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# BULLETIN

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

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Volume 92, No. 13

March 29, 2007

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

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

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

*Commissioners*

**Jeffrey Mulligan, *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>   |
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**Affecting Calendar Numbers:**

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# DOCKETS

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**61-07-A**

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**62-07-A**

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**63-07-A**

49-23 28th Avenue, North west corner of 28th Avenue & 50th Street in the bed of 50th Street., Block 745, Lot(s) 81, Borough of **Queens, Community Board: 1**. General City Law Section 35-Proposed new building.  
-----

**64-07-A**

1704 Avenue N, Southeast corner lot at intersection of East 17th Street and Avenue N., Block 6755, Lot(s) 1, Borough of **Brooklyn, Community Board: 14**. Appeal-From Borough Commissioner denial for enlargement of single family dwelling.  
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**65-07-BZ**

146-93 Guy R. Brewer Boulevard, Located at the northeastern intersection of 147th Avenue and Guy R. Brewer Boulevard., Block 13354, Lot(s) 12, Borough of **Queens, Community Board: 13**. Under 72-21-To permit a one-story (UG6) retail building.  
-----

**66-07-BZ**

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-----

**67-07-A**

515 East 5th Street, Between Avenue A and Avenue B., Block 401, Lot(s) 56, Borough of **Manhattan, Community Board: 3**. Appeal-  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**APRIL 24, 2007, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 24, 2007, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**592-71-BZ**

APPLICANT – Vito J. Fossella, P.E., for FSD Realty, LLC, owner.

SUBJECT – Application February 2, 2007 – Extension of Term of a previously granted variance for the operation of (UG6) professional office building in an R3-2 & R-2 zoning district which expired on February 15, 2007; and for the extension of time to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 1010 Forest Avenue, south side of Forest Avenue, Block 316, Lot 27, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**72-96-BZII**

APPLICANT – The Law Office of Fredrick A. Becker, for 30 WS LLC, for New York Sports Club, lessee.

SUBJECT – Application December 29, 2006 – Extension of Term/Amendment-To allow the operation of a Physical Culture Establishment/Health Club on portions of the cellar, first floor, first floor mezzanine, second floor and third floor of the existing twelve story commercial building located in a C5-5 (LM) zoning district. The application seeks to amend the hours of operation previously approved by the board.

PREMISES AFFECTED – 30 Wall Street, north side of Wall Street, 90' east of Nassau Street, Block 43, Lot 5, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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**10-01-BZ**

APPLICANT – Sheldon Lobel, P.C., for Crislis Realty Corp., owner.

SUBJECT – Application March 14, 2007 – Extension of Time to complete construction and a waiver of the rules for a Variance (§72-21) to permit, in an R-5 zoning district, the proposed development of a one story building to be used as four retail stores (Use Group 6) which expired July 10, 2005.

PREMISES AFFECTED – 85-28/34 Rockaway Boulevard, southwest corner of the intersection formed between Rockaway Boulevard and 86<sup>th</sup> Street, Block 9057, Lots 27 and 33, Borough of Queens.

**COMMUNITY BOARD #9Q**

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**83-02-BZII**

APPLICANT – Law Offices of Howard Goldman, for Big Sue LLC, owner.

SUBJECT – Application March 21, 2007 – Extension of Time to Complete Construction for a Variance to permit in an M1-1 zoning district, the proposed conversion of a four-story industrial building into a residential building with 34 units which expired on February 25, 2007.

PREMISES AFFECTED – 925 Bergen Street, bounded by Classon and Franklin Avenues, Block 1142, Lot 60, Borough of Brooklyn.

**COMMUNITY BOARD #8BK**

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**APPEALS CALENDAR**

**217-06-A**

APPLICANT – Eric Palatnik, P.C., for Yee Kon, LLC, owner.

SUBJECT – Application August 28, 2006 – Proposed construction of a daycare center which extends into the bed of a mapped street (Francis Lewis Blvd) contrary to General City Law Section 35. R3-2 zoning district.

PREMISES AFFECTED – 40-54 Francis Lewis Boulevard aka 196-23 42<sup>nd</sup> Street, north side of the intersection of Francis Lewis Boulevard and 42<sup>nd</sup> Avenue, Block 5361, Lot 10, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**APRIL 24, 2007, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, April 24, 2007, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**154-05-BZ**

APPLICANT – Kenneth K. Lowenstein, for Broome Thompson, LLC, owner.

SUBJECT – Application June 28, 2005 – Variance (§72-21) to permit the construction of a nine-story mixed-use building which will contain 51 residential units, 7,340 square feet of ground retail uses and a 280-space public parking garage. The premises is located in an M1-5B zoning district. The proposal is contrary to Sections 42-10 (Commercial (Use Group 6) and Residential (Use Group 2) uses are not permitted in a M1-5B zoning district, 42-13 (There are no residential bulk regulations in a M1-5B zoning district), and 13-12 (The proposed public parking garage is

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# CALENDAR

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not permitted in a residential development.)  
PREMISES AFFECTED – 520-528 Broome Street and 530-532 Broome Street/55 Sullivan Street, north side of Broome Street, between Thompson and Sullivan Streets, Block 489, Lots 1 and 41, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**119-06-BZ**

APPLICANT – Harold Weinberg, P.E., for Jack Erdos, owner.

SUBJECT – Application June 9, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space, lot coverage and floor area (23-141) and side yard (23-461) in an R4(OP) zoning district.

PREMISES AFFECTED – 444 Avenue W, south side 70'-0" east of East 4<sup>th</sup> Street, between Avenue R and S, Block 7180, Lot 4, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**261-06-BZ**

APPLICANT– Sheldon Lobel, P.C, for Congregation Mazah, owner.

SUBJECT – Application September 25, 2006 – Variance (§72-21) to permit the construction and operation of a Yehsiva (Use Group 3A) and accessory synagogue (Use Group 4A) in a M1-2 zoning district. The proposal is contrary to section 42-10.

PREMISES AFFECTED – 87-99 Union Avenue, west side of Union Avenue at the intersection of Harrison Avenue, Union Avenue and Lorimer Street, Block 2241, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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**306-06-BZ**

APPLICANT– Sheldon Lobel, P.C., for 60 Lawrence, LLC, owner.

SUBJECT – Application November 21, 2006 – Variance (72-21) to permit the construction of a one and six-story religious school building with the one-story portion along the rear lot line. The premises is located in a split M1-1/R5 zoning district and the Ocean Parkway Special Zoning District. The proposal is contrary to the use regulations (42-00), floor area and lot coverage (24-11), front yard (24-34), side yards (24-35), and front wall (24-52).

PREMISES AFFECTED – 50 Lawrence Avenue, south side of Lawrence Avenue, approximately 36' east of McDonald Avenue, Block 5422, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MARCH 20, 2007  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**1038-80-BZ**

APPLICANT – Davidoff & Malito & Hatcher, LLP, for  
Feinrose Downing LLC, owner; Expressway Arcade Corp.,  
lessee.

SUBJECT – Application February 6, 2007 – Extension of  
Term of a Special Permit for an amusement arcade (UG15 in  
an M2-1 zoning district.

PREMISES AFFECTED – 31-07/09 11 Downing Street,  
Whitestone Expressway, Block 4327, Lot 1, Borough of  
Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES – None.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and an  
extension of the term of the special permit, which expired on  
January 6, 2007; and

WHEREAS, a public hearing was held on this  
application on February 27, after due notice by publication in  
*The City Record*, and then to decision on March 20, 2007; and

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

WHEREAS, on January 6, 1981, the Board granted a  
special permit for the operation of an amusement arcade on the  
subject premises; and

WHEREAS, on May 13, 1986, the special permit was  
amended to increase the number of amusement arcade games  
from 112 to 130; and

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

*Therefore it is Resolved* that the Board of Standards and  
Appeals, *reopens* and *amends* the resolution, said resolution  
having been adopted on January 6, 1981, so that, as amended,  
this portion of the resolution shall read: “to permit the  
extension of the term of the special permit for an additional one  
(1) year from January 6, 2007 expiring on January 6, 2008; *on  
condition* that all conditions and drawings associated with the  
previous grant remain in effect; and *on further condition*:

THAT the term of this grant shall expire on January 6,  
2008;

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

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

THAT the Department of Buildings must 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 Alt. No. 435/81)

Adopted by the Board of Standards and Appeals, March  
20, 2007.

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**98-05-BZII**

APPLICANT – Friedman & Gotbaum, LLP by Shelly S.  
Friedman, Esq., for Lauto Group, Limited, c/o Anthony  
Lauto, owner; 48 Bonhaus Corporation, c/o Dac Bon LLC,  
lessee.

SUBJECT – Application December 1, 2006 – To reopen and  
amend a previously-approved zoning variance which  
allowed a residential multiple dwelling (UG 2) with ground  
floor retail use (UG 6) in an M1-5B district; contrary to use  
regulations (§42-10). Proposed modifications include: (1)  
minor reduction of the ground floor commercial floor area  
and (2) increase in mechanical space on the ground floor;  
and (3) the creation of a 143 sq. ft. rooftop "storage cabin."  
PREMISES AFFECTED – 46-48 Bond Street, north side of  
Bond Street 163/5’ west of the corner formed by the  
intersection of Bond Street and Bowery, Block 530, Lots 44  
and 31, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES – None.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and  
an amendment to a previously granted variance for  
modifications to the approved 11-story mixed-use residential  
and commercial building; and

WHEREAS, a public hearing was held on this  
application on March 6, 2007 after due notice by publication  
in *The City Record*, and then to decision on March 20, 2007;  
and

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

WHEREAS, Community Board 2, Manhattan,

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# MINUTES

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recommends approval of this application on the condition that the new space be restricted to storage and not be used as an extension of the living space of the adjoining apartment; and

WHEREAS, the subject premises is located on the north side of Bond Street, between Lafayette Street and the Bowery, within an M1-5B zoning district; and

WHEREAS, Lot 31 is occupied by a one-story commercial building, which will remain, and Lot 44 is occupied by the foundation for the proposed building; and

WHEREAS, the site has a total lot area of 8,047 sq. ft.; and

WHEREAS, on November 15, 2005, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of an 11-story mixed-use residential and commercial building at the premises; and

WHEREAS, on March 24, 2006, by letter, the Board permitted certain modifications to the plan; these changes include modifications to the interior, relocation of the bulkheads, and the addition of a management office; and

WHEREAS, the applicant now proposes to create an additional space on the roof (the "roof cabin"), with a floor area of 143 sq. ft., to serve as a storage area connected to the eleventh floor dwelling unit; and

WHEREAS, specifically, the roof cabin will be built behind the stair bulkhead and is planned as a storage space for the adjoining apartment; and

WHEREAS, the modifications result in a minor increase in the residential floor area from 34,732 sq. ft (4.32 FAR) to 35,015 sq. ft. (4.35 FAR); and

WHEREAS, however, the applicant represents that due to a recalculation of the floor area on the first floor, the total combined floor area of the proposed building and the existing one-story commercial building is reduced slightly to 40,062 sq. ft. (4.997 FAR), even with the inclusion of the roof cabin; and

WHEREAS, the Board notes that the 143 sq. ft. increase in floor area is minor and that the revised floor area and FAR are within the parameters approved by the Board; and

WHEREAS, the Board also notes that at the time of the variance application, the building was initially proposed to have a height of 129'-0", without bulkheads, but that the Board directed the applicant to reduce the height to 120'-0" at the eleventh floor and to allow for the total height, with bulkheads, to be 130'-0"; and

WHEREAS, the applicant represents that the current revisions provide for a reduction in the total height, with bulkheads, to 128'-11"; and

WHEREAS, the roof cabin will be accommodated within the 128'-11" total building height; and

WHEREAS, additionally, the Board notes that the proposed roof cabin will be positioned behind the bulkhead so that it is not visible from the street and the roof is occupied by a private deck associated with the eleventh floor apartment; and

WHEREAS, based upon its review of the record, the Board finds that the proposed modification is appropriate, with the conditions set forth below.

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

15, 2005, so that as amended this portion of the resolution shall read: "to grant a modification to the roof plan to permit the construction of a roof cabin; *on condition* that all work and site conditions shall comply with drawings marked 'Received March 2, 2007'—seven (7) sheets and 'Received March 14, 2007'—two (2) sheets; and *on condition*:

THAT the floor area of the roof cabin shall be limited to 143 sq. ft.;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 104469996)

Adopted by the Board of Standards and Appeals, March 20, 2007.

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## 947-80-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for Hellmuth Owners Corporation c/o Grogan & Associates, owner.

SUBJECT – Application February 12, 2007 – Extension of Time to complete construction for a Variance that was originally granted on February 17, 1981 to allow the conversion of an eight story building from commercial to residential use which expired on March 25, 2007 in a C6-2A zoning district.

PREMISES AFFECTED – 154-158 West 18<sup>th</sup> Street, South side of West 18<sup>th</sup> Street between 6<sup>th</sup> Avenue and 7<sup>th</sup> Avenue, Block 793, Lot 67, Bororugh of Manhattan.

## COMMUNITY BOARD #4M

### APPEARANCES –

For Applicant: Ron Mandel.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 17, 2007, at 10 A.M., for decision, hearing closed.

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## 619-83-BZ

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

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

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

# MINUTES

33, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to April 17, 2007, at 10 A.M., for continued hearing.

## 133-94-BZ

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

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

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

## COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E., Charles Winter.

For Opposition: Terri Pouymari.

**ACTION OF THE BOARD** – Laid over to April 24, 2007, at 10 A.M., for continued hearing.

## 395-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah Contract Vendee, owner; Meyer Unsderfer, lessee.

SUBJECT – Application June 16, 2006 – Request for a re-opening and amendment to a previously-granted variance (§72-21) that allowed bulk waivers for a new house of worship in an R5 district. The proposed amendment includes the following: (1) increase in floor area and FAR, (2) increase in perimeter wall height; and (3) minor reduction in front yard provided.

PREMISES AFFECTED – 1232 54<sup>th</sup> Street, southwest side 242'-6" southeast of the intersection formed by 54<sup>th</sup> and 12<sup>th</sup> Avenue, Block 5676, Lot 17, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Moische Friedman and Fern Weinreich of Councilman Felder's Office.

For Applicant: Howard Weiss.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 17, 2007, at 10 A.M., for decision, hearing closed.

## APPEALS CALENDAR

### 182-06-A thru 211-06-A

APPLICANT – Stadtmauer Bailkin, LLP, for Beachfront Community, LLC, owner.

SUBJECT – Application August 22, 2006 – An appeals seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R5 Zoning district. Premises is located in an R4-A Zoning district.

PREMISES AFFECTED – Beach 5<sup>th</sup> Street, Beach 6<sup>th</sup> Street and Seagirt Avenue, bound of Seagirt Avenue to the north, Beach 5<sup>th</sup> Street to the east, Beach 6<sup>th</sup> Street to the west Reynolds Channel to the south, Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67 and 68; Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67 and 69 Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Mitchell Korbey.

**ACTION OF THE BOARD** – Appeals granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner and developer of the premises has obtained the right to complete a multiple-unit residential development under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on November 14, 2006, after due notice by publication in *The City Record*, with continued hearings on December 12, 2006, January 23, 2007, and then to decision on March 20, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioners Hinkson and Ottley-Brown; and

WHEREAS, Community Board 14, Queens, opposed this appeal, citing concerns about overdevelopment and the issuance of violations; where relevant, concerns of the Community Board are discussed below; and

WHEREAS, a group of neighbors to the site, known as the Neighbors of Mott Creek (the "Neighbors") also opposed this appeal, suggesting that work was done in violation of stop work orders (SWOs) issued by the Department of Buildings (DOB) and that proper permits were not obtained prior to the commencement of work; again, where relevant, these concerns are discussed below; and

WHEREAS, the appellant states that the subject premises consists of 30 separate tax lots on two separate blocks; and

WHEREAS, 14 of the tax lots are located on the entire northern half of Block 15608, which is bounded by Seagirt Avenue to the north, Beach 5<sup>th</sup> Street to the east, Beach 6<sup>th</sup> Street to the west, and Reynolds Channel to the south; and

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WHEREAS, 16 of the tax lots are located on the entirety of Block 15609, which is bounded by Seagirt Avenue to the north, Beach 4<sup>th</sup> Street to the east, Beach 5<sup>th</sup> Street to the west, and Reynolds Channel to the south; and

WHEREAS, for purposes of this appeal, appellant referred to Block 15608, Lots 1, 57, 58, 61, 63, 65, 67, and 69 as “Cluster 1”, Block 15608, Lots 40, 42, 45, 51, 52 and 53 as “Cluster 2”, Block 15609, Lots 6, 8, 10, 12, 14, 16 and 18 as “Cluster 3”, and Block 15609, Lots 1, 3, 58, 63, 64, 65, 66, 67 and 68 as “Cluster 4”; and

WHEREAS, the proposed development on these two blocks contemplates the construction of 30 attached three-story, two-family homes, one on each lot; a site plan showing the entirety of this proposed integrated development was approved by DOB on March 19, 2004; and

WHEREAS, when the development commenced in March of 2004 subsequent to the issuance of foundation and piles permits, the site was located within an R5 zoning district; and

WHEREAS, the applicant states that piling work over the entirety of the development site proceeded and was completed as of May 24, 2004; and

WHEREAS, foundation work then commenced on six homes in Cluster 2; and

WHEREAS, the applicant notes that foundation walls, footings, framing and roofing for these six homes was installed as of the end of February 2005; and

WHEREAS, on August 2, 2005, the foundation of one of the homes in Cluster 4 was commenced; and

WHEREAS, in a submission dated November 28, 2006, the appellant summarizes the completed work as follows: (1) Cluster 1 – piles have been driven and excavation has been completed; (2) Cluster 2 – piles have been driven, excavation has been completed, foundations have been poured and framing and roofing for six of the proposed homes have been completed; (3) Cluster 3 – piles have been driven; and (4) Cluster 4 – piles have been driven, and on Lot 1, excavation has been completed and grade beams have been installed; and

WHEREAS, as discussed further below, one of the buildings in Cluster 2 will be removed and was excluded from the vesting calculation discussed herein; and

WHEREAS, the applicant states that work ceased on August 24, 2005, subsequent to the receipt of a notice of intent to revoke permits, issued by the Department of Buildings; this notice was subsequently rescinded; and

WHEREAS, while this notice was being resolved, the applicant claims that the Queens Borough office of DOB indicated that the project was vested based upon the already completed work, under the theory that the development was a “major development”, as this term is defined pursuant to ZR § 11-31; and

WHEREAS, a “major development” is a development that is rendered non-complying by a zoning change; and

WHEREAS, pursuant to ZR § 11-311, DOB can vest a “major development” after completion of just one foundation within the development, provided permits have

been issued for each building and the development as a whole was illustrated on an approved site plan; and

WHEREAS, the applicant claims that it presumed that the right to proceed under the issued permits had vested, and no more work was performed; and

WHEREAS, on September 15, 2005 (the “Enactment Date”), the City Council adopted the Far Rockaway and Mott Creek rezoning, which changed the zoning of the subject site from R5 to R4A; and

WHEREAS, under the R4A zoning, attached homes are not permitted; and

WHEREAS, the applicant states that since it was under the impression that it had vested through DOB, it did not immediately seek the right to continue construction at the Board through an application pursuant to ZR § 11-331; and

WHEREAS, however, DOB subsequently determined that, pursuant to ZR § 11-31, the development was a “minor development”, which is a development that is rendered non-conforming by a zoning change; and

WHEREAS, DOB apparently determined that the particular proposed housing form – attached two-family homes – was in a different Use Group than the detached homes permitted under the R4A zoning; and

WHEREAS, thus, the proposed attached homes had to be categorized as non-conforming, which means that the proposed development is a “minor development”; and

WHEREAS, accordingly, the appellant now seeks a Board determination that it has vested its right to complete the development as originally proposed under the common law, based upon the already completed work; and

WHEREAS, as a threshold issue, the appellant must establish whether: (1) work proceeded under valid permits and (2) work was done legally when SWOs were not in effect; and

WHEREAS, accordingly, the Board requested that the appellant provide a breakdown of validly issued permits, as well as an explanation of the site’s violation and SWO history; and

WHEREAS, as to the validity of the permits, in a submission dated February 6, 2007, the appellant explained that all the piles were driven pursuant to a permit issued March 19, 2004, referred to by the appellant as an “omnibus” permit; and

WHEREAS, the appellant explains that the omnibus permit covered the entire development, even though new addresses for each lot had not yet been obtained; and

WHEREAS, the appellant explains that subsequently, individual piles permits for each tax lot were also obtained after addresses were approved; and

WHEREAS, specifically, the appellant submitted a spread-sheet of all obtained permits, set forth as Exhibit A to appellant’s November 28, 2006 submission; and

WHEREAS, the Board observes that DOB, in a submission dated November 3, 2006, confirms that the permits issued prior the Enactment Date had been audited and had been confirmed to be valid; and

WHEREAS, further, DOB issued a notice of completion for the piles work performed, dated December 17, 2004; and

WHEREAS, the Neighbors contend that the addresses for

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the individual lots had not been established as of the commencement of work, and that therefore any work performed was not authorized; and

WHEREAS, the Neighbors make a similar contention about the work performed on Cluster 1; and

WHEREAS, however, in light of DOB's determination as to the permits, the arguments of the Neighbors are without merit; and

WHEREAS, as to work allegedly performed when SWOs were in effect, the appellant provided a detailed synopsis and explanation of all issued violations and SWOs, as well as completed work, in a submission dated January 9, 2007; and

WHEREAS, this submission clarifies that four "work without a permit" violations and four "failure to maintain job fence" violations were issued prior to the Enactment Date; and

WHEREAS, the submission explains that three of the "work without a permit" violations and attendant SWOs were issued because DOB did not take into consideration that the work observed was being performed pursuant to the above-mentioned omnibus permit; and

WHEREAS, the appellant affirms that no work was performed while the SWOs were in effect and the violations were being cleared; and

WHEREAS, further, as indicated in the above-referenced DOB submission, the various SWOs were not always applicable to each cluster, and the work done on Lot 1 of Cluster 4 in the summer of 2005 was not in contradiction to any issued SWO in effect at the time; and

WHEREAS, as to the fourth work without a permit violation, the appellant explains that the violation was issued for a failure to obtain a demolition permit for the removal of old structures on the site, and that a permit was later obtained and a correction certificate was approved by DOB; and

WHEREAS, as to the fence violations, the appellant explains that these were issued because high winds blew existing fencing down, but that fencing was repaired as needed during the course of construction; and

WHEREAS, the appellant submitted documentation in support of the January 9 submission; and

WHEREAS, the Board has reviewed this submission, and finds that it credibly explains the site's violation history and establishes that no work was done while SWOs were in effect; and

WHEREAS, the Board further finds none of the issued violations or SWOs indicate an attempt to "beat the clock" or any other bad faith on the part of the developer; and

WHEREAS, accordingly, the Board concludes that all work was performed under valid permits, and that no work occurred during the effective period of issued SWOs; and

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

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance."; and

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

WHEREAS, as to substantial construction, the appellant cites to the work noted above, which consisted of global piles installation and some work on two of the clusters; and

WHEREAS, specifically, the appellant notes that 632 piles were installed over the entire development site; and

WHEREAS, the appellant notes that the installation of piles was the most important component of foundation construction for the proposed homes, given that none of them would include cellars due to the proximity of the site to a body of water; and

WHEREAS, in support of the assertion that substantial construction was performed, the appellant submitted the following evidence: piles logs with dates, photographs of the site, a site plan showing the location of the piles, and receipts for materials and labor; and

WHEREAS, as noted above, one of the buildings in Cluster 2 will be removed; and

WHEREAS, the appellant explains that the building as constructed encroaches too far into a driveway that will be located between Clusters 1 and 2, and in order to comply with driveway requirements, it must be removed; and

WHEREAS, in terms of remaining work, the appellant states that the framing and finishing of the homes within each cluster must be completed; and

WHEREAS, the appellant also notes that some piles must be replaced, due to weather damage that occurred during the pendency of the instant appeal; and

WHEREAS, the appellant also notes that some piles must be installed for the sewer infrastructure; and

WHEREAS, based upon the above evidence, the Board concludes that a significant amount of work was performed at the development site prior to the Enactment Date; and

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

WHEREAS, the appellant states that prior to the

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Enactment Date, the owner expended a total of approximately a total of 3.745 million dollars; and

WHEREAS, said expenditures related to excavation, foundation, labor and materials costs, as well as architectural, engineering and expediting costs; and

WHEREAS, more specifically, the appellant claims 2.322 million dollars in soft costs and 1.423 million dollars in hard costs; and

WHEREAS, the appellant claims that approximately 400,000 dollars must be expended to complete the project,

WHEREAS, as proof of the expenditures, the appellant has submitted invoices, cancelled checks, and spread sheets; and

WHEREAS, the Board also notes that the appellant clarified that some of the expenditures related to work over the entire site, and some related to work on specific clusters; the appellant provided a breakdown of global versus cluster-related costs; and

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

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

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

WHEREAS, in its November 28, 2006 submission, the appellant provided a plot plan showing that if compelled to conform to the new R4A zoning, only 19 homes rather than the proposed 30 could be built; and

WHEREAS, the appellant contends that the reduced unit count would lead to a diminished profit over the entire development site; and

WHEREAS, further, in its November 28 submission, the appellant also explains that it would be forced to incur substantial soft costs in order to redesign and re-prepare the site for a conforming R4A development; and

WHEREAS, specifically, the appellant claims that it would have to spend approximately 385,000 dollars in architectural, engineering and expediting fees; the expenditures related to such fees already incurred would be wasted; and

WHEREAS, further, all construction work expenditure related to Cluster 2 and Lot 1 of Cluster 4 would be lost, and such work would have to be demolished at cost; and

WHEREAS, the appellant concludes that based on the lost expenditures and the new costs, conformance with R4A zoning would impose a 2.5 million dollar loss on the developer; and

WHEREAS, the Board agrees that the non-recoupable expenditures related to the soft costs, the piles removal and replacement costs, and the lost revenue arising from the reduced unit count, when viewed in the aggregate, constitute

a serious economic loss, and that the supporting data submitted by the appellant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the appellant has satisfactorily established that a vested right to complete construction of all 30 of the proposed homes had accrued to the owner of the premises as of the Enactment Date.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit Nos. 402146487-01, 402016625-01, 402016634-01, 402016643-01, 402016652-01, 402016661-01, 402016670-01, 402016689-01, 401712759-01, 401712811-01, 401708345-01, 401712740-01, 401712820-01, 401712768-01, 402063217-01, 402063226-01, 402063501-01, 402063510-01, 402063529-01, 402063538-01, 402063547-01, 402146931-01, 402146940-01, 402146959-01, 402146968-01, 402146977-01, 402146986-01, 402146995-01, 402147002-01, 402147011-01, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, March 20, 2007.

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## **229-06-A**

APPLICANT – Sheldon Lobel, P.C., for Breezy Point Cooperative, Incorporated, owner. Thomas Carroll, lessee. SUBJECT – Application September 6, 2006 – Appeal seeking to revoke permits and approvals for the reconstruction and enlargement of an existing one family dwelling which creates new non-compliances, increases the degree of existing non-compliances with the bulk provisions of the Zoning Resolutions and violates provisions of the Building Code regarding access and fire safety . R4 - Zoning District.

PREMISES AFFECTED – 607 Bayside Drive, Adjacent to service road, Block 16350, Lot 300, Borough of Queens.

### **COMMUNITY BOARD #14Q**

APPEARANCES –

For Applicant: Irving Minkin.

For Opposition: Simon H. Rothkrug, Arhtur Lighthall, Joseph Sherry, Noreen Goodwin, James T. Cowan, Jr., Marguerita F.Shea and others.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to May 15, 2007, at 10 A.M., for continued hearing.

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## **292-06-A**

APPLICANT – Sheldon Lobel, P.C., for 126 Newton St., LLC, owner.

SUBJECT – Application November 3, 2006 – An appeal

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seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6/M1-1. M1-2/R6A and MX-8 zoning district.

PREMISES AFFECTED – 128 Newton Street, south side of Newton Street, between Graham Avenue and Manhattan Avenue, Block 2719, Lot 14, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

### APPEARANCES –

For Applicant: Jordan Most.

For Administrative: Marisa Sasitorn, Department of Buildings.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 17, 2007, at 10 A.M., for decision, hearing closed.

## 12-07-A

APPLICANT – David L Businelli, R.A., AIA, for Mr. Thomas Tuminello, owner.

SUBJECT – Application January 10, 2007 – Proposed construction of a one family dwelling not fronting on mapped street, contrary to Article 3, Section 36 of the General City Law. R3X Zoning District.

PREMISES AFFECTED – 25 Allegro Street, North side of Allegro Street, 101.33 southwest corner of Bertram Avenue and Allegro Street. Block 6462, Lot 44, Borough of Staten Island.

## COMMUNITY BOARD #3SI

### APPEARANCES –

For Applicant: David Businelli.

**ACTION OF THE BOARD** – Laid over to April 17, 2007, at 10 A.M., for continued hearing.

*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

**REGULAR MEETING  
TUESDAY AFTERNOON, MARCH 20, 2007  
1:30 P.M.**

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

## ZONING CALENDAR

### 427-05-BZ

#### CEQR #06-BSA-047Q

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application December 28, 2005 – Pursuant to ZR §73-44 Special Permit to permit the proposed retail, community facility and office development (this latter portion is use group 6, parking requirement category B1, office use) which provides less than the required parking and is contrary to ZR §36-21.

PREMISES AFFECTED – 133-47 39<sup>th</sup> Avenue, between Prince Street and College, Block 4972, Lot 59, Borough of Queens.

## COMMUNITY BOARD #7Q

### APPEARANCES –

For Applicant: Eric Palatnik.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated December 8, 2005, acting on Department of Buildings Application No. 402032885, reads in pertinent part:

“Proposed development which does not provide the required amount of parking is contrary to ZR Section 36-21 and therefore requires a special permit pursuant to ZR 73-44.”; and

WHEREAS, this is an application under ZR § 73-44, to permit a decrease in required off-street accessory parking spaces for an eight story plus penthouse retail, community facility, and office development, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in *The City Record*, with continued hearings on October 17, 2006, December 5, 2006, January 23, 2007, and February 27, 2007, and then to decision on March 20, 2007; and

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

WHEREAS, certain neighbors and community business leaders opposed this application, based upon concerns that the amount of parking spaces would be insufficient and cause impacts on the street; and

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

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including Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the site is located in a C4-2 zoning district and has a lot area of 6,968 sq. ft., with 50 feet of frontage on 39<sup>th</sup> Avenue; the site is currently used as a commercial parking lot; and

WHEREAS, the proposed building will have total Floor Area Ratio of 4.8, with a 57 vehicle parking garage located in the sub-cellar and cellar, Use Group 6 retail and Use Group 4 community facility use on the first floor, UG 6 retail use on the first floor mezzanine, an additional 19 vehicle parking garage on the second floor, UG 6 retail use on the third floor, a UG 4 health care facility on the fourth floor and a portion of the fifth, and UG 6 offices on the remainder of the fifth floor and the upper floors; and

WHEREAS, all of the 76 parking spaces will be attended; and

WHEREAS, the proposed building complies with all applicable bulk regulations and conforms with all applicable use regulations except for the amount of required accessory parking; and

WHEREAS, specifically, the mix of uses and amount of floor area within the proposed building generates a total accessory parking requirement of 112 spaces (36 are required for the retail use, and 76 for the office and community facility use); and

WHEREAS, the applicant claims that sub-surface conditions at the site prevents the placement of more parking spaces below grade; and

WHEREAS, because a parking waiver is needed, the instant application was filed; and

WHEREAS, the Board notes that pursuant to ZR § 73-44, it may, in the subject C4-2 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable ZR provision, for UG 6 uses in the B1 parking category and UG 4 uses; and

WHEREAS, for the C4-2 zoning district and the subject UG 6 office use (which is in parking category B1), the Board may reduce the required parking from 1 space per 300 sq. ft. of floor area to 1 space per 600 sq. ft. of floor area; and

WHEREAS, for the subject UG 4 health facility, the Board may also reduce the required parking from 1 space per 300 sq. ft. of floor area to 1 space per 600 ft. of floor area; and

WHEREAS, assuming the special permit is granted, the required amount of spaces is 74; as noted above, 76 will be provided; and

WHEREAS, the Board notes that the amount of parking designated accessory to the proposed retail use is not being reduced; and

WHEREAS, the applicant notes that the second floor parking will be devoted to the proposed retail uses, and no stackers will be used; and

WHEREAS, parking for the office and community facility uses will be located in the cellar levels, where stackers will be used; and

WHEREAS, the applicant notes that a garage operator will direct vehicles seeking parking for the office and community facility uses to the correct floors; and

WHEREAS, the applicant explains that garages servicing a building with a mix of uses are common, and that it is typical to divide the parking such that transient parking is directed to parking levels not using stackers while longer-term parking like that associated with office use is directed to levels with stackers; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the proposed uses are contemplated in good faith; and

WHEREAS, the record reveals that the applicant has submitted sufficient evidence of the good faith of the owner in pursuing the proposed UG 6 office use and UG 4 community facility use, namely the filing of a DOB job application for such uses and an affidavit from the developer; and

WHEREAS, the applicant claims that the proposed development and the decreased amount of parking will not result in any negative parking or traffic impacts; and

WHEREAS, in support of this claim, the applicant's consultant prepared a report that analyzes the anticipated vehicular trips and parking demand that would be generated by the proposed development; and

WHEREAS, this report concluded that the total number of proposed on-site attended parking accessory parking spaces would be sufficient to accommodate the future parking demand to be generated by the proposed development; and

WHEREAS, this parking study also noted that there is sufficient on-street parking in the area during peak hours to accommodate the possibility of over-flow from the accessory parking facility, and established that the area is well-served by mass transit; and

WHEREAS, the Board agrees that the proposed mix of uses within the proposed building would not generate parking demand that could not be accommodated by the 76 proposed spaces; and

WHEREAS, however, at hearing, the Board expressed concern about the following issues: (1) the amount and location of the queuing spaces; (2) the proposed location of the loading dock and potential interference with parking operations; (3) the use of the proposed stackers; and (4) the single-lane ingress/egress into the parking facility; and

WHEREAS, as to the queuing spaces, the Board expressed concern that the originally proposed three-car queuing lane was insufficient; and

WHEREAS, the applicant subsequently revised the plans for the parking area to reflect a four-car queuing lane; and

WHEREAS, as to the loading berth, the Board expressed concern that it was located in an area within the proposed building where it could not be feasibly used given the interference of the proposed attended parking operation, particularly the queuing; and

WHEREAS, in response, the applicant obtained a

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reconsideration from the Department of Buildings that allows the location of the loading berth behind the proposed car elevators, on the basis that the narrow frontage compromises the ability to locate elsewhere within the proposed building; and

WHEREAS, the applicant also agreed to limit hours of servicing and deliveries; and

WHEREAS, as to the proposed stackers, the Board expressed concern that the particular brand of stacker contemplated had not yet been approved and would be too tall to be utilized on the proposed parking floors (with their limited floor to ceiling heights) without potentially interfering with fire suppression equipment; and

WHEREAS, in response, the applicant obtained another reconsideration from DOB regarding the acceptability of the proposed stackers and their compatibility with the proposed fire suppression system; and

WHEREAS, finally, as to the advisability of a single-lane parking facility, the applicant claims that the limited width of the site precludes any other design; and

WHEREAS, the applicant also submitted other examples of approved single-lane garages (including some approved by the City Planning Commission), and provided a further submission from the parking consultant that suggests that such a facility is viable if operated efficiently; and

WHEREAS, the applicant provided evidence that a sufficient number of attendants would operate the facility at all times; and

WHEREAS, the Board finds the applicant's further submissions responsive to the above-mentioned concerns; and

WHEREAS however, it defers to DOB final approval of the proposed layout of the parking areas, the queuing space, the use of stackers, and the location of the loading berth; and

WHEREAS, therefore, the Board, as a condition of this grant, will ask DOB to audit the BSA-approved plans to ensure compliance with all applicable laws and regulations concerning accessory parking; and

WHEREAS, further, in order to minimize impacts that the parking facility might have on the street, the Board will require the applicant to seek DOT approval of changes to the parking regulations on the street directly in front of the proposed building; these changes are illustrated on the submitted drawings; and

WHEREAS, based upon the above, the Board finds that the applicant has sufficiently met the requirements set forth at ZR § 73-44; and

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

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

WHEREAS, in sum, the Board has determined that the evidence in the record supports the findings set forth at Z.R.

§§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA047Q dated June 21, 2006; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings of ZR §§ 73-44 and 73-03, to permit a decrease in required off-street accessory parking spaces for an eight story plus penthouse retail, community facility, and office development, contrary to ZR § 36-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 16, 2007"-(6) sheets; and *on further condition*:

THAT a total of 76 accessory attended parking spaces shall be provided;

THAT no certificate shall hereafter be issued if either of the office or community facility uses are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT four queuing spaces shall be provided, as indicated on the BSA-approved plans;

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

THAT that the only permitted uses within the building shall be as indicated on the BSA-approved plans, absent prior approval from the Board;

THAT prior to the issuance of a building permit, DOB shall conduct an audit of the BSA-approved plans, reviewing the parking layout, the location of the loading berth, the proposed stackers, queuing, and ingress/egress, as well as any other law or regulation related to accessory parking facilities;

THAT prior to the issuance of a building permit, the

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applicant shall obtain Department of Transportation approval of changes to the parking regulations on the street in front of the proposed building and submit proof of same to 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, March 20, 2007.

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## 67-06-BZ

### CEQR #06-BSA-075R

APPLICANT – Joseph P. Morsellino, Esq., for Jhong Ulk Kim, owner; Walgreens, lessee.

SUBJECT – Application April 14, 2006 – Variance pursuant to Z.R. §72-21 to permit the proposed 8,847 square foot drugstore without the number of parking spaces required in a C2-1 zoning district (59 spaces) and to use the R2 portion of the zoning lot for accessory required parking. The proposal is requesting waivers of ZR §22-00 and §36-21. The proposed number of parking spaces pursuant to a waiver of ZR §36-21 will be 34. The site is currently occupied by a 5,594 square foot diner with accessory parking for 37 cars. PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149, 168, Richmond, Borough of Staten Island.

### COMMUNITY BOARD #2SI

#### APPEARANCES –

For Applicant: Joseph Morsellino.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 3, 2006, acting on Department of Buildings Application No. 500824593, reads in pertinent part:

“Accessory off street parking spaces for proposed new commercial building are located partially within an R2 zoning district contrary to Section 22-00 of the NYC Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C2-1 (R2) zoning district and partially within an R2 zoning district, an accessory parking lot to a Use Group 6 drugstore on the R2 portion of the site, which is contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this

application on October 31, 2006, after due notice by publication in the *City Record*, with continued hearings on December 5, 2006, January 23, 2007, and February 9, 2007, and then to decision on March 20, 2007; and

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

WHEREAS, Community Board 2, Staten Island, recommended disapproval of a prior iteration of the application, described below, which requested a reduction in the required number of parking spaces; and

WHEREAS, City Council Member James S. Oddo recommended disapproval of the prior iteration of the application; and

WHEREAS, certain neighbors provided testimony in opposition to the prior iteration of the application; and

WHEREAS, the site is located on the northwest corner of Clove Road and Woodlawn Avenue; and

WHEREAS, the site comprises two tax lots; Lot 149, which occupies the eastern portion of the site along Clove Road, is located in a C2-1 (R2) zoning district and Lot 168, which occupies the western portion of the site, is located in an R2 zoning district; and

WHEREAS, the applicant represents that the two tax lots were in common ownership prior to 1961 and form a single zoning lot; and

WHEREAS, the site has a total lot area of 24,730 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story commercial building used as a diner, which will be demolished, and an accessory parking lot with 37 parking spaces; and

WHEREAS, the applicant initially proposed an 8,847 sq. ft. one-story commercial building to be built as-of-right on Lot 149 and 34 parking spaces, a portion of which would be located in the R2 zoning district, which requires a waiver to allow the use and a waiver to allow a reduction in the required parking (based upon this square footage, 59 parking spaces is the minimum required); and

WHEREAS, the Board expressed concern about the inability to provide sufficient parking and directed the applicant to revise the application so that the parking requirement could be met; and

WHEREAS, in response, the applicant revised the application to provide for a 7,240 sq. ft. building and 48 parking spaces (based upon this square footage, 48 parking spaces is the minimum required); this eliminated the parking waiver; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site has an irregular shape, (2) the site is partially within an R2 zoning district and partially within a C2-1 (R2) zoning district, (3) a portion of the site is within the bed of mapped Woodlawn Avenue, and (4) there is a high water table at the site; and

WHEREAS, as to the shape of the site, the site is located

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at the corner of the wide Y-shaped intersection of Clove Road, Hylan Boulevard, Woodlawn Avenue and Norway Avenue; and

WHEREAS, Clove Road curves to the north around the frontage of the site, which results in the lot having an irregular shape with several angles and a range of lengths and depths; and

WHEREAS, further, the applicant notes that the portion of the site within the R2 zoning district is irregularly shaped; and

WHEREAS, specifically, the portion of the site within the R2 zoning district has frontage on Woodlawn Avenue and a triangular shape, with a range of depths and widths; and

WHEREAS, accordingly, given the irregular shape of the portion of the lot within the R2 zoning district, it would be difficult to develop it with a conforming residential use; and

WHEREAS, as to the location of the zoning district boundary, the majority of the site is located within the C2-1 (R2) has frontage at the wide intersection of two major thoroughfares, Clove Road and Hylan Boulevard; and

WHEREAS, the other four corners at the intersection are also within the C2-1 (R2) zoning district and are occupied by commercial uses; and

WHEREAS, the applicant represents that because of the commercial nature of the highly-trafficked intersection, only commercial use is feasible on the R2 portion of the site and the C2-1 (R2) portion of the site, which allows residential use; and

WHEREAS, the applicant submitted a statement from a real estate agent who states that homes near the site on Winfield Avenue behind commercial uses have been on the market for more than a year and are not marketable; and

WHEREAS, as to uniqueness, the subject site is the only site with such an irregular shape at the intersection of Clove Road and Hylan Boulevard; and

WHEREAS, as to the location of a portion of the site within the bed of Woodlawn Avenue, the applicant represents that a 30 ft. deep strip along the Woodlawn Avenue frontage of the site must be built out as a street and sidewalk; and

WHEREAS, the applicant represents that there are costs to be borne by the owner associated with DOT's requirement that the portion of the site within the bed of Woodlawn Avenue be built out; and

WHEREAS, as to the high water table, the applicant represents that boring tests indicate that water is present at a depth of approximately six feet; and

WHEREAS, the applicant represent that, given this condition, there would be significant costs associated with excavating the site to permit an underground parking area under the C2-1 (R2) portion of the site; and

WHEREAS, the applicant represents that should the portion of the site within the C2-1 (R2) zoning district be developed as commercial, the required parking would not be able to be accommodated within the C2-1 (R2) zoning district and some of the parking spaces would need to be accommodated within the R2 zoning district portion of the site; and

WHEREAS, specifically, because the required parking

cannot be accommodated on the portion of the site within the C2-1 (R2) zoning district, the applicant proposes to provide approximately 18 parking spaces, or 38 percent of the required parking, within the portion of the site in the R2 zoning district; and

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

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) a smaller 6,600 sq. ft. commercial development with all of the required parking, (2) residential development on the entire site, and (3) residential development on the portion of the site within the R2 zoning district and commercial development on the portion of the site within the C2-1 (R2) portion of the site; and

WHEREAS, the applicant concluded that such scenarios would result in a loss because of the physical conditions of the site; and

WHEREAS, specifically, the applicant represents that: (1) a smaller commercial development would not be feasible because the irregularity of the lot restricts parking and the building would be under-built, (2) a residential development would not be marketable at the site, and (3) a mixed residential and commercial development would be neither marketable for residential nor allow a reasonable return for the limited commercial use; and

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

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

WHEREAS, the Board notes that the modified proposal and request is only to allow a portion of the accessory parking lot to be located within the R2 zoning district; and

WHEREAS, the applicant notes that the proposed drug store is a permitted use in the C2-1 (R2) zoning district and that, as proposed, the one-story commercial building will be under-built; and

WHEREAS, the applicant represents that the site has been used as a diner for several decades; and

WHEREAS, the existing diner currently provides accessory parking within the portion of the site in the R2 zoning district in a similar layout to what is proposed; and

WHEREAS, additionally, the building will be positioned at approximately the same location as the existing building, at the corner of the site furthest away from both the adjacent residential use to the north and west of the site; and

WHEREAS the applicant will install and maintain an opaque fence of six feet in height around the interior portion of the site, which is adjacent to residential uses to provide

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screening and a buffer; and

WHEREAS, additionally, the applicant will provide landscaping to screen the parking and the dumpster enclosure within the R2 zoning district from the adjacent residential use; and

WHEREAS, as to the traffic flow, the Board notes that Winfield Avenue intersects Woodlawn Avenue along the boundary between the R2 zoning district and C2-1 (R2) zoning district and that two curb cuts are proposed for the Woodlawn Avenue frontage of the site, within the portion of the site in the R2 zoning district; and

WHEREAS, at hearing, the Board asked the applicant if the introduction of these curb cuts would introduce additional traffic into the adjacent residential district and whether they should be limited to egress only; and

WHEREAS, the applicant responded that because the curb cuts are at the rear of the site, away from the intersection of Clove Road and Woodlawn Avenue, few patrons would access the site from along Woodlawn Avenue and that the use of this access point would likely be primarily used by residents of the adjacent residential district; and

WHEREAS, the applicant asserts that most traffic would access the site from Clove Road; and

WHEREAS, the Board notes that DOT has stated that any development of the site should include the proposed opening and building out of the mapped Woodlawn Avenue; and

WHEREAS, in response to DOT's request, the applicant agrees to build out the portion of the site within the bed of the mapped street; and

WHEREAS, the Board also notes that there is a concrete barrier across Woodlawn Avenue at the rear of the site; and

WHEREAS, community members and Council Member Oddo request that the concrete barrier on Woodlawn Avenue, which prohibits access to the residential streets, should remain; and

WHEREAS, the Board notes that the removal of the barrier is not within the applicant's discretion nor the Board's jurisdiction; and

WHEREAS, further, in response, the applicant represents that even if the concrete barrier were to be removed, as DOT has suggested, it is likely that the use of the Woodlawn Avenue entrance would be limited to residents of the adjacent residential 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, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as discussed above, the applicant initially requested both a waiver to permit accessory parking within the portion of the site in the R2 zoning district and a reduction in the required number of parking spaces; and

WHEREAS, the Board directed the applicant to revise the applicant to eliminate the request for a reduction in the required number of parking spaces; and

WHEREAS, specifically, the revised proposal provides for a building with a floor area of 7,240 sq. ft., as opposed to the 8,847 sq. ft. initially proposed, and 48 parking spaces as opposed to the 34 parking spaces initially proposed; and

WHEREAS, the Board notes that the reduction in the size of the building to reduce the required number of parking spaces resulted in a building that uses only approximately one-third of the available floor area; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA075R, dated April 26, 2006; and

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

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C2-1 (R2) zoning district and partially within an R2 zoning district, an accessory parking lot to a Use Group 6 drugstore on the R2 portion of the site, which is contrary to ZR § 22-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the

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objections above noted, filed with this application marked "Received January 23, 2007"-(5) sheets and "Received March 16, 2007"-(1) sheet and *on further condition*:

THAT the floor area of the building shall be limited to 7,240 sq. ft.;

THAT a minimum of 48 parking spaces shall be provided;

THAT an opaque fence of six feet in height shall be installed and maintained on the portions of the site adjacent to residential uses;

THAT landscaping shall be planted and maintained as per the BSA-approved plans;

THAT all exterior lighting within the parking area shall be directed away from adjacent residential use;

THAT the applicant shall submit a builder's paving plan to DOB prior to the issuance of any permits;

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

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

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

Adopted by the Board of Standards and Appeals, March 20, 2007.

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## 115-06-BZ

APPLICANT- Harold Weinberg, for Saul Mazor, owner.  
SUBJECT - Application June 7, 2006 - Special Permit (§73-622) for the enlargement of a single family detached residence. This application seeks to vary open space, floor area and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED - 1820 East 28<sup>th</sup> Street, west side 140' south of Avenue R, between Avenue R and S, Block 6833, Lot 13, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES - None.

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

**THE VOTE TO GRANT** -

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 6, 2006, acting on Department of Buildings Application No. 302175063, reads in pertinent part:

"The proposed enlargement of the existing one family residence in an R3-2 zoning district:

1. Increases the degree of non-compliance with

respect to Floor Area Ratio and the maximum permitted floor area and is contrary to Section 23-141 and 54-31 of the Zoning Resolution;

2. Increases the degree of non-compliance with respect to open space and is contrary to Section 23-141 and 54-31 ZR

3. Reduces the rear yard below 30' and is contrary to Section 23-47 ZR;

4. Increases the degree of non-compliance with respect to side yards and is contrary to Sections 23-461 and 54-31;

5. Increases the degree of non-compliance with respect to lot coverage and is contrary to Sections 23-141 and 54-31"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, lot coverage, open space, and side and rear yards, contrary to ZR §§ 23-141, 23-461, 23-47 and 54-31; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, with continued hearings on January 23, 2007 and February 27, 2007, and then to decision on March 20, 2007; and

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

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

WHEREAS, Council Member Lew Fidler and certain neighbors opposed this application, based upon arguments addressed below; and

WHEREAS, the subject lot is located on the west side of East 28<sup>th</sup> Street, between Avenue R and Avenue S; and

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

WHEREAS, the subject lot has a total lot area of 3,000 sq. ft., and is occupied by a 1,768 sq. ft. (0.59 FAR) single-family home; and

WHEREAS, the proposed enlargement will be two stories and an attic and will be located at the rear of the existing home; and

WHEREAS, the applicant seeks an increase in the floor area from 1,768 sq. ft. (0.59 FAR) to 2,976.8 sq. ft. (0.99 FAR); the maximum floor area permitted is 1,800 sq. ft. (.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space from 1995.1 sq. ft. to 1501.7 sq. ft. (1,950 sq. ft. of open space is required); and

WHEREAS, the proposed enlargement will increase the lot coverage from 33.5% to 49.9% (a minimum of 35% is required); and

WHEREAS, the proposed enlargement will maintain the existing 6'-11" and 2'-5" side yards (two side yards of five feet each are required); and

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WHEREAS, the proposed enlargement will reduce the rear yard from 42'-6" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the Board notes that the enlarged home complies with applicable front yard, wall height, and total height requirements; and

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

WHEREAS, the opposition makes two arguments to this application: (1) the special permit should not be available when the subject home is for sale; and (2) the encroachment into the rear yard is contrary to the character of the neighborhood; and

WHEREAS, as to the first argument, the opposition suggests that the special permit was intended to enable only the current owners to enlarge a home in which they reside and would reside post-enlargement; the increased amount of space resulting from the enlargement would create an incentive to remain in New York City as opposed to moving to a different locality; and

WHEREAS, the opposition cites to excerpts of the City Planning Commission (CPC) report for the enactment of the subject special permit, which use the term "homeowners"; and

WHEREAS, the Board disagrees with this argument; and

WHEREAS, the Board observes that there is no language in the text of ZR § 73-622 that prohibits a homeowner from seeking the special permit while the home is for sale; and

WHEREAS, since the text is silent on this issue, there is no need to review the underlying legislative history; and

WHEREAS, however, even if the Board were obligated to review the legislative history, it would conclude that it does not provide any support for the opposition's argument; and

WHEREAS, the excerpts cited by the opposition only establish that the process was intended to be useful for homeowners who own the home in question; such is the case here; and

WHEREAS, further, to the extent that the broad goal of the special permit is assumed to be the retention of current City residents, the enlargement of the subject home fulfills this goal regardless of whether the current owner maintains ownership; and

WHEREAS, the Board observes that merely because the home is for sale does not mean that it will not be purchased and occupied by a City family that would otherwise consider moving out of Brooklyn; thus, because this possibility exists, having the home on the market does not necessarily contravene this alleged intent; and

WHEREAS, finally, the Board observes that zoning concerns the use of land and the built form of construction

rather than the nature of the ownership or the presumed intentions of the owner; thus, a special permit predicated on the ownership intentions of the applicant is, in most cases, contrary to general zoning principles; and

WHEREAS, for the above reasons, the Board rejects this argument; and

WHEREAS, as to the second argument, the opposition suggests that the rear yard intrusion is too extreme given the large rear yards that are present on the subject block; and

WHEREAS, specifically, the opposition suggests that the provision within ZR § 73-622 that allows an encroachment to within 20 feet of the rear lot line was designed with lots that have only a 30 foot rear yard in mind; and

WHEREAS, the opposition claims that the proposed enlargement will create a home that will be one of only two on the block that will extend into the deep rear yards, and that it will block views of the adjacent rear yards from the homes on either side of it (another home previously received a special permit to enlarge within the rear yard); and

WHEREAS, again, the Board disagrees with this argument; and

WHEREAS, first, the Board notes that ZR § 73-622 specifically provides that "any enlargement that is located in a rear yard is not located within 20 feet of the rear lot line"; and

WHEREAS, this section does not provide that the maximum encroachment permitted into the rear yard is 10 feet, as suggested by the opposition, precisely because it was anticipated that some rear yards were deeper than required, and an explicit 10 ft. limitation might mean that the special permit would place a constraint on an enlargement more significant than what would be allowed through an as of right enlargement; and

WHEREAS, instead, by referencing the rear lot line as the point of measurement, the enactors of the special permit plainly indicated that anything up to, but not within, 20 feet from the rear lot line could be acceptable; and

WHEREAS, there is no basis whatsoever to assume from reading the rear yard provision of ZR § 73-622 that the enactors of the provision capped rear yard encroachments at 10 feet; rather, the only commandment is that a 20 ft. rear yard must remain; and

WHEREAS, as noted above, the proposed enlargement contemplates a rear yard of 20 feet; and

WHEREAS, second, as to general concerns about the character of the neighborhood, the Board notes that as of right, a property owner on this block could construct a home that extends to 30 feet from the rear lot line; and

WHEREAS, thus, the as of right zoning applicable to this block already anticipates that the current rear yards are not required; and

WHEREAS, consequently, the alleged context that they create is a vestige of the historical development of this block rather than a zoning-driven element of the character of the neighborhood; the current zoning does not seek to protect this vestige; and

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WHEREAS, the Board also observes that the special permit allows an increase in floor area, even where a home is over-built; and

WHEREAS, the special permit text reveals a legislative determination that such a floor area increase should be accommodated through an enlargement at the rear of existing buildings (as evidenced by the rear yard encroachment allowance) as opposed to the front of buildings (as evidenced by the lack of a front yard encroachment allowance); and

WHEREAS, the Board agrees that rear enlargements generally will have less of an impact on the character of a neighborhood, since they are less visible; and

WHEREAS, third, as to alleged view impact, the Board observes that the special permit is available to all the lots on the subject block; and

WHEREAS, while the Board does not view the inability of adjacent homeowners to see the rear yards of other lots parallel to theirs from all points of the rear yard as a burden, even if this is assumed to be an impact, it is redressed by the ability of all homes on the block to similarly enlarge; and

WHEREAS, accordingly, the Board rejects the opposition's second argument and instead finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, in so finding, the Board observes that much of the concern of the opposition is plainly related to a general dislike of the subject special permit because it allows for larger homes than the opposition desires to see in particular neighborhoods; and

WHEREAS, however, the Board notes that the special permit was enacted by the City in order to create larger homes; and

WHEREAS, to the extent that a particular community district opted into the special permit and now wishes it had not, the proper forum to air this grievance is the Community Board or the City Council, not the Board; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family dwelling, which

does not comply with the zoning requirements for floor area, FAR, lot coverage, open space, and side and rear yards, contrary to ZR §§ 23-141, 23-461, 23-47 and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 6, 2007-(9) sheets and "March 14, 2007"-(2) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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

THAT the floor area in the attic shall be limited to 135.19 sq. ft.;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,976.8 sq. ft.; a total FAR of 0.99, side yards of 6'-11" and 2'-5", a rear yard of 20'-0", open space of 1501.7 sq. ft., and lot coverage of 49.9%, as illustrated on the BSA-approved plans;

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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, March 20, 2007.

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## **123-06-BZ**

APPLICANT – Rampulla Associates Architects, for Dr. Ronald Avis, owner.

SUBJECT – Application June 13, 2006 – Variance (§72-21) to permit the legalization of the existing one room, one-story addition which encroaches upon the required 30' rear yard of the existing single-family detached house. The Premise is located in an R3X SHPD/LOGMA zoning district. The proposal is contrary to rear yard (§23-47).

PREMISES AFFECTED – 21 Cheshire Place, north side 905.04' to Victory Boulevard, Block 240, Lot 77, Borough of Staten Island.

## **COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Philip L. Rampulla.

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

THE VOTE TO GRANT –

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

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Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated January 5, 2007, acting on Department of Buildings Application No. 500825093, reads, in pertinent part:

“The proposed legalization of a one room addition at the rear of the premises encroaches into the thirty feet (30’-0”) rear yard and is contrary to the zoning resolution. ZR 23-47.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3X zoning district, within the Special Hillside Preservation District and the Special Growth Management District, the legalization of an enlargement to a one-story with cellar single-family home, which results in noncompliance as to rear yard, contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on February 27, 2007, after due notice by publication in *The City Record*, and then to decision on March 20, 2007; and

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

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

WHEREAS, the site is located on the north side of Cheshire Place, east of Melrose Avenue and north of Beverly Avenue; and

WHEREAS, the site is 99.09 ft. in width and has a depth of between 68.08 feet and 69.78 feet, with a total lot area of 6,813 sq. ft.; and

WHEREAS, the site is currently improved upon with a 2,606 sq. ft. (0.38 FAR) one-story with cellar single-family home; and

WHEREAS, the legal floor area of the home, which was built in 1953, is 2,310 sq. ft. (0.33 FAR); and

WHEREAS, applicant proposes to legalize the as-built condition which includes a 296 sq. ft. addition at the rear at the rear of the home, characterized as a sunroom and built after 1961; and

WHEREAS, the main portion of the house, without the subject addition, has a pre-existing non-complying rear yard depth of 22.30 feet; and

WHEREAS, the site’s rear yard abuts the 17<sup>th</sup> fairway of the Silver Lake Golf Course, which is owned by the New York City Parks Department; and

WHEREAS, the enlargement maintains the two complying side yards; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the shallow depth of the site, (2) the existing non-complying rear and front yards, and (3) the site’s adjacency to a City Park/public golf course; and

WHEREAS, as to the site’s shallow depth, the applicant states that the range in depth from 68.06 feet to 69.78 feet is an

existing non-complying condition from before 1961, when the home was built; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 400-ft. radius diagram which shows that the subject site has the shallowest depth of the 14 lots within the radius, with frontage on the golf course; and

WHEREAS, as to the yard conditions, the applicant states that the shallow depth of the lot provided for non-complying front and rear yards; and

WHEREAS, the applicant represents that the home, which was under built at 0.33 FAR (0.50 FAR is the maximum permitted) could not have been enlarged horizontally (1) at the rear without encroaching into the required rear yard since the existing rear yard was only 22.23 feet (a rear yard of 30 feet is the minimum required); (2) at the 16.65 ft. front yard because it is also non-complying (a front yard of 18 feet is the minimum required); or (3) at the side yards because there is not sufficient space to enlarge at the west side of the home and there is a one-story garage at the east side; and

WHEREAS, additionally, the applicant represents that a vertical enlargement would not be feasible because, in order avoid further encroachment into the required front and rear yards, the second floor would have to be setback at both the front and the rear; and

WHEREAS, the applicant notes that in order to accommodate the setbacks, the second floor would require new load-bearing columns and steel structural support because it could not rest on the exterior walls; and

WHEREAS, the applicant asserts that this requirement would make a second-floor addition prohibitively expensive; and

WHEREAS, as to the site’s adjacency to the Silver Lake Golf Course, the applicant represents that ZR § 23-67 (Special Provisions for Zoning Lots adjoining Public Parks) requires that in addition to the rear yard requirement, the rear lot line of the house shall be treated as a front yard and the provisions of ZR § 23-63 (Maximum Height of Front Wall and Required Front Setbacks) shall apply; and

WHEREAS, the applicant represents that these requirements put additional restrictions on any development of the home at the rear; and

WHEREAS, the Board finds that the aforementioned unique physical conditions create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that a complying enlargement using available floor area would be feasible; and

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

WHEREAS, the applicant represents that most of the houses along both sides of the block are existing one-story single-family detached homes and that the enlargement is compatible with this context; and

WHEREAS, the applicant states that the modest

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enlargement is completely at the rear of the home and is not visible from the street or from the adjacent golf course because of screening; and

WHEREAS, moreover, the Board notes that the requested FAR increase to 0.38 is within the zoning district parameters; 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 for a minor increase in FAR, from 0.33 to 0.38, reflects the minimum necessary to afford the applicant relief; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.4 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, in an R3X zoning district, within the Special Hillside Preservation District and the Special Growth Management District, the legalization of an enlargement to a one-story with cellar single-family home, which results in noncompliance as rear yard, contrary to ZR § 23-47; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 21, 2006"– three (3) sheets; and *on further condition*:

THAT the parameters of the building shall be as follows: an FAR of 0.38; a floor area of 2,606 sq. ft.; a front yard of 16.65 feet; and a rear yard of 12.23 feet;

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, March 20, 2007.

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## 263-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Breindi Amsterdam and Eli Amsterdam, owners.

SUBJECT – Application September 26, 2006 – Special

Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area §23-141(a) in an R2 zoning district.

PREMISES AFFECTED – 2801-2805 Avenue L (a/k/a 1185-1195 East 28<sup>th</sup> Street) northeast corner of the intersection of East 28<sup>th</sup> Street and Avenue L, Block 7628, Lot 8, Borough of Brooklyn.

## COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Lyra Altman.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 28, 2006, acting on Department of Buildings Application No. 302229112, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space of 150.”; and

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

WHEREAS, a public hearing was held on this application on January 9, 2007, after due notice by publication in *The City Record*, with a continued hearing on February 6, 2007, and then to decision on March 20, 2007; and

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

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application, citing concerns that the application does not meet the requirements of an enlargement; and

WHEREAS, the subject lot is located on the northeast corner of Avenue L and East 28<sup>th</sup> Street; and

WHEREAS, the subject lot has a total lot area of 6,000 sq. ft., and is occupied by a 2,399.23 sq. ft. (0.40 FAR) single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,399.23 sq. ft. (0.40 FAR) to 6,178.02 sq. ft. (1.03 FAR); the maximum floor area permitted is 3,000 sq. ft. (0.50 FAR); and

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WHEREAS, the proposed enlargement will decrease the open space ratio from 191.1 percent to 51.2 percent (a minimum open space ratio of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying 12'-0" front yard and reduce the second front yard from 24'-9" to 15'-0" (two front yards with depths of 15'-0" are required); and

WHEREAS, the proposed enlargement will provide one 5'-0" side yard and one 8'-0" side yard (side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" for one are required); and

WHEREAS, initially, the applicant proposed a wall height of 24'-6" and a total height of 39'-10"; and

WHEREAS, at hearing, the Board asked the applicant to respond to questions about neighborhood character and to establish a context for the proposed bulk and height of the home; and

WHEREAS, as to bulk, the applicant submitted an analysis of homes within a 200-ft. radius of the subject premises, which reflects that more than 19 percent of the homes within the radius have an FAR of 1.04 or greater; and

WHEREAS, further, the analysis reflects that 29 percent of the homes within the radius on Avenue L have an FAR of 1.04 or greater; and

WHEREAS, at hearing, the Board also asked the applicant to reduce the wall height and total height so as to be more compatible with nearby homes; and

WHEREAS, in response, the applicant reduced the wall height to 23'-6" and the total height to 38'-3" to match the home across the street; and

WHEREAS, the Board expressed concern that not enough of the existing building was proposed to be retained and asked the applicant to clarify which elements would be retained; and

WHEREAS, in response, the applicant revised the plans to indicate which portions of the existing floor joists, foundations, and walls would remain, to the Board's satisfaction; and

WHEREAS, additionally, the Board directed the applicant to remove the reference to the stucco veneer from the plans; and

WHEREAS, the Board noted that any veneer would be as approved by DOB; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to

be made under ZR § 73-622 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, and open space ratio, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 23, 2007"-(10) sheets and "February 21, 2007"-(4) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 837.03 sq. ft.;

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

THAT the following shall be the bulk parameters of the building: a floor area of 6,178.02 sq. ft., an FAR of 1.03, a wall height of 23'-6", a total height of 38'-3", one side yard of 5'-0", one side yard of 8'-0", one front yard of 15'-0", one front yard of 12'-0", and an open space ratio of 51.2 percent, as illustrated on the BSA-approved plans;

THAT DOB shall confirm that existing portions of foundation walls, walls, and floors shall be retained as illustrated on the BSA-approved plans, marked "Received January 23, 2007"-(3) sheets and "February 21, 2007"-(3) sheets;

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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, March 20, 2007.

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## 283-06-BZ

APPLICANT – Moshe M. Friedman, for Tammy Hirsch, owner.

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SUBJECT – Application October 23, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); side yard (§23-461) and rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 1372 East 29<sup>th</sup> Street, for 190’ north of intersection formed by East 29<sup>th</sup> Street and Avenue N, Block 7664, Lot 76, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### APPEARANCES –

For Applicant: Moshe Friedman.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 17, 2006, acting on Department of Buildings Application No. 302230477, reads in pertinent part:

“Proposed extension of existing one-family dwelling is contrary to:

ZR Sec 23-141(a) Floor Area Ratio

ZR Sec 23-141(a) Open Space Ratio

ZR Sec 23-461 Side Yard

ZR Sec 23-47 Rear Yard.”; and

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

WHEREAS, a public hearing was held on this application on March 6, 2007, after due notice by publication in *The City Record*, and then to decision on March 20, 2007; and

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

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

WHEREAS, the subject lot is located on the west side of East 29th Street, between Avenue M and Avenue N; and

WHEREAS, the subject lot has a total lot area of 3,000 sq. ft., and is occupied by a 2,241.19 sq. ft. (0.75 FAR) single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,241.19 sq. ft. (0.75 FAR) to 3,017.58 sq. ft. (1.006 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease

the open space ratio from 92 percent to 57 percent (a minimum open space ratio of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying 10’-0” front yard (one front yard with a depth of 15’-0” is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying 3’-3.5” side yard and reduce the other side yard from 6’-10.5” to 6’-8.5” (a minimum width of 5’-0” for each is required); and

WHEREAS, the proposed enlargement will reduce the rear yard from 32’-10.5” to 20’-1” (the minimum rear yard required is 30’-0”); and

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

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

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio and rear and side yards, contrary to ZR § 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received January 16, 2007–(6) sheets and “March 20, 2007”-(4) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 567.98 sq. ft.;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 3,017.58 sq. ft., a total FAR of 1.006, a wall and total height of 34’-4”, one side yard of 3’-3.5”, one side yard of 6’-8.5”, a rear yard of 20’-1”, and an open space ratio of 57 percent, as illustrated on the BSA-approved plans;

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

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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 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, March 20, 2007.

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## 285-06-BZ

### CEQR #07-BSA-031M

APPLICANT – Sheldon Lobel, P.C., for 531 Central Park Avenue Associates, LLC, owner; Serenity Wellbeing Inc., lessee.

SUBJECT – Application October 25, 2006 – Special Permit (§73-36) to permit the operation of a physical culture establishment on the third floor of an existing commercial building located in a C6-4.5 zoning district.

PREMISES AFFECTED – 23 West 45th Street, north side of West 45<sup>th</sup> Street, between Fifth and Sixth Avenues, Block 1261, Lot 25, Borough of Manhattan.

### COMMUNITY BOARD #6M

#### APPEARANCES –

For Applicant: Jordan Most.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 12, 2006, acting on Department of Buildings Application No. 104554484, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted as-of-right in C6-4.5 zoning district and it is contrary to ZR 32-10.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4.5 zoning district, the establishment of a physical culture establishment (PCE) on the third floor of an existing three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 27, 2007 after due notice by publication in *The City Record*, and then to decision on March 20, 2007; and

WHEREAS, Community Board 5, Manhattan,

recommends approval of this application; and

WHEREAS, the subject site is located on the north side of West 45<sup>th</sup> Street, between Fifth Avenue and Sixth Avenue; and

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

WHEREAS, the PCE will occupy a total of 1,989 sq. ft. of floor area on the third floor; and

WHEREAS, the PCE will be operated as Serenity Wellbeing Spa; and

WHEREAS, the applicant represents that the PCE will offer spa services including massage therapy; and

WHEREAS, the proposed hours of operation are: Monday through Sunday, 10:00 a.m. to 12:00 a.m.; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07-BSA-031M dated January 2, 2007; and

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

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the

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Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4.5 zoning district, the establishment of a physical culture establishment on the third floor of an existing three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 8, 2007"-(1) sheet and *on further condition*:

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

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

THAT the hours of operation shall be limited to: Monday through Sunday, 10:00 a.m. to 12:00 a.m.;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, March 20, 2007.

## 378-04-BZ

APPLICANT– Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application November 29, 2004 – Variance (§72-21) to permit the construction of a four-story residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

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

Hinkson....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 17, 2007, at 1:30 P.M., for decision, hearing closed.

## 302-05-BZ

APPLICANT– Sheldon Lobel, P.C., for 262-272 Atlantic Realty Corp., owner.

SUBJECT – Application October 12, 2005 – Variance under 72-21 to allow a transient hotel (UG 5) in an R6A/C2-4 (DB) zoning district. Proposal is contrary to ZR §32-14 (use), §33-121 (FAR), §101-721 and §101-41(b) (street wall height), §101-351 (curb cut), and §35-24 (setback).

PREMISES AFFECTED – 262-276 Atlantic Avenue, south side of Atlantic Avenue, 100' east of the corner of Boerum Place and Atlantic Avenue, Block 181, Lot 11, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most and Fack Freeman.

For Opposition: Sidney L. Meyer, William Harris and Anita Abraham-Inz.

**ACTION OF THE BOARD** – Laid over to May 8, 2007, at 1:30 P.M., for continued hearing.

## 98-06-BZ & 284-06-A

APPLICANT – Eric Palatnik, P.C., for Siach Yitzchok, owner.

SUBJECT – Applications May 16, 2006 and October 25, 2006 – Variance (§72-21) to permit, in a R4A zoning district, a four (4)-story yeshiva, which is contrary to floor area (§24-11); total height (§24-521); front yard (§24-34); side yard (§24-35); sky exposure plane (§24-521); setback requirements (§24-521); and level of yards (§24-531). Proposed construction of a four story yeshiva (Siam Yitzchok) that lies within the bed of a mapped street Beach 9<sup>th</sup> Street which is contrary to Section 35 of the General City Law Section 35. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9<sup>th</sup> Street, southwest corner of the intersection of Beach 9<sup>th</sup> Street and Dinsmore Avenue, Block 15554, Lots 49 and 51, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik and Marc Mariscal.

**ACTION OF THE BOARD** – Laid over to May 8, 2007, at 1:30 P.M., for continued hearing.

## 136-06-BZ

APPLICANT – Kenneth Fisher, Wolf Block, LLP, for Ironworks, LLC, owner.

SUBJECT – Application June 29, 2006 – Zoning variance under §72-21 to allow the residential conversion and one-story enlargement of three (3) existing four (4) story buildings. The proposed development violates use (§42-00),

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FAR (§43-12), and rear yard (§43-26 and §43-27) regulations. The project would include ground floor retail space and twelve (12) dwelling units on the upper floors. M2-1 zoning district.

PREMISES AFFECTED – 11-15 Old Fulton Street, between Front and Water Street, Block 35, Lots 7, 8, 9, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

### APPEARANCES –

For Applicant: Paul Proux and Willis De Lalour.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 24, 2007, at 1:30 P.M., for decision, hearing closed.

## 240-06-BZ thru 251-06-BZ

APPLICANT – Manat, Phelps & Phillips, LLP, for St. John’s University, owner.

SUBJECT – Application September 15, 2006 – Variance (§72-21) to permit a five foot encroachment in the required front setback. The proposal would convert the uses in the twelve subject buildings to community facility (dormitory Use Group 3A), an as-of-right use in the R4 zoning district. The proposal is contrary to the required front yard setback (§24-34).

PREMISES AFFECTED – 147-04 to 147-30 Union Turnpike, Block 6715, Lots 25-37, Borough of Queens.

## COMMUNITY BOARD #8Q

### APPEARANCES –

For Applicant: Carol Rosenthal, Tim Nsdell, Albert Tein II, Jason Perri and Andrew Schwarsin.

For Opposition: Judith Guttman and Teresa Noonan.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 10, 2007, at 1:30 P.M., for decision, hearing closed.

## 288-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Church of God of St. Albans, owner.

SUBJECT – Application October 30, 2006 – Variance (§72-21) to permit the construction of a two-story church in an R2 zoning district. The proposal is requesting waivers of §24-111 (FAR), §24-521 (wall height, setback and sky exposure plane), §24-34 (front yard) and §24-35 (side yard).

PREMISES AFFECTED – 223-07 Hempstead Avenue, north side of Hempstead Avenue, between 223<sup>rd</sup> and 224<sup>th</sup> Streets, Block 10796, Lot 4, Borough of Queens.

## COMMUNITY BOARD #13Q

### APPEARANCES –

For Applicant: Ron Mandel, Albert Tein II, Robert Comas and Linnette Taylor.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 17, 2007, at 1:30 P.M., for decision, hearing closed.

## 290-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 386 LLC, owner; 11 Great Jones, LLC, lessee.

SUBJECT – Application November 1, 2006 – Variance under §72-21 to allow a six (6) story residential building containing ground floor retail and eight (8) dwelling units. The project site is located within an M1-5B district and is contrary to use regulations (§§42-00 and 42-14(d)(2)(b)).

PREMISES AFFECTED – 372 Lafayette Street, 11 Great Jones Street, block bounded by Lafayette, Great Jones and Bond Streets, Sinbone Alley, Block 530, Lot 13, Borough of Manhattan.

## COMMUNITY BOARD #2M

### APPEARANCES –

For Applicant: James Power and Doris Diether, CB #2.

**ACTION OF THE BOARD** – Laid over to April 17, 2007, at 1:30 P.M., for deferred decision.

## 301-06-BZ

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

SUBJECT – Application November 14, 2006 – Variance (§72-21) for the construction of a two-family dwelling on an existing narrow lot with special provisions for party or side lot line walls that does not provide the minimum required side yard of 8 feet (§23-49) in an R5 zoning district.

PREMISES AFFECTED – 148 Fountain Avenue, west side of Fountain Avenue, 111’ north of intersection with Glenmore Avenue, Block 4190, Lot 40, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

### APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to May 8, 2007, at 1:30 P.M., for continued hearing

## 316-06-BZ

APPLICANT– Jesse Masyr, Esq., Wachtel & Masyr, LLP, for Blaseboro Realty, LLC, owner; New York Botanical Garden, lessee.

SUBJECT – Application December 7, 2006 – Variance (§72-21) to permit the construction of the proposed accessory parking garage (UG4) with 825 parking spaces on

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six stories, in one cellar level and on the roof. The Premises is located in a C8-2 zoning district. The proposal is requesting waivers with respect to setback (§33-432) and parking (§36-11 and §36-12).

PREMISES AFFECTED – 2960 Webster Avenue, between Bedford Park Boulevard and Botanical Square South, Block 3274, Lots 1 & 4, Borough of The Bronx.

**COMMUNITY BOARD #7BX**

APPEARANCES –

For Applicant: Jesse Masyr, JV Cossaboom, Jesse Masyr, Robert Edward, Karen Washington, Tim Tracy, Tim Martung and Ethan Goodman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 10, 2007, at 1:30 P.M., for decision, hearing closed.

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**334-06-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Machia Abramczyk, owner.

SUBJECT – Application December 29, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141) and the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1119 East 23<sup>rd</sup> Street, East 23<sup>rd</sup> Street between Avenue K and Avenue L, Block 7623, Lot 37, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 17, 2007, at 1:30 P.M., for decision, hearing closed.

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**1-07-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Jacqueline Savio and Alfred Buonanno, owner.

SUBJECT – Application January 2, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary (§23-141) in that the proposed building exceeds the maximum permitted floor area ratio of .75 in an R4-1 zoning district.

PREMISES AFFECTED – 1792 West 11<sup>th</sup> Street, West 11<sup>th</sup> Street between Quentin Road and Highlawn Avenue, Block 6645, Lot 46, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 17, 2007, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# MINUTES

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# MINUTES

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**SPECIAL MEETING  
WEDNESDAY MORNING, MARCH 21, 2007  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins and  
Commissioner Ottley-Brown.  
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**54-05-A**

APPLICANT – NYC Department of Buildings.  
OWNER OF PREMISES: Yeshiva Imrei Chaim Viznitz.  
SUBJECT – Application March 4, 2005 – Application to  
revoke Certificate of Occupancy No. 300131122, on the  
basis that the Certificate of Occupancy allows conditions at  
the subject premises that are contrary to the Zoning  
Resolution and the Administrative Code.  
PREMISES AFFECTED – 1824 53<sup>rd</sup> Street, southeast  
corner of 18<sup>th</sup> Avenue, Block 5480, Lot 14, Borough of  
Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –  
For Applicant: Angelina Martinez-Rubio, Joel Steinberg,  
Maria Martinelli, Moses Krishner, Rabbi Israel Steinberg  
and David Garber.

For Opposition: Stuart A. Klein.

THE VOTE TO CLOSE HEARING –  
Affirmative: Chair Srinivasan, Vice-Chair Collins and  
Commissioner Ottley-Brown.....3  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 24,  
2007, at 10 A.M., for decision, hearing closed.  
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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*