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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 90, Nos. 33-34

August 18, 2005

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## DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

SATISH BABBAR, *Vice-Chair*

JOEL A. MIELE, SR.

JAMES CHIN

*Commissioners*

Pasquale Pacifico, *Executive Director*

Roy Starrin, *Deputy Director*

John E. Reisinger, *Counsel*

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

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

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**Affecting Calendar Numbers:**

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328-82-BZ	1206 48 <sup>th</sup> Street, Brooklyn
169-91-BZ	404 Lafayette Street, Manhattan
164-99-BZ	79-03 Roosevelt Avenue
186-00-BZ	2301 Avenue L, Brooklyn
558-51-BZ	68-22 Northern Boulevard, Queens
886-87-BZ	11 East 36 <sup>th</sup> Street, Manhattan
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44-99-BZ	194 Brighton Avenue, Staten Island
227-00-BZ	1869 East 23 <sup>rd</sup> Street, Brooklyn
397-04-A	151 West 76 <sup>th</sup> Street, Manhattan
346-04-BZY	3329-3333 Giles Place, The Bronx
17-05-A	3329/3333 Giles Place, The Bronx
21-05-A	2380 Hylan Boulevard, Staten Island
22-05-A	5728 Amboy Road, Staten Island
140-05-A	29 Queens Walk, Queens
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313-04-A	132-02 Hook Greek, Queens
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**Affecting Calendar Numbers:**

212-04-BZ	2360 Hylan Boulevard, Staten Island
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31-05-BZ	1897 East Second Street, Brooklyn
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107-05-BZ	1823 East 24 <sup>th</sup> Street, Brooklyn
378-03-BZ	2920 Coney Island Avenue, Brooklyn
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219-04-BZ	2162/70 University Avenue, The Bronx
296-04-BZ	135 Orchard Street, Manhattan
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43-05-BZ	1826 East 28 <sup>th</sup> Street, Brooklyn
78-05-BZ	264-15 77 <sup>th</sup> Avenue, Queens

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# DOCKETS

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New Case Filed Up to August 9, 2005

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**170-05-BZ**            B. BK            791 Autumn Avenue,  
East side of Autumn Avenue between Dumont Avenue and  
Linden Blvd., Block 4465, Lot 44, Borough of Brooklyn.  
Applic. # 301940498. Application to permit within an R5  
zoning district the erection of a two family home on an  
approximately 20' x 100' zoning lot which is contrary to  
Z.R § 23-49 and § 23-461.

**COMMUNITY BOARD #5BK**  
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**171-05-BZ**            B. M                568 Broadway a/k/a  
69-79 Prince Street and 108-112 Crosby Street, Northeast  
corner of Broadway and Prince Street, Block 511, Lot 1,  
Borough of Manhattan, Applic. # 104165154. This  
application seeks special permit under section 73-36 ZR to  
permit the operation of a physical culture establishment.

**COMMUNITY BOARD #2M**  
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**172-05-BZ**            B. BK            50 Court Street a/k/a  
194-204 Joralemon Street, Southwest corner of Court and  
Joralemon Streets, Block 265, Lot 43, Borough of Brooklyn,  
Applic. # 301981470. This application seeks special permit  
under section 73-36 ZR to permit the operation of a physical  
culture establishment.

**COMMUNITY BOARD #2BK**  
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**173-05-A**            B. Q                85-24 168<sup>th</sup> Place,  
Premises are situated at the West side of 168<sup>th</sup> Place, 200  
feet South of the corner formed by the intersection of 168<sup>th</sup>  
Place and Gothic Drive, Block 9851, Lot 47, Borough of  
Queens, Applic. # 401954033. Appeal the Borough  
Commissioner's Revocation of Construction permits  
following a change in the zoning from R5 to R4.

-----  
**174-05-A**            B. M                60 Hudson Street,  
between Worth & Thomas Streets, Block 144, Lot 40,  
Borough of Manhattan, Applic. # Letter dated July 29,  
2005. Neighbors against N.O.I.S.E. is appealing the New  
York City Department of Buildings granting variation to the  
New York City administrative Code § 27-829(b) (1).

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**175-05-BZ**            B. BK            18-24 Luquer Street,  
Luquer Street between Hicks and Columbia Streets, Block

520, Lot(s) 13 & 16, Borough of Brooklyn, Applic. #  
301973639. To permit the proposed residential  
development at the premises which situates in an M1-1  
zoning District and is contrary to ZR §42-00.

**COMMUNITY BOARD # 6BK**  
-----

**176-05-A**            B. Q                27 Fulton Walk,  
South side 35.32' North of Breezy Point Blvd., Block  
16350, Lot 400, Borough of Queens, Applic. # 402103781.  
Site and Building not fronting a mapped Street contrary to  
Article 3, Section 36 GCL & Sec. 27- 291 Administrative  
Code of the City of New York and the private disposal  
system in the bed of a private service road is contrary to  
Department of Buildings policy.

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**177-05-A**            B. Q                5 Arcadia Walk,  
East side 24.87' South of mapped Breezy Point Blvd., Block  
16350, Lot 400, Borough of Queens, Applic. # 402117311.  
Site and Building not fronting a mapped Street contrary to  
Article 3, Section 36 GCL & Sec. 27- 291 Administrative  
Code of the City of New York, the building is partially in  
the bed of a mapped Street contrary to Article 3 Section 35  
of the GCL and and the private disposal system in the bed of  
a mapped street is contrary to Department of Buildings  
policy.

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**178-05-A**            B. Q                952 Bayside Walk,  
West side 196.33' North of Beach 209<sup>th</sup> Street, Block  
16350, Lot 300, Borough of Queens, Applic. # 402103772.  
and Building not fronting a mapped Street contrary to  
Article 3, Section 36 GCL & Sec. 27- 291 Administrative  
Code of the City of New York.

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**179-05-BZ**            B. BK            139 Langham Street,  
East side 311'-8 7/8" South of Shore Blvd., Block 8755, Lot  
84, Borough of Brooklyn, Applic. # 301981069. A special  
permit to erect a two story rear enlargement in the existing  
R3-1

**COMMUNITY BOARD #15BK**  
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# DOCKETS

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**180-05-BZ**            B. M            1511 Third Avenue  
a/k/a 201 East 85<sup>th</sup> Street, Northeast corner of 85<sup>th</sup> Street and  
Third Avenue, Block 1531, Lot 1, Borough of Manhattan,  
Applic. # 103869182. Legalize the operation of an existing  
physical culture establishment pursuant to § 73-63.

**COMMUNITY BOARD #8M**  
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**181-05-A**            B. Q            22 Atlantic Walk, West  
side 3.59' North of Breezy Point Blvd., Block 16350, Lot  
400, Borough of Queens, Applic. # 402182810. Propose to  
construct a two (2) story home on a site that lies within an  
R4 zone but is contrary to Article 3, Section 36 (2) of the  
GCL in that the site does not front on a mapped Street,  
contrary to Section 35 of the GCL in that the property also  
lies within the bed of a street that is mapped and contrary to  
§ 27-291 of the NYC Bldg. Code.

**182-05-BZ**            B. M            4 Park Avenue,  
between East 33 rd and East 34<sup>th</sup> Streets, Block 863, Lot 44,  
Borough of Manhattan, Applic. # 104098343. Special  
permit to allow the legalization of a physical culture  
establishment in a C5-3 Zoning district.

**COMMUNITY BOARD #5M**  
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**183-04-BZ**            B.Q 25-09            38<sup>th</sup> Avenue, North  
East corner of the intersection of Crescent Street and 38<sup>th</sup>  
Avenue, Block 368, Lot 1, Borough of Queens, Applic. #  
4020251611. Permit the enlargement of the existing two  
story building by adding four floors and to permit floors two  
through six to be put to residential use, said residential use is  
not permitted in the M1-3D zoning district.

**COMMUNITY BOARD #1Q**  
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**184-05-A**            B. Q            207-14 43<sup>rd</sup> Avenue, South  
side of 43<sup>rd</sup> Avenue between 207<sup>th</sup> and 208<sup>th</sup> Streets, Block  
6274, Lot 7, Borough of Queens, Applic. # 402109972. An  
Administrative Appeal pursuant to the common-law doctrine  
of vested rights, requesting a determination that the owner of  
the premises has completed substantial construction and  
incurred substantial financial expenditures prior to a zoning  
amendment and therefore should be permitted to complete  
construction in accordance with the previously approved  
building permits.

**185-05-BZ**            B. Q            62-02 Roosevelt Avenue,  
South side of Roosevelt Ave. 101ft from the corner formed  
by the intersection of the LIRR tracks with Roosevelt Ave.

and 192' 59" from the corner formed by the intersection of  
Roosevelt Ave. & 63<sup>rd</sup> Street, Block 1294, Lot 58, Borough  
of Queens, Applic. # 402105253. This application is to  
allow a variance from the use of the permitted uses at the  
site. The site, an oddly shaped lot with little relative street  
frontage, is located between the LIRR right-of-way and the  
elevated # 7 train along Roosevelt Ave. within an R6 district  
with a C1-2 commercial overlay. The building currently has  
a C.O that allows a ground floor Mexican Restaurant and  
offices on the second floor. The applicant is requesting that  
a dance floor be permitted approximately 450' of the  
restaurant and that would change the applicable use group  
on the second floor to use group 12 as of-right in the district.

**COMMUNITY BOARD #2Q**  
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**186-05-A**            B. Q            13 Beach 221<sup>st</sup> Street,  
East of Beach 221<sup>st</sup> Street 247.46' South of Rockaway Point  
Blvd., Block 16350, Lot 400, Borough of Queens, Applic. #  
letter dated July 14, 2005. The Building is not fronting a  
mapped street Art. 3, Sec. 36 of the GCL, and not having at  
least 8% of perimeter fronting on a mapped street contrary  
to 27-291 A.C & upgrade of existing private disposal system  
is contrary to Department policy.

**187-05-BZ**            B. Q            78-20 67<sup>th</sup> Road,  
Southerly side of 67<sup>th</sup> Road, 170' easterly of 78<sup>th</sup> Street,  
Block 3777, Lot 17, Borough of Queens, Applic. #  
402168845. Propose to build a two family dwelling that  
will comply with all zoning requirements with the exception  
of two non-complying side yards and undersized lot area  
due to a pre-existing condition.

**COMMUNITY BOARD #5Q**  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-**  
**Department of Buildings, Brooklyn; B.M.-Department of**  
**Buildings, B.Q.-Department of Buildings, Queens; B.S.I.-**  
**Department of Buildings, Staten Island; B.BX.-**  
**Department of Buildings, The Bronx; H.D.-Health**  
**Department; F.D.-Fire Department.**

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# CALENDAR

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**SEPTEMBER 13, 2005, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 13, 2005, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, NY 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **130-39-A**

APPLICANT – Greenberg & Traurig, for Ann Rauch, owner.

SUBJECT – Application December 7, 2004 – reopening for an amendment to permit an existing building constructed in the bed of a mapped street, pursuant to Board resolution, and subsequently expanded pursuant to approval from the Department of Buildings, to be further enlarged and that such enlargement include second and third stories that continue a non-complying side yard condition, located in R1-2 zoning district.

PREMISES AFFECTED – 2 Ploughman’s Bush (aka 665 W. 246<sup>th</sup> Street). Block 5924, Lot 523, Borough of The Bronx.

**COMMUNITY BOARD #8BX**

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### **878-80-BZ**

APPLICANT - Kim Lee Vauss, for Nexus Property Management, LLC, owner.

SUBJECT - Application April 19, 2005 - reopening for an amendment to previous granted variance to convert the existing commercial UG6 on the second and fourth floors to residential/studio UG 2 & 9. The premise is located in an M1-6 zoning district.

PREMISES AFFECTED - 41 West 24<sup>th</sup> Street, Block 800, Lot 16, Borough of Manhattan

**COMMUNITY BOARD #4M**

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### **983-83-BZ**

APPLICANT - Sullivan, Chester & Gardner P.C., for Sutphin Rochdale Realty, LLC, owner.

SUBJECT - Application January 14, 2005 - Proposed Amendment to a Variance to enlarge a portion of the existing building by 700 sq. ft. and to eliminate the single use on site to house four(4) commercial tenants. The subject premise is located in an R3-2 zoning district.

PREMISES AFFECTED - 34-42/60 Guy R. Brewer Boulevard, northwest corner of 137<sup>th</sup> Avenue, Block 12300, Lot 30, Borough of Queens

**COMMUNITY BOARD #12Q**

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**APPEALS CALENDAR**

### **235-04-A**

APPLICANT - Rothkrug,Rothkrug, Weinberg & Spector , LLP for Thomas & Susan Acquafredda, owner.

SUBJECT - Application filed on June 22, 2005 - Proposed construction in the bed of a privately-owned, final mapped street, is contrary to Article 3, Section 35 of the General City Law.

PREMISES AFFECTED - 3096 Dare Place, north side of Casler Place, 199.6' east of Pennyfield Avenue, Block 5529, Lot 488, Borough of The Bronx.

**COMMUNITY BOARD #10BX**

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### **236-04-A**

APPLICANT - Rothkrug, Rothkrug, Wenig & Spector, LLP for Thomas & Susan Acquafredda, owner.

SUBJECT - Application filed on June 22, 2005 - Proposed construction in the bed of a privately-owned, final mapped street, is contrary to Article 3, Section 35 of the General City Law.

PREMISES AFFECTED - 3094 Dare Place, north side of Casler Place, 192.48' east of Pennyfield Avenue, Block 5529, Lot 487, Borough of The Bronx.

**COMMUNITY BOARD #10BX**

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### **91-05-A**

APPLICANT - The Agusta Group, for Colin Shaughnessy, owner.

SUBJECT - Application filed on April 14, 2005 - Proposed construction of a two family dwelling, which lies partially within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 60-04 172nd Street, west side, 105.5' from Horace Harding Expressway, Block 6880, Lot 23, Borough of Queens.

**COMMUNITY BOARD #7Q**

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### **157-05-A**

APPLICANT - Walter T. Gorman, P.E., for Breezy Point Cooperative, Inc., owner; David & Joan Demm, lessees.

SUBJECT - Application filed on July 6, 2005 - Appeals to Department of Buildings to allow construction of a two story frame dwelling on a site lying within an R4 district is contrary to Article 3, Section 36 of the General City Law, in that the site does not front on a mapped Street (Kildare Walk) and contrary to Sec. 27-291 of the Building Code.

PREMISES AFFECTED - 39 Kildare Walk, E/S 70' North of Breezy Point Boulevard, Queens, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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# CALENDAR

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## **158-05-A**

APPLICANT - Gary Lenhart, R.A., The Breezy Point Cooperative, Inc., owner; Elizabeth & Richard Graham, lessees.

SUBJECT - Application filed on July 7, 2005 - Appeals to Department of Buildings to reconstruct and enlarge an existing single family frame dwelling not fronting on a mapped street contrary to General City Law Article 3, Section 36 and upgrading an existing private disposal system located in the bed of the service lane contrary to Building Department Policy.

PREMISES AFFECTED - 15 Atlantic Walk, E/S Atlantic Walk 100.17' N/O Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**SEPTEMBER 13 2005, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, September 13, 2005, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, NY 10006, on the following matters:

## **ZONING CALENDAR**

### **338-04-BZ**

APPLICANT – Martyn & Don Weston, for Hi-Tech Equipment Rental Inc., owner.

SUBJECT – Application October 12, 2004 - under Z.R.§72-21 to permit the proposed construction of a one story and cellar extension to an as-of-right six story hotel, and to permit on grade accessory parking and below grade showroom/retail use, in an R5 zoning district, is contrary to Z.R. §22-00.

PREMISES AFFECTED - 806/14 Coney Island Avenue, west side, 300.75' north of Ditmas Avenue, Block 5393, Tentative Lot 27, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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### **357-04-BZ**

APPLICANT – Alfonso Duarte, for Charles Howard, owner.

SUBJECT – Application November 12, 2004 - under Z.R.§72-21 to permit the proposed erection of a two story medical facility, located in an R3-2 zoning district, which does not comply with the zoning requirements for second floor occupancy, lot coverage, front yards, side yard, off-street parking spaces and penetration of the exposure plane, is contrary to Z.R. §22-14, §24-11, §24-33, §24-34, §24-35, §25-31 and §24-521; and the proposed use of the site, for off-site accessory parking, for a proposed medical facility across the street, is contrary to §25-51.

PREMISES AFFECTED - 707 Cross Bay Boulevard, southwest corner of 98th Street, Block 15311, Lot 11, Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **358-04-BZ**

APPLICANT – Alfonso Duarte, for Charles Howard, owner. SUBJECT – Application November 12, 2004 - under Z.R.§72-21 to permit the proposed use of the site, for off-site accessory parking, for a proposed medical facility across the street, is contrary to §25-31.

PREMISES AFFECTED - 728 Cross Bay Boulevard, southeast corner of 194<sup>th</sup> Avenue, Block 15453, Lot 8, Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **19-05-BZ**

APPLICANT – Slater & Beckerman, LLP, for Groff Studios Corporation, owner.

SUBJECT – Application January 31, 2005 – under Z.R. §72-211, to permit, in an M1-6 zoning district, the change of use of portions of a nine-story, mixed-use building to Use Group 2 residential use which is contrary to ZR Section 42-00.

PREMISES AFFECTED – 151 West 28<sup>th</sup> Street, north side, 101' east of Seventh Avenue, Block 804, Lot 8, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### **60-05-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for Aslan Azrak, owner.

SUBJECT – Application March 10, 2005 - under Z.R.§ZR73-622 Special Permit - the enlargement of a semi detached single family home. The proposed enlargement to vary ZR sections 23-141(b) for FAR, open space and lot coverage, 23-47 for less than the required rear yard. The premise is located in an R4 zoning district. This proposed enlargement is also seeking to separate from the attached residence thereby creating two detached residences.

PREMISES AFFECTED – 1024 Lancaster Avenue, Lancaster Avenue between East 12<sup>th</sup> Street and Coney Island Avenue, Block 7394, Lot 50, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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### **97-05-BZ**

APPLICANT – Dennis D. Dell'Angelo, R.A., for Abraham Y. Gelb, owner.

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# CALENDAR

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SUBJECT – Application April 22, 2005 - under Z.R.§ZR73-

622 Special Permit - the enlargement of a single family residence to vary zoning section ZR 23-141 for open space and floor area, ZR 23-46 for less than the minimum required side yard and ZR 23-47 for less than the required rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1107 East 21<sup>st</sup> Street, east side 153' north of Avenue J, Block 78585, Lot 13, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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## **126-05-BZ**

APPLICANT – Eric Palatnik, P.C., for Moshe Hirsch, owner.

SUBJECT – Application May 20, 2005 - under Z.R.§ZR73-622 Special Permit - The enlargement of a single family residence to vary ZR sections 23-141 (open space and floor area), 23-46 (side yard) and 23-47 (rear yard). The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1282 East 27<sup>th</sup> Street, West side of East 27<sup>th</sup> Street, north of the intersection of E. 27<sup>th</sup> Street and Avenue M, Block 7644, Lot 79, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Pasquale Pacifico, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, AUGUST 9, 2005  
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Miele and Commissioner Chin.

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, April 19, 2005, were approved as printed in the Bulletin of April 28, 2005, Volume 90, Nos. 19-20.

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**SPECIAL ORDER CALENDAR**

**614-74-BZ**

APPLICANT – Ross F. Moskowitz, Stroock & Stroock & Lavan, LLP, for Sixty East End Owner, Inc., lessee.

SUBJECT - Application February 18, 2005 - request for a waiver of the Rules of Practice and Procedure and reopening for an extension of term of variance which expired March 11, 2000.

PREMISES AFFECTED - 60 East End Avenue west side a/k/a 532-538 East 83rd Street a/k/a 531-537 East 82nd Street, Block 1579, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Susan Shaw.

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

**THE VOTE TO GRANT** -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

Negative:.....0

**THE RESOLUTION** -

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and for a re-opening and an extension of the term of the variance; and

WHEREAS, a public hearing was held on this application on July 12, 2005, after due notice by publication in *The City Record*, and then to decision on August 9, 2005; and

WHEREAS, Community Board No. 8, Manhattan, recommends approval of this application; and

WHEREAS, the premises is situated on the west side of East End Avenue, at the intersection of East 82<sup>nd</sup> Street and East End Avenue, extending through to East 83<sup>rd</sup> Street; and

WHEREAS, on March 11, 1975, the Board granted an

application pursuant to Z.R. §§ 25-412 and 22-10, under the subject calendar number, to permit, in an R10 and R8 zoning district, transient parking within an existing garage accessory to a 42-story multiple dwelling, for a term of 15 years; and

WHEREAS, on February 11, 1992, the Board reopened and amended the original resolution to extend the term of the grant for a period of ten years; and

WHEREAS, the most recent term of the variance expired on March 11, 2000; and

WHEREAS, the applicant now seeks to extend the term of the variance for a term of ten years pursuant to Z.R. § 11-411; and

WHEREAS, the applicant represents that there is still a need for transient parking on the subject premises because the garage currently serves visitors, doctors' offices and residents in the neighborhood; and

WHEREAS, the applicant further represents that the ability to park in the subject garage for short periods of time greatly benefits the community because it significantly decreases the number of cars seeking curbside parking and lessens street congestion; and

WHEREAS, in response to the Board's concerns, recapture signs were posted and are now prominently displayed in the garage and lobby areas of the premises; and

WHEREAS, in light of the above changes, the Board finds that the requested extension of term is appropriate, with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, *reopens and amends* the resolution, adopted on March 11, 1975, so that as amended this portion of the resolution shall read: "to extend the term for ten years from March 11, 2000; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked 'August 3, 2004' – (2) sheets; and *on further condition*;

THAT the term of this grant shall be for ten years, to expire on March 11, 2010;

THAT all layouts and exits shall be as approved by DOB;

THAT the number of transient parking spaces shall not exceed 50;

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

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

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

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# MINUTES

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THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 103996687)

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 328-82-BZ

APPLICANT - Agusta & Ross, for Parkhouse Hotel, Inc., owner.

SUBJECT - Application February 4, 2005 - Extension of Term/Waiver of a variance to permit a transient hotel (UG 5) which expired on January 18, 2003. The premise is located in an R-6 zoning district.

PREMISES AFFECTED - 1206 48th Street, southwest corner of 48th Street and 12th Avenue, Block 5634, Lot 6, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES -

For Applicant: Mitchell Ross.

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

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening and an extension of the term of the variance; and

WHEREAS, a public hearing was held on this application on July 26, 2005, after due notice by publication in *The City Record*, and then to decision on August 9, 2005; and

WHEREAS, Community Board No. 12, Brooklyn, recommends approval of this application; and

WHEREAS, the premises is located on the southwest corner of 48<sup>th</sup> Street and 12<sup>th</sup> Avenue, with a lobby entrance on 48<sup>th</sup> Street; and

WHEREAS, on January 18, 1983, the Board granted an application, under the subject calendar number, to permit, in an R6 zoning district, a transient hotel (UG 5); and

WHEREAS, on February 7, 1995, the Board reopened and extended the term of the variance for ten years from the date of

the prior expiration; and

WHEREAS, the most recent term of the variance expired on January 18, 2003; and

WHEREAS, the existing transient hotel consists of four stories that contain a total of forty-three transient suites, with ten suites on the first floor and eleven suites on each of the remaining three floors; the hotel cellar contains an accessory superintendent’s unit and an accessory eating and drinking establishment; and

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

WHEREAS, the applicant states that the manner of use of the facility has not changed since its original approval in 1983; and

WHEREAS, the applicant represents that the building is equipped with an NFPA No. 72A Fire Alarm System, that all call stations are connected to a central station alarm, and that there is a local audible alarm; additionally, all rooms are equipped with hard wired smoke and CO detectors, and the basement and all public areas are sprinklered; and

WHEREAS, the applicant further represents that the even though the hotel is located in an R6 zoning district, the commercial overlay districts to the south and west of the subject lot and the various other commercial uses on the block combine to create a busy, mixed-use area within which the subject hotel fits; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, *reopens and amends* the resolution, adopted on January 18, 1983, so that as amended this portion of the resolution shall read: “to extend the term for ten years from January 18, 2003; *on condition*;

THAT the term of this grant shall be for ten years, to expire on January 18, 2013;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant

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laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 301863142)

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 169-91-BZ

APPLICANT - Ellen Hay/Wachtel & Masyr, LLP, for Broadway Wilson Realty, LLC, owner; Crunch Fitness International, Inc., lessee.

SUBJECT - Application March 21, 2005 - Extension of Term for the continued operation of a PCE/Waiver and Amendment to legalize additional floor area. The premise is located in a M1-5B zoning district.

PREMISES AFFECTED - 404 Lafayette Street aka 708 Broadway, Lafayette Street and East 4th Street, Block 545, Lot 6, Borough of Manhattan.

### COMMUNITY BOARD 2M

#### APPEARANCES -

For Applicant: Ellen Hay.

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

#### THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

#### THE RESOLUTION -

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening to amend the resolution, and an extension of the term of the previously granted special permit that expired on May 18, 2003; and

WHEREAS, a public hearing was held on this application on July 19, 2005, after due notice by publication in *The City Record*, and then to decision on August 9, 2005; and

WHEREAS, Community Board No. 2, Manhattan, recommends approval of the subject application; and

WHEREAS, the subject premises contains a through block building situated on the west side of Lafayette Street and the east side of Broadway between Astor Place and East 4<sup>th</sup> Street; and

WHEREAS, the zoning lot on the Lafayette Street portion of the property is developed with an eight story building, and the zoning lot on the Broadway portion of the lot is developed with a ten story building; the property is fully occupied with commercial tenants; and

WHEREAS, on May 18, 1993, the Board granted a

special permit application pursuant to Z.R. § 73-36, to permit, in an M1-5B zoning district, the use of the cellar and first floor of the existing ten story building as a physical culture establishment (“PCE”); such permit expired as of May 18, 2003; and

WHEREAS, the resolution was amended on October 8, 1996 to allow for a change in ownership, an increase of the floor area of the cellar, an extension of time to obtain the Certificate of Occupancy, and a change in the hours of operation; and

WHEREAS, on June 29, 1999, the Landmarks Preservation Commission (the “LPC”) designated the NOHO Historic District which includes the subject property; since the designation, LPC has reviewed and approved several applications and plans filed with the Department of Buildings (the “DOB”) pertaining to the subject PCE; and

WHEREAS, the instant application seeks, pursuant to Z.R. § 73-11, to: 1) extend the term of the special permit for ten years; 2) amend the cellar and first floor plans; and 3) legalize the increase in floor area of the PCE with the addition to the second floor; and

WHEREAS, the applicant represents that the enlargement comprises 10,069 sq. ft. of floor area entirely on the second floor of the PCE; and

WHEREAS, the applicant represents that the owner of the PCE (“Crunch Fitness”) has submitted all of the required plans and applications for the construction permits to DOB and has completed the necessary steps required to obtain the Certificate of Occupancy for the premises; and

WHEREAS, the applicant further represents that Crunch Fitness has successfully pursued the removal of the outstanding construction violations, including the removal of the improperly installed marquee from the entrance of the facility on Lafayette Street; and

WHEREAS, in response to the Board’s concerns, the applicant notes that Crunch Fitness has two legal signs located on the premises which are permitted and have been approved by DOB; and

WHEREAS, the applicant states that the PCE will continue to service approximately 1,000 members per day and will continue to offer classes in aerobics, weight training, fitness and related health and physical development programs; and

WHEREAS, the applicant represents that the days and hours of operation will remain the same: twenty-four hours per day Monday through Friday; 6 A.M. to 10 P.M. Saturday, and 8 A.M. to 10 P.M. Sunday; and

WHEREAS, the Board finds that the applicant continues to meet the requirements of Z.R. § 73-36; and

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WHEREAS, therefore, the Board finds that this application is appropriate to grant, with the conditions set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, so that as amended this portion of the resolution shall read: "to permit an extension of the term of the special permit for a term of ten years and an increase in the facility's floor area of 10,069 sq. ft. at the second floor of the building; *on condition* that the expansion shall substantially conform to drawings as filed with this application, marked 'June 8, 2005'-(2) sheets and 'July 20, 2005' - (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years from May 18, 2003, expiring May 18 2013; and

THAT the hours of operation shall be: twenty-four hours per day Monday through Friday; 6 A.M. to 10 P.M. Saturday, and 8 A.M. to 10 P.M. Sunday;

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

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

THAT fire protection measures, including exit signs, emergency lighting, sprinklers and fire extinguishers shall be installed and maintained as indicated on the BSA-approved plans; and

THAT the PCE shall comply with Local Law 58 of 1987, as determined by DOB;

THAT all exits shall be as approved by DOB;

THAT all signage shall comply with signage regulations applicable in M1-5B zoning districts;

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

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

(DOB Application No. 102584071)

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 164-99-BZ

APPLICANT – Guy M. Harding, for Oscar Franco & Ivan Duque, owners.

SUBJECT – Application January 31, 2005 – Extension of Term/Waiver of a Special Permit for and entertainment and dancing establishment (UG 12) located in a C2-3/R6 zoning district.

PREMISES AFFECTED – 79-03 Roosevelt Avenue, north side of Roosevelt Avenue, 22' east from intersection of 79th Street and Roosevelt Avenue, Block 1290, Lot 46, Borough of Queens.

## COMMUNITY BOARD #4Q

APPEARANCES – None.

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

## THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

## THE RESOLUTION -

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, and a re-opening and an extension of the term of a special permit previously granted by the Board; and

WHEREAS, a public hearing was held on this application on July 12, 2005, after due notice by publication in the *City Record*, then to decision on August 9, 2005; and

WHEREAS, Community Board No. 3, Queens, recommends approval of this application subject to the following conditions: 1) that patrons not congregate in front of the establishment and that staff better monitor crowds during satellite sports events; and 2) that the waiting area should not be utilized as an extension of the club by serving drinks or food; and

WHEREAS, the premises is located on the north side of Roosevelt Avenue, east of the intersection of 79<sup>th</sup> Street and Roosevelt Avenue, and

WHEREAS, the premises is currently improved upon with a two-story building that houses an entertainment and dancing establishment (UG 12) on both floors; and

WHEREAS, on June 6, 1989, under calendar number 873-87-BZ, the Board granted a special permit pursuant to Z.R. § 73-244, to permit, in a C2-3(R6) zoning district, an entertainment and dancing establishment (UG 12); and

WHEREAS, on August 15, 2000, under the subject calendar number, the Board granted an extension of the special permit for a term of three years; such extension expired on August 15, 2003; and

WHEREAS, the applicant now seeks an extension of the term of the special permit for a term of three years; and

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WHEREAS, the applicant represents that no cooking takes place on the premises; and

WHEREAS, the applicant further represents that the establishment is open from 8 p.m. to 4 a.m., during which heavy vehicular traffic is at a minimum; moreover, because there is ample on-street and public parking within the vicinity of the site, as well as a second floor waiting area, the use does not cause any undue vehicular or pedestrian congestion in local streets or at the first floor level; and

WHEREAS, in response to the Community Board's concerns and at the direction of the Board, the applicant has agreed to refrain from serving food or drink on the second floor and to remove the tables and chairs from that area; and

WHEREAS, the Board has determined that the evidence in the record supports the grant of the requested extension of term.

*Therefore it is Resolved* that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, so that as amended this portion of the resolution shall read: "to permit the extension of the term of the resolution for three years from August 15, 2003 expiring August 15, 2006; *on condition* that this use shall substantially conform to drawings for the ground floor and cellar of the building filed with this application marked 'Received January 31, 2005'-(2) sheets; and *on further condition*:

THAT the hours of operation shall be from 8 p.m. until 4 a.m.;

THAT there shall be no tables or chairs and no eating or drinking on the second floor;

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

THAT all conditions from prior resolution(s) not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy if listed previously;

THAT the interior layout and all exiting requirements shall be as reviewed and approved by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 401619192)

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 186-00-BZ

APPLICANT - Law Office of Fredrick A. Becker, for Stacey Dana and Murray Dana, owners.

SUBJECT - Application April 14, 2005 - reopening for an extension of time which expired April 17, 2005.

PREMISES AFFECTED - 2301 Avenue L, northeast corner of Avenue L and East 23rd Street, Block 7623, Lot 7, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES -

For Applicant: Lyra Altman.

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

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, this is an application for a re-opening and an extension of time to obtain a new certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 26, 2005 after due notice by publication in the *City Record*, and then to decision on August 9, 2005; and

WHEREAS, on April 17, 2001, the Board granted a special permit under Z.R.§73-622 to permit an enlargement of a single family home that did not comply with the requirements for floor area ratio, open space ratio and side yards; and

WHEREAS, as a condition of the initial grant, the applicant was to obtain a certificate of occupancy within four years from the date of the grant; and

WHEREAS, the time to obtain a certificate of occupancy expired on April 17, 2005, and the applicant represents that it was unable to obtain a certificate of occupancy as of that date; and

WHEREAS, therefore, the Board has determined that the evidence in record supports the grant of the requested extension.

*Therefore it is Resolved*, that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on April 17, 2001, so that as amended this portion of the resolution shall read: "to permit an extension of the time to obtain a certificate of occupancy for an additional one year from the date of the earlier expiration, to expire on April 17, 2006; *on condition*:

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 301025717)

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 558-51-BZ

APPLICANT – Eric Palatnik, P.C., B.P Products North America, owner.

SUBJECT – Application April 28, 2005 – Extension of Time to obtain a Certificate of Occupancy for a gasoline service station which expires on August 5, 2005. The premise is located in an C2-2/R-5 zoning district.

PREMISES – 68-22 Northern Boulevard, southwest corner of Northern Boulevard and 69<sup>th</sup> Street, Block 1186, Lot 19, Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

**ACTION OF THE BOARD** - Laid over to August 23, 2005, at 10 A.M., for decision, hearing closed.

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## 886-87-BZ

APPLICANT - Stuart Allen Klein, for Rockford R. Chun, owner.

SUBJECT - Application March 22, 2005 - request for a waiver of the Rules of Practice and Procedure and reopening for an extension of term of the special permit.

PREMISES AFFECTED - 11 East 36th Street, aka 10 East 37th Street, 200' east of 5th Avenue, Block 866, Lot 11, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Stuart Klein.

**ACTION OF THE BOARD** - Laid over to September 13, 2005, at 10 A.M., for continued hearing.

## 203-92-BZ

APPLICANT – Sullivan, Chester & Gardner, P.C., for Austin-Forest Assoc., owner; Lucille Roberts Org., d/b/a Lucille Roberts Figure Salon, lessee.

SUBJECT – January 26, 2005 Extension of Term/Amendment/Waiver for a physical culture establishment. The premise is located in an R8-2 zoning district.

PREMISES AFFECTED – 70-20 Austin Street, south side, 333' west of 71<sup>st</sup> Avenue, Block 3234, Lot 173, Borough of Queens.

### COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jeffrey Chester.

For Administration: Anthony Scaduto, FDNY

**ACTION OF THE BOARD** - Laid over to September 27, 2005, at 10 A.M., for continued hearing.

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## 44-99-BZ

APPLICANT - Vito J. Fossella, P.E., for Michael Bottalico, owner.

SUBJECT - Application January 24, 2005 – Extension of Term of a variance for an automotive repair shop, located in an R3A zoning district.

PREMISES AFFECTED – 194 Brighton Avenue, south side of Brighton Avenue, southwest of the corner formed by the intersection of Summers Place and Brighton Avenue, Block 117, Lot 20, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Sameh El-Meniawy and Mike Bohalico.

**ACTION OF THE BOARD** - Laid over to September 13, 2005, at 10 A.M., for continued hearing.

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## 227-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Moshe Nachum, owner.

SUBJECT – Application April 22, 2005 – reopening for an extension of time to obtain a Certificate of Occupancy which expired April 24, 2005.

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PREMISES AFFECTED – 1869 East 23<sup>rd</sup> Street between Avenue R & Avenue S, Block 6829, Lot 58, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Zara Fernandes.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

**ACTION OF THE BOARD** - Laid over to August 23, 2005, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 397-04-A

APPLICANT – Petraro & Jones, LLP., for Jennifer Walker, owner.

SUBJECT – Application December 23, 2004 – An appeal to request the Board to determine that the apartment house at subject premises, is not a “single room occupancy multiple dwelling” and (2) nullify the Department of Buildings’ plan review “objection” that resulted in this appeal application.

PREMISES AFFECTED - 151 West 76<sup>th</sup> Street, north side, 471’ from the intersection of Columbus Avenue, Block 1148, Lot 112, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Patrick Jones.

For Administration: Janine A. Gaylard.

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

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, the instant appeal comes before the Board in response to a determination made on behalf of the Manhattan Borough Commissioner, dated December 17, 2004; the specific objection states “Provide Letter of No Harassment for SRO”; and

WHEREAS, a public hearing was held on this application on March 29, 2005 after due notice by publication in the City Record, with continued hearings on May 10, 2005 and June 14, 2005, and then to decision on August 9, 2005; and

WHEREAS, this appeal is being brought on behalf of the fee owner of the referenced premises (the “appellant”); the pre-appeal procedural history of this matter is outlined in detail in the March 22, 2005 Department of Buildings (“DOB”) submission; and

WHEREAS, the premises is a five-story building located in and R8 zoning district, and does not have a certificate of occupancy (“CO”); and

WHEREAS, in the mid-1990s and in the early part of this decade, certain residents in the building applied for job permits that would ultimately require issuance of a CO; DOB initially approved the applications without requiring a Certificate of No Harassment (“CNH”) in compliance with Local Law 19 of 1983 (“LL19”), as no indication was made in them that the building may have been an “single room occupancy” (“SRO”) dwelling; and

WHEREAS, LL19 provides, in part, that prior to the authorization by DOB of a conversion of any SRO units to Class A apartments (for permanent residence purposes), the applicant for such conversion must obtain a CNH from the New York City Department of Housing Preservation and Development (“HPD”), the issuance of which indicates, in sum and substance, that the owner of SRO units to be altered or converted did not engage in harassment of the SRO unit occupants over a certain period of time; and

WHEREAS, after further review, DOB determined that the building was an SRO; thus, the above-mentioned application approvals were rescinded; and

WHEREAS, appellant now desires to obtain a CO for the building, legalizing existing conditions within the building (purportedly, the units contain kitchens and bathroom indicative of Class A apartments), and brings the instant appeal of DOB’s decision to apply LL19’s CNH requirement to any application to legalize said conditions; as the pre-appeal procedural history indicates, compliance with the CNH requirement has proven difficult for the appellant; and

WHEREAS, the appeal raises three separate but related issues: (1) whether the legal use of the premises is a SRO; (2) whether the legal use or the actual use of the building is relevant to an exemption from LL19 set forth at Section 27-198(a)(6) of the Administrative Code of the City of New York; and (3) notwithstanding the legal status of the building, is there sufficient evidence that the actual use of the building changed to Class A apartment building at some point prior to enactment of LL19; and

WHEREAS, as to the first issue, DOB contends that according to its Building Information System (“BIS”), as well as records of HPD, the building’s legal use is SRO, and

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with 15 individual SRO units; DOB has submitted documentation supporting this contention, including a copy of the HPD I-Card that shows the premises contains Class B units (Class B units may be SRO units); and

WHEREAS, appellant argues that the building is not an SRO but an “apartment house”, with ten Class A apartments having kitchens and bathrooms; and

WHEREAS, appellant states that while the building may have contained SRO units at one time, the majority of the units were converted to Class A apartments well prior to the enactment of LL19; and

WHEREAS, thus, appellant argues that a CNH is not needed as part of the job permitting process; and

WHEREAS, however, the Board observes that appellant has not produced any evidence of a lawful change of use, such as DOB or HPD approvals or a CO; and

WHEREAS, additionally, DOB cites to a recent OATH decision, Department of Housing Preservation and Development v. Rice, OATH Index No. 1838/04 (March 23, 2005), which is factually similar to the instant matter; and

WHEREAS, in this decision, the OATH judge held that absent a CO or signed-off permit reflecting a lawful change in use, an HPD I-card represents the legal use of a building; and

WHEREAS, the Board has reviewed the OATH decision and finds it persuasive, in that the facts are very similar to those presented in the instant appeal and the issue is largely the same; and

WHEREAS, accordingly, the Board finds that in the absence of a CO, the HPD I-Card establishes the legal use of this building; therefore, the legal use of the building is SRO; and

WHEREAS, as to the second issue, appellant argues that the exemption from LL19 set forth at AC § 27-198(a)(6) applies to the subject building; this section lists occupancies that are excluded from the definition of single room occupancy multiple dwelling, including “any multiple dwelling containing fewer than nine class B dwelling units [SRO units] used for single room occupancy.”; and

WHEREAS, appellant contends that the exclusion encompasses any multiple dwelling containing fewer than nine class B dwelling units actually used for single room occupancy, irrespective of established legal use; and

WHEREAS, appellant further contends that notwithstanding the date of the change in the configuration of the use of the building, if actual use has changed in a sufficient amount of units, then the exemption applies; and

WHEREAS, DOB disagrees that the afore-mentioned exemption applies, because the current building configuration does not represent the building’s legal use,

which is established by the I-card; and

WHEREAS, DOB states, and the Board agrees, that interpreting the term “used” in AC §27-198(a)(6) to refer to actual use and not legal use would completely contravene the intent of LL19, one of the goals of which is to prevent the loss of single-room occupancy units from illegal conversion work; and

WHEREAS, DOB also states that if the term “used” is interpreted as referring to actual use, then a landlord could simply convert illegally and then take the position that the building was not subject to the LL19 CNH requirement because the “actual use” of the building was no longer an SRO; and

WHEREAS, the Board agrees, and observes that appellant’s argument, if accepted and extended to the applicability of other code provisions where use of a premises is relevant, would lead to absurd and adverse consequences, compromising the purpose and enforcement of said provisions; and

WHEREAS, appellant nevertheless attempted to support this interpretation by citing to various cases; and

WHEREAS, the Board disagrees that the cases cited by the appellant support the interpretation; and

WHEREAS, as explained by DOB in its various submissions, the cited cases are either distinguishable from the facts at hand and therefore irrelevant, or in fact support DOB’s position, not appellant’s; and

WHEREAS, two of the cited cases (Greene v. Board of Zoning Appeals of City of Ithaca, 267 Ad2d 835 (3d Dept. 1999), and Ponte Equities Inc. v. Chin, 284 AD2d 283 (1<sup>st</sup> Dept. 2001)) are cases in which the disputed issue was the continuance of a non-conforming use under the Zoning Resolution; and

WHEREAS, as correctly noted by DOB, the issue in the instant matter is not whether the use of the building is a non-conforming use; thus, the cited cases are not relevant; and

WHEREAS, DOB states that two other cases discussed by both the appellant and DOB (Luchetti v. Office of Rent Control, 49 Ad2d 532 (1<sup>st</sup> Dept. 1975), and Brown v. Roldan, 307 Ad 2d 208 (1<sup>st</sup> Dept. 2003)), support its position as the court in both held that legal use is determinative where a change in actual use can not be proven (as discussed in more detail below, DOB disagreed that the evidence of a change in actual use submitted by appellant was convincing); and

WHEREAS, the Board has reviewed the cited cases and agrees with DOB as to their meaning and applicability (or lack thereof) to the instant appeal; in sum, the Board concludes that none of the cases mentioned above, or any of

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the other cases cited by appellant, support appellant's interpretation; and

WHEREAS, based upon the above, the Board rejects the argument that actual use trumps legal use for purposes of the exemption set forth at AC §27-198(a) (6); and

WHEREAS, as to the third issue, appellant argues that the actual configuration of the building changed (albeit in the absence of any issued permits or CO) well prior to the enactment of LL19; thus, legalization of this work should be allowed without subjecting the application to the LL19 requirements; and

WHEREAS, DOB responds that appellant has not, either prior to or during the hearing process, submitted compelling evidence that the actual use of the building changed to Class A apartment building prior to enactment of LL19; and

WHEREAS, however, DOB agrees that proof of actual use would have some bearing on whether LL19 should apply to work performed in the building; and

WHEREAS, specifically, in its May 31, 2005 submission, DOB states: "The only way that Local Law 19 of 1983 would not apply to the premises is if Appellant were to submit sufficient evidence to the Department to prove that the actual use of the premises was not a SRO prior to the enactment of the Local Law"; and

WHEREAS, DOB continues: "The proof of actual use must be sufficiently before the Local Law so that the work would not have been done in order to evade its requirements. The legal use would still be a SRO, and the illegal work would need to be legalized and a CO obtained"; and

WHEREAS, appellant has submitted the following documents (among others) to the Board, contending that they support the contention that actual use changed well before the enactment of LL19: (1) affidavits from the current owner and the prior owner, stating that the ten of eleven units were converted as far back as the 1960s, and the remaining unit was converted in 1980; (2) rent rolls filed with the New York State Division of Housing and Community Renewal; (3) a drawing that appellant claimed to have obtained from HPD, dated August 8, 1956, which appears to show the building configured as Class A regular apartments and not SRO units; (4) three affirmations from the former managing agent of the building (the "Former Manager"), who is also an attorney, stating, in part, that he observed that the actual configuration of almost all of the units in the building reflected Class A apartments when he visited the building from 1976 to 1983; and

WHEREAS, as noted above, DOB has reviewed all the evidence submitted to it by the appellant prior to this appeal,

as well as the evidence submitted during the hearing process, and is not persuaded that actual use changed prior to enactment of LL19; and

WHEREAS, DOB states that the affidavits from the owners constitute testimony from interested parties, and therefore should be considered potentially self-serving; and

WHEREAS, DOB also argues that affidavits cannot supersede COs or I-cards to establish the legal use of a building; and

WHEREAS, the Board agrees that the affidavits are not particularly compelling because of the interest the affiants have or had in the building; and

WHEREAS, as to the rent rolls, DOB states that it does not accept them in place of a CO or HPD I-card to establish the legal use of a building, as they are simply reports made by the building's owner, and filed by such owner; and

WHEREAS, the Board has reviewed the rent rolls and agrees that they are not probative of actual use; and

WHEREAS, the next piece of evidence, the 1956 drawing, was the source of much contention and controversy, and the Board and parties expended considerable time investigating its origins and meaning; and

WHEREAS, as noted by DOB, the 1956 drawing has been disclaimed by HPD as an official representation of the legal configuration of the building; DOB states that it is not certain what the drawing represents or who it was produced by; and

WHEREAS, initially, appellant argued that the drawing is comparable to HPD inspector drawings often attached to I-cards of the era, and thus should be viewed as a reflection of existing conditions at the time; and

WHEREAS, however, appellant was unable to support this argument with any proof, and later contended that the 1956 drawing was a required drawing made pursuant to the Rooming House laws in effect at the time; and

WHEREAS, nonetheless, the Board was unable to gain a full and complete understanding from either of the parties as to what the 1956 drawing really was, and, in light of the inconclusive nature of the document, the Board declines to credit the drawing as evidence that actual use of the building in 1956 was as reflected in the drawing; and

WHEREAS, as to the affirmations from the Former Manager, DOB initially stated that the first affirmation was not probative, since it was not corroborated by contemporaneous records; and

WHEREAS, DOB maintained this position even after a second affirmation was submitted from the Former Manager, in which he stated he did not retain records for the apartment house after he was no longer legally required to

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do so, as his involvement with the building ended some time ago; and

WHEREAS, while this second affirmation stated that the basis of the Former Manager's knowledge was his "direct experience" with the building, the Board pressed appellant for some clarification as to how this "direct experience" was obtained; and

WHEREAS, in a third affirmation, the Former Manager specifically affirms that, in the course of at least 100 visits to the building over an approximately seven year period, from 1976 through May 1983, he was in each of the units, and that he observed that ten of the eleven units always were configured as Class A-type apartments, with kitchens with cooking facilities and private bathrooms with toilets sinks and bathing facilities; and

WHEREAS, in this same affirmation, the Former Manager states that he has never had a pecuniary interest in the building; and

WHEREAS, the Board finds the series of affirmations from the Former Manager sufficient evidence that actual use of at least ten of the eleven apartments changed from SRO to Class A apartments at some point well prior to enactment of LL19; and

WHEREAS, thus, based upon DOB's own representations, it appears that appellant may apply to have the above-referenced objection removed by DOB; and

WHEREAS, the Board notes, however, that the affirmations do not supersede the HPD I-card in establishing the legal use of the premises; as stated above, the legal use of the building is still a SRO, until changed through issuance of a CO obtained lawfully through DOB; and

WHEREAS, moreover, the Board also notes that its evidentiary finding is limited to the instant matter and that its decision as set forth herein should not be construed to limit or constrain in any way DOB's authority to set standards for acceptance of evidence submitted to it during either the permitting process or any other exercise of Departmental jurisdiction; and

*Therefore it is Resolved*, that the subject appeal, inasmuch as the Board has determined both that the legal use of the premises is an SRO and that legal use, not actual use, is relevant to AC § 27-198(a)(6), is hereby denied in part, and, inasmuch as the Board has determined that the record contains sufficient evidence showing that actual use of the subject building changed to Class A apartment well prior to enactment of LL19, is hereby granted in part.

Adopted by the Board of Standards and Appeals, August 9, 2005.

APPLICANT – Sheldon Lobel, P.C., for GRA V LLC, owners.

SUBJECT – Application October 27, 2004 - Application to extend time to complete construction for a minor development pursuant to Z.R. §11-331.

PREMISES AFFECTED – 3329-3333 Giles Place (a/k/a 3333 Giles Place), west side of Giles Place between Canon Place and Fort Independence Street, Block 3258, Lot 5 and 7, Borough of The Bronx.

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** - Application denied.

THE VOTE TO GRANT -

Affirmative:.....0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Miele:.....4

THE RESOLUTION -

WHEREAS, this is an application under Z.R. §11-331 to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; and

WHEREAS, a public hearing was held on this application on November 19, 2004, after due notice by publication in *The City Record*, and then to continued hearings on December 7, 2004 and on January 11, 2005, on which date the case was laid over without a date; the case was re-opened and restored to the calendar May 10, 2005 for decision, then deferred to July 12, 2005; on this date, the matter was scheduled for decision on August 9, 2005; and

WHEREAS, the following organizations and elected officials appeared or made submissions in opposition to the subject application: Council Member Koppell, Assembly Member Dinowitz, State Senator Schneiderman, Community Board 8, Bronx, and Fort Independence Park Neighborhood Association; and

WHEREAS, although some of the testimony and submissions from opposition were relevant to the Board's proceedings, the Board notes that arguments were made suggesting that the developer acted in bad faith, sought to "beat the clock" by expediting excavation and foundation work, or attempted to undermine the hard work of the community in effecting a rezoning, which are not arguments that the Board may consider given the statutory framework set forth at Z.R. § 11-30 et. seq.; and

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WHEREAS, the site had a site examination by a committee of the Board, including Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin; and

WHEREAS, pursuant to Z.R. §11-331, the Board may renew a building permit that lapsed due to a rezoning for a period of six months, thus allowing construction to continue under the prior rezoning, so long as the Board finds that on the date the permit lapsed, excavation had been completed and substantial progress had been made on foundations; and

WHEREAS, a pre-requisite for a renewal under 11-331 is the issuance of a building permit, lawfully issued as set forth in Z.R. §11-31; and

WHEREAS, Z.R. §11-31 (a) provides: "A lawfully issued building permit shall be a building permit which is based upon an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to the [Zoning Resolution]. In case of dispute as to whether an application includes 'complete plans and specifications' as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, during the hearing on this application, the applicant claimed that a full new building permit that complied with 11-31 (the "NB Permit") had been issued on September 28, 2004; and

WHEREAS, also on September 28, 2004, the subject site was rezoned from R6 to R4A (the "Rezoning"); thus, during the hearing, as a threshold matter, the Board sought to ascertain whether the NB Permit had been obtained before or after the effectiveness of the rezoning; and

WHEREAS, further investigation revealed that the NB Permit was issued on or about 3:56 PM on September 28, 2004; and

WHEREAS, this investigation also revealed that the City Council adjourned at 3:20 PM that same day, meaning that the vote on the subject rezoning had taken place prior to issuance of the NB Permit; and

WHEREAS, the Board then sought the opinion of the Department of Buildings as to whether the application for the NB Permit included "complete plans and specifications," and also as to when the rezoning became effective; and

WHEREAS, in a letter dated January 7, 2005, the DOB Bronx Borough Commissioner stated, in sum and substance that: (1) the Legal Counsel Division of the City's Law Department concluded that the effective time of the rezoning is presumed to be 12:01 AM of the date of the City Council vote, but that this presumption can be rebutted with evidence of the actual time of the vote to avoid unfair results, as might occur in

the vesting context; thus, the rezoning was effective prior to the issuance of NB Permit (given the Council adjournment at 3:20 pm); and (2) the NB Permit application had several unresolved objections that prohibited its full approval, leading to the conclusion that the application was "incomplete" as per Z.R. § 11-31; and

WHEREAS, the matter was scheduled for decision on January 11, 2005; and

WHEREAS, at the January 11 hearing, the applicant indicated its intent to file the instant appeal, which would comprise both a challenge to DOB's determination to refuse to both vacate the stop-work order in place and reissue the NB Permit, as well as an application to continue construction under the prior zoning based upon a common law theory of vested rights; and

WHEREAS, the Board agreed to defer the decision on 346-04-BZY, pending the outcome of the appeal; and

WHEREAS, the appeal was filed under Calendar No. 17-05-A, which was decided the date hereof; and

WHEREAS, for the reasons set forth in the resolution issued under 17-05-A, the Board finds that DOB's January 7, 2005 determination regarding the effective time of the Rezoning should be upheld; and

WHEREAS, accordingly, the instant application must be denied, as the applicant failed to obtain a full building permit authorizing the entire proposed development prior to the effective time of the Rezoning.

*Therefore it is resolved*, that this application to renew New Building permit no. 200859053-NB pursuant to Z.R. § 11-331 is denied.

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## **17-05-A**

APPLICANT – Sheldon Lobel, P.C., for GRA V LLC, owner.

SUBJECT - Application January 27, 2005 - An appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue a development commenced under R6 Zoning.

PREMISES AFFECTED - 3329/3333 Giles Place, (a/k/a 3333 Giles Place), west side, between Canon Place and Fort Independence Street, Block 8258, Lots 5 and 7, Borough of The Bronx.

## **COMMUNITY BOARD #8BX**

APPEARANCES –

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For Applicant: Jordan Most.

For Administration: Janine A. Gaylard.

**ACTION OF THE BOARD** - Application denied.

**THE VOTE TO GRANT** -

Affirmative:.....0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Miele:.....4

**THE RESOLUTION** -

WHEREAS, this matter is both an appeal of a final determination, dated December 27, 2004, issued by the Bronx Borough Commissioner of the New York City Department of Buildings (“DOB”) (described in detail below), as well as an application for a Board determination that the owner of the premises has acquired a common-law vested right to continue development under regulations applicable to an R6 zoning district; and

WHEREAS a public hearing was held on this application on March 15, 2005 after due notice by publication in *The City Record*, with continued hearings on May 10, 2005 and July 12, 2005, and then to decision on August 9, 2005; and

WHEREAS, the Fort Independence Park Neighborhood Association appeared in opposition to this application; and

WHEREAS, the subject property is located at 3329-3333 Giles Place in an R4A (previously R6) zoning district; and

WHEREAS, on September 28, 2004, the developer/owner of the subject premises, GRA V, LLC (hereinafter, the “Developer”) filed DOB Permit Application No. 200911754-01-NB (hereinafter, the “NB Permit Application”), for the development of a seven-story, 63 unit residential apartment house (hereinafter, the “Proposed Development”); this application was self-certified by the Developer’s architect and a permit was pulled (the “NB Permit”); and

WHEREAS, on this same date (hereinafter, the “Rezoning Date”), the area in which the premises is located was rezoned from R6 to R4A by the City (CPC Res. C040516 ZMX adopted by the City Planning Commission on September 8, 2004) and approved by the City Council on the Rezoning Date; and

WHEREAS, in an R4A district, only single-or-two-family detached dwellings on zoning lots of specified lot widths are permitted; and

WHEREAS, prior to the Rezoning Date, DOB also issued permits related to the Proposed Development, none of which authorized in full the total construction of the Proposed Development; specifically, on May 24, 2004, DOB issued permits for retaining walls and fences under DOB permit nos. 200858759-01-EW OT, 200858759-01-EQ-FN, 200858740-01 EW OT and 200858740-01 EQ FN; and

WHEREAS, DOB also issued a partial permit under No. 200869024-01-FO for foundation work only (hereinafter, the “Foundation Permit”) on September 7, 2004; and

WHEREAS, as discussed in more detail below, DOB states that the application under which the Foundation Permit was issued had several objections that precluded the full approval of a New Building application and permit at that time; and

WHEREAS, nevertheless, under the Foundation Permit, excavation and some foundation work was performed by the Developer; and

WHEREAS, however, on October 5, 2004, DOB issued a Stop-Work Order for all work under the Foundation Permit based on the Rezoning, for failure to complete foundations prior to the zoning change; and

WHEREAS, because DOB determined that vesting had not occurred under the prior R6 zoning, notwithstanding the foundation work performed, the Developer was compelled to seek a reinstatement of the NB Permit from the Board; and

WHEREAS, thus, prior to the filing of the instant appeal, Sheldon Lobel & Associates, P.C. (hereinafter, the “appellant”), on behalf of the Developer, filed an application to continue construction at the site pursuant to Z.R. § 11-331 (Right to construct if foundations completed) under BSA Cal. No. 346-04-BZY; and

WHEREAS, pursuant to Z.R. § 11-331, the Board may renew a building permit that lapsed due to a rezoning for a period of six months, thus allowing construction to continue under the prior rezoning, so long as the Board finds that on the date the permit lapsed, excavation had been completed and substantial progress had been made on foundations; and

WHEREAS, a pre-requisite for a renewal under 11-331 is the issuance of a building permit, lawfully issued as set forth in Z.R. §11-31; and

WHEREAS, Z.R. §11-31 (a) provides: “A lawfully issued building permit shall be a building permit which is based upon an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to the [Zoning Resolution]. In case of dispute as to whether an application includes ‘complete plans and specifications’ as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, during the hearing on 346-04-BZY, the appellant cited to the NB Permit, claiming that it was a building permit for the entire Proposed Development that complied with 11-31; and

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WHEREAS, as stated above, the subject site was rezoned from R6 to R4A on September 28, 2004; thus, during the hearing, as a threshold matter, the Board sought to ascertain whether the full building permit had been obtained before or after the effectiveness of the rezoning; and

WHEREAS, further investigation revealed that the building permit was issued at or about 3:56 pm on September 28, 2004; and

WHEREAS, this investigation also revealed that the City Council adjourned at 3:20 that same day, meaning that the vote on the subject rezoning had taken place prior to issuance of the NB Permit; and

WHEREAS, the Board then sought the opinion of the Department of Buildings as to whether the application for the full building permit included “complete plans and specifications” and also as to when the rezoning became effective; and

WHEREAS, in a letter dated January 7, 2005, the DOB Bronx Borough Commissioner stated, in sum and substance that: (1) the Legal Counsel Division of the City’s Law Department concluded that the effective time of the rezoning is presumed to be 12:01 AM of the date of the City Council vote, but that this presumption can be rebutted with evidence of the actual time of the vote to avoid unfair results, as might occur in the vesting context; thus, the rezoning was effective prior to the issuance of NB Permit (given the Council adjournment at 3:20 pm); and (2) the NB Permit application had several unresolved objections that prohibited its full approval, leading to the conclusion that the application was “incomplete” as per Z.R. § 11-31; and

WHEREAS, accordingly, the Board set a hearing date on January 11, 2005 so that that 346-04-BZY could be decided; and

WHEREAS, at this hearing, the appellant indicated its intent to file the instant appeal, and asked that decision on 346-04-BZY be adjourned pending outcome of the appeal; and

WHEREAS, the instant appeal was subsequently filed on January 27, 2005; and

WHEREAS, as noted above, the appeal is of a December 27, 2004 decision by the DOB Bronx Borough Commissioner, which is in the form of a “Denied” stamp on a December 13, 2004 letter from the appellant to the Borough Commissioner; the letter asks DOB to vacate the DOB stop work order issued on October 5, 2004 relative to the Foundation Permit, and to reissue the NB Permit and various related permits for fences and equipment; and

WHEREAS, as represented by the appellant, the primary issues in this appeal are: (1) whether the DOB determinations, made in the BZY case, as to the effective time of the Rezoning

and the validity of the Permit, are correct; and (2) whether the appellant has obtained vested rights under the State’s common law; and

WHEREAS, the appellant notes that DOB’s determination that the effectiveness of the Rezoning was the time of the Council vote enacting the Rezoning appears to be contrary to a position articulated by the Board in BSA Cal. Nos. 102-92-A and 102-93-A (hereinafter, collectively referred to as the “Prior Decision”); and

WHEREAS, in the Prior Decision, the Board stated, in sum and substance, that because the zoning change as approved by the Council was subject to a five day Mayoral review period under the City’s Uniform Land Use Review Procedures (“ULURP”), the actual effectiveness of the zoning change was not triggered until this five day period had run out; and

WHEREAS, the record reveals that during the course of the hearings on the Prior Decision, DOB submitted a letter supporting this interpretation, which it appears the Board relied upon in reaching its decision; and

WHEREAS, the appellant states that the Prior Decision reflects an interpretation that is consistent with the purposes of ULURP; specifically, the appellant states that ULURP is intended to establish a predictable, standardized procedure that necessarily involves the review of certain entities, including the Mayor; and

WHEREAS, the appellant argues that the position taken by DOB in the BZY case and in the instant appeal is contrary to the goals of predictability and notice to the public; and

WHEREAS, DOB disagrees on the following basis: under New York State common law, the effective time of legislation is presumed to be 12:01 a.m. of the date of legislative action, but this presumption can be rebutted with concrete evidence of the time of actual adoption in order to avoid an unfair result; and

WHEREAS, thus, DOB argues that the effectiveness of the Rezoning is presumed to begin at the time the Council adjourned for the day (3:20 PM); and

WHEREAS, in support of this contention, DOB provided the Board with an Opinion from the Legal Counsel Division of the Corporation Counsel of the City of New York; and

WHEREAS, DOB also disagrees with appellant’s contentions regarding ULURP: specifically, DOB states that the language of City Charter § 197(e) provides that “Actions of the Council pursuant to this section shall be final unless the Mayor within five days of receiving a filing with respect to such an action of Council files with the Council a written

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disapproval of that action.”; and

WHEREAS, DOB notes that since the Mayor did not file a written disapproval of the zoning change, it was final on September 28, 2004, the date of the City Council vote, at approximately 3:20 PM; and

WHEREAS, DOB states that no public purpose would be served by giving developers a five-day window of opportunity to undermine the intent of the zoning change by completing construction that is meant to be prohibited; a Mayoral override should be irrelevant with respect to permits, since in the event of override there is no zoning change; and

WHEREAS, DOB further states that if one were to determine the effective time of Council action by reading 197-d according to appellant’s logic, fifteen days would be tacked on to the date on which the Council files its action with the Mayor, since 197-d (f) provides that the Mayoral disapproval is still subject to a further two-thirds override by all the Council members within ten days of such filing by the Mayor; and

WHEREAS, DOB contends that a fifteen-day window of opportunity after the date of the Council vote would significantly undermine the intent of any zoning change; and

WHEREAS, thus, DOB maintains that because the Permit was issued more than a half-hour after the Council adjourned, it was not issued prior to the Rezoning; therefore, the Department properly revoked it; and

WHEREAS, the Board agrees with each of the arguments made DOB; and

WHEREAS, the Board observes that if the Mayor doesn’t act, the new zoning is final as of the day of Council action, and if the Mayor does act, the new zoning is invalid, unless the Council overrides; and

WHEREAS, either way, the predictability and public notice imperatives noted by the appellant are preserved: if the Mayor overrides, the permit was never invalid and will remain valid until any further action by the Council, and if the Mayor does not override, then the permit is invalid as of the date of the rezoning, a contemplated and noticed date for which any reasonable developer can anticipate and plan; and

WHEREAS, accordingly, the Board declines to follow the Prior Decision to the extent it sets forth the proposition that the effective date of the rezoning is when the five-day Mayoral review period under ULURP expires; instead, the Board now takes the position that the effectiveness of a rezoning for purposes of determining when vesting occurs, either under the statutory scheme set forth in the Zoning Resolution or under the State’s common law, is at the time of the Council vote; and

WHEREAS, the Board notes that it is not bound to follow

a prior decision where it can be shown that decision was flawed in some respect; specifically, the Board observes that City Charter §666(8) gives it the authority to review and reverse or modify any of its prior decisions, so long as this review does not prejudice the rights of any person who has in good faith acted thereon before it is reversed or modified; and

WHEREAS, the appellant has not produced any evidence of Developer actions made in good faith reliance on the Prior Decision relative to the Proposed Development; and

WHEREAS, instead, the appellant has raised the Prior Decision for the first time in the context of this appeal; and

WHEREAS, moreover, based upon the fact that the Developer attempted to self-certify the NB Permit Application late in the day on September 28, 2004, a reasonable inference is that the Developer considered the effective date of the Rezoning to be that date as well; and

WHEREAS, because the Board has determined that the Rezoning was effective prior to issuance of the Permit, the Board finds that DOB’s decision to revoke the NB Permit as invalidly issued and refuse reinstatement was proper on this basis alone; and

WHEREAS, as stated above, appellant also challenges DOB’s determination that the NB Permit Application was deficient in that it did not show “complete plans and specifications” for the entire Proposed Development; and

WHEREAS, however, because the Board finds that the Permit was not issued prior to the Rezoning, an examination of this challenge is not necessary: even if the Permit did “show complete plans specifications”, it clearly was not timely issued; and

WHEREAS, thus, the Board concludes that the appellant has not met the statutory requirement set forth at Z.R. §11-331, which requires that a full building permit be issued prior to the Rezoning; and

WHEREAS, thus, on the date hereof, the Board, through a separate resolution, is denying the application filed under 346-04-BZY; and

WHEREAS, the only remaining issue is whether the Developer has, under the common-law of the State of New York, vested its rights to proceed with construction under the prior R4 zoning; and

WHEREAS, initially, DOB did not contest appellant’s assertion that it had met the common-law standard for vested rights for work performed under the Foundation Permit; instead, as noted in its March 8, 2005 submission, DOB deferred to the Board regarding appellant’s common law vested rights; and

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WHEREAS, however, subsequent to a recent audit of the Foundation Permit application and the supporting materials submitted therewith, DOB has changed its position and now contests appellant's vested rights claim; and

WHEREAS, at issue is the fact that the appellant submitted a Sanborn map in lieu of a survey in connection with its application for the Foundation Permit; and

WHEREAS, DOB states that the purpose of the survey, in part, is to account for adjacent buildings to establish the application of Quality Housing Requirements in the Zoning Resolution for location of the street wall; and

WHEREAS, DOB also states that though it is not the Department's policy or procedure to accept a Sanborn map in the place of a survey, nonetheless, when the plan examiner reviewed and approved the Foundation Permit on September 7, 2004, he accepted a Sanborn map in lieu of the required initial site survey; and

WHEREAS, during the audit process, after the Foundation Permit had lapsed by operation of law due to the rezoning, DOB asked for an actual survey; and

WHEREAS, DOB states that this survey reveals that the Proposed Development was contrary to the street wall location requirements for setback set forth in Z.R. §23-633; and

WHEREAS, this Z.R. section provides that the street wall location be measured from the nearest adjacent building; the survey shows that the nearest adjacent building is a garage that is 1 ft., 9 inches further from the street line than is shown on the Sanborn Map; this measurement represents the degree of non-compliance with Z.R. § 23-633; and

WHEREAS, DOB argues this renders the Foundation Permit invalidly issued; since a foundation permit undergoes review with respect to zoning and overall structure, it relates to the proposed building in its entirety; thus, street wall location compliance must be shown for the Foundation Permit to be valid, and here there is no compliance; and

WHEREAS, DOB argues that relevant case law stands for the proposition that vested rights may not be found where the work was performed under an invalid permit, even where the work performed was substantial and the reason that the permit was invalid is due to a minor zoning non-compliance; and

WHEREAS, appellant disagrees, and highlights numerous reasons why it believes that the Foundation Permit should not be considered invalid by DOB; and

WHEREAS, specifically, appellant notes that: (1) the Foundation Permit was only issued for the foundation work; (2) the non-complying condition was never built or

permitted; (3) the equities weigh in favor of the appellant; (4) the Developer contracted to purchase the Premises with intention of redeveloping same in good faith well before there was public discussion of rezoning; (5) the discrepancy in original street wall setback is de minimis and could be deemed compliant after due consideration of average setback distance and front yard area (only three small triangular portions of front façade pierce the 1.9' setback area); (6) proper DOB reconsideration resulted in the acceptance of a revised plans showing a completely compliant setback; (7) Section 11-31(b) is instructive as to right to modify plans after zoning change provided no new non-compliance is created; and

WHEREAS, DOB states that its conclusion that the Foundation Permit was invalid is not changed by the fact that no non-complying structure was constructed, nor by the fact that the non-compliance as reflected on the plans may reasonably be viewed as minimal; and

WHEREAS, instead, DOB again represents that the overall building design cannot be separated from the foundation design, and thus the overall structure must comply with zoning for the Foundation Permit to be valid upon issuance; and

WHEREAS, moreover, DOB states that the fact that no structure above-grade has been constructed does not have any relevance to the validity of the permit when issued; a permit is either validly issued because the plans reflect compliance with applicable laws, or it is invalidly issued because it reflects a non-compliance; and

WHEREAS, finally, DOB asserts that Z.R. § 11-31(b), which allows modification to plans approved under a prior zoning so long as no non-compliance is created, only applies to applications for a right to continue construction brought under 11-311 or 11-312, not to applications under the common law; and

WHEREAS, the Board agrees with DOB's position as set forth above; and

WHEREAS, additionally, the Board has reviewed the appellant's argument that the discrepancy in original street wall setback could be deemed compliant after due consideration of average setback distance and front yard area and finds it unpersuasive in that there is no basis in law for accepting an average of setback distances when there is an obvious non-compliance with the setback at some measurements; and

WHEREAS, DOB acknowledges that the plans associated with the Foundation Permit may now be corrected and the permit reinstated; however, any reinstatement must comply with the new zoning, as per

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Building Code Section 27-196; and

WHEREAS, Building Code Section 27-196 provides, in sum and substance, that a DOB Borough Commissioner may reinstate a permit, provided that the work shall comply with all relevant laws in effect at the time the application for reinstatement is made; and

WHEREAS, thus, DOB takes the position that all of the work related to the Proposed Development must comply with all zoning requirements under the new R4 zoning district; and

WHEREAS, the Board agrees that a building permit may properly be determined by DOB to have been invalidly issued if it is based upon plans that show a non-compliance; and

WHEREAS, the Board is aware that under the common law of the State of New York, a claim of vested rights can not be supported by work performed under an invalidly issued permit; and

WHEREAS, specifically, the Board is aware that in *Jayne Estates v. Raynor*, 293 N.Y.S.2d 75 (1968), the Court of Appeals plainly stated that vested rights are not acquired “where one builds in reliance on an invalid permit”, citing to two earlier Court of Appeals decisions; and

WHEREAS, other decisions, including *Albert v. Board of Standards and Appeals of the City of New York*, 454 N.Y.S.2d 108 (1982), have applied this principle to determinations of the Board; and

WHEREAS, the Board is bound by the precedent established by these and similar decisions; and

WHEREAS, the Board concludes that, notwithstanding the degree of excavation and foundation work performed under the invalidly issued Foundation Permit, no vested right to continue construction at the site under the R6 zoning has accrued to the Developer; and

WHEREAS, in sum, the Board agrees with DOB that: (1) the effective time of the subject rezoning, or any other rezoning, is the time of the vote of the City Council, which renders the NB Permit untimely and therefore invalid; and (2) the Developer has failed to meet the common-law standard for vested rights, as the Foundation Permit was invalidly issued.

*Therefore it is Resolved*, that this appeal is hereby denied and the final determination of the New York City Department of Buildings, dated December 27, 2004, is hereby upheld, and the application for the right to continue construction under Foundation Permit No. 200869024-01-FO, under a theory of common law vested rights, is hereby denied.

Adopted by the Board of Standards and Appeals,

August 9, 2005

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**21-05-A**

APPLICANT -Rampulla Associates Architects, for Geraldo Campitiello, owner.

SUBJECT - Application February 4, 2005 - Proposed addition to an existing banquet hall, which will be located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED -2380 Hylan Boulevard, south side of Otis Avenue, Block 3904, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Philip Rampulla.

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

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 1, 2005, acting on Department of Buildings Application No. 500751411, reads:

“1. The proposed extension of the Banquet Hall on Otis Avenue located in the bed of a mapped street that is contrary to General City Law 35 and therefore shall be referred to the Board of Standards and Appeals; and

WHEREAS, a public hearing was held on this application on July 19, 2005, after due notice by publication in the *City Record*, and then to August 9, 2005 for decision; and

WHEREAS, by letter dated March 10, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 11, 2005 the Department of Environmental Protection has reviewed the above project and has no objections; and

WHEREAS, by letter dated May 4, 2005, the Department of Transportation has reviewed the above project, and has advised the Board that the approval of the applicant’s request would place an obstacle to future reconstruction of the street; and

WHEREAS, the applicant contends that the widening of Otis Avenue to its full width would require the removal of sixteen trees which are under the jurisdiction of the Department of Parks; and

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WHEREAS, the applicant has submitted a letter from the Borough Commissioner of Department of Parks dated April 4, 2005 requesting that the trees be preserved and not removed from the site; and

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

*Therefore it is Resolved*, that the decision of the Staten Island Borough Commissioner, dated February 1, 2005, acting on Department of Buildings Application No. 500751411, is modified under the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received June 13, 2005"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 22-05-A

APPLICANT – Dennis Dell’ Angelo, President for Pleasant Plains, Richmond Valley, Civic Association for Joseph Galante, owner.

SUBJECT – Application February 7, 2005 – An appeal challenging the Department of Buildings’ (“DOB”) decision that approved and permitted the building of two (2) houses on a lot containing less than the required square footage as zoned for in the Special South Richmond District (“SSRD”), also this appeals is seeking to reverse the DOB’s decision not to enforce §107-42 of the SSRD within NYC Zoning Resolution.

PREMISES AFFECTED – 5728 Amboy Road and 3 Haynes Street, southeast corner, Block 6654, Lot 9, Borough of

Staten Island.

## COMMUNITY BOARD #3S.I.

APPEARANCES –

For Applicant: Dennis Dell’ Angelo.

For Administration: Janine Gaylard, Department of Buildings.

**ACTION OF THE BOARD** - Application denied.

THE VOTE TO GRANT -

Affirmative Commissioner Chin:.....1

Negative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Miele:.....3

THE RESOLUTION -

WHEREAS, the instant appeal comes before the Board in response to a determination of the Staten Island Borough Commissioner, dated January 20, 2005, to rescind a notice of intent to revoke an approval and permit for work issued to the subject premises, and lift a Stop Work Order on the premises; and

WHEREAS, a public hearing was held on this appeal on April 19, 2005 after due notice by publication in the *City Record*, with a continued hearing on June 14, 2005, and then to decision on August 9, 2005; and

WHEREAS, the appellant is the Pleasant Plains, Prince’s Bay, Richmond Valley Civic Association, represented by Dennis Dell’ Angelo, the President; and

WHEREAS, Councilmember Andrew J. Lanza and the Staten Island Borough President appeared at hearing and submitted materials supporting the appeal; and

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

WHEREAS, the Staten Island Chapter of the American Institute of Architects and the Building Industry Association of New York recommend disapproval of this appeal; and

WHEREAS, the appellant contests the decision of the Staten Island Borough Commissioner to allow the construction of two residences on the premises based upon specific language in Z.R. §107-42, which states that “[a]ll residences permitted by the underlying district regulations shall comply with the minimum lot area and lot width requirements which shall vary with the building height as set forth in Table A [of Z.R. §107-42];” and

WHEREAS, the subject premises is located in an R3X zoning district in the Special South Richmond Development District (“SSRDD”); and

WHEREAS, the premises has a lot area of 7,500 sq. ft. and

WHEREAS, the owner of the property intends to construct two, two-story homes on the premises; and

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the addresses assigned to separate tax lots, but are located on one zoning lot; and

WHEREAS, on December 14, 2004, the Department of Buildings (“DOB”) issued a New Building Permit No. 500744885-01-NB for 5728 Amboy Road for the construction of a single-family house, and on December 21, 2004, DOB issued a second New Building Permit No. 500744894-01-NB for 3 Haynes Street for the construction of a single-family house; and

WHEREAS, on December 22, 2004, DOB issued objections in connection with an audit of the applications; one of the objections stated that “the proposed two buildings in a zoning lot is contrary to Section 107-42 ZR and Table A in the South Richmond Special District;” and

WHEREAS, the owner responded to the DOB objections on December 23, 2004, and stated, in relevant part, “There is no restriction and never has been a restriction to multiple buildings on a single zoning lot. The referenced chart is for new subdivisions of zoning lots not tax lots. This proposed project is on an existing zoning lot and (2) new tax lots;” and

WHEREAS, DOB issued a Stop Work Order on January 7, 2005; such Stop Work Order was lifted on January 20, 2005 by the letter that is the subject of this appeal; and

WHEREAS, the appellant argues that the portion of Z.R. §107-42 that states that “[a]ll residences permitted by the underlying district regulations shall comply with the minimum lot area and lot width requirements” set forth in Table A means that each residence built on the premises must comply with the minimum lot area requirements; and

WHEREAS, Table A of Z.R. §107-42 sets forth a minimum lot area of 3,800 sq. ft. for buildings with heights of one-to-two stories in an R3X zoning district; and

WHEREAS, the appellant contends that to build two residences on the premises, the zoning lot would have to be at least 7,600 sq. ft; because the premises has a lot area of 7,500 sq. ft., the appellant believes that only one residence can be constructed on the premises; and

WHEREAS, DOB argues that the owner can build more than one residence on the lot since the zoning lot meets the minimum lot area of 3,800 sq. ft. as set forth in Table A; DOB further states that the appellant is incorrectly interpreting the words “all residences” to mean “each residence;” and

WHEREAS, the Board finds that despite the appellant’s claims to the contrary, the plain meaning of the words “all

WHEREAS, the Board, in interpreting the text of the Zoning Resolution, is guided by New York legislation found in McKinney’s Cons. Laws of N.Y., Book 1, Statutes §97, which states that “[a] statute or legislative act is to be construed as a whole, and all parts of an act are to be read and construed together to determine the legislative intent;” and

WHEREAS, a comment to McKinney’s Statutes §97 clarifies that the intention of the statutory language “is to be found not in the words of a particular section alone but by comparing it with other parts or provisions of the general scheme of which it is part;” and

WHEREAS, the Board is further guided by case law in which New York courts have upheld previous interpretations of the Zoning Resolution by the Board, in part, because the Board viewed the Zoning Resolution as a whole, rather than just relying on the text of the ambiguous section (*see* Matter of Lee v. Chin, 1 Misc. 3d 901(A) at \*16 (1<sup>st</sup> Dept 2003); and

WHEREAS, in reviewing relevant sections of the Zoning Resolution, the Board specifically notes the following provisions:

- (1) 12-10, “Lot Area,” which defines lot Section area as the area of a zoning lot;
- (2) Section 12-10, “Residence, or residential,” which defines residence, in part, as a building or a part of a building containing dwelling units or rooming units, including one-family or two-family houses, multiple dwellings, boarding or rooming houses, or apartment hotels;
- (3) Section 12-10, “Zoning lot,” which defines zoning lot, in part, as a lot of record existing on December 15, 1961;
- (4) Section 23-32, “Minimum Lot Area or Lot Width for Residences,” which provides that “[i]n all districts...no residence is permitted on a zoning lot with a total lot area or lot width less than as set forth in the following table;”
- (5) Section 107-63, “Minimum Distance Between Buildings,” which provides, in part, that “[f]or any residential development, the City Planning Commission may authorize the location of buildings, on a single zoning lot without regard for spacing between buildings regulations, provided [certain conditions are met];” and

WHEREAS, the appellant notes that Z.R. §23-32 states that “no residence is permitted on a zoning lot with a total lot area or lot width” less than that set forth on the attached

table; and

WHEREAS the introduction to Z.R. §107-42 states that “all residences ... shall comply with the minimum lot area

there is a different minimum lot area requirement for buildings with different heights (unlike Z.R. §23-32), each residence must have a different minimum lot area

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and lot width requirements” set forth in Table A; and

WHEREAS, the appellant contends that because of the differences in wording between Z.R. §107-42 and Z.R. §23-32 – specifically the omission of the words “zoning lot” from Z.R. §107-42 – the minimum lot area requirements in Z.R. §107-42 apply only to a portion of the zoning lot, that is, the portion that the residence is being built upon; and

WHEREAS, the Board notes that the appellant’s interpretation is contrary to the definition of lot area found in §12-10 of the Zoning Resolution, which states that lot area is the area of a zoning lot, not the area of a portion of the zoning lot where a residence is being built; and

WHEREAS, the appellant argues that Z.R. §12-10 defines lot area as the area of a zoning lot and not the total area of an entire zoning lot; and

WHEREAS, the Board does not find appellant’s distinction compelling, and concludes that lot area as defined is the area of an entire zoning lot notwithstanding the absence of the word “total” from the definition; in addition, the Board notes that throughout the text of the Zoning Resolution “lot area” is used in reference to the total area of the entire lot; and

WHEREAS, DOB stated at hearing that it is the practice of DOB to interpret lot area as the total area of the entire zoning lot; and

WHEREAS, DOB states that the words “all residences” in Z.R. §107-42 refer to all building types included within the category of residential development that may be built on a minimum-sized zoning lot, including single-family, two-family, general residence, detached, semi-attached or attached; and

WHEREAS, in addition, DOB states that the words “all residences” are intended to show that Z.R. §107-42 regulates residential development and not commercial or community facility buildings; and

WHEREAS, therefore, DOB argues that when Z.R. §107-42 provides that “all residences” must comply with the minimum lot area requirements, this means that all types of residences must comply and not that each residence must comply, as asserted by the appellant; and

WHEREAS, the appellant also argues that because

requirement depending upon the height of the building; and

WHEREAS, DOB states that if only one residence were allowed to be built on a zoning lot meeting the minimum lot area requirement, then there would be no reason for the City Planning Commission (“CPC”) to include Z.R. §107-63, which allows CPC to modify the minimum distance requirements between buildings on single zoning lots in certain cases; and

WHEREAS, the appellant states that more than one building can be built on a zoning lot so long as each residence meets the minimum lot area requirement; and

WHEREAS, the Board notes that Z.R. §107-42 specifically regulates the number of buildings on a zoning lot where the zoning lot has less than the minimum required lot area or lot width as prescribed in Table A and was owned separately and individually from all other adjoining tracts of land on the date of the adoption of the SSRDD regulations and on the date of application for a building permit; and

WHEREAS, the appellant also points to the legislative history of the SSRDD regulations to support its position; the appellant states that the purpose of the regulations was to restrict density and control development in the area, and, accordingly, Z.R. §107-42 is intended to be more restrictive than Z.R. §23-32; and

WHEREAS, DOB states that population and building density is addressed by Z.R. §107-42, which provides, “In all cases, the density regulations of the applicable district shall remain in effect;” therefore, the density allowed at the premises is regulated by the provisions for “lot area per dwelling unit” and “lot area per room” found in Z.R. §23-22; and

WHEREAS, the Board notes that within the SSRDD the minimum lot area requirements in Z.R. §107-42 supersede, and are more restrictive than, those in Z.R. §23-32; for example, generally in an R3X district, the minimum lot area for developing single- or two-family detached residences is 3,325 sq. ft. and the minimum lot width is 35 ft.,

WHEREAS, in an R3X district in the SSRDD, the minimum lot area requirement for developing detached one-to-two story residences is 3,800 sq. ft. and the minimum lot width is 40 ft.; and

WHEREAS, DOB also argues that, based upon its review of the legislative history, the purpose of the SSRDD

regulations was not solely to control development in the area, but to create an open space network consisting of existing parks and a waterfront pedestrian waterway; and

WHEREAS, the Board is further guided by McKinney’s Statutes §179, which states that when judges interpret an ambiguous statute, they are “often aided by the way the statute is interpreted by those administering it, and a long continued course of action by an executive or administrative officer may be entitled to great weight unless

work issued to the subject premises, and to lift a Stop Work Order on the premises, is hereby denied.

Adopted by the Board of Standards and Appeals, August 9, 2005.

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manifestly wrong;” and

WHEREAS, the Board recognizes DOB’s position on the subject appeal, and finds the arguments set forth by DOB to be persuasive and consistent with its past practice and interpretation; and

WHEREAS, the Board further notes that the Department of City Planning, the drafters of the text at issue in this appeal, submitted a letter in support of DOB’s interpretation of the Zoning Resolution, and specifically stated that neither Z.R. §107-42 nor Z.R. §23-32 apply the minimum lot area and lot width requirements to each residence, as appellant contends; and

WHEREAS, the Board has reviewed the aforementioned sections of the Zoning Resolution together with the disputed section, and analyzed the textual and legislative arguments set forth by the appellant and DOB;

WHEREAS, based upon its review of the text of the Zoning Resolution, the Board concludes that Z.R. §107-42 does not require that each residence on a zoning lot meet the minimum lot area requirement; and

WHEREAS, based upon its review of the legislative history, the Board further finds that the legislative material does not speak specifically to the issue of whether Z.R. §107-42 requires the interpretation set forth by the appellant; and

WHEREAS, in conclusion, the Board agrees with DOB and finds that the owner is entitled to construct more than one residence on the lot since the zoning lot meets the minimum lot area requirement of 3,800 sq. ft., so long as DOB determines that the owner complies with other applicable zoning provisions, such as density and minimum distance between buildings; and

*Therefore it is Resolved*, that the subject application, seeking a reversal of the determination of the Staten Island Deputy Borough Commissioner, dated January 20, 2005, to rescind a notice of intent to revoke an approval and permit for

### 140-05-A

APPLICANT – Gary Lenhart, R.A., for the Breezy Point Cooperative, owner; Loretta & Tom Kilkenny, owners.

SUBJECT – Application June 7, 2005 – Proposed enlargement of an existing one family dwelling, not fronting on a legally mapped street, and has an upgrade existing private disposal system situated partially in the bed of the service road, is contrary to Section 36, Article 3 of the General City Law and Department of Buildings Policy.

PREMISES AFFECTED – 29 Queens Walk, east side, 217.19’ north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

#### APPEARANCES –

For Applicant: Gary Lenhart.

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

#### THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

#### THE RESOLUTION -

WHEREAS, the decision of the Queens Borough Commissioner, dated May 11, 2005, acting on Department of Buildings Application No. 402100908, reads:

“A-1 The Street giving access to the existing building to be altered is not duly placed on the official map of the City of New York, Therefore:

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

B) Existing dwelling to be altered does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291 of the Administrative Code of the City of New York.

A-2 The proposed upgraded private disposal system is in the bed of the service lane contrary to Department of Buildings Policy;" and

WHEREAS, a public hearing was held on this application on August 9, 2005, after due notice by publication in the *City Record*, and then to closure and decision on August 9, 2005;

**231-04-A**

APPLICANT – Joseph P. Morsellino, Esq., for Chri Babatsikos and Andrew Babatsikos, owners.

SUBJECT – Application June 17, 2004 – Proposed one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law. PREMISES AFFECTED - 240-79 Depew Avenue, corner of 243<sup>rd</sup> Street, Block 8103, Lot 5, Borough of Queens.

**COMMUNITY BOARD#11Q**

APPEARANCES –

For Applicant: Joseph Morsellino.

For Opposition: William Sievers, Joseph Hellmann and Peter Segel.

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and

WHEREAS, by letter dated June 21, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

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

*Therefore it is Resolved*, that the decision of the Queens Borough Commissioner, dated May 11, 2005, acting on Department of Buildings Application No. 402100908, is modified under 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 June 7, 2005"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, August 9, 2005.

**ACTION OF THE BOARD** - Laid over to September 27, 2005, at 10 A.M., for continued hearing.

**313-04-A**

APPLICANT – Sheldon Lobel, P.C., for Angella Blackwood, owner.

SUBJECT – Application September 16, 2004 – Proposed enlargement of an existing two story, single family residence, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law. PREMISES AFFECTED – 132-02 Hook Creek Boulevard, southwest corner of 132<sup>nd</sup> Avenue, Block 12981, Lot 117, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES –

For Applicant: Zara Fernandes.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

**ACTION OF THE BOARD** - Laid over to August 23, 2005, at 10 A.M., for decision, hearing closed.

**365-04-A thru 369-04-A**

APPLICANT – Petraro & Jones, LLP, for Sunrise Hospitality, LLC, owner.

SUBJECT – Application November 22, 2004 – Proposed construction, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law PREMISES AFFECTED –

85-04 56<sup>th</sup> Avenue, south side, 44.16' east of Long Island Railroad right-of-way, Block 2881, Tentative Lot 9, Borough of Queens.

85-02 56<sup>th</sup> Avenue, south side, east of and adjacent to Long Island Railroad right-of-way, Block 2881, Tentative Lot 54, Borough of Queens.

85-01 57<sup>th</sup> Avenue, north side, east of and adjacent to Long Island Railroad right-of-way, Block 2881, Tentative Lot 53, Borough of Queens.

85-03 57<sup>th</sup> Avenue, north side, 10.62' east of Long Island Railroad right-of-way, Block 2881, Tentative Lot 52, Borough of Queens.

85-03-A 57<sup>th</sup> Avenue, north side, 30.62' east of Long Island Railroad right-of-way, Block 2881, Tentative Lot 51, Borough of Queens.

**COMMUNITY BOARD #4Q**  
APPEARANCES –

**212-04-BZ**

APPLICANT - Rampulla Associates Architects, for G.A.C. Caterers, Inc., owner.

SUBJECT - Application May 21, 2004 - under Z.R. §72-21 to permit the proposed erection and maintenance of a cellar and two (2) story photography and video studio, Use Group 6, located in an R3-2 zoning district, which is contrary to Z.R. §22-10.

PREMISES AFFECTED - 2360 Hylan Boulevard, a/k/a 333 Otis Avenue, between Otis and Bryant Avenues, Block 3905, Lot 17, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES -

For Applicant: Philip Rampulla.

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

**THE VOTE TO GRANT** -

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For Applicant: Pat Jones.

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 22, 2004, acting on DOB Application No. 500680818 reads, in pertinent part:

**THE VOTE TO CLOSE HEARING** -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

**ACTION OF THE BOARD** - Laid over to August 23, 2005, at 10 A.M., for decision, hearing closed.

“1. The proposed cellar and two story commercial building within an R3-2 Zoning District is not permitted as per Section 22-10 Z.R.”; and

WHEREAS, a public hearing was held on this application on March 15, 2005 after due notice by publication in *The City Record*, with continued hearings on May 24, 2005 and July 19, 2005, and then to decision on August 9, 2005; and

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

WHEREAS, Community Board 2, Staten Island, and the Staten Island Borough President recommend approval of this application; and

WHEREAS, neighbors to the subject premises appeared at the hearing in opposition to this application; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, in an R3-2 zoning district, the erection and maintenance of a two-story with cellar commercial building for a photography and video studio, contrary to Z.R. §22-10; and

WHEREAS, the subject zoning lot is located on the

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*Pasquale Pacifico, Executive Director.*

Adjourned: 11:19 A.M.

**REGULAR MEETING**  
**TUESDAY AFTERNOON, AUGUST 9, 2005**  
**2:00 P.M.**

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Miele and Commissioner Chin.

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**ZONING CALENDAR**

southeast side of Hylan Boulevard between Otis Avenue and Bryant Avenue, and has a total lot area of approximately 5,690 sq. ft.; and

WHEREAS, the site is a corner lot with 60 ft. of frontage on Hylan Boulevard and 96 ft., 17 in. of frontage on Otis Avenue; and

WHEREAS, the applicant states that Hylan Boulevard is a six-lane arterial street, mapped at a width of 100 ft; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (i) location on a six-lane arterial street which is a major commercial thoroughfare; (ii) one of the few residentially-zoned corner lots located on such arterial street in the surrounding area; and (iii) location near many commercial uses, including one across the street; and

WHEREAS, the applicant has submitted a land use map that shows that there is a C2-1 zoning district across from the site on both Hylan Boulevard and Otis Avenue; and

WHEREAS, the land use map also reflects that areas near the site, specifically at the intersection of New Dorp Lane and Hylan Boulevard, are zoned C4-2 and C8-1; and

WHEREAS, the applicant represents that directly across

regulations would not yield the owner a reasonable return, namely because of the size of the parcel and the limited potential for on-site parking after development as well as limited street parking near the site; and

WHEREAS, the Board asked the applicant to revise its analysis of a medical building as a community facility doctor's office, to comply with the recently revised community facility text amendment; the applicant concluded that such proposal would still not result in a reasonable rate of return; and

WHEREAS, at the request of the Board, the applicant analyzed other conforming scenarios, including: (i) two detached, two-family homes; (ii) two one-family semi-detached homes; and (iii) a multiple dwelling; and

WHEREAS, the applicant revised its feasibility study and concluded that the additional conforming scenarios would not result in a reasonable rate of return; and

WHEREAS, the Board inquired as to whether the site had been marketed for conforming uses; and

WHEREAS, the applicant submitted a letter from a real estate broker indicating that the property was unsuccessfully marketed from May 2003 through August 2003; and

WHEREAS, therefore, the Board has determined that because of the subject lot's unique physical conditions there is

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from the site, on Hylan Boulevard, zoning district amendments were made to rezone Blocks 3644 and 3617 from residential to commercial; and

WHEREAS, the applicant has also submitted a land use map that indicates that the site is one of only three residential corner lots with frontage on Hylan Boulevard for a .86-mile radius around the site; and

WHEREAS, the land use map also reflects that out of 30 linear blocks surrounding the site along Hylan Boulevard, 27 of those blocks are fully built out with commercial uses; and

WHEREAS, the applicant states that these factors act together to make the site unmarketable for conforming uses; and

WHEREAS, the Board finds that, when considered in the aggregate, the factors stated above create unnecessary hardship and practical difficulties in strictly conforming with the applicable use provisions of the Zoning Resolution; and

WHEREAS, the applicant submitted a feasibility study that contemplates use of the existing building as a conforming medical building and two conforming semi-detached homes; and

WHEREAS, the study indicates that developing the premises in conformance with applicable district use

no reasonable possibility that development in strict conformity with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood, and that a commercial use on the site is compatible with the uses in the surrounding neighborhood; and

WHEREAS, the applicant submitted a land use map that reflects that the areas to the northeast, east and southeast of the site are zoned for commercial uses; and

WHEREAS, the applicant represents that directly across from the site on Otis Avenue is a catering hall that is owned by the same owners as the subject site; the proposed use on the site will be used in conjunction with the events held at the catering hall; and

WHEREAS, the applicant notes that the proposed development complies with most of the R3-2 bulk regulations, including F.A.R. and total height; and

WHEREAS, at the request of the Board, the applicant modified the application to include a 10 ft. front yard on Hylan Boulevard and a 10 ft. front yard on Otis Avenue; and

WHEREAS, the initial application included a second floor balcony and an outdoor wedding garden; at the request of the neighbors who live to the rear of the site, the balcony and

garden have been removed; and

WHEREAS, the applicant has also agreed to provide landscaping with trees and buffer planting on the portions of the site that border residential properties; and

WHEREAS, the applicant proposes to have six parking spaces on site, three of which will be used by employees; and

WHEREAS, the Board questioned whether there would be sufficient parking for clients of the studio; and

WHEREAS, the applicant represents that there will only be two appointments scheduled at any one time; and the applicant further represents that any additional clients will be able to utilize the parking lot of the catering hall across the street because the owner of the studio also owns the catering hall; and

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; 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 617.4, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under Z.R. § 72-21, to permit, in an R3-2 zoning district, the erection and maintenance of a two-story plus cellar commercial building for a photography and video studio, contrary to Z.R. § 22-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 28, 2005"—(3) sheets; and *on further condition*:

THAT the hours of operation shall be 9AM to 7 PM, Monday through Thursday, 9 AM to 9 PM, Friday and Saturday, and 9 AM to 5 PM on Sunday;

THAT the use on the site shall be restricted to a video and photography studio;

THAT no photography shall take place outside of the building;

THAT clients of the studio will be told to either park behind the employee cars in the on-site parking lot or park across the street in the Excelsior Grand parking lot when they come in for their appointments;

THAT a sign shall be posted in the studio's parking lot

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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. 04-BSA-209R, dated June 16, 2004; and

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

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

which will read "Additional Parking is available across the street in the Excelsior Grand parking lot;"

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

THAT the maximum floor area ratio for the studio shall be 0.54 and the maximum total building height shall be 22';

THAT all signage shall conform to C1 signage requirements;

THAT landscaping shall be provided as indicated on the BSA-approved plans;

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

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

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

Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 9, 2005.

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**12-05-BZ**

APPLICANT – Eric Palatnik, P.C., for Dina Horowitz, owner.

SUBJECT – Application January 21, 2005 – under Z.R. §73-622 for an enlargement to a single family home to vary sections Z.R. §23-141 for floor area, Z.R. §23-461 for side yards and Z.R. §23-47 for rear yard. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 1662 East 28<sup>th</sup> Street, between Quentin Road and Avenue “P”, Block 6790, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 27, 2004, acting on Department of Buildings Application No. 301874531, reads, in pertinent part:

“Respectfully request denial for Board of Standards and Appeals.

1. ZR 23-461 – In R3-3 two side yards are required with a total width of 13’ and the minimum width of any side yard shall be 5’.
2. ZR 23-141 – The floor area ratio shall not exceed 0.5.
3. ZR 23-47 – The rear yard shall have a minimum depth of 30’ continuous;” and

WHEREAS, a public hearing was held on this application on June 14, 2005 after due notice by publication in *The City Record*, with a continued hearing on July 26, 2005, and then to decision on August 9, 2005; and

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

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

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the

proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio, side yards and rear yard, contrary to Z.R. §§ 23-141, 23-461 and 23-47; and

WHEREAS, the subject lot is located on East 28<sup>th</sup> Street, between Quentin Road and Avenue P; and

WHEREAS, the subject lot has a total lot area of approximately 5,000 sq. ft.; and

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

WHEREAS, the applicant states that the subject premises is improved upon with an existing single-family home; and

WHEREAS, the applicant seeks an increase in the floor area from 2,354 sq. ft. (0.47 Floor Area Ratio or “FAR”) to 3,368 sq. ft. (0.67 FAR); the maximum floor area permitted is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will maintain one existing non-complying side yard of 3’-7”, which does not comply with the 5’ minimum side yard requirement; and

WHEREAS, the proposed enlargement will also maintain the other existing complying side yard of 9’, which, when aggregated with the other side yard dimension, does not comply with the 13’ total side yard requirement; and

WHEREAS, the enlargement into the side yard does not result in a decrease in the existing minimum width of open area between the building and the side lot line; and

WHEREAS, the proposed enlargement will reduce the existing non-complying rear yard from 29.5’ to 20’; the minimum rear yard required is 30’-0”; and

WHEREAS, the enlargement of the building into the rear yard is not located within 20’ of the rear lot line; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 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 Z.R. §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the

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proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio, side yards and rear yards, contrary to Z.R. §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received July 12, 2005"-(6) sheets and "August 9, 2005" - (1) sheet; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the total FAR on the premises, including the attic, shall not exceed 0.67;

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

THAT the use and layout of the cellar 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 objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 15-05-BZ

APPLICANT – Friedman & Gotbaum, LLP, by Irving J. Gotbaum, for West 20th Street Realty, LLC, owner.

SUBJECT - Application January 27, 2005 – under Z.R. §72-21 to permit the proposed construction of a seven-story 64.5' residential building, located in an R8B zoning district, which exceeds the permitted height of 60', which is contrary to Z.R. §23-692.

PREMISES AFFECTED – 209 West 20<sup>th</sup> Street, north side, 141' west of Seventh Avenue, Block 770, Lot 33, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES –

For Administration: Lori Cuisiner.

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

## THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 24, 2005, acting on Department of Buildings Application No. 103430529, reads:

“Proposed penthouse penetrates special height limitation of 60’ (width of abutting street) contrary to ZR 23-692;” and

WHEREAS, a public hearing was held on this application on May 17, 2005, after due notice by publication in *The City Record*, and July 12, 2005, and then to decision on August 9, 2005; and

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

WHEREAS, Community Board 4, Manhattan, recommends disapproval of this application; and

WHEREAS, certain neighbors of the site appeared in opposition to this application; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R8B zoning district, the proposed construction of a seven-story, 64’- 6” high residential building, which exceeds the permitted height of 60’, contrary to Z.R. §23-692; and

WHEREAS, the subject premises is situated on the north side of West 20<sup>th</sup> Street, 141 feet west of the corner formed by the intersection of Seventh Avenue and West 20<sup>th</sup> Street; and

WHEREAS, the site has a total lot area of 2,308.5 sq. ft., and is 25 ft. wide and 81 ft. deep; and

WHEREAS, the applicant proposes to develop the site with a seven-story, 64’ – 6” high, 12-unit residential rental building, with 7,990 sq. ft. of floor area and a Floor Area Ratio (FAR) of 4.0, which is the maximum permitted; and

WHEREAS, the seventh story is set back approximately 20 ft. at 55’-6” and the street wall is 59 ft. high; and

WHEREAS, because the height exceeds 60 ft. (the permitted maximum) by approximately four feet, a height waiver is requested; and

WHEREAS, the site had formerly been occupied by an obsolete one-story garage, and was then vacant; construction at the site has already commenced pursuant to a building permit based upon plans showing an as-of-right development; and

WHEREAS, the applicant states that the following is a unique physical condition inherent to the site, which creates practical difficulties and/or unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site is both narrow and shallow, and thus can not accommodate an as-of-right development that uses available floor area in a feasible manner while still

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complying with applicable yard requirements and Building Code requirements for elevator cores; and

WHEREAS, the applicant argues that because of the shallowness of the site and the requirement for a 30' rear yard, the only way to use available floor area and realize a reasonable return is to construct a seven-story building at a height slightly higher than is allowed; and

WHEREAS, however, with only six floors, available floor area could not be fully utilized, resulting in an infeasible development; and

WHEREAS, a six floor development using available floor area would only be feasible if the lot was 100 ft. in depth; and

WHEREAS, the applicant also notes that the size of the lot leads to a complying development that is only 23'-8" in width, with usable floor area further reduced by the application of certain Building Code requirements for new construction; and

WHEREAS, the applicant states that the height waiver allows the development to use available floor area through the addition of one more unit at a setback seventh floor, which, as discussed further below, will increase revenue sufficiently to provide a reasonable return on investment; and

WHEREAS, the Board acknowledges that the shallowness of the lot creates a practical difficulty in developing the site with a building that utilizes available floor area while still complying with rear yard and lot coverage requirements; and

WHEREAS, accordingly, the Board finds that the aforementioned unique condition creates a practical difficulty in developing the site in compliance with the applicable zoning provision; and

WHEREAS, the applicant submitted an initial feasibility study that analyzed a fully complying building, which was a six-story, eleven rental unit, 55'-6" high building, with a total FAR of 3.6; and

WHEREAS, the applicant concluded that such a development would not realize a reasonable return, as the building form, although complying in terms of height, would not allow utilization of available FAR; and

WHEREAS, at hearing, opposition suggested that an as-of-right condominium scenario would be feasible; and

WHEREAS, in response, the applicant submitted a full analysis of a five-story condo building, with a unit per floor and sufficient ceiling heights to make the units attractive to potential purchasers; the applicant stated that the need to provide such ceiling heights reduces a complying building to five stories, with an attendant decrease in sellable floor area; and

WHEREAS, the applicant concluded that a five-story condo building, because of the diminished use of available floor area, would not realize a reasonable return; and

WHEREAS, the applicant also analyzed a six-story condo building scenario, with a unit per floor, but with ceiling heights lower than what would be acceptable for a marketable condo unit; available floor area also could not be fully

accommodated; this scenario was also deemed to be infeasible; and

WHEREAS, the Board agrees that neither scenario is viable; and

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

WHEREAS, the applicant states that the height of the proposed building is consistent with the surrounding buildings; and

WHEREAS, the applicant represents that seven-story buildings are located directly north and west of the site, and that the subject block contains residential buildings ranging from three to six stories; and

WHEREAS, the applicant has also submitted elevations of the adjacent buildings, showing the relation between the premises and the neighboring properties; and

WHEREAS, the Board has reviewed the above representations and supporting submissions, and agrees that the proposed height of the building is compatible with the surrounding buildings; and

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

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. § 72-21, to permit, within an R8B zoning district, the proposed construction of a seven-story 64'- 6" high residential building, which exceeds the permitted height of 60', contrary to Z.R. §23-692; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "July 25, 2005"- (8) sheets; and *on further condition*;

THAT the total height of the building, and all other height measurements, shall be as indicated herein and on the BSA-approved plans;

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

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

THAT the approved plans shall be considered approved

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only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 31-05-BZ

APPLICANT - The Law Office of Fredrick A. Becker, for Larry Warren, owner.

SUBJECT - Application April 28, 2005 - under Z.R. §73-622 to permit the enlargement to a single family home to vary sections ZR 23-141 floor area, ZR 23-461 for side yards and ZR 23-631 for perimeter wall height. The premise is located in an R2X (OP) zoning district.

PREMISES AFFECTED - 1897 East Second Street, between Billings Place and Colin Place, Block 6681, Lot 211, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES -

For Applicant: Lyra Altman.

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

**THE VOTE TO GRANT** -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

**THE RESOLUTION** -

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 27, 2005, acting on Department of Buildings Application No. 301874504, reads:

1. Proposed plans are contrary to ZR 23-141 in that it exceeds the maximum permitted floor area ratio of 85%.
2. Proposed plans are contrary to ZR 23-461 in that the proposed total side yards are less than the minimum 10'-0".
3. Proposed plans are contrary to ZR 23-631 in that it exceeds the maximum permitted perimeter wall height of 21'-0";and

WHEREAS, a public hearing was held on this application on July 19, 2005 after due notice by publication in *The City Record*, and then to decision on August 9, 2005; and

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

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

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R2X zoning district in the Special

Ocean Parkway District, the proposed enlargement of an existing one-family dwelling, which does not comply with the zoning requirements for floor area ratio, side yards and perimeter wall height, contrary to Z.R. §§ 23-141, 23-461 and 23-631; and

WHEREAS, the subject lot is located on East 2nd Street between Billings Place and Colin Place, and has a total lot area of approximately 3,000 sq. ft.; and

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

WHEREAS, the applicant states that the subject premises is improved upon with an existing two-story residential structure; and

WHEREAS, the applicant seeks an increase in the floor area from 2,480 sq. ft. (0.83 Floor Area Ratio or "FAR") to 3,492 sq. ft. (1.16 FAR); the maximum floor area permitted is 2,550 sq. ft. (0.85 FAR); and

WHEREAS, the proposed enlargement will maintain the existing side yards of 3'-11" and 5'-0", which, when aggregated, do not comply with the 10'-0" total side yard requirement; and

WHEREAS, the enlargement into the side yard does not result in a decrease in the existing minimum width of open area between the building and the side lot line; and

WHEREAS, the proposed enlargement will maintain the existing non-conforming perimeter wall height of 25'-0"; the required maximum wall height is 21'-0"; and

WHEREAS, the applicant believes that because the proposed enlargement does not increase the pre-existing legal non-complying height of the front wall, the objection with respect to perimeter wall height should not have been issued by the Department of Buildings ("DOB"); and

WHEREAS, the Board notes that since the applicant came to the Board with an objection from DOB as to the perimeter wall height of the residence, the applicant must meet the findings set forth in Z.R. §73-622 with respect to perimeter wall height; and

WHEREAS, the applicant represents that the perimeter wall height of the adjacent home is equal to 25'-0";

WHEREAS, at the request of the Board, the applicant has submitted a letter from an architect verifying the same; and

WHEREAS, the proposed enlargement will reduce the rear yard from 21'-10" to 20'-0"; the minimum rear yard required is 20'-0"; and

WHEREAS, the proposed enlargement will increase the total height of the building from 30'-6" to 35'-0"; the maximum total height is 35'-0"; and

WHEREAS, the Board finds that the proposed enlargement will not alter the essential character of the surrounding neighborhood, nor will it impair the future use and development of the surrounding area; and

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

WHEREAS, the Board finds that, under the conditions

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

WHEREAS, therefore the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 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 617.13 and §§5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§ 73-622 and 73-03, to permit, in an R2X zoning district in the Special Ocean Parkway District, the proposed enlargement of an existing one-family dwelling, which does not comply with the zoning requirements for floor area ratio, side yards and perimeter wall height, contrary to Z.R. § 23-141, 23-461 and 23-631; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received April 28, 2005"- (8) sheets and "June 20, 2005"-(1) sheet; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the total F.A.R. on the premises, including the attic, shall not exceed 1.16;

THAT the total attic floor area shall not exceed 841 sq. ft.;

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

THAT the use and layout of the cellar shall be as approved by the Department of Buildings;

THAT all interior partitions shall be subject to the approval of 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; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 34-05-BZ

APPLICANT - Sheldon Lobel, P.C., for Robert Hakim, owner.

SUBJECT - Application February 24, 2005 - under Z.R. §73-622 to permit the proposed enlargement of an existing one family dwelling, Use Group 1, located in an R3-2 zoning district, which does not comply with the zoning requirements for floor area, open space ratio, also side and

rear yards, is contrary to Z.R. §23-141, §23-461(a) and §23-47.

PREMISES AFFECTED - 1975 East 24th Street, east side, between Avenues "S" and "T", Block 7303, Lot 56, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES -

For Applicant: Richard Lobel.

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

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 28, 2005, acting on Department of Buildings Application No. 301900272, reads:

"Obtain approval from the Board of Standards and Appeals for the following objections:

Proposed floor area is contrary to Z.R. 23-141; proposed open space ratio is contrary to Z.R. 23-141; proposed rear enlargement of the building into non-complying side yard is contrary to Z.R. 23-461(a); and proposed enlargement of the building does not provide minimum 30'-0" rear yard and is contrary to Z.R. 23-47";and

WHEREAS a public hearing was held on this application on July 19, 2005 after due notice by publication in *The City Record*, and then to closure and decision on August 9, 2005; and

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

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

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing one-family dwelling, which does not comply with the zoning requirements for floor area, open space, side yards and rear yard, contrary to Z.R. §§ 23-141, 23-461 and 23-47; and

WHEREAS, the subject lot is located on East 24th Street between Avenues N and T, and has a total lot area of approximately 2,700 sq. ft.; and

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

WHEREAS, the applicant states that the subject premises is improved upon with an existing two-story residential structure; and

WHEREAS, the applicant seeks an increase in the floor area from 1,715 sq. ft. (0.63 Floor Area Ratio or "FAR") to 2,860.2 sq. ft. (1.06 FAR); the maximum floor area permitted is 1,620 sq. ft. (0.60 FAR); and

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WHEREAS, the Board notes that at the request of the Board the applicant reduced its FAR to 1.06 from its initial proposal of 1.12; and

WHEREAS, the applicant proposes to decrease the open space ratio ("OSR") from 0.63 to 0.57; the minimum required OSR is 0.65; and

WHEREAS, the proposed enlargement will maintain the existing side yards of 3'-1 1/2" and 6'-10 1/4", which, when aggregated, do not comply with the 13'-0" total side yard requirement; and

WHEREAS, the enlargement into the side yard does not result in a decrease in the existing minimum width of open area between the building and the side lot line; and

WHEREAS, the proposed enlargement will maintain the existing non-conforming perimeter wall height of 23'-0"; the required maximum wall height is 21'-0"; and

WHEREAS, the applicant represents that the perimeter wall height of the adjacent homes is equal to the proposed perimeter wall height;

WHEREAS, at the request of the Board, the applicant has submitted a letter from an architect verifying the same; and

WHEREAS, the proposed enlargement will reduce the rear yard from 29'-3 1/4" to 20'-0"; the minimum rear yard required is 20'-0"; and

WHEREAS, the proposed enlargement will increase the total height of the building from 31'-0" to 34'-8"; the maximum total height is 35'-0"; and

WHEREAS, the Board finds that the proposed enlargement will not alter the essential character of the surrounding neighborhood, nor will it impair the future use and development of the surrounding area; and

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

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

WHEREAS, therefore the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 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 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing one-family dwelling, which does not comply with the zoning requirements for floor area, open space, side yards and rear yard, contrary to Z.R. §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received July 26, 2005"-(10) sheets; and *on further condition*:

THAT the total F.A.R. on the premises, including the attic, shall not exceed 1.06;

THAT the above condition shall be set forth on the certificate of occupancy;

THAT the use and layout of the cellar shall be as approved by the Department of Buildings;

THAT all interior partitions shall be subject to the approval of 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; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## **64-05-BZ**

APPLICANT - Paul F. Bonfilio, for Patrick & Elizabeth O'Connor, owner.

SUBJECT - Application March 16, 2005 - under Z.R. §72-21 to construct a single family detached residence with less than the required lot area ZR 23-32 and less than the required side yard width ZR 23-461. The vacant lot/site is located in a R1-2 zoning district.

PREMISES AFFECTED - 40 Conyningham Avenue, west side, between Springhill and Castleton Avenues, Block 101, Lot 445, Borough of Staten Island.

## **COMMUNITY BOARD #1SI**

APPEARANCES -

For Applicant: Paul Bonfilio.

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

**THE VOTE TO GRANT** -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

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Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 2, 2005, acting on Department of Buildings Application No. 500753749, reads:

1. 23-32 Z.R. – The proposed construction of a detached one family residence in an R1-2 Zoning District on a Zoning Lot with a width of 50 feet and an area of 5000 square feet is contrary to section 23-32 Z.R.
2. 23-461 Z.R. – The proposed construction of a detached one family residence in an R1-2 Zoning District on a Zoning Lot with side yards totaling less than 20 feet is contrary to section 23-461 Z.R.
3. Therefore the proposed building is referred to the Board of Standards and Appeals;” and

WHEREAS, a public hearing was held on this application on July 19, 2005, after due notice by publication in *The City Record*, and then to decision on August 9, 2005; and

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

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

WHEREAS, this is an application under Z.R. § 72-21, to permit the proposed construction of a single-family detached residence, located in an R1-2 zoning district, which does not comply with the zoning requirements for minimum lot area, lot width, and side yard width, contrary to Z.R. §§ 23-32 and 23-461; and

WHEREAS, the record indicates that the subject premises on the west side of Conyningham Avenue between Springhill and Castleton Avenues, and is currently vacant; and

WHEREAS, the lot has a non-complying total lot area of 5,000 sq. ft. (minimum required lot area is 5,700 sq. ft.) and a non-complying lot width of 50 ft. (minimum required lot width is 60 ft.); and

WHEREAS, the proposal contemplates a non-complying total side yard width of 18 ft. (minimum required is 20 ft.); and

WHEREAS, the proposal contemplates a two-story plus attic and cellar building that will comply with all floor area, front yard and rear yard zoning requirements; and

WHEREAS, the applicant represents that the subject lot (Lot 445) was purchased by James J. Hasson and Mary Lou Hasson together with the adjacent lot (Lot 441) on June 26, 1961; and

WHEREAS, the applicant has submitted a copy of a tax map from 1928 that confirms that Lot 441 and 445 were two separate tax lots as of that date; and

WHEREAS, the applicant also has submitted a copy of the title report issued in connection with the title

insurance policy dated May 4, 1961; the report describes the property as consisting of two separate tax lots, Lot 441 and Lot 445; and

WHEREAS, the applicant represents that the subject lot was conveyed to Mary Lou Hasson on November 7, 1966, wherein she became the sole owner of Lot 445;

WHEREAS, the applicant submitted a deed that reflects that Mary Lou Hasson conveyed Lot 445 to the applicant on January 14, 2005; and

WHEREAS, the applicant represents that when James J. Hasson purchased Lots 441 and 445, Lot 441 was improved with a house and Lot 445 was vacant; and

WHEREAS, the applicant states that Lot 445 has remained vacant since that time and has never been used together with Lot 441; and

WHEREAS, the applicant further represents that Z.R. §23-33, “Special Provisions for Existing Small Lots,” would permit development on the subject narrow lot, except that it contains a condition that states that the narrow lot must have been “owned separately and individually from all other adjoining tracts of land, both on December 15, 1961 and on the date of application for the permit;”

WHEREAS, the applicant represents that Lot 441 and 445 always operated as separate tax lots, and, although the lots were under common ownership on December 15, 1961, the lots have been under separate ownership since November 1966; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties in developing the subject lot in compliance with underlying district regulations: the site is a pre-existing, narrow, undersized, and vacant lot that has historically been used separate and apart from the contiguous property; and

WHEREAS, the Board finds that the aforementioned unique condition creates a practical difficulty in developing the site in compliance with the applicable zoning provision; and

WHEREAS, the applicant states that without the waivers, no residence could be constructed on the property; and

WHEREAS, although the Board recognizes that the subject lot was under common ownership with another lot for a period of five years, the Board notes that the lots have historically been separate tax lots and have never been used together; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical condition, there is no reasonable possibility that development in strict compliance with the applicable zoning requirements will result in any development of the property; and

WHEREAS, the applicant states that the bulk of the proposed building is consistent with the surrounding residential uses; and

WHEREAS, the applicant represents that the rear lot line of the subject property is on the boundary of an R2 zoning district; the applicant notes that the lot width and lot area of the subject property would be complying in an R2

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zoning district; and

WHEREAS, the applicant states that of the 17 lots that face Conyningham Avenue, only 5 lots comply with the R1-2 lot width and lot area requirements; and

WHEREAS, the applicant represents that it will comply with all other zoning requirements including F.A.R., height and setback requirements; and

WHEREAS, the Board questioned whether it was necessary for the applicant to receive a side yard waiver; and

WHEREAS, the applicant explained that if the owner was required to maintain the required side yards, the proposed building would have a floor plate that would be too narrow to accommodate the colonial style house that is prevalent in the neighborhood; and

WHEREAS, the applicant further states that narrowing the house and increasing the size in the rear instead of encroaching into the side yard would not resolve the issue because the proposed building would still be too narrow to support the center hall and staircase; and

WHEREAS, the applicant represents that if the subject lot was recognized as a lawful pre-existing lot, the applicant could utilize the narrow side yard provisions of Z.R. §23-48 that would allow a total side yard width of 16 ft, 8 in. and a minimum side yard of 5 ft.; and

WHEREAS, the applicant notes that the extension into the side yard will be on the side of the house adjacent to the applicant's father-in-law's house; and

WHEREAS, the Board notes that the side yards will each be at least 8 ft., therefore complying with the minimum side yard requirement in an R1-2 zoning district; 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, based on the information provided to the Board, the Board finds that the site historically has operated as a separate zoning lot; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. § 72-21, to permit the proposed construction of a single-family detached residence, located in an R1-2 zoning district, which does not comply with the zoning requirements for minimum lot area, lot width, and side yard width, contrary to Z.R. §§ 23-32 and 23-461; *on condition* that all work shall substantially

conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 16, 2005" - (4) sheets, "May 18, 2005"-(1) sheet and "July 26, 2005"-(2) sheets; and *on further condition*;

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

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

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

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

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 67-05-BZ

APPLICANT – Sheldon Lobel, P.C., for 1710 Broadway, LLC, C/O C&K Properties, owners; OPUS Properties LLC, lessees.

SUBJECT – Application March 17, 2005 – under Z.R. §73-36 to permit the proposed physical culture establishment, within the cellar level, with entry on the ground level, of an existing six-story building, located in a C6-6/C6-7 zoning district, which requires a special permit.

PREMISES AFFECTED – 1710 Broadway, northeast corner of West 54th Street, Block 1026, Lot 21, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Richard Lobel.

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

**THE VOTE TO GRANT** -

Affirmative: Chair Srinivasan, Commissioner Miele

and Commissioner Chin.....3

Negative:.....0

Recused: Vice-Chair Babbar.....1

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 16, 2005, acting on Department of Buildings Application No. 104053612, reads:

"Proposed adult physical culture establishment is not permitted in any District (ZR 12-10)"; and

WHEREAS, a public hearing was held on this application on July 12, 2005 after due notice by publication in *The City Record*, and then to decision on August 9, 2005; and

WHEREAS, Community Board 5, Manhattan,

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recommends approval of this application; and

WHEREAS, the New York City Fire Department recommends approval of this application; and

WHEREAS, this is an application, under Z.R. §73-36, to permit, in a C6-6/C6-7 zoning district within the Special Midtown District, a physical culture establishment (“PCE”) to be located on the ground level of an existing six-story building, contrary to Z.R. §32-00; and

WHEREAS, the PCE will occupy a total of 6,450 sq. ft. of the cellar level of a six-story building that is occupied entirely with commercial uses; and

WHEREAS, the applicant represents that the proposed PCE will have direct access into the building from the ground floor via stairs and an elevator; in addition, the PCE will have ingress and egress through the cellar of the adjacent Dream Hotel; and

WHEREAS, the applicant further states that the PCE will contain facilities for meditation instruction, yoga, massage therapy, facials, diet and nutritional counseling, stress management techniques, wellness classes and educational programs; and

WHEREAS, the applicant represents that all masseurs and masseuses employed by the facility will be New York State licensed; and

WHEREAS, the applicant asserts that the entire facility will be equipped with an automatic wet sprinkler system and a fire alarm system that is connected to a Fire Department-approved central monitor system; and

WHEREAS, the applicant anticipates that the proposed PCE will employ approximately 24 employees; and

WHEREAS, the PCE will have hours of operation of 5 a.m. to 11 p.m., seven days a week; and

WHEREAS, the applicant represents that area where the PCE will be located is predominantly a commercial area with some residential and hotel uses; and

WHEREAS, the Board finds that the PCE, given the proposed uses and the hours of operation, will not have any significant impact on the residential use in the building or adjacent residential uses; and

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

WHEREAS, the 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 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 requisite findings pursuant to Z.R. §73-36; 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 05-BSA-107M, dated April 19, 2005 ; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§73-36 and 73-03, to permit, in a C6-6/C6-7 zoning district within the Special Midtown District, a physical culture establishment to be located on the ground level of an existing six-story building, contrary to Z.R. §32-00; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received July 19, 2005”–(1) sheets; and *on further condition*

THAT this grant shall be limited to a term of ten years from August 9, 2005, expiring August 9, 2015;

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

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

THAT the hours of operation shall be limited to: 6 a.m. to 11 p.m., Monday through Sunday;

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

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

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

THAT an interior fire alarm system shall be provided as set forth on the BSA-approved plans and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed

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DOB/other jurisdiction objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 71-05-BZ

APPLICANT - Sheldon Lobel, P.C., for Barbara and Marc Tepler, owner.

SUBJECT - Application March 23, 2005 - under Z.R. § 73-622 to permit the enlargement of a single family residence which exceeds the allowable floor area and less than the minimum required open space per ZR23-241, less than the minimum side yard per ZR23-46 and less than the minimum rear yard per ZR23-47. The premise is located in an R-2 zoning district.

PREMISES AFFECTED - 1226 East 29th Street, west side, between Avenues "L and M", Block 7646, Lot 56, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

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

**THE VOTE TO GRANT** -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 17, 2005, acting on Department of Buildings Application No. 301889767, reads, in pertinent part:

“The proposed enlargement of the existing one family residence in a R2 zoning district:

1. Causes an increase in the floor area exceeding the floor area ratio allowed by section 23-141 of the zoning resolution.
2. Causes a decrease in open space resulting in open space ratio less than the required minimum pursuant to section 23-141 of the zoning resolution.
3. Proposes straight line extension resulting in a side yard contrary to section 23-461 of the zoning resolution.
4. Proposed rear yard contrary to ZR 23-47 in that the proposed rear yard is less than the 30'-0" that is required in the zoning resolution"; and

WHEREAS, a public hearing was held on this application on July 19, 2005 after due notice by publication in *The City Record*, and then to decision on August 9, 2005; and

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

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

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio, open space ratio, side yards and rear yard, contrary to Z.R. §§ 23-141, 23-461 and 23-47; and

WHEREAS, the subject lot is located on the west side of East 29<sup>th</sup> Street, between Avenues L and M; and

WHEREAS, the subject lot has a total lot area of 3,000 sq. ft.; and

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

WHEREAS, the applicant states that the subject premises is improved upon with an existing single-family home; and

WHEREAS, the applicant seeks an increase in the floor area from 2,469 sq. ft. (0.82 Floor Area Ratio or "FAR") to 3047.3 sq. ft. (1.02 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the open space ratio will be decreased from 81% to 56%; 150% is the minimum required; and

WHEREAS, the proposed enlargement will maintain one existing non-complying side yard of 2'-6 1/2"; and

WHEREAS, the proposed enlargement will maintain the other existing non-complying side yard of 6'-10 1/2"; and

WHEREAS, the enlargement into the side yard does not result in a decrease in the existing minimum width of open area between the building and the side lot line; and

WHEREAS, the proposed enlargement will reduce the existing non-complying rear yard from 30'-2 3/4" to 20"; the minimum rear yard required is 30'-0"; and

WHEREAS, the enlargement of the building into the rear yard is not located within 20' of the rear lot line; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to

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be made under Z.R. §§ 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 Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio, open space ratio, side yards and rear yard, contrary to Z.R. §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received July 26, 2005"- (5) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the total F.A.R. on the premises, including the attic, shall not exceed 1.02;

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

THAT the use and layout of the cellar 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 objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 107-05-BZ

APPLICANT – Eric Palatnikl, P.C., for Jeff and Jill Adler, owners.

SUBJECT – Application May 11, 2005 – under Z.R. §73-622 to permit the enlargement of a single family home to waive ZR§23-141(b) for floor area, lot coverage, open space, ZR§23-47 for rear yard. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 1823 East 24<sup>th</sup> Street, east side of 24<sup>th</sup> Street, off Avenue "R", Block 6830, Lot 77, Borough of Brooklyn.

## COMMUNITY BOARD#15BK

APPEARANCES –

For Applicant: Eric Palatnik and Jewel Adler.

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

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 26, 2005, acting on Department of Buildings Application No. 301923621, reads, in pertinent part:

"Plans are contrary to Z.R. 23-141(b) in that the proposed Floor Area Ratio exceeds the permitted .5.

Plans are contrary to Z.R. 23-141(b) in that the proposed lot coverage is more than the allowable 35%.

Plans are contrary to Z.R. 23-141(b) in that the proposed open space ratio is less than the required 65%.

Plans are contrary to 23-461(a) in that the proposed side yards are less than the required 13'.

Plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than the minimum required 30'.";

and WHEREAS, a public hearing was held on this application on August 9, 2005 after due notice by publication in *The City Record*, and decided on this same date; and

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

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

WHEREAS, this is an application under Z.R. §§73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio, lot coverage, open space ratio, side yards and rear yard, contrary to Z.R. §§ 23-141(b), 23-461(a) and 23-47; and

WHEREAS, the subject lot is located on the east side of East 24<sup>th</sup> Street, near Avenue R; and

WHEREAS, the subject lot has a total lot area of approximately 3,000 sq. ft.; and

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

WHEREAS, the applicant states that the subject premises is improved upon with an existing single-family home; and

WHEREAS, the applicant seeks an increase in the floor area from 1,926 sq. ft. (0.64 Floor Area Ratio or "FAR") to 2,494.23 sq. ft. (0.83 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the open space ratio will be decreased from 64.9% to 56%; 65% is the minimum required; and

WHEREAS, the proposed lot coverage will be increased from 35% to 44%; 35% is the maximum allowed; and

WHEREAS, the proposed enlargement will maintain one existing non-complying side yard of 9 inches; and

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WHEREAS, the proposed enlargement will reduce the other existing non-complying side yard of 9'-2" to 8', which, when aggregated with the other side yard dimension, does not comply with the 13' total side yard requirement; and

WHEREAS, the enlargement into the side yard does not result in a decrease in the existing minimum width of open area between the building and the side lot line; and

WHEREAS, the proposed enlargement will reduce the existing non-complying rear yard from 29'-7" to 20'; the minimum rear yard required is 30'-0"; and

WHEREAS, the enlargement of the building into the rear yard is not located within 20' of the rear lot line; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§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 Z.R. §§73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio, lot coverage, open space ratio, side yards and rear yard, contrary to Z.R. §§ 23-141(b), 23-461(a) and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received June 13, 2005"-(5) sheets; and June 30, 2005 – four (4) sheets ; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the total F.A.R. on the premises, including the attic, shall not exceed 0.83;

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

THAT the use and layout of the cellar 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 objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, August 9, 2005.

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## 378-03-BZ

APPLICANT – Harold Weinberg, P.E., for The New Way Circus Center by Regina Berenshtein, owner.

SUBJECT – Application December 4, 2003 - under Z.R. §72-21 application seeks to waiver sections: 23-141 (Lot Coverage), 23-462 (Side Yards), 23-45 (Front Yard), and 23-631 (Perimeter Wall Height, Sky Exposure Plane and Setback), to allow in a R5 zoning district the construction of a two story building to be used as a non-profit institution without sleeping accommodations for teaching of circus skills.

PREMISES AFFECTED – 2920 Coney Island Avenue, west side 53.96' north of Shore Parkway, Block 7244, Lot 98, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 23, 2005, at 1:30 P.M., for decision, hearing closed.

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## 160-04-BZ/161-04-A

APPLICANT – Mitchell S. Ross, Esq., Augusta & Ross, for Daffna, LLC, owner.

SUBJECT – Application April 21, 2004 – under Z.R. §72-21 to permit, in an M1-2 zoning district, the residential conversion of an existing four-story commercial loft building into eight dwelling units, contrary to Z.R. §42-10.

PREMISES AFFECTED – 73 Washington Avenue, East side of Washington Avenue 170' north of Park Avenue, Block 1875, Lot 5, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to November 2, 2005, at 1:30 P.M., for adjournment.

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## 219-04-BZ

APPLICANT - Eric Palatnik, P.C., for Cora Realty Co., LLC., owner.

SUBJECT - Application May 28, 2004 – under Z.R. §72-21

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to permit the legalization of a portion of the required open space of the premises, for use as parking spaces (30) spaces, which are to be accessory to the existing 110 unit multiple dwelling, located in an R7-1 zoning district, is contrary to Z.R. §25-64 and §23-142.

PREMISES AFFECTED – 2162/70 University Avenue, aka Dr. Martin Luther King Boulevard, southeast corner of University Avenue and 181<sup>st</sup> Street, Block 3211, Lots 4 and 9, Borough of The Bronx.

## COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 15, 2005, at 1:30 P.M., for decision, hearing closed.

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## 296-04-BZ

APPLICANT – Sheldon Lobel, P.C., for 135 Orchard Street, Co., LLC, owner.

SUBJECT – Application August 30, 2004 – under Z.R. §72-21 to permit the legalization of the residential uses on floors two through five of an existing five-story mixed use building located in a C6-1 zoning district.

PREMISES AFFECTED – 135 Orchard Street, (a/k/a 134 Allen Street), between Delancey and Rivington Streets, Block 415, Lot 69, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Irv Minkin.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 6, 2005, at 1:30 P.M., for decision, hearing closed.

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## 332-04-BZ

APPLICANT - Eric Palatnik, P.C., for Chava Lobel, owner. SUBJECT – Application April 6, 2005 – under Z.R. §73-622 to permit the proposed to combine two lots and enlarge one residence which is contrary to ZR 23-141(a) floor area, ZR 23-131(a) open space and ZR 23-47 rear yard, located in an R-2 zoning district.

PREMISES AFFECTED – 1410/14 East 24th Street, between Avenues “N and O”, Block 7677, Lots 33 and 34 (tentative 33), Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 13, 2005, at 1:30 P.M., for decision, hearing closed.

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## 382-04-BZ

APPLICANT – Eric Palatnik, P.C., for Billy Ades, (Contract Vendee).

SUBJECT – Application December 6, 2004 – under Z.R. §73-622 – to permit the proposed enlargement of an existing single family dwelling, located in an R4 zoning district, which does not comply with the zoning requirements for floor area, lot coverage, open space and side yards, is contrary to Z.R. §23-141(b) and §23-461(a).

PREMISES AFFECTED – 2026 Avenue “T”, corner of Avenue “T” and East 21<sup>st</sup> Street, Block 7325, Lot 8, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to September 13, 2005, at 1:30 P.M., for adjournment.

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## 260-04-BZ

APPLICANT - The Law Office of Fredrick A. Becker, for Leewall Realty by Nathan Indig, owner.

SUBJECT – Application July 20, 2004 – under Z.R. §72-21 to permit the proposed construction of a four story, penthouse and cellar three-family dwelling, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 222 Wallabout Street, 64’ west of Lee Avenue, Block 2263, Lot 44, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to October 18, 2005, at 1:30 P.M., for continued hearing.

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## 262-04-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Tishrey-38 LLC by Malka Silberstein, owner.

SUBJECT – Application July 22, 2004 – under Z.R. §72-21, to permit the proposed construction of a four story, penthouse and cellar four-family dwelling, located in an M1-2 zoning district,

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is contrary to Z.R. §42-00.

PREMISES AFFECTED - 218 Wallabout Street, 94' west of Lee Avenue, Block 2263, Lot 43, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to October 18, 2005, at 1:30 P.M., for continued hearing.

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**269-04-BZ**

APPLICANT – Law Office of Howard Goldman, LLC, for 37 Bridge Street Realty, Corp., owner.

SUBJECT – Application August 2, 2004 – under Z.R. §72-21 to permit the conversion of a partially vacant, seven-story industrial building located in a M1-2 and M3-1 zoning district into a 60 unit loft style residential dwelling in the Vinegar Hill/DUMBO section of Brooklyn.

PREMISES AFFECTED - 37 Bridge Street, between Water and Plymouth Streets, Block 32, Lot 4, Borough of Brooklyn.

**COMMUNITY BOARD #1BK.**

APPEARANCES –

For Applicant: Howard Goldman and Robert Pauls.

**ACTION OF THE BOARD** – Laid over to October 18, 2005, at 1:30 P.M., for continued hearing.

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**355-04-BZ**

APPLICANT – Slater & Beckerman, LLP, for Trustees under Irr.Trust, Stanley Gurewitsch, owner.

SUBJECT – Application November 10, 2004 and amended on July 26, 2005 to be a bulk variance – under Z.R. §72-21 to permit the proposed residential conversion of a portion of an existing three-story manufacturing building, and the construction of a four story residential enlargement atop said building, located in an M1-2(R6) zoning district within the special mixed-use MX-8 district, is contrary to Z.R. §§23-633, 23-942 and 123-64.

PREMISES AFFECTED – 302/10 North Seventh Street, aka 289 North Sixth Street, bounded on the southwest side, by north sixth street, southeast side by Meeker Avenue and northeast side by North Seventh Street, Block 2331, Lot 9, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

APPEARANCES –

For Applicant: Carole Slater, Stuart Beckerman, Robert Pauls, James Heineman, Adam Kushner, Richard Stubbs and Perry Fikelman.

**ACTION OF THE BOARD** – Laid over to September 27, 2005, at 1:30 P.M., for continued hearing.

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**380-04-BZ**

APPLICANT – Sheldon Lobel, P.C., for BK Corporation, owner.

SUBJECT - Application November 29, 2004 – under Z.R. §72-21 to permit the legalization of the conversion of one dwelling unit, in a new building approved exclusively for residential use, to a community facility use, in an R5 zoning district, without two side yards, is contrary to Z.R. §24-35.

PREMISES AFFECTED – 32-12 23<sup>rd</sup> Street, bounded by 33<sup>rd</sup> Avenue and Broadway, Block 555, Lot 36, Borough of Queens.

**COMMUNITY BOARD #1Q**

APPEARANCES –

For Applicant: Irv Minkin, Sheldon Lobel and Thomas Cusanelli.

**ACTION OF THE BOARD** – Laid over to September 20, 2005, at 1:30 P.M., for continued hearing closed.

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**389-04-BZ**

APPLICANT – Francis Angelino, Esq., for 150 East 34<sup>th</sup> Street, Co., LLC, owner; Oasis Day Spa, Lessee.

SUBJECT – Application December 13, 2004 – under Z.R. §73-36 to permit the proposed legalization of an existing Physical Cultural Establishment, located on the second floor of the thirty seven story, Affina Hotel. The premise is located in a C1-9 zoning district.

PREMISES AFFECTED – 150 East 34<sup>th</sup> Street, Manhattan, between Lexington and Third Avenue, Block 889, Lot 55, Borough of Manhattan.

**COMMUNITY BOARD #6M**

APPEARANCES –

For Applicant: Francis R. Angelino, Suzane Marie Musho and Gauntlett Stewart.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 13, 2005, at 1:30 P.M., for decision, hearing closed.

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# MINUTES

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**43-05-BZ**

APPLICANT – Harold Weinberg, P.E., for Yossi Cohen, owner.

*Pasquale Pacifico, Executive Director.*

SUBJECT - Application February 25, 2005 - under Z.R. §73-622 to permit an enlargement to the rear of a single family home to vary sections Z.R. §23-141 floor area and open space, Z.R. §23-461 side yards and Z.R. §23-47 for rear yard. The premise is located in an R3-2 zoning district. PREMISES AFFECTED – 1826 East 28th Street, west side, 200'-0" south of Avenue "R", Block 6833, Lot 17, Borough of Brooklyn.

Adjourned: 4:30 P.M

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Harold Weinberg.

**ACTION OF THE BOARD** – Laid over to August 23, 2005, at 1:30 P.M., for continued hearing.

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**78-05-BZ**

APPLICANT – Sheldon Lobel, P.C., for Young Israel of New York Hyde Park, owner.

SUBJECT – Application March 31, 2005 – under Z.R. §72-21 to permit the proposed expansion of an existing one story synagogue building, located in an R2 zoning district, which does not comply with the zoning requirements for lot coverage, also front and side yards, is contrary to Z.R. §24-11, §24-24 and §24-35.

PREMISES AFFECTED – 264-15 77<sup>th</sup> Avenue, southwest corner of 256<sup>th</sup> Street, Block 8538, Lots 29 and 31, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES –

For Applicant: Richard Lobel, David Dubinsky and Larry Barth.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, and Commissioner Chin.....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 20, 2005, at 1:30 P.M., for decision, hearing closed.

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