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# BULLETIN

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

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Volume 92, Nos. 9-10

March 9, 2007

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### DIRECTORY

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

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**SUSAN M. HINKSON**

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**Roy Starrin, *Deputy Director***

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**MINUTES of Regular Meetings,  
Tuesday, February 27, 2007**

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166-75-BZ	164-17 Union Turnpike, Queens
383-04-BZ	46-21 Greenpoint Avenue, Queens
27-96-BZ	602-04 Coney Island Avenue, Brooklyn
30-00-BZ	458 West 166 <sup>th</sup> Street, Manhattan
1038-80-BZ	31-07/09/11 Downing Street, Queens
8-01-BZ	352 Clinton Avenue, Staten Island
60-82-BZ	60-11 Queens Boulevard, Queens
619-83-BZ	552-568 McDonald Avenue, Brooklyn
200-01-BZ	182-15 Hillside Avenue, Queens
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**Affecting Calendar Numbers:**

36-06-BZ	2125 Utica Avenue, Brooklyn
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237-06-BZ	1462 East 26 <sup>th</sup> Street, Brooklyn
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110-06-BZ	1473 East 21 <sup>st</sup> Street, Brooklyn
123-06-BZ	21 Cheshire Place, Staten Island
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285-06-BZ	23 West 45 <sup>th</sup> Street, Manhattan
318-06-BZ	49-05 Astoria Boulevard, Queens

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# DOCKETS

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New Case Filed Up to February 27, 2007  
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**46-07-BZ**

1328 East 23rd Street, Located on the west side of East 23rd Street between Avenue M and Avenue N., Block 7658, Lot(s) 62, Borough of **Brooklyn, Community Board: 14.** (SPECIAL PERMIT)-73-622-To allow the enlargement of a single-family residence.  
-----

**47-07-A**

144 East 44th Street, South side of 44th Street 195 ft. east of Lexington Avenue., Block 1298, Lot(s) 45, Borough of **Manhattan, Community Board: 6.** Appeal-To install an exterior sign on the west façade of building.  
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**48-07-BZ**

7-12 126th Street, West side 90 ft. south of 7th Avenue., Block 3970, Lot(s) 11, Borough of **Queens, Community Board: 7.** Under 72-21-To enlarge existing one family dwelling. Enlargemnt projects into rear yard due to zoning district change from R3-2 to R2A.  
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**49-07-BZ**

37-02 Main Street, Southwest corner of 37th Avenue and Main Street., Block 4974, Lot(s) 27, Borough of **Queens, Community Board: 7.** (SPECIAL PERMIT)73-36 & 32-31-For a Physical Culture Establishment on the third, fourth and fifth floors of the building.  
-----

**50-07-A**

100-12 39th Avenue, Northside of 39th Avenue distant 500' west of corner of 39th Avenue and 103rd Street., Block 1767, Lot(s) 61, Borough of **Queens, Community Board: 3.** Appeal-To permit the construction of a five story dwelling (UG2) with communiity facility medical office (UG4).  
-----

**51-07-BZ**

70-44 Kissena Boulevard, Northwest corner of Kissena Biulevare and 70th Road., Block 6656, Lot(s) 52, Borough of **Queens, Community Board: 8.** Under 72-21-To permit the construction of a one story commerical building (UG6) on a site which was occupied by a gasoline station (UG16).  
-----

**52-07-BZ**

1576 East 27 Street, West side of East 27 Street., Block 6773, Lot(s) 43, Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT) 73-622-Extend rear at first and second floor new attic.  
-----

**53-07-BZ**

1901 Eighth Avenue, Corner of Eighth Avenue and 19th Street., Block 888, Lot(s) 7, Borough of **Brooklyn, Community Board: 7.** Under 72-21-Proposal is to rehabilitate and convert to residential use a 75 year old manufacturing building.  
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**54-07-BZ**

1776 East 26 Street, West side of East 26 Street between Avenue R and Quentin Road, approximately, 200 feet north of Avenue R., Block 6808, Lot(s) 34, Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT)73-622-Enlargement of a single family home.  
-----

**55-07-A**

3 Devon Walk, South east corner Devon Walk and mapped Oceanside Avenue., Block 16350, Lot(s) p/o 400 Borough of **Queens, Community Board: 14.** General City Law Section 35, Article 3-Proposed reconstruction and enlargement of an existing single family dwelling. Proposed upgrade of non-conforming private disposal system.  
-----

**56-07-A**

13 Bayside Roxbury, Intersection of mapped Bayside Drive and unmapped Roxbury Avenue, Block 16340, Lot(s) p/o 50, Borough of **Queens, Community Board: 14.** General City Law Section 35, Article 3-Proposed reconstruction and enlargement of an existing single family dwelling. Propoised upgrade of non-conforming private disposal system.  
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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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**MARCH 20, 2007, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 20, 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**

**947-80-BZII**

**APPLICANT** – Sheldon Lobel, P.C., for Hellmuth Owners Corp., 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, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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**APPEALS CALENDAR**

**229-06-A**

**APPLICANT** – Sheldon Lobel, P.C., for Breezy Point Cooperative, Inc., owner; Thomas Carroll, lessee.

**SUBJECT** – 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**

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**6-07-A thru 9-07-A**

**APPLICANT** – Sheldon Lobel, P.C., for College Point Holding, LLC, owner.

**SUBJECT** – Application January 8, 2007 – Proposed construction of four two family homes not fronting on mapped street which is contrary to Article 3, Section 36 of the General City Law. R4A Zoning District.

**PREMISES AFFECTED** – 127-09, 127-11, 127-15 and 127-17 Gurino Drive, (*Former 25<sup>th</sup> Road*) between 127<sup>th</sup> Street and Ulmer Street, Block 4269, Lots 1 & 27 (*to be known as New Tax Lots 1, 2, 3 & 4*), Borough of Queens.

**COMMUNITY BOARD #7Q**

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**MARCH 20, 2007, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 20, 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**

**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**

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**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 sections 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**

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**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

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# CALENDAR

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Brooklyn.

**COMMUNITY BOARD #5BK**

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**316-06-BZ**

APPLICANT- Jesse Masyr, Esq., Wachtel & Masyr, LLP, for Blaseboro Realty, LLC, owner; New York Botanical Barden, 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 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**

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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**

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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**

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**MARCH 21, 2007, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 21, 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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**APPEAL CALENDAR**

**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**

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*Jeff Mulligan, Executive Director*

**SPECIAL HEARING**

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, FEBRUARY 27, 2007  
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Collins and Commissioner Hinkson.

Absent: Commissioner Ottley-Brown.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon November 21, 2006, as printed in the bulletin of November 30, 2006, Vol. 91, No. 45. If there be no objection, it is so ordered.

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## SPECIAL ORDER CALENDAR

### 166-75-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Kassiani Katos, owner; KPS Food Corporation, lessee.

SUBJECT – Application August 30, 2006 – Extension of Term and waiver of the rules for variance to permit an eating and drinking establishment (Burger King & Popeye's) which expired in January 6, 2006 in a C1-2(R3-2) and R3-2 zoning district; and an extension of Time to obtain a certificate of occupancy which expired on March 18, 1998.

PREMISES AFFECTED – 164-17 Union Turnpike, north side of Union Turnpike, 148.83' east of 164<sup>th</sup> Street, Block 6972, Lot 21, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Trevis Savage.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, and an extension of the term for a previously granted variance for an eating and drinking establishment, which expired on January 6, 2006; and

WHEREAS, a public hearing was held on this application on February 6, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

WHEREAS, Community Board 8, Queens, recommends approval of this application with the following conditions: garbage pick up be limited to daylight hours, noise levels from the ventilation system be at an acceptable level, sidewalks be cleared of snow and maintained, the facility be closed at 11:00 p.m., lights be directed away from residences, and food stacks be cleaned; and

WHEREAS, the subject premises is located on the north side of Union Turnpike, 148.83 ft. east of 164<sup>th</sup> Street; and

WHEREAS, the site has a lot area of approximately 24,340 sq. ft. and is located partially within a C1-1 (R3-2) zoning district and partially within an R3-2 zoning district; and

WHEREAS, the eating and drinking establishment occupies a one-story commercial building with 3,569 sq. ft. of floor area; and

WHEREAS, the establishment is operated as a Burger King and a Popeye's; and

WHEREAS, on January 6, 1976, under the subject calendar number, the Board granted a variance, to permit a change in occupancy from an automobile rental and service establishment to an eating and drinking establishment with accessory parking; and

WHEREAS, the grant was subsequently amended and extended twice; and

WHEREAS, most recently, on March 18, 1997, the term was extended for a period of ten years from the expiration of the prior grant; and

WHEREAS, this application seeks an additional ten year term; and

WHEREAS, at hearing, the Board asked the applicant if the garbage enclosure along the northern lot line of the site is located within the R3-2 zoning district; and

WHEREAS, the applicant responded that the garbage enclosure is located within the portion of the site within the R3-2 zoning district but that the adjacent property is occupied by a pumping station rather than by residential use; and

WHEREAS, at hearing, the applicant stated that the operation of the site would comply with all of the Community Board's conditions; and

WHEREAS, however, the applicant stated that it is difficult to guarantee the hours of garbage removal, but that it would request an early pick up; and

WHEREAS, additionally, the applicant seeks an extension of time to obtain a certificate of occupancy, which expired on March 18, 1998; and

WHEREAS, the applicant represents that a certificate of occupancy has not been obtained due to an administrative delay; and

WHEREAS, the applicant states that the certificate of occupancy will be obtained within six months; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated January 6, 1976, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a permanent certificate of occupancy, and an extension of the term for a term of ten years from the expiration of the last grant to expire on January 6, 2016; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received December 5, 2006' -(5) sheets; and *on condition*:

# MINUTES

THAT this grant shall be limited to a term of ten years, expiring January 6, 2016;

THAT the hours of operation shall be limited to: 7:00 a.m. to 11:00 p.m., daily;

THAT garbage removal shall be limited to the hours of 8:00 a.m. to 9:00 p.m., daily;

THAT all exterior lighting shall be directed down and away from adjacent residences;

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

THAT a certificate of occupancy shall be obtained within one year of the date of this grant;

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

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

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

(Alt. 231/1975)

Adopted by the Board of Standards and Appeals, February 27, 2007.

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## 383-04-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Israel Realty; lessee: Total Fitness & Karate Center.

SUBJECT – Application December 6, 2004 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 46-21 Greenpoint Avenue, 47<sup>th</sup> Street, Block 152, Lot 1, Borough of Queens.

### COMMUNITY BOARD #2 Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Application dismissed

**THE VOTE TO DISMISS** –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated November 29, 2004, acting on Department of Buildings Application No. 400946410, reads in pertinent part:

“Legalization of existing physical cultural establishment requires BSA approval as per 73-36.”; and

WHEREAS, this is an application under ZR § 73-36, to permit, on a site within a C4-2 zoning district, the legalization of a Physical Culture Establishment (PCE), which occupies the cellar level of a two-story commercial building; and

WHEREAS, on April 19, 1988, under BSA Cal. No. 685-87-BZ, the Board granted a special permit to allow the

legalization of the PCE operating at the site, for a term of ten years; and

WHEREAS, the applicant failed to renew the special permit at its expiration; and

WHEREAS, accordingly, the PCE has illegally occupied and operated within the building since April 19, 1998; and

WHEREAS, because the special permit had been expired for more than six years, the applicant brought an application for a new special permit; and

WHEREAS, the special permit application was filed on December 6, 2004; and

WHEREAS, in January 2005, Board staff contacted the applicant to discuss the deficiencies of the application; and

WHEREAS, on February 18, 2005, the applicant made a submission; and

WHEREAS, on April 28, 2005, Board staff issued a Notice of Objections to the applicant; and

WHEREAS, on August 15, 2005, Board staff issued a Notice of Intent to dismiss; and

WHEREAS, in December 2005, Board staff met with the applicant again to discuss the deficiencies of the application; and

WHEREAS, the Board did not receive any subsequent response from the applicant; and

WHEREAS, on August 17, 2006, Board staff issued a second Notice of Intent to dismiss; and

WHEREAS, on September 14, 2006, Board staff spoke with the applicant and reviewed the outstanding issues of the April 28, 2005 Notice of Objections; and

WHEREAS, the applicant did not provide any response; and

WHEREAS, on November 16, 2006, the Board sent the applicant a Notice of Hearing, which stated that the case had been put on the January 23, 2007 dismissal calendar; and

WHEREAS, the applicant appeared at the January 23, 2007 hearing and requested additional time to complete the application; and

WHEREAS, at hearing, the Board scheduled a February 20, 2007 submission date and a February 27, 2007 continued hearing; and

WHEREAS, on February 20, 2007, Board staff met with the applicant to discuss the significant deficiencies of the application including an incomplete Department of Investigations application and the lack of an Environmental Assessment Statement; and

WHEREAS, the applicant failed to cure the deficiencies of the application; and

WHEREAS, the applicant also failed to appear at the February 27, 2007 hearing; and

WHEREAS, accordingly, because of the applicant’s lack of good faith prosecution of this application, it must be dismissed in its entirety.

*Therefore it is Resolved* that the application filed under BSA Cal. No. 383-04-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, February 27, 2007.

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# MINUTES

## 27-96-BZ

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

SUBJECT – Application October 23, 2006 – Extension of Term and Amendment for an existing Physical Cultural Establishment which was granted pursuant to §73-36 of the zoning resolution on October 16, 1996 and expired on October 16, 2006. The site is located in a C2-3/R5 zoning district.

PREMISES AFFECTED – 602-04 Coney Island Avenue, west side of Coney Island Avenue between Beverley Road and Avenue C, Block 5361, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Ron Mandel.

### ACTION OF THE BOARD –

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

### THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment, and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on October 16, 2006; and

WHEREAS, a public hearing was held on this application on February 13, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the west side of Coney Island Avenue between Beverly Road and Avenue C; and

WHEREAS, the site has a lot area of approximately 5,100 sq. ft. and is located within a C2-3 (R5) zoning district; and

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

WHEREAS, the PCE occupies a portion of the first floor and mezzanine; and

WHEREAS, on October 16, 1996, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE for a term of ten years; and

WHEREAS, the instant application seeks approval of interior layout modifications including the rearrangement of the eating and drinking area, the relocation of the sauna, steam room and shower, and the enlargement of the men’s locker room; and

WHEREAS, the applicant also requests a ten-year extension of term for the special permit; and

WHEREAS, based upon its review of the record, the Board finds that the requested interior modifications and extension of term are appropriate, with the conditions set forth

below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated October 16, 1996, so that as amended this portion of the resolution shall read: “to grant approval of a the requested layout modifications and an extension of the term for a term of ten years from the expiration of the last grant to expire on October 16, 2016; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked ‘Received January 10, 2007’–(4) sheets; and *on condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years to expire on October 16, 2016;

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

THAT a certificate of occupancy shall be obtained within one year of the date of this grant;

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

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. 300326895)

Adopted by the Board of Standards and Appeals, February 27, 2007.

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## 30-00-BZ

APPLICANT– Sheldon Lobel, P.C., for Sand Realty Group, Inc., owner.

SUBJECT – Application October 13, 2006 – Extension of term/Waiver of a previously granted variance granted pursuant to §72-21 of the zoning resolution which permitted an open parking lot (Use Group 8) within an R7-2 zoning district.

PREMISES AFFECTED – 458 West 166<sup>th</sup> Street, north side of West 166<sup>th</sup> Street, between Amsterdam Avenue and Edgecomb Avenue, Block 2111, Lot 57 (a/k/a 53-55, 57, 71-73), Borough of Manhattan.

### COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Ron Mandel.

### ACTION OF THE BOARD –

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

# MINUTES

## THE RESOLUTION:

WHEREAS, this is an application for waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a parking lot, which expired on February 6, 2006; and

WHEREAS, a public hearing was held on this application on January 30, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 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 12, Manhattan, recommends approval of this application; the Community Board recommends that the term be limited to five years; and

WHEREAS, the subject premises is located on the north side of West 166<sup>th</sup> Street, between Amsterdam Avenue and Edgcombe Avenue; and

WHEREAS, the site is located within an R7-2 zoning district and is occupied by a 18,350 sq. ft. parking lot; and

WHEREAS, on February 6, 2001, the Board granted a variance to legalize an open parking lot (Use Group 8) at the site for a five-year term; and

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

WHEREAS, the applicant represents that there are approximately 71 spaces for motor vehicle parking and storage at the site and that this condition will be maintained; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated February 6, 2001, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of ten years from the date of this grant; *on condition* that the use and operation of the parking lot shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received February 12, 2007 -(2) sheets; and *on condition*:

THAT this grant shall be limited to a term of ten years, to expire on February 6, 2016;

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

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

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

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

(DOB Application No. 101948403)

Adopted by the Board of Standards and Appeals, February 27, 2007.

## 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 –

For Applicant: Howard Weiss.

THE VOTE TO CLOSE HEARING

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 20, 2007, at 10 A.M., for decision, hearing closed.

## 8-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Bruno Savo, owner.

SUBJECT – Application October 20, 2006 – Extension of Time to complete construction to a previously granted Variance (§72-21) for the construction of a single family home on a lot with less than the lot width which expired on December 18, 2005; and an amendment to the off street parking requirement to comply with provisions in an R32(LDGM) zoning district.

PREMISES AFFECTED – 352 Clifton Avenue, south side of Clifton Avenue, 125' east of Reynolds Street, Block 2981, Lot 7, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Trevis Savage.

For Opposition: Sarem Ozdusal and William Allen.

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

## 60-82-BZ

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

SUBJECT – Application August 1, 2006 – Extension of Term Filed pursuant to §11-411 of the zoning resolution for an automotive service station (Use Group 16) with accessory uses located within a C2-3/R7X zoning district. The term expired on July 7, 2006.

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60<sup>th</sup> Street and 61<sup>st</sup> Street, Block 1338, Lot 1, Borough of Queens.

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## COMMUNITY BOARD #2Q

### APPEARANCES –

For Applicant: Trevis Savage.

### THE VOTE TO CLOSE HEARING

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 13, 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 33, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

### APPEARANCES –

For Applicant: Howard Weiss.

**ACTION OF THE BOARD** – Laid over to March 20, 2007, at 10 A.M., for continued hearing.

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## 200-01-BZ

APPLICANT – Davidoff Malito & Hatcher by Howard S. Weiss, Esq., for Browne Associates, owner; Hillside Manor Rehabilitation and Extended Care Center, lessee.

SUBJECT – Application January 9, 2007 – Extension of Time to complete construction and to obtain a Certificate of Occupancy for the enlargement of a community use facility (Hillside Manor) in a C2-2/R-5 zoning district which expired on January 11, 2007.

PREMISES AFFECTED – 182-15 Hillside Avenue, northeast corner of Hillside Avenue and Avon Street, Block 9950, Lot 1, Borough of Queens.

## COMMUNITY BOARD #8Q

### APPEARANCES –

For Applicant: Howard Weiss.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 13, 2007, at 10 A.M., for decision, hearing closed.

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## 124-02-BZ

APPLICANT – Law Office of Howard Goldman, for St. John’s University, owner.

SUBJECT – Application January 9, 2007 – Reopening of a

previously approved variance to grant an extension of time to complete substantial construction of two parking facilities for St. John’s University. R4 zoning district.

PREMISES AFFECTED – 8000 Utopia Parkway, bounded by Union Turnpike, 82<sup>nd</sup> Street and 180<sup>th</sup> Street, Block 7021, Lots 1 and 50, Borough of Queens.

## COMMUNITY BOARD #8Q

### APPEARANCES –

For Applicant: Chris Wright.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 13, 2007, at 10 A.M., for decision, hearing closed.

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## 213-06-A

APPLICANT – Fredrick A. Becker, Esq., for 7217 Grand Avenue Corp., owner.

SUBJECT – Application August 23, 2006 – to permit the construction of three story mixed use commercial/residential structure within the bed of a mapped street (72nd Place), contrary to General City Law Section 35. Premises is located in an C1-2 (R6B) Zoning District.

PREMISES AFFECTED – 72-19 Grand Avenue, northwest corner of Grand Avenue and 72<sup>nd</sup> Place, Block 2506, Lot 96 (tent.), Borough of Queens.

## COMMUNITY BOARD #5Q

### APPEARANCES –

For Applicant: Lyra J. Altman.

### ACTION OF THE BOARD –

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

### THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 18, 2006, acting on Department of Buildings Application No. 402141419 which reads in pertinent part:

“Proposed new building is on City street widening contrary to General City Law Section 35.”; and

WHEREAS, a public hearing was held on this application on February 6, 2007 after due notice by publication in the *City Record*, and then to decision on February 27, 2007; and

WHEREAS, by letter dated September 11, 2006, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated November 6, 2006, the Department of Environmental Protection (DEP) states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 2, 2007, the Department of Transportation (DOT) stated that it had reviewed the application and advised the Board that the proposed building’s height will impair visibility at the

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intersection due to the angle of the intersection and the curvature of the street; and

WHEREAS, accordingly, DOT recommended that the curb cut be pushed back further away from the intersection as much as possible towards the end of the property and that the sidewalk adjacent to the property be a five feet in width and completely free of obstacles; and

WHEREAS, the Board notes that the February 2, 2007 letter did not indicate that DOT intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, by letter February 9, 2007, in response to DOT's request, the applicant submitted a revised plot plan and statement reflecting a proposed ten-ft. sidewalk on 72<sup>nd</sup> Place, and a 15-ft. sidewalk on Grand Avenue, both with a minimum five-ft. width free of obstacles; and

WHEREAS, the plot plan also provides that the curb cut will be relocated to the northerly edge of the premises as far away from the intersection as possible; and

WHEREAS, additionally, the applicant notes that the new building will be in the same location as the existing building and therefore will not result in any new visibility impairment at the intersection; and

WHEREAS, by letter dated February 16, 2007, DOT states that it has reviewed the applicant's revised submission and has no further comments or objections; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated August 18, 2006, acting on Department of Buildings Application No. 402141419, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received February 9, 2007"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, February 27, 2007.

## 84-06-BZY

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application May 4, 2006 – Proposed extension of time to complete construction minor development pursuant to ZR §11-331 for a four story mixed use building.

Prior zoning was R6 and new zoning district is R4-1 as of April 5, 2006.

PREMISES AFFECTED – 1472 East 19<sup>th</sup> Street, between Avenue N and Avenue O, Block 6756, Lot 36, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Trevis Savage.

For Opposition: Mark J. Kurzman and Joel Cohen.

For Administration: Angelina Martinez, Department of Buildings.

## THE VOTE TO CLOSE HEARING

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD – Off Calendar.**

## 45-07-A

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application February 8, 2007 – For a determination that the owner of the premises has acquired a common-law vested right to continue development commenced under the prior R6 zoning district.

PREMISES AFFECTED – 1472 East 19<sup>th</sup> Street, between Avenue "N" and Avenue "O", Block 6756, Lot 36, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Trevis Savage.

For Opposition: Mark J. Kurzman, Abraham Lasker and David Tovey.

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

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

*Jeffrey Mulligan, Executive Director*

Adjourned: 11:00 A.M.

## REGULAR MEETING

**TUESDAY AFTERNOON, FEBRUARY 27, 2007**

**1:30 P.M.**

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

## ZONING CALENDAR

## 36-06-BZ

APPLICANT – Sheldon Lobel, P.C., for The RNR Group

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Ltd., owner.

SUBJECT – Application March 1, 2006 – Special Permit pursuant to Z.R. §73-53 to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor’s establishment (Use Group 16) by 2,485 square feet.

PREMISES AFFECTED – 2125 Utica Avenue, east side of Utica Avenue between Avenue M and Avenue N, Block 7875, Lot 20, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ron Mandel.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 6, 2006, acting on Department of Buildings Application No. 301801726, reads in pertinent part:

“Proposed enlargement of a legal, non-conforming manufacturing use located in a R3-2 zoning district is not allowed and requires a special permit from the Board of Standards and Appeals pursuant to Section 73-53 ZR and must be referred to the Board of Standards and Appeals.”; and

WHEREAS, this is an application made pursuant to ZR §§73-53 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a legal non-conforming mixed-use residential (Use Group 2)/manufacturing (Use Group 16) building, which does not comply with requirements related to commercial floor area, commercial floor area ratio, open space ratio, and front, side, and rear yards, contrary to ZR §§33-121, 23-141, 23-45, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on October 24, 2006 after due notice by publication in *The City Record*, with continued hearings on December 5, 2006 and January 23, 2007, and then to decision on February 27, 2007; and

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

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the subject zoning lot is located on the east side of Utica Avenue, between Avenue M and Avenue N, within an R3-2 zoning district; and

WHEREAS, the lot is approximately 6,000 square feet and is improved upon with a one-story building with a partial second story mixed-use residential/manufacturing building; and

WHEREAS, the manufacturing use currently occupies the entire 4,332 sq. ft. first floor (0.72 FAR); and

WHEREAS, two residential units currently occupy the existing 1,452 sq. ft. second floor; and

WHEREAS, the proposed enlargement will be built above the existing first floor and will add 2,310 square feet of manufacturing floor area to the second floor; and

WHEREAS, the enlargement will result in the following non-compliances: a commercial/manufacturing FAR of 1.10 (the maximum permitted commercial/manufacturing FAR is 1.0) and a commercial/manufacturing floor area of 6,642 sq. ft.; and

WHEREAS, the open space and side, front, and rear yards are existing non-compliances, which will be maintained; and

WHEREAS, the current owner purchased the property in 1995, and has used it since then for the design and manufacturing of custom cabinets and interiors (Use Group 16); and

WHEREAS, as to the prerequisites, the applicant, through testimony and submission of supporting documentation, has demonstrated that: the use of the premises is not subject to termination pursuant to ZR §52-70; the use for which the special permit is being sought has lawfully existed for more than five years; there has not been residential use where the existing manufacturing floor area is located during the past five years; the subject building has not received an enlargement pursuant to ZR §§11-412, 43-121 or 72-21; and that the subject use is listed in Use Group 16, not Use Group 18; and

WHEREAS, the applicant also demonstrated that the requested proposal is for an enlargement that results in less than 45 percent of the floor area occupied by the UG 16 use on December 17, 1987, and does not exceed 10,000 square feet; and

WHEREAS, in support of the above, the applicant has submitted plans, an owner’s statement, Sanborn maps, and a history of the establishment’s listing in the telephone directory; and

WHEREAS, the applicant represents that the enlargement is an entirely enclosed building, and that there will be no open uses of any kind; and

WHEREAS, additionally, the proposed plans reflect that the enlargement will provide for a 30-ft. rear yard and an 8-ft. side yard above the first floor; and

WHEREAS, the applicant notes that the enlargement will result in the hiring of approximately four new employees, which is below the number which will generate significant increases in vehicular or pedestrian traffic; and

WHEREAS, as to potential parking impacts, the applicant states there will be adequate parking to accommodate projected parking needs; and

WHEREAS, further, all parking and loading will be enclosed; and

WHEREAS, accordingly, the record indicates and the Board finds that the subject enlargement will not generate significant increases in vehicular or pedestrian traffic, nor cause congestion in the surrounding area, and that there is

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adequate parking for the vehicles generated by the enlargement, and that loading will be inside the building; and

WHEREAS, at hearing, the Fire Department provided testimony stating that two forms of egress should be provided from the second floor; and

WHEREAS, the Board asked the applicant to confirm that egress complied with all Building Code requirements; and

WHEREAS, in response, the applicant submitted a reconsideration from DOB stating that the egress, as shown on the approved plans, complies with all Building Code requirements; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the Board notes that the new manufacturing space abuts an automotive repair facility and that there is a commercial warehouse and a transportation facility across Utica Avenue; and

WHEREAS, the Board also observes that the subject block is developed with many other commercial uses; and

WHEREAS, additionally, the subject zoning district is adjacent to C1-2 and C2-2 zoning districts; and

WHEREAS, thus, the neighborhood in which the site is located is characterized by a significant manufacturing and commercial presence; and

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

WHEREAS, the Board notes that the grant of the special permit will facilitate the enlargement of a viable UG 16 use, which provides jobs and tax revenue, on a site where such use is appropriate and legal; and

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

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

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be made under ZR §§73-53 and 73-03; 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 EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the

environment that would require an Environmental Impact Statement are foreseeable; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§73-53 and 73-03 for a special permit to allow, within an R3-2 zoning district, the proposed enlargement of a legal non-conforming mixed-use residential (Use Group 2)/manufacturing (Use Group 16) building, which does not comply with requirements related to commercial floor area, commercial floor area ratio, open space ratio, and front, side, and rear yards, contrary to ZR §§ 33-121, 23-141, 23-45, 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 marked "Received February 23, 2007"-(7) sheets; and *on further condition*;

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

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

THAT there shall be no open uses on the site;

THAT prior to the issuance of a certificate of occupancy, DOB shall ensure that there is no commercial occupancy of the two existing residential units;

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

THAT all applicable fire safety measure will be complied with;

THAT all egress and staircases 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 objection(s) only;

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

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

Adopted by the Board of Standards and Appeals February 27, 2007.

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**54-06-BZ**  
**CEQR #06-BSA-069K**

APPLICANT – Eric Palatnik, P.C., for The Cheder, owner.  
SUBJECT – Application March 21, 2006 – Variance application pursuant to Z.R. §72-21 to permit the development of a three-story and cellar Use Group 3 Yeshiva for grades 9 through 12 and first, second, and third

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years of college as well as an accessory dormitory use (Use Group 4) to house a small portion of those college age students. The Premises is located within a R3-1 zoning district. The site is currently occupied by two single-family dwellings which would be demolished as part of the proposal. The proposal seeks to vary ZR §113-51 (Floor Area); §113-55 and §23-631 (Perimeter Wall Height, Total Height and Sky Exposure Plane); §113-542 and §23-45 (Front Yard and Setback); §113-543 and §23-461(a) (Side Yard); §113-544 (Rear Yard); §113-561 and §23-51 (Parking); and §113-22 (Loading Berth).

PREMISES AFFECTED – 401 and 403 Elmwood Avenue, between East 3<sup>rd</sup> and East 5<sup>th</sup> Streets, Block 6503, Lot 99, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Hiram Rothkrug.

## ACTION OF THE BOARD –

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

## THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 13, 2007, acting on Department of Buildings Application No. 302088960, reads in pertinent part:

1. Proposed floor area is contrary to ZR 113-51.
2. Proposed perimeter wall height is contrary to ZR 113-55 and ZR 23-631.
3. Proposed front yard is contrary to ZR 113-542 and ZR 23-45.
4. Proposed rear yard is contrary to ZR 113-544.
5. Proposed setback is contrary to ZR 113-542 and ZR 23-45.
6. Proposed sky exposure plane is contrary to ZR 113-55 and ZR 23-631.
7. Proposed parking is contrary to ZR 113-561 and ZR 25-31.
8. Proposed loading berth is contrary to ZR 113-22(b).”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-1 zoning district within the Ocean Parkway Special District (OP), the construction of a new three-story Use Group 3 school and accessory dormitory building (the “New Building”), which results in non-compliances with zoning requirements related to floor area, perimeter wall height, front yard, rear yard, setback, sky exposure plane, parking and loading, contrary to ZR §§ 113-51, 113-55, 23-631, 113-542, 23-45, 113-544, 113-561, 25-31, and 113-22(b); and

WHEREAS, specifically, the New Building will have a community facility and total Floor Area Ratio (FAR) of 2.32 (1.5 is the maximum permitted); a perimeter wall height of 35 ft. (21 ft. is the maximum permitted); a front yard of seven feet (a 10 ft. front yard is required); no rear yard (a rear yard of 20 ft. is required); no setback (a setback of 10 ft. is required); sky exposure plane non-compliance; no parking spaces (18 spaces

are required); and no loading berth (one is required); and

WHEREAS, the applicant initially proposed a building with an FAR of 2.43, a total and perimeter wall height of 41 ft., no front yard, and less than a 10 ft. side yard; and

WHEREAS, however, in response to concerns of the Board as to the impact of the initially proposed building, the applicant reduced the total height to within complying parameters, proposed a complying side yard, and reduced the degree of non-compliance as to FAR and the front yard; and

WHEREAS, a public hearing was held on this application on July 18, 2006, after due notice by publication in the *City Record*, with continued hearings on September 12, 2006, November 14, 2006 and January 9, 2007, and then to decision on February 27, 2007; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application; and

WHEREAS, the Kensington-Flatbush Preservation Association (the “Opposition”) opposed this application, for reasons that are discussed below; and

WHEREAS, the application is brought on behalf of The Cheder (the “School”), a not for profit education institution; and

WHEREAS the site is located on the north side of Elmwood Avenue between East 3<sup>rd</sup> Street and East 5<sup>th</sup> Street, with frontage of 120 ft. on Elmwood Avenue, and a lot area of 10,790 sq. ft.; and

WHEREAS, the site abuts a railroad line to the rear, and is across the street from a seven-story multiple dwelling; and

WHEREAS, the site has a shallow depth, extending only 90 feet from the front lot line to the rear lot line; and

WHEREAS, the site is currently occupied by two single-family homes that are proposed to be demolished; and

WHEREAS, the New Building will house the School’s 9<sup>th</sup> through 12<sup>th</sup> grades, and first through third year of college, as well as seven rooms for the college students; and

WHEREAS, the total proposed enrollment at the New Building will be 230 students; and

WHEREAS, the School currently operates another facility approximately one block from the subject site, at 129 Elmwood Street (the “129 Building”); and

WHEREAS, the 129 Building houses the School’s lower grades, as well as a catering hall that is as of right aside from its kitchen; and

WHEREAS, the applicant states that the School’s high school is also currently housed at the 129 Building; and

WHEREAS, the 129 Building was constructed pursuant to a prior Board grant, made under BSA Cal. No. 139-96-BZ; and

WHEREAS, during the hearing process, the Opposition contends that the School has not complied with various conditions of this resolution; and

WHEREAS, because of this, the Opposition suggests that the Board should question the credibility of the School in the instant application; and

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WHEREAS, the Opposition even suggests that the Board deny the instant application on this basis; and

WHEREAS, the Board observes that while it does possess the authority to investigate allegations concerning the School's failure to comply with another grant, such consideration does not need to precede the conclusion of the instant application; and

WHEREAS, the Board may ultimately determine, upon further investigation, that the School should make more effort to comply with the conditions related to 139-96-BZ, and may take appropriate action to ensure that this occurs; and

WHEREAS, however, such a determination would not require the Board to deny the instant application; and

WHEREAS, the Board also notes that the School previously applied to enlarge another one of its facilities, located at 4001 16<sup>th</sup> Avenue, under BSA Cal. No. 45-05-BZ; and

WHEREAS, the applicant states that the proposed expansion of this facility (which now houses the nursery school program) was ultimately determined to be unsatisfactory, and this application was withdrawn after the subject site became available; and

WHEREAS, the applicant represents that the New Building will fulfill significant programmatic needs of the School; and

WHEREAS, specifically, the applicant notes that the New Building will allow for: seven classrooms on the first through third floors for grades nine through twelve and the college levels, two religious study rooms, library space, a full-sized gym, lunch room and kosher kitchen at the cellar level, seven dormitory rooms with 30 beds on the second floor, office space, restrooms, janitorial space, and a recreation area at the rooftop level; and

WHEREAS, the applicant states that the New Building is needed to serve the current student body, and to accommodate anticipated growth; and

WHEREAS, specifically, the New Building will accommodate 230 high school and post-grad students; and

WHEREAS, the applicant notes that each successive graduating class needs new space as it progresses through the grades; and

WHEREAS, the Board also observes that the New Building needs to be located near both the 129 Building (in order to reduce administrative costs) and within the geographic area from which the School's student are drawn (so that students can easily come to the facility); the subject site satisfies both these goals; and

WHEREAS, during the hearing process, the Board asked the applicant to explain the need for the proposed dormitory rooms, which, as noted above, the applicant claims is a component of the programmatic needs; and

WHEREAS, the applicant also explained that the educational program for the upper level students requires an intensive degree of study per day, that extends into well into the late evening hours, which in turn necessitates that sleeping accommodations be provided; and

WHEREAS, the applicant also submitted a list of other similar schools that provide dormitory beds for their students in

comparable facilities; and

WHEREAS, based upon the above, the Board agrees that the cited programmatic needs are legitimate and have been documented with substantial evidence; and

WHEREAS, the Board also notes that as an educational institution, the School is entitled to special treatment under applicable zoning ordinances, and its programmatic space needs may form the basis for a claim of practical difficulties; and

WHEREAS, the Board observes that the School's programmatic needs necessitate the majority of the needed waivers; and

WHEREAS, specifically, as to the FAR waiver, the applicant notes that without such waiver, the New Building would be much smaller and would not be able to accommodate the proposed enrollment of 230 high school and post-graduate students; and

WHEREAS, the Board notes that the remainder of the waivers largely arise due to the need to accommodate the increase in FAR in a reasonable building envelope; and

WHEREAS, as to the perimeter wall height and front yard waivers, the Board observes that with the proposed FAR, the most efficient layout for the School's programmatic needs is three stories of uniform size; and

WHEREAS, these two waivers facilitate such uniformity; if not granted, setbacks would be required that would limit the size of classrooms or even eliminate them and offices and eliminate six proposed dormitory rooms; and

WHEREAS, as to the rear yard, the applicant notes that the provision of a fully complying rear yard would result in floor plates that could not accommodate the study halls, the library, and classrooms; additionally, the fire stairwell at the rear of the building would have to be relocated to elsewhere in the interior of the building, further compromising the floor plates; and

WHEREAS, the Board also observes that the site's shallow depth, as mentioned above, further complicates the provision of a fully complying rear yard; and

WHEREAS, as to the parking waiver, the applicant states that the provision of the required amount of parking would eliminate the possibility of providing the above-cited programmatic elements; and

WHEREAS, finally, as to the loading berth waiver, the Board observes the provision of a loading berth would have to occur at grade, which would eliminate approximately 216 sq. ft. of floor area on the first floor; this would result in the loss of classroom and office space; and

WHEREAS, alternatively, in order to accommodate the stated programmatic needs, this lost square footage would need to be recaptured on a fourth floor (creating a total height non-compliance, adding to construction costs, and interfering with the functional operation of the School); and

WHEREAS, based upon its consideration of the above, the Board finds that the site's shallow depth, the need to have a facility in close proximity to the 129 Building, and the other established programmatic needs of the School, when considered in combination, create unnecessary hardship and practical difficulty in developing the site in compliance with the

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applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, as a threshold issue, the Board notes that the use of the site for a religious school is as of right in the subject R3-1 zoning district; and

WHEREAS, as to the FAR, the Board observes that there is a seven-story multiple dwelling across the street with an FAR of 2.89, and a six-story building at 505 Elmwood Avenue with an FAR of 3.96, both of which exceed the New Building's proposed FAR; and

WHEREAS, the Board also observes that the additional FAR is located primarily at the rear of the New Building, where it will have less impact since the site abuts railroad tracks to the rear; and

WHEREAS, as to the height of the New Building, the applicant notes that at 35 feet, it is lower than the seven-story multiple dwelling across the street (75 feet), the six-story building at 505 Elmwood Avenue (65 feet) and a 13-story building at the corner of Elwood Avenue; and

WHEREAS, the Board observes that the total height was reduced and now complies with the maximum height; and

WHEREAS, the Board further observes that the perimeter wall height was reduced, and any impact of the slight variance for wall height will be minimized by the provision of a front yard of seven feet; and

WHEREAS, likewise, as to the rear yard, the applicant states, and the Board agrees, that since the site abuts this railroad track to the rear, there will be no detrimental impact from this waiver; and

WHEREAS, the Board further observes that the front yard waiver is modest (only a 3 ft. non-compliance), and that a nearby building on the same block-front also possesses a non-complying front yard; and

WHEREAS, finally, the Board notes that the New Building provides complying side yards; and

WHEREAS, as to garbage storage and collection, the applicant notes that the School will install a refrigerated garbage storage room at the cellar level, and that garbage will only be collected at scheduled times and will not be left in the street; and

WHEREAS, the Board also notes that restrictions on garbage storage and collection will be made conditions of this grant; and

WHEREAS, as to traffic and parking, the applicant submitted a study prepared by its traffic and parking consultant, which concluded that the proposed action would not have any significant effect on neighborhood traffic or on-street parking supply; and

WHEREAS, at the request of the Board, the consultant made subsequent submissions that explain the methodology used in the study, and which analyzed the differential between an as of right school development and the proposed New Building, assuming that the New Building could accommodate 70 more students; and

WHEREAS, these subsequent submission clarified that the methodology used was appropriate, and that the proposal, when compared to an as of right development, was not anticipated to result in any significant impacts as to traffic and parking; and

WHEREAS, the applicant also notes that it will provide bicycle racks (four racks allowing storage of 36 bikes total) in the front yard so that students may bike to school; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the School could occur on the subject site given the site's configuration; and

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

WHEREAS, the applicant represents that the requested waivers are the minimum waivers necessary to accommodate the School's programmatic needs; and

WHEREAS, the applicant also notes that the degree of the waivers is modest in most cases; and

WHEREAS, the Board also observes that the applicant reduced the size of the building in terms of FAR, maximum height, and side yards, in order to create a more compatible building envelope; and

WHEREAS, therefore, the Board agrees that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

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

WHEREAS, as noted above, the Opposition made a variety of arguments and observations regarding the instant application; and

WHEREAS, three of those arguments are as follows: (1) the applicant has failed to clarify the School's enrollment; (2) the applicant's traffic study fails to consider the alleged transport of students by private bus; and (3) the floor to ceiling heights can still be adjusted; and

WHEREAS, as to the School's enrollment, the Opposition cites to a document that allegedly indicates that the enrollment is actually 468, rather than the 435 initially claimed by the applicant, or the 444 now claimed; and

WHEREAS, the Board finds that the applicant has credibly established that the total enrollment of Kindergarten through 12<sup>th</sup> grade is 444, based upon submitted documentation; and

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WHEREAS, further, it finds the Opposition's concern about the actual number to be somewhat picayune, given that whether the number is 435, 444 or 468, the programmatic need pressures facing the School would be largely the same; and

WHEREAS, as to the use of private buses, the applicant explains that the reference to such buses was in error, and that students will arrive and leave the New Building primarily by walking or biking, as reflected in the afore-mentioned traffic study; and

WHEREAS, as to the floor to ceiling heights, the Opposition claims that further reduction is still possible; and

WHEREAS, however, the Board observes that the floor to ceiling heights are not extreme given the proposed educational use of the New Building, and that the total height now complies; and

WHEREAS, the Opposition also made a variety of other arguments not specifically addressed, none of which the Board finds persuasive, for the reasons stated by the applicant in its most recent submission; and

WHEREAS, in sum, the Board declines to view any of the Oppositions' arguments as fundamental flaws in the application; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA069K, dated March 21, 2006; and

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

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

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, within an R3-1 (OP) zoning district, the construction of a new three-story Use Group 3 school and accessory dormitory

building, which results in non-compliances with zoning requirements related to floor area, perimeter wall height, front yard, rear yard, setback, sky exposure plane, parking and loading, contrary to ZR §§ 113-51, 113-55, 23-631, 113-542, 23-45, 113-544, 113-561, 25-31, and 113-22(b), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 21, 2007" – (8) sheets; and *on further condition*:

THAT no commercial catering shall be permitted within the building or on-site;

THAT the only outdoor recreation space shall be located on the roof, as indicated on the BSA-approved plans, and shall only be used from 8:30 am to 6:30 pm;

THAT garbage shall be stored in the designated storage area and only placed on the street on scheduled pick-up days;

THAT garbage pick-up shall occur Tuesday and Friday between 7:30 am to 9:30 am;

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

THAT the bulk parameters of the building shall be as follows: a community facility and total Floor Area Ratio of 2.32; a total and perimeter wall height of 35 ft; and a front yard of seven feet, all as indicated on the BSA-approved plans;

THAT four bicycle racks shall be located as indicated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, February 27, 2007.

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**107-06-BZ**

**CEQR #06-BSA-092M**

APPLICANT– Kramer Levin Naftalis & Frankel, LLP, for Barbizon Hotel Associates, L.L.P.

SUBJECT – Application May 25, 2006 – Special Permit (§73-36) to allow a physical culture establishment use (Equinox) in the cellar, subcellar, first floor and second floor of a 22 story mixed use building. C1-8X/R8B zoning district.

PREMISES AFFECTED – 140 East 63<sup>rd</sup> Street, northwest corner block bounded by Lexington and Third Avenues, Block 1397, Lot 49, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: James Power.

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

**THE VOTE TO GRANT** –

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Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

## THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 3, 2006, acting on Department of Buildings Application No. 104405038, reads in pertinent part:

“The proposed Physical Culture Establishment is not permitted as of right in C1-8X district and is contrary to ZR 32-10.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-8X zoning district and partially within an R8B zoning district, the establishment of a physical culture establishment (PCE) on portions of the cellar and sub-cellar levels and the first and second floors of a 22-story mixed-use commercial/residential building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on January 23, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Commissioner Collins; and

WHEREAS, Community Board 8, Manhattan, does not take a position on this application; and

WHEREAS, an existing residential tenant of the building provided testimony in opposition to the application; the concerns of this tenant are discussed below; and

WHEREAS, the subject site is located on the southeast corner of Lexington Avenue and East 63<sup>rd</sup> Street; and

WHEREAS, because more than 50 percent of the lot area is located in the C1-8X zoning district and the greatest distance from the district boundary to any lot line does not exceed 25 feet, the C1-8X zoning district regulations may apply to the entire premises, pursuant to ZR § 77-11; and

WHEREAS, the site is occupied by a 22-story building, which was formerly a hotel; and

WHEREAS, the PCE, which is operated as an Equinox Fitness Club, has been in operation at the premises since 1998 as an accessory use to the hotel; and

WHEREAS, the hotel was recently closed and the building is being converted to a mixed-use commercial/residential use; and

WHEREAS, because of the conversion, the PCE will no longer be an accessory use and therefore the special permit is required; and

WHEREAS, the Board notes that the building does not currently comply with the maximum permitted FAR within the C1-8X zoning district but that after the conversion, the building will comply with all relevant zoning district regulations; and

WHEREAS, the Board notes that the building’s conversion plans are proceeding at DOB; and

WHEREAS, the PCE will occupy a total of 38,209 sq. ft. of floor space in the sub-cellar and cellar levels and on the first and second floors; and

WHEREAS, the Board defers approval of the location of

the PCE on the first and second floors and of the floor area calculations to DOB, to be confirmed prior to the issuance of a certificate of occupancy; and

WHEREAS, the applicant represents that the PCE offers classes and equipment for physical improvement, bodybuilding, and aerobics; and

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

WHEREAS, the applicant responded to the tenant’s following concerns: (1) that a separation between residential services and PCE services be provided, (2) that the second floor was illegally altered for PCE use, and (3) that noise from the PCE was affecting residential uses above; and

WHEREAS, as to the separation of uses at the site, the applicant represents that the building will maintain separate entrances for the PCE and the residential uses, with the PCE entrance being located on Lexington Avenue and the residential entrance being located on East 63<sup>rd</sup> Street; and

WHEREAS, additionally, the applicant represents that the PCE will provide a designated storage room for garbage; and

WHEREAS, as to the use of the second floor, the applicant, through the building owner, replied that the change of use in 1997, when the health club performed the alterations to the second floor, was approved and permitted by DOB and resulted in an amended certificate of occupancy; and

WHEREAS, the owner states that the uses on the second floor were discontinued in 1997 and represents that no complaints have been filed by any of the tenants until now; and

WHEREAS, further, the owner represents that none of the other existing tenants characterized the use of the second floor as a required building service; and

WHEREAS, additionally, the owner also notes that efforts were made to relocate and accommodate the remaining residential tenants through the conversion and to offer them services that are comparable to those offered before the conversion; and

WHEREAS, as to noise, the applicant notes that the PCE use does not go above the second floor and the residential use begins at the fourth floor; the third floor, which will be used by commercial tenants or for tenant storage, will provide a buffer between the uses; and

WHEREAS, the applicant also submitted a sound attenuation analysis from a sound consultant describing the sound attenuation measures that are in place; 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

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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.06-BSA-092M dated May 25, 2006; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-8X zoning district and partially within an R8B zoning district, the establishment of a physical culture establishment on portions of the cellar and sub-cellar levels and the first and second floors of a 22-story mixed-use commercial/residential building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 20, 2006"-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 27, 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 Thursday, 5:30 a.m. to 11:00 p.m.; Friday, 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.;

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 DOB shall review and approve the location of the PCE on the first and second floors and of the floor area calculations prior to the issuance of a 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, February 27, 2007.

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## 157-06-BZ

### CEQR #07-BSA-004Q

APPLICANT– The Law Office of Fredrick A. Becker, for C & K Steinway, LLC, owner; TSI Astoria Inc. dba New York Sports Club, lessee.

SUBJECT – Application July 15, 2006 – Special Permit (§73-36) to legalize the enlargement of a previously approved physical culture establishment on the first and second floor of a three story commercial building. C4-2A, C2-2(R6) zoning district.

PREMISES AFFECTED – 28-56 Steinway Street, northwest corner of Steinway Street and 30<sup>th</sup> Avenue, Block 662, Lot 41, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Lyra Altman.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated June 16, 2006, acting on Department of Buildings Application No. 401705963, reads in pertinent part:

“Proposed enlargement of Physical Culture Establishment at 2<sup>nd</sup> floor located at 28-26 Steinway (265-03-BZ) is contrary to ZR 12-10.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-2 (R6)

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zoning district and partially within a C4-2A zoning district, the legalization of a physical culture establishment (PCE) on portions of the first, second, and third floors of a three-story commercial building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on February 6, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

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

WHEREAS, the subject site is located on the northwest corner of Steinway Street and 30<sup>th</sup> Avenue; and

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

WHEREAS, the PCE, which is operated as New York Sports Club, has been in operation at the premises since 2004; and

WHEREAS, on January 13, 2004, under BSA Cal. No. 265-03-BZ, the Board granted a special permit for a PCE at the subject premises for a ten-year term; and

WHEREAS, the PCE as approved occupied a total of 18,005 sq. ft. of floor area on the first, second, and third floors; and

WHEREAS, the applicant now proposes to legalize an increase in the floor area, primarily on the second floor, which results in a total floor area of 30,676 sq. ft.; and

WHEREAS, because of the significant increase in floor area, the applicant requests a new special permit, which will supersede the prior special permit; and

WHEREAS, the applicant represents that the PCE offers classes and equipment for physical improvement, bodybuilding, and aerobics; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 5:30 a.m. to 12:00 a.m.; Friday, 5:30 a.m. to 11:00 p.m.; and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant whether the signage complied with zoning district regulations; and

WHEREAS, the applicant responded that the marquee signage was an existing non-complying condition; 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-004Q dated November 10, 2006; and

WHEREAS, the EAS documents show that the continued 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 continued operation of the PCE will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-2 (R6) zoning district and partially within a C4-2A zoning district, the legalization of a physical culture establishment on portions of the first, second, and third floors of a three-story commercial building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 30, 2006"-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 27, 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 Thursday, 5:30 a.m. to 12:00 a.m.; Friday, 5:30 a.m. to 11:00 p.m.; and Saturday and Sunday, 7:00 a.m. to 9:00 p.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 all signage shall be as approved by DOB;

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

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DOB/other jurisdiction objection(s);

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

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

Adopted by the Board of Standards and Appeals, February 27, 2007.

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## 266-06-BZ

### CEQR #07-BSA-023M

APPLICANT – Friedman & Gotbaum, LLP, for Woodcutters Realty Corp., owner; Three on Third LLC, lessee.

SUBJECT – Application September 29, 2006 – Special Permit (§ 73-52) to extend C6-1 zoning district use and bulk regulations twenty-five (25) feet into an adjacent R7-2 district to allow a mixed-use building containing Use Group 5 (transient hotel) on the residentially zoned portion of the subject zoning lot. C6-1 and R7-2.

PREMISES AFFECTED – 4 East 3<sup>rd</sup> Street, a/k/a 335-343 Bowery, Block 458, Lot 6, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Lori Cuisinier.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 28, 2006, concerning DOB applications numbers 103310329-NB and 104296888-A2, reads:

“ZR 77-11, ZR 22-10 Proposed 16 story building with commercial use is located on a zoning lot split between two zoning district C6-1/R7-2 with greatest maximum permitted distance exceeding 25’ on R7-2 portion, hence proposed extension of commercial use within R7-2 zoning district is not permitted. Proposed commercial use within R7-2 zoning district is not permitted”; and

WHEREAS, this is an application under ZR § 73-52 to permit the proposed development of a 16-story mixed-use community facility, residential and commercial (hotel) building, on a lot partially within a C6-1 zoning district and

partially within an R7-2 zoning district, which is contrary to Z.R. § 22-10 and which requires a special permit to allow the extension of the commercial use to a 25 foot portion of the lot within the R7-2 zoning district; and

WHEREAS, the proposed building will have a total floor area of 78,543 sq. ft., a total residential floor area of 7,231 sq. ft, a total community facility floor area of 1,130 sq. ft., a total commercial floor area of 70,182 sq. ft., a total Floor Area Ratio (FAR) of 6.49, a total height of 204’-0”, a wall height of 70’-0” (C6-1) and a wall height of 56’-0” (R7-2), an open space ratio of 16.7 percent, a 30 ft. rear yard, and setbacks of 10 and 15 ft.; and

WHEREAS, a public hearing was held on this application on February 6, 2007 after due notice by publication in the City Record, and then to decision to February 27, 2007; and

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

WHEREAS, Community Board 3, Manhattan, recommends approval of the subject application, on condition that the developer of the site enter into a Memorandum of Understanding (“MOU”) with the Community Board; the MOU covers a variety of topics, including hiring practices, sound attenuation, visual aesthetics, and use restrictions; and

WHEREAS, the Board notes that it is not a party to the MOU and said agreement is not enforceable here; and

WHEREAS, the Board observes that this site and proposed development was the subject of a prior appeal, brought under BSA Cal. No. 317-05-A; and

WHEREAS, this appeal challenged DOB’s issuance of construction permits for the proposed development, but was withdrawn after the developer agreed to make modifications to the building and address various community concerns; and

WHEREAS, the site is located on the southeast corner of East Third Street and the Bowery, with 139’-9” of frontage on East Third, and 102’-8” of frontage along the Bowery, with a total lot area of 12, 084 sq. ft.; and

WHEREAS, the eastern side lot line of the site partially abuts the Marble Cemetery, a New York City landmark; and

WHEREAS, the portion of the site that is within the C6-1 zoning district occupies 9,788.6 sq. ft.; the portion of the site that is within the R7-2 zoning district occupies 2,295.4 sq. ft.; and

WHEREAS, the R7-2 portion fronts on East Third Street and occupies a triangular-shaped part of the site to the east of the C6-1 portion; and

WHEREAS, the C6-1 district permits commercial and residential uses; the R7-2 district permits only residential uses; and

WHEREAS, the site was formerly occupied by a garage, repair shop, and gas station, constructed in the 1950s pursuant to a Board grant made under BSA Cal. No. 291-55-BZ; this service station was expanded pursuant to another Board grant made under BSA Cal. No. 217-73-BZ; and

WHEREAS, the gas station building was recently demolished, and the proposed building is now largely completed; and

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WHEREAS, as noted above, the proposed building will contain, when fully completed, 70,182 sq. ft. of Use Group 5 hotel use, 7,231 sq. ft. of residential use, and 1,130 sq. ft. of community facility use; and

WHEREAS, the applicant represents that by allowing C6-1 use regulations to apply to 25 feet of the total width of the R7-2 portion of the lot, an increase in commercial floor area of 11,454 sq. ft. is allowed; and

WHEREAS, however, a very small triangular-shaped part of the site will remain solely within the R7-2 district, even after the boundary line is moved 25 feet east, and therefore may only be used for community facility or residential use; and

WHEREAS, the Board notes that aside from the floor area for commercial use generated by the extension of the district boundary, all other bulk requirements are presumably as of right; the Board notes that it conditions this grant on review and confirmation of ZR and Building Code compliance of all other aspects of the building by the Department of Buildings; and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of 1961, is divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided: (a) that, without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (b) that such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold single ownership requirement, the applicant has submitted a copy of a deed that reveals that the zoning lot was in single ownership as of 1961; and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence showing that the zoning lot was in single ownership prior to 1961 and continuously from that time onward; and

WHEREAS, as to the threshold 50 percent requirement, as discussed above, approximately 9,788.6 sq. ft. of the site's total lot area is located within the C6-1 zoning district, which is more than the required 50 percent of lot area; and

WHEREAS, as to the first finding, the applicant states that although the R7-2 district allows residential development at an FAR of 3.44, such development is impracticable because of the insufficient lot size and irregular shape of the R7-2 portion, and the corresponding R7-2 height limitation; and

WHEREAS, specifically, the applicant states that construction of an independent residential building on this portion of the site would create massing problems and result in floor plates too small and inefficient to develop effectively and viably, and that a conforming integrated building over the entire site would likewise not result in a reasonable return; and

WHEREAS, the Board acknowledges that use of the site for a hotel, at least in part, is the most economically rational development option, given the location of the site and current demand for hotels; and

WHEREAS, the Board observes that the commercial FAR available on the site is 6.0, whereas the residential FAR available is 3.4, which provides a further incentive to develop the site commercially; and

WHEREAS, the Board further observes that full commercial development is not possible given the R7-2 portion; thus, the entire site may be developed with a mixed-use building or the two portions may be developed with two separate buildings; and

WHEREAS, for a mixed-use development covering the entire site, the Board notes that this necessitates that the commercial FAR be maximized on the lower floors, since residential use cannot be located on a floor lower than the location of commercial use, pursuant to the supplementary use regulations; and

WHEREAS, however, residential use cannot be located on the lower floors, since such residential use cannot be on the same floor as commercial use, again due to the supplementary use regulations; and

WHEREAS, this leaves locating community facility use on the lower floors of a mixed-use building, which as discussed below, would not realize a reasonable return; and

WHEREAS, as to developing the R7-2 portion with a separate residential building, the Board observes that the R7-2 portion has a narrow street frontage of only approximately 35 feet and a trapezoidal shape, which compromises the efficiency of residential floor plates given the requirements of a separate core and egress; and

WHEREAS, finally, the Board observes that while a separate community facility building could be built on the R7-2 portion and not suffer the same constraints that compromise residential development, the revenue produced from such a development would not justify it; and

WHEREAS, additionally, the applicant submitted a financial analysis of five different as of right scenarios to determine whether strict conformity with the ZR would be economically feasible: (1) a hotel development in the C6-1 portion, and a new separate height-factor residential development in the R7-2 portion, with an FAR of 3.44; (2) a hotel development in the C6-1 portion, and a residential conversion of the existing building in the R7-2 portion, also with an FAR of 3.44; (3) a hotel development in the C6-1 portion, and a new community facility building in the R7-2 portion, with an FAR of 3.87; (4) a complying integrated 6.5 FAR building, with 58,693 sq. ft. of hotel use, 13,005 sq. ft. of community facility space, and 6,320 sq. ft. of residential space; and (5) a complying 3.4 FAR residential building; and

WHEREAS, the applicant concluded that none of these as of right scenarios would result in an economically feasible development, which confirms the representation that the R7-2 portion of the site cannot sustain economically feasible development if developed in its entirety with a conforming use; and

WHEREAS, based upon the above, the Board finds that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R7-2, for a permitted use; and

WHEREAS, as to the second finding, the applicant states

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that the proposed development is consistent with existing land use conditions and anticipated projects in the immediate area; and

WHEREAS, the applicant also notes that the developer has worked closely with the community to address concerns regarding the availability of community facility space, the mitigation of noise impacts on the Marble Cemetery and residents on the north side of East 3<sup>rd</sup> Street, and garbage pick-up schedules; and

WHEREAS, the Board again observes that aside from the increase in floor area devoted to hotel use, the proposed development presumably complies with all other ZR use and bulk provisions, including height and setback; and

WHEREAS, at hearing, the Board asked the applicant to clarify the location of the ground floor entrances to the commercial uses, since it appeared from the plans that a commercial entrance was planned for the R7-2 portion of the site; and

WHEREAS, the applicant clarified that all commercial entrances would be located within the commercially zoned portion of the site, and submitted revised plans reflecting this; and

WHEREAS, the Board also asked the applicant to clarify the proposed use of the open outdoor space on the small triangular-shaped section of the site that would remain R7-2; the Board observes that the majority of the open space would be within the C1-6 portion of the site; and

WHEREAS, the applicant clarified that the proposed restaurant at the cellar and second floors would not use this part of the open area (since such commercial use would be prohibited), and that planters would be installed as barriers to prevent this; and

WHEREAS, the applicant also clarified that the noise from the open area would be buffered through the use of acoustical panels; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C6-1 zoning district portion of the lot into the R7-2 portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

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

WHEREAS, as discussed above, the applicant notes that the special permit, if granted, would lead only to more commercial use on the site than what would be permitted as of right; and

WHEREAS, the Environmental Assessment Statement submitted with the application indicates that this increase in commercial use would not have any adverse affect on the surrounding area, including the surrounding historic resources; and

WHEREAS, conversely, the special permit will allow for the development of land that otherwise could not be developed feasibly, and provide for a development with additional hotel units and community facility use; and

WHEREAS, thus, 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 are outweighed by the advantages to be derived by the community; and

WHEREAS, in sum, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-52 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA023M dated September 29, 2006; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§ 73-52 and 73-03 and grants a special permit to allow the proposed development of a 16-story mixed-use community facility, residential and commercial (hotel) building, on a lot partially within a C6-1 zoning district and partially within an R7-2 zoning district, which is contrary to Z.R. § 22-10 and which requires a special permit to allow the extension of the commercial use to a 25 foot portion of the lot within the R7-2 zoning district; *on condition* that any and all work shall substantially conform to the drawing as it applies to the objections above noted, filed with this application marked “Received December 22, 2006” – one (1) sheet; and *on further condition*:

THAT, DOB shall review all requirements pertaining to the location and separation of uses; mechanical spaces, and location of commercial entrances and commercial signage;

THAT no commercial signage or entrances shall be located within the R7-2 district;

THAT planters shall be installed on the second floor outdoor space as barriers to restrict access to the portion of the space within the R7-2 zoning district;

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

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

Adopted by the Board of Standards and Appeals, February 27, 2007.

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## 268-06-BZ

### CEQR #07-BSA-025Q

APPLICANT – Omnipoint Communications Inc., for Mokom Sholom Cemetery Assoc., owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application October 2, 2006 – Special Permit for non-accessory radio tower under (§73-30). In an R-4 district, on a lot consisting of 714,600 SF, and located in a portion of Mokom Sholom Cemetery, permission sought to erect an 80’ stealth flagpole disguised as a radio tower for public utility wireless communications.

PREMISES AFFECTED – 80-35 Pitkin Avenue, 150 east of the intersection of Pitkin Avenue and 80<sup>th</sup> Street, Block 9141, Lot 20, Borough of Queens.

### COMMUNITY BOARD #10Q

#### APPEARANCES –

For Applicant: Daniel H. Braff, Esq.

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

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

#### THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 8, 2006, acting on Department of Buildings Application No. 402446652, reads in pertinent part:

“Comply with 73-30 Zoning Resolution for this telecommunication monopole and related equipment in R4 zoning district.”; and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R4 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR §§ 22-00; and

WHEREAS a public hearing was held on this application on January 30, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

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

WHEREAS, the proposed monopole will be located on the grounds of the Mokom Sholom Cemetery; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of an 80-foot high monopole; and

WHEREAS, the proposed monopole has been designed

to resemble a flagpole, with six small panel antennas located inside and completely hidden from view; and

WHEREAS, the stealth design includes an American flag and a decorative gold ball with a maximum height of 82’-0”;

and  
WHEREAS, three small equipment cabinets and a battery cabinet will be located at the base of the flagpole; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood.”; and

WHEREAS, the applicant represents that the pole has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the pole will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant also states that related equipment cabinets will be installed within a six-foot opaque locked fence enclosure; and

WHEREAS, the applicant further represents that the height is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

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

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

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07-BSA-025Q, dated October 2, 2006; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

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Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and grants a special permit under ZR §73-03 and §73-30, to permit, within an R4 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR §§ 22-00, on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received October 2, 2006"- (4) sheets; and on further condition;

THAT any fencing and landscaping will be maintained in accordance with BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, February 27, 2007.

## 275-06-BZ

### CEQR #07-BSA-028M

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for 410-13 West LLC, owner.

SUBJECT – Application October 11, 2006 – Variance (§72-21) to allow a proposed commercial office building (UG 6) to violate §43-28 (rear yard equivalent regulations for through lots) in an M1-5 district.

PREMISES AFFECTED – 408-414 West 13<sup>th</sup> Street and 13-15 Little West 12<sup>th</sup> Street, south side of West 13<sup>th</sup> Street, 124.16' west of the corner formed by the intersection of Ninth Avenue and West 13<sup>th</sup> Street, Block 645, Lots 33, 35, 51, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Lori Cuisiner.

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

## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

## THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 10, 2006, acting on Department of Buildings Application No. 104539144, reads in pertinent part:

"40' Proposed rear yard equivalent in thru lot (tax lot 35 and 51) and 20' rear yard (tax lot 33) are not provided and is contrary to 43-28 ZR. (combining tax lots 33, 35 and 51)"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-5 zoning district comprised of three separate tax lots, the construction of a five-story commercial development without a required rear yard equivalent and rear yard, which is contrary to ZR § 43-28; and

WHEREAS, the following parameters are as of right: a commercial floor area of 58,264, a commercial Floor Area Ratio of 4.44, 100 percent lot coverage, and a wall and total height of 79'-1" ; and

WHEREAS, however, no rear yard or rear yard equivalent will be provided; a 20 ft. rear yard is required on Lot 33, and a 40 ft. rear yard equivalent is required on Lots 35 and 51, which collectively constitute a through lot; and

WHEREAS, a public hearing was held on this application on January 30, 2007 after due notice by publication in the *City Record*, and then to decision on February 27, 2007; and

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

WHEREAS, Community Board 2, Manhattan, informed the Board that it is not opposed to the instant application; and

WHEREAS, as noted above, the site is comprised of three separate tax lots (Lots 33, 35 and 51), which will be merged in anticipation of the proposed development; and

WHEREAS, the applicant states that Lot 33 is 2,136 sq. ft. with 21'-0" of frontage on West 13<sup>th</sup> Street, and a depth of 107'-3"; the adjacent Lot 35 is 5,834 sq. ft., with 56'-6" of frontage on West 13<sup>th</sup> Street and a depth of 103'-3"; Lot 51 is adjacent to the rear of Lot 35, is 5,163 sq. ft., with 50'-0" of frontage on Little West 12<sup>th</sup> Street and a depth of 103'-3"; and

WHEREAS, the site is located within an M1-5 zoning district, within the Gansevoort Market Historic District; and

WHEREAS, the applicant previously approached the Landmarks Preservation Commission (LPC) with a proposal in 2004, which consisted only of Lots 33 and 35, and contemplated a commercial building; and

WHEREAS, the applicant states that the LPC-approved plans for this approval provided for a uniform street wall and a complying rear yard at the first story; and

WHEREAS, however, when Lot 51 was acquired, LPC indicated to the applicant that it would require a recessed fourth floor level along the Little West 12<sup>th</sup> Street expanse and a uniform street wall along West 13<sup>th</sup> and Little West 12<sup>th</sup> Streets;

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and

WHEREAS, the applicant claims that this design constraint eliminated the option to provide a 20'-0" deep open space along the full length of the proposed development's north and south façade, pursuant to ZR § 43-28(c), in lieu of compliance with the rear yard and rear yard equivalent requirements; and

WHEREAS, however, the applicant states, and the Board agrees, that the LPC-imposed design requirements are not a unique physical condition that can be properly claimed as hardship; and

WHEREAS, nor is the mere location of a property in a designated historic district; actual unique physical conditions must be present on a site before it may be eligible for relief through a variance; and

WHEREAS, the applicant represents that the following is a unique physical condition, which creates an unnecessary hardship in developing the site in compliance with applicable regulations: each of the three tax lots is undersized; and

WHEREAS, as to the size of the three lots, the applicant explains that individually, none of the three could sustain a viable conforming development, due to the small floor plates that could be created; and

WHEREAS, accordingly, in order to create sufficient lot area to sustain a viable conforming commercial development, with floor plates that meet modern commercial user expectations, the three lots must be combined; and

WHEREAS, however, adding Lot 51 to the zoning lot imposes a rear yard equivalent requirement that would necessitate the creation of two individual commercial towers, with two cores; and

WHEREAS, this would result in both an inefficient layout and a loss of usable floor area; and

WHEREAS, further, as noted above, the option of providing a rear yard equivalent along the street frontages pursuant to ZR § 43-28(c) is not available, due to the LPC-imposed design constraints reflected in the Certificate of Appropriateness; and

WHEREAS, as to the uniqueness of this condition, the applicant engaged in a thorough study of 41 lots within a 400 ft. radius (within both the M1-5 district and the Historic District), and determined that only three of these lots are in common ownership and could be potentially assembled in a comparable through block configuration; and

WHEREAS, specifically, this study reveals that many of the other small sites within the radius are already in residential use or are significantly developed; and

WHEREAS, the Board agrees that the existence of one other potential comparable lot configuration in the immediate vicinity does not negate the required uniqueness finding; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical condition creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing an as of right commercial building; and

WHEREAS, this complying scenario includes rehabilitation of the building on Lot 33 and construction of two separate buildings on Lots 35 and 51, each with its own core; and

WHEREAS, however, as noted by the applicant, the lack of consolidated mechanical systems and cores decreases both the amount and utility of the floor area, resulting in a negative return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the site's unique physical condition, there is no reasonable possibility that development in strict compliance with the applicable yard requirements will provide a reasonable return; and

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

WHEREAS, the applicant notes that LPC has approved the design of the proposed development, finding it to be an appropriate addition that will relate well with other commercial, residential and manufacturing buildings in the area; and

WHEREAS, the applicant also notes that the height and the FAR are within the as of right limits within the M1-5 district; and

WHEREAS, the Board observes that any impact resulting from the lack of a rear yard and rear yard equivalent is minimized by the common ownership of the three tax lots, the lack of a rear yard at the adjacent site to the west on both frontages and to the east on the Little West 12<sup>th</sup> Street frontage, and the fact that the adjacent building to the east is commercially occupied; and

WHEREAS, further, if not for the LPC-imposed requirements, the rear yard equivalent could have been placed on the frontages as of right; and

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

WHEREAS, the applicant states that while the lot configuration is the result of a voluntary merger of the three tax lots, this in of itself does not constitute a self-created hardship; and

WHEREAS, the Board agrees, noting that the applicant has established that each of the three lots are uniquely burdened when standing alone; the merger actually alleviates this hardship, and sets the stage for a conforming development (albeit one that requires yard relief to be viable); and

WHEREAS, under such circumstances, the Board does not consider the merger to constitute a self-created hardship; and

WHEREAS, accordingly, the Board finds that the hardship claimed herein was not created by the owner or a

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predecessor in title; and

WHEREAS, because the proposed conforming development only requires the cited rear yard and rear yard equivalent waivers, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA028M, dated October 11, 2006; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-5 zoning district comprised of three separate tax lots, the construction of a five-story commercial development without a required rear yard equivalent and rear yard, which is contrary to ZR § 43-28, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 11, 2006" – eight (8) sheets and "Received January 25, 2007 - one (1) sheet; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, February 27, 2007.

## 427-05-BZ

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: Hiram A. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 20, 2007, at 1:30 P.M., for decision, hearing closed.

## 25-06-BZ

APPLICANT– Dominick Salvati and Son Architects, for Josef Packman, owner.

SUBJECT – Application February 14, 2006 – Variance (§72-21) to allow an eight (8) story residential building with ground floor community facility use to violate applicable regulations for dwelling unit density (§23-22), street wall height (§ 23-631 & § 24-521), maximum building height (§23-631), front yard (§24-34), side yards (§24-35 & §24-551), FAR (§24-11, 24-162 & 23-141) and lot coverage (§23-141 & §24-11). Project is proposed to include 29 dwelling units and 31 parking spaces. R3-2 district.

PREMISES AFFECTED – 2908 Nostrand Avenue, Block 7690, Lots 79 and 80, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Hirshman, Councilmember Kendall Stuart and Eliot Berry.

For Opposition: Alice Loubaton and Mitchell Fruchter.

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

## 49-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Brigitte Zabbatino, owner.

SUBJECT – Application March 17, 2006 – Variance under §72-21. In the Flatlands section of Brooklyn, and in a C1-2/R3-2 district on a lot consisting of 5,181 SF, permission sought to permit the construction of a three-story

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commercial building, with ground floor retail and office space on the second and third floors. The development is contrary to FAR, height and setback, and minimum parking.

Parking for 12 vehicles in the cellar is proposed. The existing one-story structure consisting of approximately 2,600 SF will be demolished.

PREMISES AFFECTED – 2041 Flatbush Avenue, at the intersection of Flatbush Avenue and the eastern side of Baughman Place. Block 7868, Lot 18, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ron Mandell and Robert Pauls.

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

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## 64-06-BZ

APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.

SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. §72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. §42-10.

PREMISES AFFECTED – 363-371 Lafayette Street, between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Segal, Caroline G. Harris, Chuck ? and Doris Diether, CB#2.

For Opposition: Caroline Harris.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 13, 2007, at 1:30 P.M., for decision, hearing closed.

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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 –

For Applicant: Harold Weinberg, P.E.

For Opposition: Antoinette Vasile, Kathleen Jaworski and ?

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and

Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 20, 2007, at 1:30 P.M., for decision, hearing closed.

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## 138-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for RH Realty LLC NY by Ralph Herzka, owner.

SUBJECT – Application July 5, 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)) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3447 Bedford Avenue, between Avenue M and N, Block 7661, Lot 31, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman and David Shteirman, R.A.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and

Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 13, 2007, at 1:30 P.M., for decision, hearing closed.

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## 237-06-BZ

APPLICANT – Moshe M. Friedman, for Jonathan M. Schwartz, owner.

SUBJECT – Application September 12, 2006 – Special Permit (§73-622) for the enlargement of a single family semi-detached 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 R-2 zoning district.

PREMISES AFFECTED – 1462 East 26<sup>th</sup> Street, west side 333'-7" north of the intersection formed by East 26<sup>th</sup> Street and Avenue O, Block 7679, Lot 79, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and

Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 13, 2007, at 1:30 P.M., for decision, hearing closed.

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## 100-06-BZ

APPLICANT– Francis R. Angelino, for Old Gowanus Road, LLC, owner.

SUBJECT – Application May 23, 2006 – Variance (§72-21) to allow a proposed residential building to violate regulations for maximum height (§23-633), minimum

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dimensions of inner court (§23-851) and permitted obstructions in courts (§ 23-87). The proposed building will contain five (5) dwelling units and three (3) parking spaces. Site is located in an R6B district.

PREMISES AFFECTED – 638-640 President Street, between 4<sup>th</sup> and 5<sup>th</sup> Avenues, Block 958, Lots 35 and 36, Borough of Brooklyn.

## COMMUNITY BOARD #6BK

### APPEARANCES –

For Applicant: Francis R. Angelino, Jack Freeman, Shael Shapiro, Noah Shapiro, Daniel M. Bernstein and Roslyn Bernstein and Roslyn Bernstein.

For Opposition: Sheila O’Hara and Mira Jones.

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

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## 110-06-BZ

APPLICANT – Moshe M. Friedman, for Rochelle Grossman, owner.

SUBJECT – Application June 5, 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); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district. This application also proposes to convert from a two family to a one family residence.

PREMISES AFFECTED – 1473 East 21<sup>st</sup> Street, a/k/a Kenmore Place, 325’ north of intersection formed by East 21<sup>st</sup> Street and Avenue N, Block 7657, Lot 23, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES – None.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3  
Negative:.....0  
Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 13, 2007, at 1:30 P.M., for decision, hearing closed.

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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.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and

Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 20, 2007, at 1:30 P.M., for decision, hearing closed.

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## 152-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Gregory Montalbano, owner.

SUBJECT – Application July 11, 2006 – Special Permit (§73-125) to allow the proposed two-story ambulatory diagnostic/treatment care facility containing 5,565 square feet of floor area and parking for fourteen vehicles. The Premise is located in an R3X zoning district. The proposal is contrary to §22-14.

PREMISES AFFECTED – 82 Lamberts Lane, southwest corner of Lamberts and Seldin Avenue, Block 1609, Lot 16, Borough of Staten Island.

## COMMUNITY BOARD #2SI

### APPEARANCES –

For Applicant: Adam Rothkrug, Gregory Montalbano and Carlo Montalbano.

For Opposition: Mary Jane DeSantis, Scott Hall and William Tanzosh; Fire Department.

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

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## 272-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for The Media Realty Group, owner; Evolution Sports Club, LLC, lessee.

SUBJECT – Application October 10, 2006 – Special permit (§73-36) to legalize a Physical Culture Establishment on the second floor in a three-story building. The proposal is contrary to Section 42-31. M1-5 zoning district.

PREMISES AFFECTED – 37-11 35<sup>th</sup> Avenue, between 37<sup>th</sup> and 38<sup>th</sup> Streets, Block 645, Lot 1, Borough of Queens.

## COMMUNITY BOARD # 1Q

### APPEARANCES –

For Applicant: Joseph P. Morsellino.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3  
Negative:.....0  
Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 13, 2007, at 1:30 P.M., for decision, hearing closed.

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## 285-06-BZ

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

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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: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to March 20, 2007, at 1:30 P.M., for decision, hearing closed.

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**318-06-BZ**

APPLICANT– Eric Palatnik, P.C., for Sun Company, Inc., owner.

SUBJECT – Application September 27, 2006 – Special Permit (§11-411) seeking to re-instate a previous BSA approval issued to the premises permitting the continued use as an automotive service station (use group 16) located in a R-4 zoning district.

PREMISES AFFECTED – 49-05 Astoria Boulevard, northeast corner of Astoria Boulevard and 49<sup>th</sup> Street, Block 1000, Lot 35, Borough of Queens.

**COMMUNITY BOARD #1Q**

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Gus Prentros.

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

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:30 P.M.*