
Cliff Towers Owners Corp., owner.

SUBJECT – Application June 14, 2007 – Proposed
construction of an accessory parking lot located within a
portion of the bed of a mapped street (Cliff Street) contrary
to General City Law Section 35 . R3-2 Zoning District.

PREMISES AFFECTED – 11 Cliff Street, northeast corner
of Cliff Street and Cliff Court, Block 2833, tent. Lot 65,
Borough of Staten Island

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to June 24,
2008, at 10 A.M., for continued hearing.

246-07-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for
Stacey Farrelly, owner; Dominick Desimone, lessee.

SUBJECT – Application October 30, 2007 – Proposed
construction of a mixed use building located within the bed
of a mapped street contrary to General City Law Section 35.
C2-1 Zoning district.

PREMISES AFFECTED – 97 Victory Boulevard (aka no
number Corson Avenue), west side of Victory Boulevard,
180’ south of Corson Avenue, Block 23, Lot 55, Borough of
Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to May 20,
2008, at 10 A.M., for continued hearing.

265-07-A

APPLICANT – Abigail Patterson, for West 70th Associates,
owner.

SUBJECT – Application November 19, 2007 – An appeal
challenging the Department of Building's interpretation that
the rear yard structure (porch) is a permitted obstruction that
complies with Section 23-44. R8B zoning district.

PREMISES AFFECTED – 57 West 70th Street, north side of
70th Street, 160’ east of corner formed by 70th Street and
Columbus Avenue, Block 1123, Lot 7, Borough of
Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant:.

ACTION OF THE BOARD – Laid over to May 20,
2008, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 10:10 A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MAY 6, 2008
1:30 P.M.**

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

ZONING CALENDAR

299-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Three Partners, LLC.

SUBJECT – Application November 3, 2006 – To consider dismissal for lack of prosecution – Proposed legalization of a public parking facility (garage and lot); contrary to use regulations (§ 22-10). R7-1 district.

PREMISES AFFECTED – 1976 Crotona Parkway, east side of Crotona Parkway, 100' north of Tremont Avenue, Block 3121, Lots 10 and 25, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCE – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, May 6, 2008.

68-07-BZ

CEQR #07-BSA-069Q

APPLICANT – Jeffrey A. Chester, Avram Babadzhyanov, owner; Congregation Rubin Ben Issac Haim, lessee.

SUBJECT – Application March 22, 2007 – Under §72-21 Proposed community facility synagogue, which does not comply with front and side yard requirements.

PREMISES AFFECTED – 102-48 65th Road, southwest corner Yellowstone Boulevard and 65th Road, Block 2130, Lot 37, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jeffrey Chester.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough

Commissioner, dated March 13, 2008, acting on Department of Buildings Application No. 402199973, reads, in pertinent part:

“Community facility (synagogue/daycare) Use Group 4 in R5 zone requires front and side yards for existing building and proposed enlargement as per Section 23-24 and Section 24-35 of the NYC Zoning Resolution.

In addition, proposed plans exceed lot coverage requirements as per ZR 24-11 and as such must be referred to the Board of Standards and Appeals for approval.”; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R5 zoning district, a proposed enlargement and conversion of an existing two-story two-family home into a three-story and cellar building to be occupied by a synagogue and a daycare, which does not comply with front and side yards and lot coverage requirements for community facilities, contrary to ZR §§ 23-24, 24-11, and 24-35; and

WHEREAS, a public hearing was held on this application on November 20, 2007, after due notice by publication in *The City Record*, with continued hearings on January 29, 2008, March 4, 2008, and April 1, 2008 and then to decision on May 6, 2008; and

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

WHEREAS, Community Board 6, Queens, recommends disapproval of the application, citing concerns about (1) the absence of a pre-existing congregation, (2) whether the application meets all of the findings of ZR § 72-21, (3) the absence of a clearly defined program, (4) ambiguous space needs, (5) lack of parking, (6) the site’s ownership, and (7) a potential negative impact on the adjacent property; and

WHEREAS, certain members of the community provided testimony and forms of objection in opposition to the proposal, and reiterate the concerns of the Community Board and added that the proposed building is not compatible with the neighborhood context (collectively, “the Opposition”); and

WHEREAS, an adjacent neighbor raised specific concerns about the proposed building’s potential impact on access to light and air for the adjacent home and the elimination of an informal access way across the subject site to Yellowstone Boulevard; and

WHEREAS, certain members of the community provided written and oral testimony in support of the proposal and the synagogue and daycare center’s services; and

WHEREAS, this application is being brought on behalf of Rubin Ben Issac Haim Synagogue, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the southwest corner of Yellowstone Boulevard and 65th Road, and is occupied by a semi-detached two-family home; and

WHEREAS, the proposal provides for the following uses: (1) a synagogue on the first floor and cellar level, and (2) a daycare, operated by the Synagogue, on the second and third

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floors, with a rooftop play area; and

WHEREAS, during the hearing process, the proposal was revised several times; the current proposal provides for a three-story and cellar synagogue with the following parameters: a height of 35 feet, with 4,884 sq. ft. of floor area (4,994 sq. ft. is the maximum permitted for a community facility in the subject zoning district); and an FAR of 1.95 (2.0 FAR is the maximum permitted for a community facility); and southern lot line, and one partial side yard with a width of 4'-0" on the western lot line (two side yards with minimum widths of 10'-0" each are the minimum required); and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue: (1) to accommodate the congregation of approximately 80 adults; (2) to provide space for small meetings and gatherings including those for religious education and social services; and (3) to provide a free non-profit daycare center for approximately 40 students; and

WHEREAS, the applicant states that the proposed amount of space would accommodate a maximum total of approximately 140 adults; and

WHEREAS, the applicant represents that there will not be any formal catering space and that no significant catering events are proposed to take place at the site; and

WHEREAS, the applicant represents that meeting space is required for educational programs accessory to the Synagogue and for groups to meet outside of the worship space; and

WHEREAS, in response to certain concerns raised by the Opposition, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, similarly, the Board notes that under well-established precedents of the courts and this Board, applications for variances that are needed in order meet the programmatic needs of non-profit educational and religious institutions, are entitled to significant deference (see e.g. Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, the applicant represents that the proposed classroom space is required to meet standards to accommodate the projected enrollment; and

WHEREAS, the applicant notes that a rooftop play area is required to accommodate outdoor space since there is insufficient yard space, and that it will be built in strict

compliance with the Building Code and any other relevant regulations; and

WHEREAS, however, in addition to the programmatic need, the applicant presents the following site conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations, as to lot coverage and yards: the corner site has a trapezoidal shape with a width of 10'-0" along the western lot line and the required front yard of 10'-0" on Yellowstone Boulevard were provided, only a triangular sliver would remain, with a maximum width of 10'-0" ranging to a width of 0'-0"; and

WHEREAS, the Board agrees that no feasible building could be built on such a small footprint; and

WHEREAS, the Board notes that the existing home at the site is semi-detached and does not provide any side yard for the majority of its western lot line, which is a permitted condition for a residential use, but not a community facility use, in the subject zoning district; and

WHEREAS, the applicant states that the required floor area cannot be accommodated within the as-of-right lot coverage and yard parameters and allow for efficient floor plates that will accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant argues that the requested yard and lot coverage waivers would enable the Synagogue to develop the site with a building with viable floor plates; and

WHEREAS, the applicant states that in addition to facilitating a uniform floor plate, the waivers also allow the Synagogue's height to fit into the context of the neighborhood; and

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

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the Board notes that the immediate area is characterized by two- and two-and-a-half-story semi-detached homes, but that there are a significant number of other community facilities and multiple dwelling buildings of greater height; and

WHEREAS, the applicant initially proposed a building with a complying lot coverage of 59 percent, no 4'-0" setback and partial side yard and a greater height along the western lot

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line, and a 5'-0" side yard at the rear of the site; and

WHEREAS, the Board directed the applicant to explore other designs to improve compatibility with adjacent buildings; and

WHEREAS, specifically, the Board suggested that the applicant (1) increase the side yard at the rear to 8'-0", (2) suppress the elevation of the platform at the entrance and limit the encroachment into the front yard on 65th Road, (3) shift the bulk of the building away from the 65th Road frontage where there is a residential context, (4) eliminate any windows from the lot line façade, and (5) reduce the height of the one-story portion on the western lot line from 19'-0" to 15'-0"; and

WHEREAS, in response, the applicant re-designed the building, which resulted in an increase in lot coverage, but provided an increased side yard of 8'-0" at the rear and a 10'-0" front yard along 65th Road where there is a context for front yards; and

WHEREAS, additionally, the applicant shifted the proposed setbacks from the rear of the building to the front and agreed to reduce the height of a portion of the building at the rear to one-story and 15'-0" so as to be more compatible with the adjacent home while also providing a 4'-0" setback above the first floor along the western property line; and

WHEREAS, as to traffic impact and parking, the applicant noted that the traffic impact would be minimal as a majority of congregants live nearby and would walk to services, specifically to worship services on Fridays and Saturdays when they are not permitted to drive; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

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

WHEREAS, as noted, throughout the hearing process, the applicant revised the proposal to increase the size of the yards and shift the bulk across the site; and

WHEREAS, the Board considered the modifications noted above and finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, as to the Community Board and Opposition's concerns, the Board notes that: (1) the applicant represents that there is a large Bukharian population within walking distance of the site which is expected to form the congregation; (2) as discussed, the requirements of ZR § 72-21(a) are met by the demonstration of legitimate programmatic needs and the limitations of the site in meeting those goals; (3) the applicant has described a program and a use which are permitted as-of-right in the subject zoning district; (4) the

applicant represents that the majority of the congregants will walk and that it plans to provide transportation for majority of the students; (5) the site's ownership is irrelevant to the Board's findings; and (6) the applicant has modified the proposal to provide for a building with a bulk and yards that are compatible with neighborhood context; and

WHEREAS, as to the specific concerns of the adjacent neighbor, the Board notes that the applicant reduced the height of the building and provided a setback along the common lot line to minimize any impact on access to light and air for the adjacent home; and

WHEREAS, as to the informal access way across the subject site to Yellowstone Boulevard, the Board notes that it did not receive any evidence that a legal easement exists and that making a determination as to the validity of this claim is not within its jurisdiction; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA069Q, dated March 21, 2007; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R5 zoning district, a proposed three-story and cellar Use Group 4 synagogue and accessory daycare, which does not comply with lot coverage, front yard, and side yard regulations for community facilities, contrary to ZR §§ 23-24, 24-11, and 24-35, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above

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noted, filed with this application marked "Received April 21, 2008"--Thirteen (13) sheets; and *on further condition*:

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the building parameters shall be: a floor area of 4,884 sq. ft. (1.95 FAR), three stories, a total height of 35 feet, a lot coverage of 62.3 percent, one front yard of 10'-0" on 65th Road, and one side yard of 8'-0" at the rear/south lot line;

THAT the use shall be limited to a house of worship and daycare (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT sound attenuation measures shall be installed and maintained to limit the maximum interior noise level from the Synagogue to the adjacent residential use to 45 dBA;

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

THAT DOB shall review and approve the rooftop play area;

THAT any rooftop mechanicals shall comply with all applicable Building Code and other legal requirements, including noise guidelines, as reviewed and approved by the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, May 6, 2008.

218-07-BZ

CEQR #08-BSA-019Q

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

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

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

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated February 4, 2008, acting on Department of Buildings Application No. 402630765, reads in pertinent part:

"Proposed Use Group 6 in R3-2 District is contrary to ZR 22-00;" and

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

WHEREAS, the Board notes that that the application as originally filed also contemplated a two-story enlargement to the existing building, which was eliminated subsequent to meetings with the local Community Board; and

WHEREAS, a public hearing was held on this application on February 12, 2008, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2008, and then to decision on May 6, 2008; and

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

WHEREAS, Council Member Monserrate testified in favor of this application; and

WHEREAS, Community Board 3, Queens, recommended disapproval of this application, citing concerns with its potential impact on neighborhood character; and

WHEREAS, local residents provided testimony in support and in opposition to this application; and

WHEREAS, the converted building will have two stories and a cellar with a total floor area of 1,868 sq. ft., an FAR of 0.31, a rear yard of 30'-0", a front yard ranging from 10'-1" to 15'-1", a total height of 30'-6", and six parking spaces; and

WHEREAS, the subject premises is located within an

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R3-2 zoning district at the intersection of Astoria Boulevard and Ditmars Boulevard; and

WHEREAS, the site has an irregular bowtie-shape, with approximately 195 feet of frontage on Astoria Boulevard and approximately 59 feet of frontage on Ditmars Boulevard, extending approximately 66'-0" in depth at its longest point and approximately 4'-0" in depth at its shortest point within a lot area of approximately 5,200 sq. ft.; and

WHEREAS, the site is currently occupied with a two-story and cellar home; and

WHEREAS, the applicant states that the proposed building will be occupied by commercial office use; and

WHEREAS, as noted above, the proposed building requires a use waiver; thus, the instant variance application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the site's shape; and (2) the site's location at the intersection of two heavily-traveled arterial roads; and

WHEREAS, as to the site's shape, the applicant states that the site is an irregular bowtie shape, with two triangular portions that cannot be developed due to its narrowness and irregularity; and

WHEREAS, the applicant represents that, as a consequence of its irregular shape, the buildable area is especially small in relation to the total lot area, resulting in an existing building footprint of only 843 sq. ft., despite a total lot area of approximately 5,200 sq. ft.; and

WHEREAS, as to the site's location, the applicant states that it is located at the intersection of Astoria Boulevard and Ditmars Boulevard, two heavily-trafficked thoroughfares; and

WHEREAS, the applicant states that the site is additionally impacted by traffic exiting from the Grand Central Parkway adjacent to the premises, and by its proximity to Shea Stadium; and

WHEREAS, the applicant represents that the heavy incidence of traffic on these arteries constrains demand for residential development; and

WHEREAS, as to the historic use of the site, the applicant has submitted evidence establishing that the subject building has been in existence since 1985 and has been used in recent years as an architectural office; and

WHEREAS, the applicant submitted letters from local realtors stating that their efforts to market the site for conforming use had been unsuccessful because of its small building footprint and location; and

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

WHEREAS, the applicant submitted a feasibility study which analyzed two as-of-right residential alternatives: a single-family home, and a two-family home; and

WHEREAS, the study concluded that neither complying

scenario would realize a reasonable return; and

WHEREAS, at hearing the Board asked the applicant to explain why the construction costs for the lesser variance scenario were estimated to cost less than the estimated expense for the proposed use; and

WHEREAS, the applicant responded that the costs presented for the proposed use were based on actual contracted costs, while the two conforming scenarios were extrapolated from industry estimates of the cost to develop a building of the proposed size and use; and

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

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

WHEREAS, the applicant represents that Astoria Boulevard fronting the subject site is occupied by an abundance of commercial uses; and

WHEREAS, the applicant has submitted a land use map of the area indicating that within a 400-ft. radius of the site, more than two-thirds of the frontage along the south side of Astoria Boulevard has been developed for commercial uses; and

WHEREAS, further, photographs submitted by the applicant depict a large one-story commercial building occupied by an auto rental company and a gasoline service station both located at Astoria Boulevard across from the site; and

WHEREAS, the applicant represented that the proposed building will have an estimated 12 to 15 occupants and generate limited customer traffic, thereby resulting in minimal traffic impact; and

WHEREAS, the Board notes that the current proposal complies with height and yard regulations of the subject zoning district; and

WHEREAS, the Board notes that the original plans did not provide for buffering landscaping or a privacy wall surrounding the parking area, as would now be required by ZR § 36-56 if the proposed building were in a commercial district; and

WHEREAS, at the Board's request, the applicant submitted revised plans which indicate that landscaping, including shrubbery and plantings, and a privacy wall will screen the open parking area from the adjoining residential properties and from Astoria Boulevard; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development 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

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result of the site's pre-existing shape and location; and

WHEREAS, the Board notes that the application as originally filed contemplated a building with a floor area of 3,876 sq. ft. (0.75 FAR), no rear yard or side yard, and two parking spaces; and

WHEREAS, because the applicant reduced the size of the proposed building, increased the number of parking spaces, and will provide yards which comply with those required for a residential use in the zoning district, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA019Q, dated February 1, 2008; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-2 zoning district, the proposed conversion of a two-story and cellar commercial building, which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 1, 2008"—five (5) sheets and "Received April 29, 2008"—one (1) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 1,868 sq. ft. and an FAR of 0.31, a rear yard of 30'-0", a front yard ranging from 10'-1" to 15'-1", a total height of 30'-6", and six parking spaces, as indicated on the BSA-approved plans;

THAT the use be limited to a Use Group 6 office use;

THAT landscaping, including shrubbery and plantings, and a privacy wall screening the adjacent open parking area, shall be provided and maintained as per the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, May 6, 2008.

241-07-BZ

APPLICANT – Eric Palatnik, P.C., for Exxon Mobil Oil Corporation, owner.

SUBJECT – Application October 26, 2007 – Special Permit filed pursuant to §73-211 to allow an automotive service station with an accessory convenience store (use group 16) in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner of Victory Boulevard and Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, May 6, 2008.

11-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Audrey Grazi and Ezra Grazi, owners.

SUBJECT – Application January 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary open space and floor area (§23-141); side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3573 Bedford Avenue, Bedford Avenue between Avenue N and Avenue O, Block 7679, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

MINUTES

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated December 27, 2007, acting on Department of Buildings Application No. 302312959, reads in pertinent part:

“The proposed enlargement is contrary to:
ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50;
ZR 23-141 in that the proposed open space ratio is less than the minimum required open space of 150.00;
ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30’-0”;
ZR 23-461 in the proposed side yard is less than the minimum required side yard of 5’-0”.” and

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

WHEREAS, a public hearing was held on this application on March 4, 2008, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2008, and then to decision on May 6, 2008; and

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

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

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue N and Avenue O; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 3,134.97 sq. ft. (0.52 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 3,134.97 sq. ft. (0.52 FAR), to 4,396.67 sq. ft. (0.73 FAR); the maximum floor area permitted is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 85.62 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain a non-complying side yard of 4’-10 ¼” (a minimum width of 5’-0” is required) and a complying side yard of 10’-5 ¼” (side yards with a minimum total width of 13’-0” are

required); and

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

WHEREAS, the enlargement of the building is not located within 20’-0” of the rear lot line; and

WHEREAS, at hearing, the Board directed the applicant to revise the plans to reflect that there would not be any increase in the degree of non-compliance of the existing side yard; and

WHEREAS, in response, the applicant revised the drawings to reflect a straight line extension of the building at the rear; and

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

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, and rear and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received March 18, 2008”–(12) sheets; and *on further condition*:

THAT the floor area in the attic shall be limited to 809.39 sq. ft.;

THAT there shall be no habitable room in the cellar;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 4,396.67 sq. ft. (0.73 FAR), a minimum open space ratio of 85.62 percent, side yards with minimum widths of 4’-10 ¼” and 10’-5 ¼”, and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, May 6, 2008.

21-08-BZ

CEQR #08-BSA-047X

APPLICANT – Law Office of Fredrick A. Becker, for Pilot Realty Co. c/o Sackman Enterprises, owner; TSI Morris Park LLC dba New York Sports Club, lessee.

SUBJECT – Application January 30, 2008 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the first floor of a two-story commercial building. The proposal is contrary to section 42-10. M1-1 district.

PREMISES AFFECTED – 1601 Bronxdale Avenue, westerly side of Bronxdale Avenue, 675’ southerly of Van Nest Avenue, Block 4042, Lot 200, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Fredrick A. Becker and Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT:

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated January 23, 2008, acting on Department of Buildings Application No. 201111082, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted pursuant to ZR Section 42-00;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-1 zoning district, the legalization of a physical culture establishment (PCE) on a portion of the first floor of a two-story commercial building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on April 1, 2008, after due notice by publication in *The City Record*, and then to decision on May 6, 2008; and

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

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

WHEREAS, the subject site is located on the west side of Bronxdale Avenue, 675 feet south of Van Nest Avenue; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE occupies approximately 31,949 sq. ft. of floor area on the first floor; and

WHEREAS, the PCE is operated as New York Sports Club; and

WHEREAS, the Board notes that the PCE has operated at the site since approximately November 1, 2007; accordingly, the term will be reduced for the amount of time between November 1, 2007 and the date of this grant; and

WHEREAS, the applicant represents that the PCE provides facilities for cardiovascular exercise and weight-training; and

WHEREAS, the hours of operation are: Monday through Thursday 5:00 a.m. to 11:00 p.m.; Friday 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday 8:00 a.m. to 9:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant to explain any outstanding violations; and

WHEREAS, in response, the applicant stated that all violations pre-date the PCE’s occupancy of the site and are not relevant to its use and occupancy; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 08BSA047X, dated January 25, 2008; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows;

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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 and the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-1 zoning district, the legalization of a physical culture establishment on a portion of the first floor of a two-story commercial building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 30, 2008"- (1) sheet and "Received April 3, 2008"- (1) sheet and *on further condition*:

THAT the term of this grant shall expire on November 1, 2017;

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

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

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

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

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT all sound attenuation measures shall be installed and maintained as per the Board-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, May 6, 2008.

197-05-BZ

APPLICANT – Blank Rome LLP, by Marvin Mitzner, for B & E 813 Broadway, LLC & Broadway Realty, owner.

SUBJECT – Application August 17, 2005 – Variance (§72-21) to allow a 11-story residential building with ground floor retail; contrary to regulations for FAR and open space ratio (§23-142), front wall height, setback and sky-exposure plane (§33-432), and maximum number of dwelling units (§23-22). C6-1 district.

PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42' south of East 12th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Marvin Mitzner.

ACTION OF THE BOARD – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

109-07-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Sano Construction Corporation, owner.

SUBJECT – Application May 3, 2007 – Variance (§72-21) to construct on an undersized, triangular lot a two story single family residence. This application seeks to vary lot coverage (§23-141); less than the required front yard (§23-45) and less than the required side yards (§23-461) in an R-5 zoning district.

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

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Jeffrey Chester.

For Opposition: Mary Walsh, Howard Nathan and Tom Ryan.

ACTION OF THE BOARD – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

119-07-BZ

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

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

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

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel

ACTION OF THE BOARD – Laid over to June 17, 2008, at 1:30 P.M., for continued hearing.

MINUTES

173-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gitty Gubitz-Rosenberg, owner.

SUBJECT – Application June 21, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space ratio (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1061 East 21st Street, located on the east side of East 21st Street between Avenue I and Avenue J, Block 7585, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

189-07-BZ

APPLICANT – Eric Palatnik, P.C., for Feng Dong, owner.

SUBJECT – Application August 2, 2007 – Variance (§72-21) to allow ground floor retail use (UG 6) within a six (6) story residential building; contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 40-55 College Point Boulevard, east side of College Point Boulevard, between the LIRR right-of-way and 41st Avenue, Block 5037, Lot 2, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

248-07-BZ

APPLICANT – Akeeb Shekoni, for Bhola Trilok, owner.

SUBJECT – Application October 31, 2007 – Variance (§72-21) for legalization of three story, two family home, in an R5 zoning district, which was built on an undersized lot contrary to section (23-33) for minimum lot width.

PREMISES AFFECTED – 32-15 60th Street, between Northern Boulevard and 32nd Avenue, Block 1161, Lot 29, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 17, 2008, at 1:30 P.M., for continued hearing.

257-07-BZ

APPLICANT – Gordon J. Davis c/o Dewey & LeBoeuf, for The Mount Sinai Hospital and Mount Sinai, owners; One Gustave L. Levy Place, lessees.

SUBJECT – Application November 17, 2007 – Variance

(§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The proposal is contrary to sections 24-522 (height, setbacks, and sky exposure plane for community facility), 24-11 (community facility lot coverage), and 24-54 (community facility tower coverage).

PREMISES AFFECTED – 3 East 101st Street, 11 East 101st Street, 65 and 4-20 East 102nd Street, Block 1607, Lots 3, 5, 59, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Gordon Davis, In Favor: Costas Machlouzarids, Mustata K. Abadan, Dr. Kenneth Davis, Stephen Holley, C. Shelton, Angela Calderon, Derrick Taitt, Alluta Slappy, Vincent Torres, Joseph F. Brown and others. For Opposition: Danish Perez of Community Board #11, Gorman Reslly, Raymond Promey, Beverley Birks, Melissa Mark Viverito, Joanne Seminari, Nicholas Sander, Seri Worden, Betto-Jane Raphae, Fred R. Cohen and Lo Van der Valk.

ACTION OF THE BOARD – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

258-07-BZ

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

SUBJECT – Application October 24, 2007 – Special Permit (§73-211) to permit in a C2-2/R6 zoning district, the reconstruction of an existing automotive service station with accessory uses including an accessory convenience store.

PREMISES AFFECTED – 105-55 Horace Harding Expressway, northwest corner of 108th Street, Block 1964, Lot 23, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Carl. A. Sulfaro.

ACTION OF THE BOARD – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

MINUTES

281-07-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 20, 2008, at 1:30 P.M., for continued hearing.

12-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Empire State Development Corp., owner; Harlem Center, LLC, lessee.

SUBJECT – Application January 3, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on a portion of the cellar and ground floor in a ten-story commercial building. The proposal is contrary to §32-10. C4-7 district.

PREMISES AFFECTED – 317 Lenox Avenue, a/k/a 105 W. 125th Street, west side of Lenox Avenue, between 125th Street and 126th Street, Block 1910, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to June 17, 2008, at 1:30 P.M., for continued hearing.

13-08-BZ

APPLICANT – Bryan Cave LLP/Robert Davis, for Little Red School House, Inc., owner.

SUBJECT – Application January 8, 2008 – Variance (§72-21) to permit an addition at the rear of the existing high school and adjacent buildings to meet the school's programmatic needs. The proposal is contrary to §§ 24-11 (lot coverage) and 24-36 (rear yard). R6/M1-6 districts.

PREMISES AFFECTED – 34-42 Charlton Street (a/k/a 34 Charlton, 40 Charlton, 40-42 Charlton Street) bounded by Varick and Charlton Streets, Avenue of the Americas and Vandam Street, Block 506, Lots 11 & 12, Borough of Manhattan.

COMMUNITY BOARD # 2M

APPEARANCES –

For Applicant: Robert Davis.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 13, 2008, at 1:30 P.M., for decision, hearing closed.

25-08-BZ

APPLICANT – Eric Palatnik, P.C., for Torah Academy For Girls, owner.

SUBJECT – Application March 25, 2006 – Variance (§72-21) to permit the enlargement of the existing school approved by BSA in a prior grant in 2002 (158-02-BZ). The proposal is contrary to sections 24-11 (lot coverage), 24-34 (minimum front yard), 24-382 (minimum rear yard), and 24-521 (height, setback and sky exposure plane). R4-1 district.

PREMISES AFFECTED – 444 Beach 6th Street, between Jarvis and Meehan Avenues, Block 1559, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 20, 2008, at 1:30 P.M., for decision, hearing closed.

52-08-BZ

APPLICANT – Dennis D. Dell' Angelo, for Yossi Amar, owner.

SUBJECT – Application March 7, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and lot coverage (§23-141); side yards (§23-461) and rear yard requirement (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 3935 Bedford Avenue, east side of Bedford Avenue, Block 6811, Lot 72, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Dennis Dell' Angelo.

ACTION OF THE BOARD – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 5:15 P.M.