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DOCKET

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176-08-A

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177-08-A

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178-08-BZ

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179-08-BZ

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180-08-A

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181-08-A

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182-08-A

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183-08-A

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184-08-A

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185-08-BZ

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186-08-BZ

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187-08-BZ

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188-08-BZ

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189-08-BZ

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190-08-BZ

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191-08-BZY

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192-08-A

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193-08-A

125 Greaves Lane, Amboy Road-Greaves Avenue, Block 4645, Lot(s) 425, Borough of **Staten Island, Community Board: 3.**

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

AUGUST 19, 2008, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 19, 2008, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

360-01-BZ

APPLICANT – Carl. A. Sulfaro, Esq., for Kings Knapp Development Corporation, owner.
SUBJECT – Application July 1, 2008 - Extension of Time to obtain a Certificate of Occupancy/waiver for an existing gasoline service station (Mobil), in a C2-2/R-4 zoning district, which expired on December 17, 2004.
PREMISES AFFECTED – 2228 Gerritsen Avenue, southwest corner of Avenue U, Block 7370, Lot 10, Borough of Brooklyn.
COMMUNITY BOARD #15BK

217-03-BZ

APPLICANT – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.
SUBJECT – Application July 17, 2008 - Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.
PREMISES AFFECTED – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.
COMMUNITY BOARD #5BK

257-04-BZ

APPLICANT – Cozen O'Connor Attorneys, for Boerum Place, LLC, owner.
SUBJECT – Application May 19, 2008 - Original bulk variance was granted on 8/23/05. SOC Amendment filed on 5/19/08 pursuant to ZR Sections 72-01 & 72-22 to modify the street wall with dormers and to extend the elevator bulkhead to allow ADA access to the roof. No changes proposed to floor area or any waiver previously granted by the Board. R6, R6A, C2-3 & C2-4 districts.
PREMISES AFFECTED – 252/260 Atlantic Avenue aka 83-89 Boerum Place aka 239/247 Pacific Street, east side of Boerum Place, Block 181, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #2BK

APPEALS CALENDAR

168-08-A

APPLICANT – Cozen O'Connor Attorneys, for South Brighton Development, LLC, owner.
SUBJECT – Application June 24, 2008 - Legalization of an existing building not fronting on a legally mapped street contrary to General City Law Section 36. R6(OP) zoning district.
PREMISES AFFECTED – 63 Brighton 2nd Place, east side of Brighton 2nd Place, 110' north of Brighton 2nd Lane, Block 8662, Lot 157, Borough of Brooklyn.
COMMUNITY BOARD #13BK

AUGUST 19, 2008, 1:30 P.M.

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

ZONING CALENDAR

41-08-BZ

APPLICANT – Omnipoint Communications Inc., for Mid Queens Ltd., owner; Omnipoint Communications Inc., lessee.
SUBJECT – Application February 27, 2008 – Special Permit (§73-30) to permit a proposed 65 foot non-accessory radio tower and related equipment at grade.
PREMISES AFFECTED – 64-35 223rd Place, Block 7658, Lot 2, Borough of Queens.
COMMUNITY BOARD #11Q

76-08-BZ

APPLICANT – Eric Palatnik, P.C., for Hatzolah of Far Rockaway, owner.
SUBJECT – Application April 12, 2008 – Variance (§72-21) to permit the legalization of the rear yard for the existing Use Group 4 not-for-profit ambulance/emergency garage, dispatch and training facility. The proposal is contrary to ZR section 24-36. R5 district.
PREMISES AFFECTED – 621 Beach 9th Street, south of Caffney Avenue, Block 1558, Lot 15, Borough of Queens.
COMMUNITY BOARD #14Q

CALENDAR

79-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Giuseppe Porretto, owner.

SUBJECT – Application April 3, 2008 – Variance (§72-21) for the construction of a single family residence on a vacant lot. This application seeks to vary (23-32) for undersized lot width and lot area; (23-461) for less than the required side yards and (21-15) for a proposed lot line building which is not allowed in an R3-2 zoning district.

PREMISES AFFECTED – 117-23 132nd Street, easterly side of 132nd Street, 220; southerly of Foch Boulevard, Block 11696, Lot 55, Borough of Queens.

COMMUNITY BOARD #12Q

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JULY 15, 2008
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

718-56-BZ

APPLICANT – Walter T. Gorman, for Exxon/Mobil Corporation

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

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

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Patrick Gorman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of term for the continued use of a gasoline service station, which expired on July 2, 2002; an extension of time to obtain a certificate of occupancy and an amendment to legalize certain site modifications; and

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2008, and then to decision on July 15, 2008; and

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

WHEREAS, Community Board 1, Staten Island, recommends approval of this application for a five-year extension pending assurance from the Department of Environmental Protection that gasoline vapor is not seeping through the sewers into surrounding homes; and

WHEREAS, the site is located on the northwest corner of Forest Avenue and North Burgher Avenue, within a C2-1 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 2, 1957 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses for a term of 15 years; and

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

WHEREAS, the grant was most recently extended on July 2, 1992 for a term of ten years from the expiration of the prior grant, to expire on July 2, 2002, and then amended on July 13, 1999 to grant the applicant until July 2000 to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to administrative oversight during the merger of the corporate owner; and

WHEREAS, pursuant to ZR § 11-41, the Board may permit an extension of term; and

WHEREAS, the applicant seeks an amendment to legalize the conversion of one restroom to office space and office/sales to an accessory convenience store; and

WHEREAS, at hearing, the Board directed the applicant to provide information about the existing spill and to design a plan to remediate garbage storage and to remove non-complying flags and signage; and

WHEREAS, in response, the applicant represents that the New York State Department of Environmental Conservation has agreed that remediation may be discontinued to allow time for the underground storage tanks to be removed, and that all noted debris, flags, signage and guardrail conditions have been corrected; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an alteration to a site subject to a previously granted variance; and

WHEREAS, based upon the above, the Board finds that the requested amendments to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 2, 1957, so that as amended this portion of the resolution shall read: “to extend the term for ten years from July 2, 2002, to expire on July 2, 2012; to grant an extension of time to obtain a certificate of occupancy to January 15, 2009, and to permit certain site modifications; *on condition* that all use and operations shall substantially conform drawings filed with this application marked “Received March 20, 2008”-(5) sheets ; and *on further condition*:

THAT the term of the grant shall expire on July 2, 2012;
THAT a certificate of occupancy shall be obtained by January 15, 2009;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)

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and/or configuration(s) not related to the relief granted.”
(DOB Application No. 510030574)

Adopted by the Board of Standards and Appeals, July 15, 2008.

841-76-BZ

APPLICANT – Anthony M. Salvati, for HJC Holding Corporation, owner.

SUBJECT – Application December 5, 2006 – Extension of Term/Amendment for previously approved variance, under BSA calendar numbers 841-76-BZ and 78-79-BZ, granted pursuant to §72-21 which permitted on the premises auto wrecking and junk yard for auto parts (UG 18), sale of new and used cars and auto repair shop (UG 16), and sale of new and used parts (UG 6) not permitted as of right in a R4 zoning district. The amendment seeks to legalize the change in use from the previously mentioned to open commercial storage bus parking, repairs and sales (UG 16 & 6).

PREMISES AFFECTED – 651 Fountain Avenue, north east corner of Fountain Avenue and Wortman Avenue, Block 4527, Lots 61, 64, 77, 78, 80, 85, 11, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Application: Peter Hirshman.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, July 15, 2008.

78-79-BZ

APPLICANT – Anthony M. Salvati, for HJC Holding Corporation, owner.

SUBJECT – Application December 5, 2006 – Extension of Term/Amendment for previously approved variance, under BSA calendar numbers 841-76-BZ and 78-79-BZ, granted pursuant to §72-21 which permitted on the premises auto wrecking and junk yard for auto parts (UG 18), sale of new and used cars and auto repair shop (UG 16), and sale of new and used parts (UG 6) not permitted as of right in a R4 zoning district. The amendment seeks to legalize the change in use from the previously mentioned to open- commercial storage bus parking, repairs and sales (UG 16 & 6).

PREMISES AFFECTED – 671 Fountain Avenue, north east corner of Fountain Avenue and Stanley Avenue, Block 4527, Lots 94 and 110, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Application: Peter Hirshman.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, July 15, 2008.

1098-83-BZ

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

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

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

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Patrick Gorman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, an extension of term for a previously granted special permit allowing the operation of a gasoline service station, which expired on April 13, 2004, and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2008, and then to decision on July 15, 2008; and

WHEREAS, Community Board 7, Queens, has recommended approval of this application, with the recommendation that the hours of operation of the automotive vacuum be limited to Monday through Friday, 8:00 a.m. to 6:00 p.m. and Saturday, 8:00 a.m. to 5:00 p.m.; and

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

WHEREAS, the premises is located on the southwest corner of Northern Boulevard and 147th Street; and

WHEREAS, the site is located within a C1-2 (R5) zoning district and is occupied by a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 17, 1955 when, under BSA Cal. No. 736-51-BZ, the Board granted an application to permit the construction of a gasoline service station; and

WHEREAS, on April 3, 1984, under the subject calendar

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number, the Board granted an application to re-establish the expired variance to permit the use for a period of ten-years; and

WHEREAS, most recently, on September 19, 1995, the Board granted an additional ten-year term, to expire on April 3, 2004; and

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

WHEREAS, the applicant now proposes, to legalize the following changes to the site: a conversion of a portion of the sales area to an accessory convenience store, the addition of planters and a public telephone, and the elimination of bollards along Northern Boulevard; the applicant also proposes to install a chain link fence along the brick wall at the rear of the property; and

WHEREAS, additionally, the Board requested that the applicant provide documentation regarding the current status of the open spill report and the remediation protocol being followed on the premises; and

WHEREAS, in response, the applicant provided a statement confirming compliance with all New York State Department of Environmental Conservation ("NYSDEC"); and

WHEREAS, further, the Board directed the applicant to ensure that all signage complies with C1-2 zoning district regulations; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on April 3, 1984, so that as amended this portion of the resolution shall read: "to extend the term for ten years from April 3, 2004, to expire on April 3, 2014 to permit the noted site modifications *on condition* that all work and the site layout shall substantially conform to drawings as filed with this application, marked "Received March 31, 2008"-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 3, 2014;

THAT signage shall comply with C1-2 zoning district regulations;

THAT the hours of the repair shop and automotive vacuum shall be limited to Monday through Friday, 8:00 a.m. to 6:00 p.m. and Saturday, 8:00 a.m. to 5:00 p.m.; and

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

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

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

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

(DOB App. No. 410065352)

Adopted by the Board of Standards and Appeals, July 15,

2008.

561-87-BZ

APPLICANT – The Agusta Group, for 2700 Jerome Avenue Realty Corporation, owner.

SUBJECT – Application April 13, 2007 – Extension of Term/Amendment/Waiver-To permit eating and drinking. To legalize interior layout change and reduction from 53 to 50. To permit an increase in the hours of operation of the (UG12) from the 9:00pm-3:00am to 8:00pm 4:00am Wednesday thru Sunday.

PREMISES AFFECTED – 2700 Jerome Avenue, easterly side of Jerome Avenue, 221.27' northerly of Kingsbridge Road, Block 3317, Lot 17, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application requesting a waiver of the Rules of Practice and Procedure, and a reopening for an extension of term and an amendment of a special permit under ZR § 73-241, to permit, on a site in an R8 zoning district with a C2-3 overlay, an eating and drinking establishment without limitation on entertainment which seeks to legalize an interior layout change, to reduce a parking requirement from 53 vehicles to 50 vehicles, and to permit an increase in the hours of operation from 9:00 p.m. to 3:00 a.m. to 8:00 p.m. to 4:00 a.m.; and

WHEREAS, on October 25, 1988, under the subject calendar number, the Board granted a special permit to permit a one story eating and drinking establishment without restriction on entertainment for a term of five years; and

WHEREAS, the Board subsequently approved the amendment and extension of the application; and

WHEREAS, most recently, on June 17, 2003, the Board reopened and amended the grant to permit the reconfiguration of the first floor and to extend the term of the special permit for three years from the date of its expiration April 13, 2002, to expire on April 13, 2005; and

WHEREAS, the instant application was filed on May 13, 2007; and

WHEREAS, on June 13, 2007, Board staff issued a Notice of Comments informing the applicant that the special permit for an eating and drinking establishment that permitted dancing and a capacity of more than 200 persons was not compliant with the provisions ZR § 73-241 which limit capacity to 200 patrons and do not permit dancing; and

WHEREAS, on October 11, 2007, Board staff issued a warning letter informing the applicant that its continued failure to respond to the Notice of Objections could result in a dismissal hearing; and

WHEREAS, on March 17, 2008, Board staff met with

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the applicant to discuss the feasibility of filing a new special permit application pursuant to ZR §73-244 which would allow for dancing and a capacity of more than 200 patrons; and

WHEREAS, by letter to the Board dated March 18, 2008, the applicant stated that a new special permit application pursuant to § 73-244 would be filed within four to six weeks; and

WHEREAS, on March 21, 2008, Board staff contacted the applicant to discuss the required findings of ZR § 73-244; and

WHEREAS, the applicant failed to file a special permit application pursuant to ZR § 73-244; and

WHEREAS, on June 3, 2008, the applicant was advised by Board staff to either withdraw the subject application or to modify it to comply with the provisions of ZR § 73-244, and that the application would be placed on the dismissal calendar if no action was taken, and

WHEREAS, the applicant did not provide any response; and

WHEREAS, on June 18, 2008, the Board sent the applicant a Notice of Hearing, which stated that the case had been put on the July 15, 2008 dismissal calendar; and

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

WHEREAS, the applicant also failed to appear at the July 15, 2008 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. 561-87-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, July 15, 2008.

84-91-BZ

APPLICANT – Eric Palatnik, P.C., for Ronald Klar, owner.
SUBJECT – Application March 13, 2008 – Extension of Term/waiver of a previously granted variance (§72-21) for the continued UG6 use (Professional Offices) in a residential building in an R4A zoning district and an Amendment to allow storage use in the attic.

PREMISES AFFECTED – 2344 Eastchester Road, east side, south of Waring Avenue, Block 4393, Lot 17, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for Use Group 6 use within a residential building in an R4A zoning district, which expired on September 15, 2002; and

WHEREAS, a public hearing was held on this application on June 17, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

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

WHEREAS, the site is located on the east side of Eastchester Road, south of Waring Avenue; and

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

WHEREAS, the site is located within an R4A zoning district and is occupied by a two-story house with basement and attic, and a total floor area of 5,291.89 sq. ft.; and

WHEREAS, on September 15, 1992, the Board granted a variance to permit within an R3-2 zoning district, the legalization of the conversion of a two-story building with basement and attic with medical offices (Use Group 4) in the basement and residential uses on the first and second floors to professional offices (Use Group 6B); and

WHEREAS, the term for the initial variance was for ten years, which expired on September 15, 2002; and

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

WHEREAS, the applicant represents that the term was not extended in a timely manner due to administrative oversight; 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 September 15, 1992, so that as amended this portion of the resolution shall read: “to extend the term of the grant for a period of ten years from September 15, 2002, to expire on September 15, 2012; *on condition* that all use and operations shall substantially conform to all BSA-approved drawings associated with the prior grant and BSA-approved drawings filed with this application marked “Received July 1, 2008”-(5) sheets; and *on further condition*:

THAT the term of the variance shall expire on September 15, 2012;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 210019530)

Adopted by the Board of Standards and Appeals, July 15, 2008.

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80-07-BZ

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

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

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

COMMUNITY BOARD # 7M

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 26, 2007 acting on Department of Buildings Application No. 104694868 reads, in pertinent part:

“Proposed wall height, setback & sky exposure are not permitted and are contrary to ZR 24-522.

Proposed rear yard does not meet minimum requirement, is not permitted, and is contrary to ZR 24-36.

Proposed demolition of existing building is not permitted and is contrary to ZR 54-41;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8 zoning district, the three story enlargement of an existing six-story building for a community facility with sleeping accommodations and accessory social service space that exceeds the street wall height, does not provide the required setbacks, encroaches into the setback and sky exposure plane, does not provide the required rear yard, and demolishes more than 75 percent of the interior floor area of an existing non-complying building, contrary to ZR §§ 24-522, 24-36, and 54-41; and

WHEREAS, after due notice by publication in *The City Record*, a public hearing was held on this application on August 21, 2007, with a continued hearing on September 25, 2007, and then to decision on October 23, 2007; and

WHEREAS, in connection with a proceeding pending in New York Supreme Court, County of New York (captioned Neighborhood in the Nineties, Inc. v. Board of Standards and Apps., Index No. 115705-2007), the applicant disclosed that it not have proof that proper notice had been performed, specifically, that residents of the subject building had been notified prior to the hearing; and

WHEREAS, therefore, in accordance with § 666(8) of

the Charter and § 1-10(f) of its Rules of Practice and Procedure, the Board moved to review its October 23, 2007 decision; and

WHEREAS, a hearing in connection with the Board’s review of this application was held on May 13, 2008, after due notice in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, accordingly, this resolution supersedes the resolution dated October 23, 2007; and

WHEREAS, the Board notes that the applicant provided documentation that the residents of the building and the affected property owners received proper notification of the re-hearing; the Board received 12 forms for objection and consent from affected property owners and 25 residents and property owners provided testimony at the re-hearing, as noted below; and

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

WHEREAS, Community Board 7, Manhattan, recommends approval of this application conditioned upon the following:

- (1) that HPD and the applicant meet with a community advisory board regarding the safety of tenants during construction;
- (2) that a memorandum of understanding be executed between the existing tenants and the applicant; and

WHEREAS, City Council Member Brewer testified at the initial set of hearings in favor of this application; and

WHEREAS, representatives of Neighborhood in the Nineties Block Association and other local residents testified in opposition to this application (the “Opposition”); and

WHEREAS, this application is brought on behalf of The Lantern Group, which is a not-for-profit affiliate of the Clover Housing Development Fund Corporation, a not-for-profit entity which owns the property; and

WHEREAS, the site’s lot area is 7,565 sq. ft., with 75 feet of frontage on the northern side of West 94th Street, approximately 214 ft. east of Riverside Drive; and

WHEREAS, the site is currently improved upon with a dumbbell-shaped six-story non-complying New Law Tenement Class A Building, occupied as a Single Room Occupancy (“SRO”); and

WHEREAS, the building currently measures approximately 31,578 sq. ft. in floor area (FAR 4.17) and contains 149 rooming units, pursuant to a Certificate of Occupancy dated September 9, 1949, of which 54 units are occupied; and

WHEREAS, the applicant proposes to rehabilitate and enlarge the existing structure for use as a 140-unit community facility with sleeping accommodations, with one unit for an on-site superintendent; and

WHEREAS, the proposed building will have a total floor area of 45,418 sq. ft. and a total FAR of 6.0, which are permitted as of right for a community facility use, and

WHEREAS, the proposed building will have a street wall height along West 94th Street of 88 feet (85 feet is the

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maximum permitted); with a setback of approximately 19'-6" (a 20'-0" foot setback is the minimum required); a total height of 99 feet (, and a rear yard of 13'-1" (30'-0" is the minimum required), and will require the substantial demolition of the existing building; and

WHEREAS, the applicant originally filed an application for a ten-story building which sought waivers to the floor area ratio (for a 6.70 FAR), floor area of 50,666 sq. ft., a street wall height of 109'-6", a total height of 109'-6", and 150 units, which was modified after discussions with community residents to the current proposal; and

ZR § 72-21 (a) – Unique Physical Conditions Finding

WHEREAS, under § 72-21 (a) of the Zoning Resolution, the Board must find that there are unique physical conditions inherent to the zoning lot which create practical difficulties or unnecessary hardship in strictly complying with the zoning requirements (the "(a) finding"); and

WHEREAS, the applicant represents that the variance request is necessitated in part by the programmatic needs and in part by the conditions on the subject site – namely -- the existing obsolete building, which will be retained; and

WHEREAS, as to the programmatic needs, the applicant represents that the community facility's proposed housing program, to be located on floors two through nine, will provide 52 studio apartments and 88 SRO units to meet the housing needs of (i) homeless single adults (40% of the units, approximately 56 units) and (ii) low-income adults currently living in the surrounding community (60% of the units, approximately 84 units); and

WHEREAS, the applicant states that the community facility's social service component, to be located on a portion of the cellar and ground floors, will include therapeutic, educational and employment services administered by a staff to include case managers, psychiatric social workers, an independent living skills specialist, a housing intake and outreach coordinator, vocational/educational counselor, nutritionist, program director and residence coordinators; and

WHEREAS, the applicant notes that the housing and social services program was designed in collaboration with New York City's Housing Development Corporation (HDC) and Department of Housing Preservation and Development (HPD), which are financing the development of the proposed community facility; and

WHEREAS, the applicant submitted a letter to the Board from HPD stating that the project funding was conditioned on providing a minimum of 140 dwelling/rooming units at the approved level of public subsidy, beyond which the project would be infeasible; and

WHEREAS, the applicant further notes that HPD and HDC program requirements also dictate the minimum unit sizes, the number of bathrooms and kitchenettes, and the volume of community space to be provided within the proposed building; and

WHEREAS, the applicant states that, in addition to creating 140 affordable units, its mission also includes preventing the displacement and relocation of the 52 current tenants, who are predominately elderly and low-income; and

WHEREAS, the applicant further states that it would be economically infeasible to relocate and rehouse the tenants during the construction of the facility; and

WHEREAS, the applicant represents that, as their relocation is neither financially feasible nor consistent with its mission, the existing tenants must be housed within the building while the proposed community facility is constructed; and

WHEREAS, the applicant asserts therefore, that (i) the existing building cannot be demolished and (ii) the number of dwelling units and the associated waivers requested are required to comply with funders' requirements; and

WHEREAS, the applicant states that the following unique physical conditions of the existing building create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) its dumbbell shaped floorplate, (2) the existing non-complying rear yard, and (3) the non-complying non-fireproof nature of the building; and

WHEREAS, as to the dumbbell-shaped footprint, the floorplate results in an irregular and inefficient floorplate with court yards of approximately 20 feet by 30 feet at the east and west;

WHEREAS, the applicant states that this irregular floorplate generates an excessive amount of hallway circulation space in comparison to the floorplate of a more typical square-shaped building; and

WHEREAS, the applicant notes that the inefficient floorplate results in an inability to use space that would otherwise have been available; and

WHEREAS, the applicant further notes that the inefficient floorplate constrains the programmatic space needs, which require the development of at least 140 studio apartments and SRO units and accessory social services space from being accommodated within the existing structure; and

WHEREAS, notwithstanding the noted inefficiencies of the floorplate, the applicant states that it is compelled to retain the existing building in order to retain the existing tenants; and

WHEREAS, accordingly, the applicant proposes to enlarge the existing building; and

WHEREAS, the applicant further states that the cost to modify the building to conform to all relevant zoning regulations as well as to accommodate the programmatic space needs would far exceed its development budget, and require the relocation of the existing tenants; and

WHEREAS, the applicant has determined that accommodating its program needs within the building's footprint would require the construction of a vertical enlargement; and

WHEREAS, as to enlargement of the existing building, the applicant states that the existing court yards constrain the development of an as of right building that can accommodate its program needs; and

WHEREAS, the applicant further states that a complying development would require a front setback at the seventh floor and a thirty-foot rear yard for the enlarged portion of the building; and

WHEREAS, as to the existing rear yard, the applicant

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notes that the rear yard with a depth of 13'-1" is an existing non-complying condition and that the ground through sixth floors of the existing building encroach by 16'-11" into the rear yard; and

WHEREAS, the Opposition contends that the applicant has failed to establish that the building floorplate and rear yard constitute unique conditions; and

WHEREAS, the applicant submitted a survey of 48 neighboring residential properties located within a three-block radius of the subject site within the R8 zoning district indicating that only 16 buildings were characterized by dumbbell-shaped construction, of which only five also had rear yards of 13 ft. or less; and

WHEREAS, according to the survey, only one other site within the study area was owned by a not-for-profit organization, and that site was not burdened by a dumbbell-shaped configuration; and

WHEREAS, the Board notes that buildings characterized by rear yards and floorplates similar to that of the subject building constitute approximately ten percent of the buildings in the zoning district, but that no other building within the district is characterized by these burdens as well as by the programmatic needs of the subject building; and

WHEREAS, a finding of uniqueness, however, does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district's zoning (see Douglaston Civ. Assn. v. Klein, 51 N.Y.2d 963, 965 (1980); and

WHEREAS, the applicant provided drawings showing an as of right 12-story structure with the required front setback and rear yard; and

WHEREAS, the applicant represents that the resulting building would have consequently smaller floorplates and would result in approximately 20 fewer units than are required to meet its programmatic needs; and

WHEREAS, as to the fire safety of the existing building, the applicant states that the building is a non-complying, non-fireproof Class 3 structure; and

WHEREAS, the applicant represents that the existing Building Code requires that a newly-constructed nine-story building be fireproof; and

WHEREAS, the applicant states that in order to create a fireproof structure that integrates the enlargement with the existing building, the replacement of the entire wood joist structural system, as well as antiquated plumbing, electrical, fire alarm and sprinkler systems and the installation of internal fire stairs and a code compliant elevator are required; and

WHEREAS, the applicant further states that the scope of this reconstruction necessitates the replacement of approximately 80 percent of the floor area of the existing building; and

WHEREAS, under ZR § 54-41 no more than 75 percent of the floor area can be replaced in the reconstruction of an existing building; and

WHEREAS, at the hearing, the Board questioned

whether the anticipated structural work required the replacement of more than 75 percent of the floor area of the existing wood joist structural system of the building with a new fireproof steel and concrete floor structure; and

WHEREAS, to respond to the Board's concern, the applicant sought a reconsideration from the Department of Buildings for the proposed replacement of 80 percent of the existing building; and

WHEREAS, in response, on September 10, 2007, the Deputy Borough Commissioner of the Buildings Department, denied a request for reconsideration, stating, "Proposed reconstruction exceeds permitted in ZR 54-41; 80% > 75%," and

WHEREAS, the Board finds that replacement of more than 75 percent of the floor area is appropriate and necessary to improve the safety of the building; and

WHEREAS, the Opposition argues that uniqueness is limited to the physical conditions of the zoning lot and that obsolescence of a building therefore cannot fulfill the requirements of the (a) finding; and

WHEREAS, New York Courts have found that unique physical conditions under Section 72-21(a) of the Zoning Resolution refer not only to land, but to buildings as well (see Homes for the Homeless v. BSA, 7/23/2004, N.Y.L.J. citing UOB Realty (USA) Ltd. v. Chin, 291 A.D.2d 248 (1st Dep't 2002;); and, further, obsolescence of a building is well-established as a basis for a finding of uniqueness (see Matter of Commco, Inc. v. Amelkin, 109 A.D.2d 794, 796 (2d Dep't 1985), and Polsinello v. Dwyer, 160 A.D. 2d 1056, 1058 (3d Dep't 1990) (condition creating hardship was land improved with a now-obsolete structure); and

WHEREAS, the applicant states that a waiver of street wall height, setback and sky exposure plane and rear yard requirements are necessary to develop the 140 units and social services space required to fulfill its programmatic mission; and

WHEREAS, the Opposition argues that the programmatic needs of a not-for-profit cannot support a uniqueness finding under section 72-21(a) of the Zoning Resolution; and

WHEREAS, however, in numerous prior instances the Board has found that unique physical conditions, when considered in the aggregate and in conjunction with the programmatic needs of a not-for-profit organization, can create practical difficulties and unnecessary hardship in developing a site in strict conformity with the current zoning (see, e.g., BSA Cal. No. 145-07-BZ, approving variance of lot coverage requirements to permit development of a medical facility; BSA Cal. No. 209-07-BZ, approving bulk variance to permit enlargement of a school for disabled children; and 215-07-BZ, approving bulk variance to permit enlargement of a YMCA); and

WHEREAS, further, under BSA Cal. No. 219-03-BZ, the Board approved the legalization of a transitional housing facility for homeless families sponsored by the not-for-profit organization Homes for the Homeless based on a finding that the programmatic needs of the organization, coupled with the physical conditions of the site created hardship; and

WHEREAS, BSA Cal. No. 219-03-BZ is the

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companion resolution to BSA Cal. No. 220-03-BZ, reviewed by the N.Y. County Supreme Court in Homes for the Homeless, 231 N.Y.L.J. 18 at 3, col. 3 (Sup. Ct. 2004) (N.Y. County), a case in which the proposed variance permitting expansion of an existing facility was rejected by the Board because the applicant had failed to adequately establish its programmatic need for the proposed expansion, not, as contended by the Opposition, because the Board could not consider programmatic need when making the (a) finding under ZR § 72-21; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of the Lantern Group's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; thereby meeting the required finding under ZR § 72-21(a); and

ZR § 72-21 (b) – Financial Return Finding

WHEREAS, under ZR § 72-21 (b), the Board must establish that the physical conditions of the site preclude any reasonable possibility that its development in strict conformity with the zoning requirements will yield a reasonable return, and that the grant of a variance is therefore necessary to realize a reasonable return (the "(b) finding"), unless the applicant is a nonprofit organization, in which case the (b) finding is not required for the granting of a variance; and

WHEREAS, the applicant represents that it need not address the (b) finding since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

WHEREAS, the Opposition argues that the applicant must establish the (b) finding because it has purportedly been stripped of its status as a not-for-profit organization; and

WHEREAS, as evidence of its current status as a not-for-profit tax-exempt organization, the applicant supplied: (i) a certified copy of its Certificate of Incorporation pursuant to Article XI of the Private Housing Finance Law and Section 402 of the Not-For-Profit Corporation Law of the State of New York, dated November 19, 1998; (ii) a Certificate of Good Standing executed by the Special Deputy Secretary of State of the State of New York on May 19, 2008; (iii) a report of the Charities Bureau Registry Search of the Office of the New York State Attorney General printed June 18, 2008 indicating that the applicant's annual filing required for all charitable organizations was made April, 28, 2008; (iv) a Letter of Exemption under Section 501(c)(3) of the Internal Revenue Code; as well as (v) an Exempt Organization Certificate issued by the New York State Department of Taxation and Finance, all issued to the Clover Housing Development Fund Corporation; and

WHEREAS, the Board notes that the New York State Secretary of State oversees the formation and status of not-for-profit corporations and the New York State Attorney General oversees the regulation and enforcement of such organizations (see "The Regulatory Role of the New York State Attorney General," available from <http://www.oag.state.ny.us/charities/role.pdf>); and

WHEREAS, the existence of a current Certificate of Good Standing issued by the NY Secretary of State is dispositive of the question of the status of a not-for-profit organization; and

WHEREAS, the Opposition has submitted no documents originating from either the NY Secretary of State or the NY Attorney General invalidating the May 19, 2008 Certificate of Good Standing; and

WHEREAS, the documents submitted by the Opposition that purport to prove that the applicant has lost its not-for-profit status -- Internal Revenue Bulletin 2004-11 dated March 15, 2004 ("Bulletin 2004-11"), and Internal Revenue Bulletin 2005-27 dated July 5, 2005 ("Bulletin 2005-27") (collectively, the "IRS Bulletins") -- are entirely irrelevant to the question of the applicant's standing as a not-for-profit corporation; and

WHEREAS, instead, each IRS Bulletin lists several hundred organizations that, as of the date of issuance, are said to be classified as operating foundations, rather than public charities (both classifications are constituted as not-for-profit organizations); the name of the applicant is contained in Bulletin 2004-11, but is not identified by Bulletin 2005-27; and

WHEREAS, in addition to being irrelevant to the applicant's not-for-profit status, neither IRS Bulletin is relevant to the question of whether the applicant is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code, as the first page of each includes a disclaimer stating specifically that, "[t]his listing does *not* indicate that the organizations have lost their status as organizations under section 501(c)(3), eligible to receive deductible contributions" (emphasis in original); and

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

ZR § 72-21 (c) – Neighborhood Character Finding

WHEREAS, as pertains to the (c) finding under ZR § 72-21, the Board is required to find that the grant of the variance will not alter the essential neighborhood character, impair the use or development of adjacent property, or be detrimental to the public welfare; and

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

WHEREAS, the applicant states that the proposed use, floor area and total height are permitted as of right under the zoning regulations and that the number of proposed units is fewer than the number permitted under the existing certificate occupancy; and

WHEREAS, the applicant states that the proposed street wall waiver would allow the building to rise to the eighth floor, to a height of 88 feet high along the West 94th Street street line; and

1 Bulletin 2005-27 identifies an unrelated South Carolina organization, Clover Housing and Redevelopment Services, which the Opposition may have confused with the applicant.

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WHEREAS, the applicant notes that the zoning regulations permit a street wall height of 85 feet, and that the wall height increase is three feet over what is permitted and is compatible with neighborhood character; and

WHEREAS, the applicant represents that a complying development would be forced to set back from the street line at the eighth floor; and

WHEREAS, the applicant states that the building's eighth story will be recessed with a mansard and a series of dormer elements and suggests that these design elements mitigate the building height by providing a visual break and making the building appear to be only eight stories; and

WHEREAS, the applicant represents that the setback and rear yard waivers are required because the enlargement would rise upward and extend from the existing front and rear walls; and

WHEREAS, the Board agrees that the encroachment into the required rear yard is compensated by the gain in light and air as a result of the reduced height of the building; and

WHEREAS, the Opposition raised issues at hearing concerning the scale of the proposed building and its compatibility to the neighborhood context; and

WHEREAS, the applicant states that the proposed bulk and height of the building will not be out of context with surrounding buildings, pointing out that the subject site is flanked by six and seven-story multiple dwelling buildings and that a 21-story residential building is located approximately 75 feet from the site on the northeast corner of 94th Street and Riverside Drive, and a 16-story residential building is located directly to its south; and

WHEREAS, the applicant provided information in the record depicting an as of right enlargement which rises to 128 feet or 12 stories, containing the same square footage as the proposed development, but which included only 122 dwelling/rooming units instead of the 140 units which would be created by the proposed project; and

WHEREAS, the applicant represents that a complying development would be forced to set back from the street line at the eighth floor, as well as set back from the rear by 30 feet from the seventh floor; and that these setbacks in bulk would necessarily result in a twelve-story building, three stories higher than that proposed; and

WHEREAS, the Board notes that a building constructed as of right under the zoning regulations could be considerably taller than that proposed; and

WHEREAS, as noted above, the use is allowed as of right and the proposed variance seeks only a waiver of street wall height, setback, sky exposure plane and rear yard requirements of the zoning regulations; and

WHEREAS, the applicant represents that the target population to be served by a community facility would be immaterial to the consideration of the impacts on neighborhood character implicated by the grant of a waiver of street wall height, setback, sky exposure plane and rear yard requirements of the zoning regulations under ZR § 72-21; and

WHEREAS, the Opposition contends that the Board must consider the impact of the proposed residents on the surrounding residential community, based on its

interpretation of the holding in Charisma Holding Corp. v. Zoning Bd. of Appeals; 266 A.D.2d 540 (2d Dep't 1999); and

WHEREAS, in Charisma, the Second Department upheld a zoning board's approval of a bulk variance permitting the expansion of an as of right auto repair and spray-painting business in a commercial district, but required the proposed building to be sited in an alternative location of the zoning lot to mitigate its impact on an adjacent residential district (the applicant had originally sought a location within 100 feet of a kitchen in a private home); and

WHEREAS, Charisma stands for the proposition that a zoning board can impose reasonable conditions to minimize the impact of a bulk variance for an as of right use; and

WHEREAS, consistent with Charisma, the Board evaluated the impacts of the variance on the potential light and air of surrounding buildings and on surrounding uses; and

WHEREAS, the Board finds no support within Charisma for the proposition that a zoning board must assess the purported impacts of new residents to a residential neighborhood in connection with a variance application which seeks only bulk waivers and further notes that the Opposition's submissions are bare of any legal authority for such a contention; and

WHEREAS, the applicant argues that the building will alter the "uniform character" of the neighborhood because it will be nine stories, rather the six or seven stories of the buildings on either side; and

WHEREAS, the Board notes that, at nine stories in height, the building would not be significantly taller than the adjacent seven-story buildings while remaining much shorter than the 15 to 21 story buildings located within 400 feet of the site; and

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

ZR § 72-21 (d) - Self Created Hardship Finding

WHEREAS, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; the purchase of a zoning lot subject to the cited hardship shall not constitute a self-created hardship; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's unique physical conditions: (1) its dumbbell shaped floorplate, (2) the existing non-complying rear yard, and (3) the non-complying non-fireproof nature of the building; and

WHEREAS, the applicant further states that these conditions originate with its 1910 construction, long predating its acquisition of the building; and

WHEREAS, the Opposition contends that the applicant's hardship is instead created by its purchase of the subject

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building for which extensive renovations would be necessary to meet its programmatic needs; and

WHEREAS, as noted above, the purchase of a zoning lot subject to the restriction sought be varied is specifically not a self-created hardship under ZR § 72-21(d); furthermore, New York courts have consistently held that the purchase of land burdened by obsolete improvements is not a self-created hardship (see Citizens Sav. Bank v. Bd. of Zoning Apps., 238 A.D. 2d 874 (3d Dep't 1997); see generally, Fiore v. Zoning Bd. of Apps. of Town of Southeast, 21 N.Y. 2d 393 (1968); Matter of Commco, Inc. v. Amelkin, 109 A.D.2d 794, 796 (2d Dep't 1985), and Polsinello v. Dwyer, 160 A.D. 2d 1056, 1058 (3d Dep't 1990)

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

ZR § 72-21 (e) – Minimum Variance Finding

WHEREAS, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the variance sought is the minimum necessary to afford relief; and

WHEREAS, the Board notes that the applicant originally filed an application for a ten-story building which sought waivers to the floor area ratio (for a 6.70 FAR), floor area of 50,666 sq. ft., a street wall height of 109'-6", a total height of 109'-6", and 150 units, and

WHEREAS, in response to concerns raised by the Community Board and others, the applicant withdrew the floor area variance request and amended its proposal to instead seek to construct the building currently proposed with an FAR of 6.0, floor area of 45,418 sq. ft., a street wall height of 88'-0", a total height of 99'-0" and 140 units; and

WHEREAS, the Board finds that the requested wall height, sky exposure plane, setback, rear yard, and floor area demolition waivers are the minimum necessary to allow the applicant to fulfill its programmatic needs; and

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

Adequacy of Notice

WHEREAS, in an Article 78 action challenging the Board's October 23, 2007 approval of a variance permitting the facility, the Opposition asserted inter alia that the residents of the subject building had failed to receive notice of the proposed action and the public hearing, as required by the BSA Rules; and

WHEREAS, the Board agreed to reopen the hearing to provide an opportunity for residents of the building and of the neighborhood surrounding the proposed project to testify; and

WHEREAS, the applicant provided proof that letters of notification of the May 13, 2008 hearing, including descriptions of the proposed action, were provided to residents in conformance with BSA notification procedures; and

WHEREAS, the Opposition contends that that notice of the May 13, 2008 hearing was difficult to understand by the average layperson and, therefore, that the hearing notice was inadequate; and

WHEREAS, in a submission to the Board, the

applicant points out that the first sentence of the hearing notice states clearly, "[f]or a variation from the requirements of the Zoning Resolution so as to permit a nine-story and cellar not-for-profit institution with sleeping accommodations and accessory supportive social service space"; and

WHEREAS, the applicant further states that the standard by which courts determine adequacy of a hearing notice is whether the notice in question is: (i) misleading or deceptive; and (ii) whether neighboring property owners attended the public hearings (see Brew v. Hess, 124 A.D.2d 962, 963) (3d Dep't 1986) (citing Reizel, Inc. v. Exxon Corp., 42 A.D. 2d 500, 504 (2d Dep't 1973), aff'd 36 N.Y.2d 888 (1975); and

WHEREAS, as 25 witnesses testified at the May 13, 2008 hearing, in addition to the 14 persons who testified at the hearings held August 21, 2007 and September 25, 2007, the Board finds that the notice was effective at apprising neighborhood residents of the pendency of the action and afforded them an opportunity to be heard; and

Fair Share Analysis

WHEREAS, the Opposition also argues that the proposed project is a "city facility" and is thus subject to analysis under the "fair share" criteria for such facilities, in conformity with section 203 of the City Charter; and

WHEREAS, with respect to the application of fair share planning guidelines to the proposed building, the Board notes that section 203 of the Charter requires the Mayor to annually file with the City Planning Commission proposed criteria for the siting of new City facilities ("fair share criteria"); and

WHEREAS, a facility is defined by section 203 to be a city facility only if it "used or occupied . . . to meet city needs [and] is located on real property owned or leased by the city or is operated by the city or pursuant to a written agreement on behalf of the city"; and

WHEREAS, the fair share criteria are only considered when a city agency is selecting a site for a public facility (see NYC Charter, section 204(g)), and does not apply to a private entity, such as the applicant, that is developing an as of right use of a private property; and

WHEREAS, in cases with similar facts, the courts have found that not-for-profit sponsoring organizations were not subject to fair share analysis (see West 97th Street – West 98th Street Block Association v. Volunteers of America, 190 A.D.2d 303 (1st Dep't 1993) (fair share analysis not necessary for supportive housing project for persons with mental health problems or HIV) and Planning Board No. 4 v. Homes for the Homeless, 158 Misc.2d 184 (Sup. Ct. NY Co. 1993) (no violation of fair share criteria where project was financed and planned by HPD because facility would be operated by a not-for-profit organization and was therefore not a "city facility"); and

WHEREAS, the Opposition has provided no evidence that this project qualifies as a project subject to fair share analysis, furthermore, Board approval would not necessarily override subsequent review by other City agencies; and

WHEREAS, the Board therefore finds that the

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application of fair share planning principles to the proposed project is not properly before it; and

Application of ULURP

WHEREAS, the Opposition also argues that the proposed project constitutes a “site selection for a capital project” and a “housing project” within the meaning of section 197-c of the City Charter which requires full review under the City’s Uniform Land Use Review Procedure (“ULURP”); and

WHEREAS, the Opposition has provided no evidence that this project qualifies for ULURP; and

WHEREAS, the Board therefore finds that the issue of ULURP is not properly before it; and

Adequacy of Environmental Review

WHEREAS, the project is classified as an unlisted action pursuant to Section 617.13 of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA075M, dated April 10, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health, and that no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Opposition disputes the EAS’s findings and contends that the project would have significant adverse impacts on Socioeconomic Conditions; Shadows; Neighborhood Character; Hazardous Materials; Air Quality; Noise; and Public Health, and that the applicant is therefore required by the State Environmental Quality Review Act (“SEQRA”) to prepare an environmental impact statement (an “EIS”); and

WHEREAS, with respect to socioeconomic conditions, the Opposition argues that preparation of an EIS was required to evaluate the alleged social and economic impacts of the building’s potential occupancy; and

WHEREAS, neither SEQRA nor CEQR require an assessment of social impacts if an action does not change the use or intensity of a use or structure, and

WHEREAS, the proposed project would create no socioeconomic changes as it would merely continue, and actually reduce, an existing use; and the subject property has been operating under a certificate of occupancy as an SRO for at least 40 years, with a permitted occupancy of 149 units and the proposed project will develop only 140 dwelling units, a reduction in the permitted number; and

WHEREAS, based on the technical guidelines for CEQR, the proposed project, which entails a reduction to 141 units from the 149 units permitted by the certificate of

occupancy, does not trigger the additional analysis of the impacts of the community facility on socioeconomic conditions or neighborhood character that the Opposition argues is required; and

WHEREAS, furthermore, an assessment of social impacts is triggered by a population increase in excess of 200 persons, but not by the type of persons who are proposed to occupy a building (CEQR Technical Manual at 3B-2); and

WHEREAS, the Opposition also asserts that the proposal would cast shadows across nearby playgrounds and other properties, that the height of the building is inconsistent with neighborhood character, and that the encroachment into the rear yard would significantly reduce light and air to neighboring structures ; and

WHEREAS, the applicant states that the CEQR regulations provide that an adverse shadow impact is considered to occur when the shadow from a proposed project falls upon a publicly accessible open space, a historic landscape, or other historic resource, if the features that make the resource significant depend on sunlight, or if the shadow falls on an important natural feature and adversely affects its uses or threatens the survival of important vegetation, and that shadows on streets and sidewalks or on other buildings are not considered significant under CEQR; and

WHEREAS, the applicant further states that the EAS analyzed the potential shadow impacts on publicly accessible open space and historic resources and found that no significant impacts would occur; and

WHEREAS, the applicant represents that the elevation of the building relative to other mid-block buildings does not constitute an adverse environmental impact under CEQR and further notes that at nine stories in height, the building would be modestly taller than the adjacent seven-story buildings while remaining much shorter than the 15 to 21 story buildings located within 400 feet of the site; and

WHEREAS, regarding the impacts to light and air to surrounding buildings caused by the increased non-compliance of the rear yard, the applicant notes that as of right construction of a 12-story structure would have more significant impacts on light and air than the proposed building; and

WHEREAS, with respect to hazardous materials and noise impacts, the Opposition argues that demolition of the building during construction would expose existing residents to lead paint, asbestos, toxic mold and bacteria and to excessive and prolonged noise impacts; and

WHEREAS, the applicant states that the EAS detected lead-based paints and asbestos-containing materials and these materials will be removed prior to and during construction in accordance with all applicable federal, State and City regulations; and

WHEREAS, the applicant further states that the based on the CEQR Manual, the project’s construction impacts would likely be considered as temporary short-term impacts, as the development is not a large-scale action with a long construction period; further noise is not expected to be

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significant as construction vehicles and equipment would adhere to local and federal requirements for noise emission control; and

WHEREAS, with respect to public health impacts, the Opposition argues that demolition during construction would release rodents and other vermin into the surrounding neighborhood; and

WHEREAS, the applicant states that the CEQR Manual requires an assessment of a project only if it would attract vermin, which the proposed project does not, and that standard pest control procedures will be employed during construction; and

WHEREAS, the applicant states that the EAS was prepared in accordance with the NYC CEQR Manual; and

WHEREAS, the EAS prepared for the subject action indicated that the project would fall below the initial thresholds for each of the 20 environmental impact categories and that no significant impact would occur for each technical area; and

WHEREAS, the applicant states that no EIS would be needed if screening or detailed analyses show that no significant impact would occur; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit, within an R8 zoning district, the three-story enlargement of an existing six-story building for a community facility with sleeping accommodations and accessory social service space that exceeds the street wall height, does not provide the required setbacks, encroaches into the sky exposure plane, does not provide the required rear yard, and demolishes more than 75 percent of the interior floor area of an existing building, contrary to ZR §§ 24-522, 24-36, and 54-41; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 17, 2007" – (12) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a community facility floor area of 45,418 sq. ft.; a total of 141 dwelling units; a total FAR of 6.0, a street wall height of 88 feet without a setback, a total height of 99 feet, and a rear yard of 13'-1";

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

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

THAT lead-based paints and asbestos-containing materials be removed prior to and during construction in accordance with all applicable federal, State and City regulations;

THAT construction vehicles and equipment adhere to local and federal requirements for noise emission control;

THAT standard pest control procedures will be employed during construction; and

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

Adopted by the Board of Standards and Appeals, July 15, 2008.

853-53-BZ

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC, Owner, Exxon Mobil Coperati, Lessee.

SUBJECT – Application May 13, 2008 – Extension of Term/waiver to permit the continued operation of a gasoline service station (Mobil) which expired on October 23, 1999 and an Extension of Time to obtain a Certificate of Occupancy which expired on April 1, 1996 in R3-2/C2-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, South west corner of Avenue X. Block 7429, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Patrick Gorman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 22, 2008, at 10 A.M., for decision, hearing closed.

467-58-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Nor-Topia Service Station, lessee.

SUBJECT – Application April 16, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Exxon Mobil) in an R3-2 zoning district which expired on May 21, 1999.

PREMISES AFFECTED – 172-11 Northern Boulevard, north side blockfront between 172nd Street and Utopia Parkway, Block 5363, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Patrick Gorman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2008, at 10 A.M., for decision, hearing closed.

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579-68-BZ

APPLICANT – Seldon Lobel, P.C., for Lexington Towers Company Successor II, L.P., owners; Swift Parking, LLC, lessees.

SUBJECT – Application April 25, 2008 – Extension of Term, to permit the operation of a transient parking garage in the cellar of a building located within a C1-8X zoning district originally granted under Section 60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED–152-160 East 88th Street, southeast corner of the intersection formed by East 88th Street and Lexington Avenue, Block 1516, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #8M

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to July 22, 2008, at 10 A.M., for decision, hearing closed.

406-82-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Adolf Clause & Theodore Thomas, owners; Hendel Products, lessee.

SUBJECT – Application April 29, 2008 – Extension of Term/waiver for a Special Permit (§73-243) Eating and Drinking Establishment (McDonald's) with accessory drive-thru which expired on January 18, 2008; and an Extension of Time to obtain a Certificate of Occupancy which expired on January 1, 2006 in an C1-3/R05 zoning district.

PREMISES AFFECTED –2411 86th Street, northeast corner of 24th Avenue and 86th Street, Block 6859, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to July 22, 2008, at 10 A.M., for decision, hearing closed.

546-82-BZIII

APPLICANT – Pasquale Carpentiere, owner; Ganesh Budhu, lessee.

SUBJECT – Application April 14, 2008 – Extension of Term for a UG8 parking lot which expires on June 14, 2008 in an R7a/DJ zoning district.

PREMISES AFFECTED – 148-15 89th Avenue, north side of 89th Avenue, between 148th and 150th Streets, Block 9693, Lot 60, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 22, 2008, at 10 A.M., for continued hearing.

200-00-BZIII

APPLICANT – Eric Palatnik, P.C., for Plans Development Corp., owner.

SUBJECT – Application January 22, 2007 – Extension of Term/Waiver of a previously approved variance, which expired on July 17, 2006 for an existing physical culture establishment at the second floor of the premises located in a R6B (C1-4) zoning district

PREMISES AFFECTED – 107-24 37th Avenue aka 37-16 108th Street, southwest corner of 108th Street and 37th Avenue, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to August 19, 2008, at 10 A.M., for decision, hearing closed.

33-06-BZII

APPLICANT – Rampulla Associates Architects, owner; Carroll's Garden Florist Corp., lessee.

SUBJECT – Application March 5, 2008 – Amendment to a previously-approved variance to allow the relocation of the approved commercial building to a different portion of the zoning lot. R1-2 district.

PREMISES AFFECTED – 1457 Richmond Road, north side Richmond Road from the intersection of Delaware Street, Block 869, Lot 359, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip Rampulla.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to August 19, 2008, at 10 A.M., for decision, hearing closed.

302-06-BZ

APPLICANT – Harold Weinberg, P.E., for Mirrer Yeshiva Central Inst.

SUBJECT – Application April 10, 2008 – Reopening for an Amendment (§§72-01 and 72-22) to allow a small increase in floor area and floor area ratio.

PREMISES AFFECTED – 1791 Ocean Parkway, northeast

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corner of Avenue R, between Ocean Parkway and East 7th Street, Block 6663, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #15BK

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 22, 2008, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

194-07-A

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

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

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

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete the enlargement of a single-family dwelling under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on May 13, 2008, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2008, and then to decision on July 15, 2008; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Bronx, recommends disapproval of the appeal; and

WHEREAS, certain neighbors testified in opposition to the appeal (“the Opposition”); and

WHEREAS, the applicant states that the subject site consists of an approximately 667 sq. ft. lot at the intersection of the Cross Bronx Expressway Service Road North and Rosedale Avenue; and

WHEREAS, the applicant proposes to develop the site with a three-story two-family home with 1,470 sq. ft. of residential floor area; and

WHEREAS, the subject site was formerly located within an R6 zoning district; and

WHEREAS, the proposed home complies with the former zoning district parameters; and

WHEREAS, however, on May 9, 2007 (hereinafter, the “Rezoning Date”), the City Council voted to adopt the “Park Stratton Rezoning,” which rezoned the site to R5; and

WHEREAS, the home does not comply with the R5 district parameters as to the maximum permitted floor area, parking, lot coverage, residential density and front yard; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, Section 645 (b) (1) of the Charter vests the Commissioner of Buildings with “exclusive power . . . to examine and approve or disapprove plans for the construction or alteration of any building or structure . . .”, and

WHEREAS, DOB has confirmed that New Building Permit No. 201109549 (hereinafter, the “Construction Permit”) was lawfully issued to the owner by DOB on April 25, 2007, prior to the Rezoning Date; and

WHEREAS, thus, the Board finds that the permits were validly issued by DOB to the owner of the subject premises and were in effect until the Rezoning Date; and

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

WHEREAS, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested and will not be disturbed where enforcement of new zoning requirements would cause serious loss to the owner, and where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance; and

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

WHEREAS, as to substantial construction, the applicant states that before the Rezoning Date, the owner had completed site excavation, footings and foundations and backfilled the site; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site, an affidavit from the general contractor, concrete pour tickets, and accounting summaries; and

WHEREAS, the general contractor states that the

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excavation, fill removal, foundations and backfilling of the site were completed on May 9, 2007; and

WHEREAS, the Board concludes that, based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the rezoning; and

WHEREAS, the Board also notes that the site preparation, excavation and foundation work at the site indisputably occurred prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the Rezoning Date, and that said work was substantial enough to meet the guideposts established by case law; and

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

WHEREAS, the applicant states that prior to the Rezoning Date, the owner expended \$47,940; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices and accounting reports; and

WHEREAS, the Board considers the amount of expenditures significant, both in and of itself and for a project of this size; and

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

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped under the new zoning; and

WHEREAS, the applicant contends that the loss of the \$47,940 associated with pre-Rezoning Date project costs that would result if this appeal were denied is significant; and

WHEREAS, the inability to construct the proposed building would mean that no portion of these expenditure could be recouped; and

WHEREAS, the applicant represents that a complying home would be uninhabitable due to the narrow lot width, which would result in a maximum building width of less than 4'-0" after providing the required 10'-0" front yard and 5'-0" side yard along the northerly lot line; and

WHEREAS, the Board agrees that the limitations of any complying construction, and the \$47,940 of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, at hearing, the Opposition argued that the subject application should be denied because work was performed by the owner in violation of an outstanding Stop Work Order issued May 2, 2007 by the Department of Buildings; and

WHEREAS, the Board observes that it can only consider representations of work performed and expenditures made pursuant to a valid permit in a determination as to whether the owner has a common law vested right to complete construction under the Prior Zoning; and

WHEREAS, the applicant represents that with respect to the validity of the permit and the work completed thereunder, none of the violations giving rise to the stop work order affected the validity of the permits or approval of the work completed at the site; and

WHEREAS, the record indicates a Notice of Violation was issued by DOB related to a failure by the owner to provide for the protection of employees on the site and for failing to safeguard the abutting sidewalk; and

WHEREAS, a submission by DOB states that an inspection performed on May 2, 2007 found an unshored excavation and an incomplete foundation with concrete footings in place and that concrete was poured to correct an unsafe condition, and was not contrary to the Stop Work Order; and

WHEREAS, the applicant represents that the pouring of concrete on May 2, 2007 had the effect of curing the violations; and

WHEREAS, furthermore, the applicant has submitted documentation indicating that the required shoring was scheduled to be delivered and installed at the site on May 2, 2007, and represents that the scheduled installation would have led to the lifting of the Stop Work Order and the completion of the foundations by the Rezoning Date; and

WHEREAS, the applicant further represents that backfilling work was also performed prior to the Rezoning Date under authority of a DOB inspector on May 3, 2007; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, the serious loss projected, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction had accrued to the owner of the premises as of the Rezoning Date; and

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 201109549, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy in conformance with DOB Permit No. 201109549, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, July 15, 2008.

143-08-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Nora Cahill, lessee.

SUBJECT – Application May 13, 2008 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street contrary to General City

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Law Section 36 and the proposed upgrade of the private disposal system contrary to DOB policy. R4 Zoning district. PREMISES AFFECTED – 43 Beach 221st Street, east side of Beach 221st Street, 100’ north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 30, 2008, acting on Department of Buildings Application No. 410106497, reads in pertinent part:

“A1- The street giving access to the existing building altered is not duly placed on the map of the City of New York.

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

B. Existing dwelling altered does not have at least 8% of the total perimeter of the building fronting space is contrary to Section 27-291 of the Administrative Code.

A2- The proposed upgrade of the private disposal system is contrary to Department of Building policy;” and

WHEREAS, a public hearing was held on this application on June 24, 2008, after due notice by publication in the *City Record*, with continued hearing on July 15, 2008, then to closure and decision on this same date; and

WHEREAS, by letter dated, May 23, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated April 30, 2008, acting on Department of Buildings Application No. 410106497 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 13, 2008” – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, July 15, 2008.

146-08-A

APPLICANT – Fire Department of the City of New York
OWNER: 1620 LLC DBAPK International c/o Jacob Ullman

Lessee: Plastic Kitchens Corp.

SUBJECT – Application May 16, 2008 – Application seeking to modify Certificate of Occupancy No. 84836 to require additional fire protection in the form of an automatic wet sprinkler system for the entire building under the authority under Section 27-4265. C8-2 Zoning District.

PREMISES AFFECTED – 1618-1620 Broadway, Hopkinson Avenue, Block 144, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application from the Fire Commissioner, requesting to modify the certificate of occupancy of the subject premises to reflect a requirement for automatic wet sprinklers in the entire building; and

WHEREAS, the order issued from the Fire Commissioner to the property owner, dated March 5, 2008, reads in pertinent part:

“You are hereby directed and required to comply with the following ORDER within thirty (30) days:

- 1) Install an approved automatic wet sprinkler system throughout the entire building, arranged and equipped per Title 27, Chapter 1, and Sub-Chapter 17 of the Administrative Code of the City of New York.
- 2) Plans are to be filed and approved by the Department of Buildings and a certified copy, accompanied by numbered Plan Work application, submitted to the Bureau of Fire Prevention – Sprinkler Install Unit – FDNY before any work is commenced.
- 3) After installation of sprinkler system submit a copy of the FP-85 Test Report to the Bureau of Fire Prevention – Sprinkler Install Unit – FDNY.

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AUTHORITY: Section 27-4265 of the Administrative Code of the City of New York;” and

WHEREAS, a public hearing was held on this application on July 1, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, the subject site is located within a C8-2 zoning district; and

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

WHEREAS, the first floor is occupied with Use Group 6 offices and storage and the cellar, second and third floors are used for storage, which are both permitted uses in the zoning district; and

WHEREAS, the site is operated by Plastics Kitchen Corporation; and

WHEREAS, the Board notes that the site is the subject of prior Board grants under BSA Cal. Nos. 137-37-SA, 140-37-S, and 751-45-A, which were associated with the use, fire safety, and boiler operation and precede the current Building Code; and

WHEREAS, the current Certificate of Occupancy No. 84836, dated November 3, 1937, does not reflect that sprinklers are required; and

WHEREAS, the Fire Department performed inspections of the building on September 22, 2007 and January 24, 2008 and referred its recommendations to the Bureau of Fire Prevention’s Sprinkler Install Unit; and

WHEREAS, the Sprinkler Install Unit then inspected the site and determined that, notwithstanding the absence of a requirement for an automatic wet sprinkler system at the site on the current certificate of occupancy, the entire building must be fully sprinklered in order to bring the building into compliance with the Building Code; and

WHEREAS, ultimately, as noted above, the Fire Commissioner issued an order dated March 5, 2008, which reflected the determination that the owner must install automatic sprinklers in the entire building within 30 days; and

WHEREAS, the Fire Department asserts that its request is reasonable and necessary in the interest of public safety due to the following existing conditions, which limit access and external water penetration: (1) the three-story and cellar building is non-fireproof; (2) the upper floors are congested with large quantities of stored goods, leaving little open space; (3) the cellar occupies the entire building footprint, but does not provide exterior access; (4) all windows have been replaced with steel plating; and (5) a portion of the building is adjacent to an elevated train line which obstructs third-floor access; and

WHEREAS, the Fire Department further states that a serious potential for collapse exists throughout all floors and the roof, which could further compromise the safety of adjacent buildings and the elevated train; and

WHEREAS, pursuant to the Administrative Code § 27-4265, the Fire Department requests to modify the certificate of occupancy to reflect that (1) an automatic wet sprinkler system be installed in the entire building, (2) that the plans be approved by DOB, and (3) that the plans be filed with the

Sprinkler Install Unit; and

WHEREAS, the Board agrees with the Fire Department that, given the use of the building and the inability to provide ventilation through any other means, automatic sprinklers are required in the entire building as per the Building Code; and

WHEREAS, thus, based on the evidence in the record, the Board finds that the installation of an automatic wet sprinkler system, as requested by the Fire Department, is necessary to protect life and property at the premises in the event of fire; and

WHEREAS, by letter dated June 23, 2008 the owner agreed to install a sprinkler configuration, in consultation with DOB, which would satisfy the Fire Department’s requirements; and

WHEREAS, the Board notes that the ultimate configuration of the sprinkler system may differ from what the Fire Department initially requested, but it will be approved by DOB and the Fire Department prior to installation.

Therefore it is Resolved that the application of the Fire Commissioner, dated April 18, 2008, seeking the modification of the Certificate of Occupancy No. 84836 is granted.

Adopted by the Board of Standards and Appeals, July 15, 2008.

141-07-A

APPLICANT – Hakime Altine, for Charles Macena, owner.
SUBJECT – Application May 29, 2007 – Proposed construction of a two story one family residential building in the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning.

PREMISES AFFECTED – 129-48 Hookcreek Boulevard, situated on the West side of Hookcreek Boulevard, Block 12891, Lot 10, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

ACTION OF THE BOARD – Laid over to September 9, 2008, at 10 A.M., for continued hearing.

168-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1479 Rosedale, LLC, owner.

SUBJECT – Application June 18, 2007 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R6 Zoning District.

PREMISES AFFECTED – 1479 Rosedale Avenue, Rosedale Avenue between Mansion Street and Cross Bronx Expressway, Block 3895, Lot 58, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Lyra Altman.

For Administration: Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to September 23, 2008, at 10 A.M., for continued hearing.

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33-08-A

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

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

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

COMMUNITY BOARD #13BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 16, 2008, at 10 A.M., for continued hearing.

104-08-BZY thru 119-08-BZY

APPLICANT – Anthony J. Tucci, for Carmel Homes LLC, owner.

SUBJECT – Application April 23, 2008 – Extension of time (§11-332) to complete construction and obtain a Certificate of Occupancy under the prior district regulations. R3X zoning district Series cases 104-08-BZY thru 119-08-BZY

PREMISES AFFECTED – 14/589 Carmela Court, Mill Road, Block 4690, Lots 129, 128, 127, 126, 120, 121, 122, 123, 124, 125, 110, 111, 112, 113, 114, 115, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Anthony Tucci.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2008, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, JULY 15, 2008
1:30 P.M.**

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

ZONING CALENDAR

127-07-BZ

CEQR #07-BSA-091Q

APPLICANT – Gerald J. Caliendo, R.A., for Maric Mechanical, Incorporated, owner.

SUBJECT – Application May 18, 2007 – Variance (§72-21) to allow the enlargement of a legal, non-conforming warehouse and office building (UG16); proposal increases the degree of non-conformance (contrary to §52-31) and non-compliance (contrary to §54-31). Proposal is therefore contrary to regulations for use (§22-00), front yard (§23-45), side yard (§23-466), rear yard (§23-47), FAR (§23-141) and wall height (§ 23-631). R4 district.

PREMISES AFFECTED – 19-03 75th Street, southeast corner of Hazen Street and 75th Street, Block 943, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, July 15, 2008.

274-07-BZ

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

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

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

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated November 15, 2007 acting on Department of Buildings Application No. 302312771, reads in pertinent part:

- “1) Proposed floor area and OSR contrary to ZR § 23-141 (a)
- 2) Proposed side yards are contrary to ZR § 23-461”; and

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

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2008, and then to decision on July 15, 2008; and

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

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of 83rd Street, between 11th Avenue and 12th Avenue; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with floor area of 2,377 sq. ft. (0.594 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,377 sq. ft. (0.594 FAR), to 3,163 sq. ft. (0.79 FAR); the maximum floor area permitted is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 60 percent (a minimum of 65 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards with widths of 6'-1½" and 3'-10" (side yards with a total width of 13'-0" and a minimum width of 5'-0" each are required); and

WHEREAS, at hearing, the Board directed the applicant to confirm whether the space at the lower level should be included in floor area calculations; and

WHEREAS, in response, the applicant obtained a reconsideration from DOB regarding classification of floor area in the basement/cellar level stating that it is not counted as floor area; and

WHEREAS, additionally, the Board noted that the proposed perimeter wall must be reviewed and approved by DOB; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter

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the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3X zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio and side yards, contrary to ZR §§ 23-141(a), 23-46 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 30, 2008"-(10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 3,163 sq. ft. (0.79 FAR), an open space ratio of 60 percent, one side yard with a minimum width of 6'-1½", one side yard with a minimum width of 3'-10", and a rear yard with a minimum depth of 14'-5", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve the perimeter wall height;

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

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

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

Adopted by the Board of Standards and Appeals, July 15, 2008.

23-08-BZ

CEQR #08-BSA-049Q

APPLICANT – Sheldon Lobel, P.C., for Bokharian Communities Center, Inc., owner.

SUBJECT – Application February 1, 2008 – Variance (§72-

21) to permit the construction of a community facility building (Use Group 4). The proposal is contrary to §§24-10 and 25-30. R1-2 district.

PREMISES AFFECTED – 182-69 80th Road, located at the northwest corner of the intersection of 80th Road and Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated January 23, 2008, acting on Department of Buildings Application No. 402618431, reads, in pertinent part:

"In an R1-2 zoning district, the proposed Community Facility Building:

- (1) Violates ZR section 24-10 as the proposed floor area would exceed maximum permitted floor area;
- (2) Violates ZR section 25-30 as less than the required parking spaces would be provided"; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R1-2 zoning district, a proposed two-story and cellar Use Group 4 synagogue building, which does not comply with floor area regulations and parking requirements for community facilities, contrary to ZR §§ 24-10, and 25-30; and

WHEREAS, a public hearing was held on this application on April 15, 2008, after due notice by publication in *The City Record*, with continued hearings on May 20, 2008 and June 24, 2008 and then to decision on July 15, 2008; and

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

WHEREAS, Community Board 8, Queens, recommends disapproval of the application; and

WHEREAS, State Senator Frank Padavan submitted testimony recommending disapproval of the application; and

WHEREAS, neighborhood residents submitted written and oral testimony in opposition to the application (the "Opposition"), citing concerns with the bulk of the building, traffic, parking, site drainage and noise; and

WHEREAS, this application is being brought on behalf of the Bokharian Communities Center, a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject premises is located on the northwest corner of the intersection of 80th Road and Chevy Chase Street, and is currently vacant; and

WHEREAS, the proposal provides for a two-story and

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cellar synagogue building with the following parameters: an FAR of 0.92 (0.50 FAR is the maximum permitted), and no parking spaces (23 are required); with Use Group 4 synagogue use space on the first and second floors and on the cellar level; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue: (1) to accommodate religious services for 440 persons; and (2) to provide separate space for men and women during religious services; and

WHEREAS, the applicant states that the proposed amount of space would provide a permanent location for the growing congregation which has been leasing space at a nearby synagogue for three years; and

WHEREAS, the applicant also states that it is religious tradition to provide separate space for men and women during religious services; and

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

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

WHEREAS, the applicant represents that a complying building would be inadequate to accommodate the size of the congregation and would not permit the creation of a women's balcony on the second floor; and

WHEREAS, the applicant states that the requested floor area waiver enables the Synagogue to have the second floor worship space, and

WHEREAS, the applicant further represents that worship space which separates men and women is also critical to its religious practice, thus necessitating the requested waiver of the floor area limitation; and

WHEREAS, the applicant states that the size of the site and the height limitations of the district do not permit surface or below-grade parking to be accommodated on the site; and

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

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

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

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

WHEREAS, the applicant further states that the only bulk waiver is to floor area ratio, to permit a building that can accommodate the size of the congregation, and that the building otherwise complies with all the yard, height and setback requirements of the zoning district; and

WHEREAS, the radius diagram and photographs submitted by the applicant indicate that the site abuts a one story commercial building fronting on Union Turnpike, a major thoroughfare, and that Union Turnpike is characterized by a mix of commercial and residential uses similar in size to the proposed building; and

WHEREAS, the Opposition contends that that the proposed building would have a significant impact on the surrounding community, because the proposed FAR of 0.92 will be built on a single zoning lot; while a building approved under BSA Cal. No. 240-03-BZ permitting an FAR of 1.13 was proposed for two zoning lots; and

WHEREAS, the Board notes that because FAR is proportional to the size of a zoning lot, a building with an FAR of 1.13 would exceed the floor area of the subject building by approximately 23 percent on each zoning lot, and would consequently result in a higher ratio of total building floor area to lot size than the proposed building; and

WHEREAS, as to traffic and parking impacts, a submission by the applicant indicates that approximately 96 percent of the congregants live within three-quarters of a mile from the premises; and

WHEREAS, the applicant represents that traffic and parking demand would be minimal as congregants are close enough to walk to services and are not permitted to drive to worship at on religious holidays, Fridays, or Saturdays – the synagogue's peak usage periods; and

WHEREAS, the applicant further represents that the subject site will not be used for commercial catering, thereby further limiting traffic demand; and

WHEREAS, the applicant initially stated that a parking study conducted during morning hours indicated that more than 100 on-street parking spaces were available within a 400'-0" radius of the subject site; and

WHEREAS, the Opposition testified that available parking was inadequate to meet current demand and that the applicant's parking study had failed to evaluate parking availability on the streets in which the proposed Synagogue would create the greatest parking demand, or during evening hours, when demand from the Synagogue would be most likely to conflict with that of neighboring homeowners; and

WHEREAS, the Board directed the applicant to provide a traffic study that evaluated parking availability between the hours of 6:00 p.m. and 8:00 p.m. on streets located to the south of Union Turnpike within a one-quarter mile radius of the site; and

WHEREAS, a revised traffic study submitted by the applicant indicated that a total of 336 on-street parking spaces are located within the study area, of which at least 188 spaces were available between 6:00 a.m. and 8:00 a.m., and at least 100 spaces were available between 6:00 and

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8:00 p.m.; and

WHEREAS, the applicant represents that parking demand by congregants would be limited to morning services attracting an average of ten members daily and bi-monthly life-cycle events that attract between 30 to 40 members and guests; and

WHEREAS, the applicant further represents that the number of available on-street parking spaces far exceeds the expected demand by members and guests of the synagogue; and

WHEREAS, at hearing, the Opposition also raised concerns with potential storm run-off caused by the proposed paving of the front and side yards; and

WHEREAS, in response, the Board directed the applicant to provide a landscaped strip at least 3'-0" wide along the lot lines; and

WHEREAS, at hearing, the Opposition also raised concerns regarding noise impacts from roof-mounted mechanical equipment; and

WHEREAS, the Board directed the applicant to provide baffling and to ensure that roof-mounted mechanical units are code-compliant; and

WHEREAS, the Board also directed the applicant to direct all lighting away from residential uses; and

WHEREAS, the applicant submitted revised plans indicating that baffling will screen the mechanical units, a 3'-0" landscaped strip will screen off the Synagogue from neighboring properties and absorb storm run-off, and lighting will be directed away from residential uses; and

WHEREAS, at hearing and in a submission to the Board, the Opposition argues that the proposed building is inconsistent with the neighborhood character; and

WHEREAS, the applicant states that the only waiver is to floor area ratio, that the building otherwise complies with all the yard, height and setback requirements of the zoning district and is consistent with the height of nearby buildings; and

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

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

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

WHEREAS, the Board notes that the height is consistent with permitted height for the district, and that the front yard and side yards meet or exceed the minimum requirements of the district; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA049Q, dated February 15, 2008; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration 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 R1-2 zoning district, a proposed two-story and cellar Use Group 4 synagogue, which does not comply with floor area regulations, and parking requirements for community facilities, contrary to ZR §§ 24-10, and 25-30, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 23, 2008" – Nine (9) sheets; and *on further condition*:

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

THAT the building parameters shall include a maximum floor area ratio of 0.92 as reflected on the BSA-approved plans;

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

THAT accessory uses shall not include the utilization of a room or other space for the operation of a business engaged in preparing or serving food or beverages for functions, occasions or events;

THAT a 3'-0" wide landscaped strip of landscaping be provided along the lot lines as shown on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, July 15, 2008.

32-08-BZ

CEQR #08-BSA-057R

APPLICANT – Slater & Beckerman, LLP, for Baron Hirsch Cemetery Assn. Inc., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 19, 2008 – Special Permit (§73-30) to permit, a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 1126 Richmond Avenue, intersection of entrance to the Baron De Hirsch Cemetery adjacent to Mark Street, Block 1668, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #ISI

APPEARANCES –

For Applicant: Robert Gardioso.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Superintendent, dated February 12, 2008, acting on Department of Buildings Application No. 510026473, reads in pertinent part:

“Proposed monopole is not allowable within R3-2 district. Refer to the Board of Standards and Appeals for review pursuant to Section 73-30 of the NYC Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3-2 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS, a public hearing was held on this application on June 3, 2008 after due notice by publication in *The City Record*, with a continued hearing on July 1, 2008, and then to decision on July 15, 2008; and

WHEREAS, certain community members raised concern that proper notification had not been performed; and

WHEREAS, in response, the Board directed the applicant to confirm that proper notification had been performed, which it did to the Board’s satisfaction; and

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

WHEREAS, Community Board 1, Staten Island, recommends approval of this application on condition that the City conduct a health study on the effects of the tower on the community and that no other entity other than the applicant, New York City, use the tower; and

WHEREAS, the proposed telecommunications pole will be located at a site which is occupied by a cemetery; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWiN) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City’s public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a pole with a height of 90 feet designed as a flagpole with internally-mounted antennas and related equipment that will be located within the basement of an existing building immediately adjacent to the pole; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 further represents that the height of the pole 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, the applicant provided an alternative site analysis, which reflects that the proposed site location within the center of the necessary coverage area; 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

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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 NYCWiN system is designed to streamline and enhance public safety and public service operations; 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. 08-BSA-057R, dated February 19, 2008; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within an R3-2 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received February 19, 2008"- (3) sheets; and *on further condition*;

THAT the telecommunications pole will be used by the NYCWiN system or for governmental purposes; any proposal from a non-municipal or non-governmental entity seeking to collocate additional equipment at the site must be reviewed and approved by the Board;

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, July 15, 2008.

65-08-BZ

CEQR #08-BSA-071Q

APPLICANT – Slater & Beckerman, LLP, for MBU Bridge Home, Inc., n/k/a Community Bridge Home, Inc., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 28, 2008 – Special Permit (§73-30) to permit, a 90 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications ("DoITT") New York City Wireless Network ("NYCWiN"). R3A zoning district. PREMISES AFFECTED – 120-50 Springfield Boulevard, northwest corner of 121st Avenue and Springfield Boulevard, Block 12694, Lot 56, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Robert Gardioso.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated March 27, 2008, acting on Department of Buildings Application No. 410076509, reads in pertinent part:

"Unipole in a R3-2 district requires the issuance of a Special Permit by the Board of Standards and Appeals. Refer to BSA ZR 73-30;" and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3A zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on June 17, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, Community Board 12, Queens, recommends disapproval of this application; and

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

WHEREAS, the proposed telecommunications pole will

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be located at a site which is occupied by a two-and-a-half-story community facility building; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a pole with a height of 90 feet designed as a flagpole with internally-mounted antennas and related equipment, located within a fenced area immediately adjacent to the pole; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 states that the telecommunications pole and related equipment cabinets will be installed within an opaque fence enclosure; and

WHEREAS, the applicant further represents that the height of the pole 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, at hearing, the Board questioned whether the location of the pole within the site, adjacent to two lots occupied by residential use, could be relocated closer to the Springfield Boulevard frontage; and

WHEREAS, in response, the applicant agreed to relocate the pole to a location at the corner of Springfield Boulevard and 121st Avenue near to the street line, although the associated equipment shed will be located at the rear of the site along the western property line; 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 NYCWiN system is designed to streamline and enhance public safety and public service operations; 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. 08-BSA-071Q, dated March 28, 2008; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within an R3A zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received July 1, 2008"-(4) sheets; and *on further condition*;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or

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configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 15, 2008.

69-08-BZ

CEQR #08-BSA-072Q

APPLICANT – Slater & Beckerman, LLP, for United States Columbarium Company, Inc., owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application March 31, 2008 – Special Permit (§73-30) to permit in an R4 district, a 90 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWiN”). R4 zoning district.

PREMISES AFFECTED – 61-40 Mt. Olivet Crescent, northwest corner of 62nd Avenue and Mt. Olivet Crescent, Block 2767, Lot 1, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Robert Gardioso.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated March 28, 2008, acting on Department of Buildings Application No. 410078892, reads in pertinent part:

“Monopole in a R4 district requires the issuance of Special Permit by the Board of Standards and Appeals. Refer to BSA ZR 73-30;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R4 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on July 17, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

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

WHEREAS, the proposed telecommunications pole will be located at a site which is occupied by a –two-story crematorium and mausoleum; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWiN) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City’s public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a pole with a height of 90 feet designed as a flagpole with internally-mounted antennas and related equipment, located alongside the pole and in the basement of the adjoining building; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 states that the telecommunications pole and related equipment cabinets will be installed within an opaque fence enclosure; and

WHEREAS, the applicant further represents that the height of the pole 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 NYCWiN system is designed to streamline and enhance public safety and public service operations; 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

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WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08-BSA-072Q, dated March 31, 2008; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within an R4 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received March 31, 2008”-(3) sheets; and *on further condition*;

THAT the telecommunications pole will be used by the NYCWiN system or for governmental purposes; any proposal from a non-municipal or non-governmental entity seeking to collocate additional equipment at the site must be reviewed and approved by the Board;

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, July 15, 2008.

85-08-BZ

CEQR #08-BSA-076Q

APPLICANT – Slater & Beckerman, LLP, for Braddock Avenue Owners, Inc., owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 9, 2008 – Special Permit

(§73-30) to permit, a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWiN”). R4 zoning district.

PREMISES AFFECTED – 222-89 Braddock Avenue, northwest corner of Braddock Avenue and Ransom Street, Block 7968, Lot 31, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Robert Gardioso.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated March 26, 2008, acting on Department of Buildings Application No. 410002198, reads in pertinent part:

“Communication facility exceeds the 400 square feet allowed under TPPN #5/98 and therefore will require a Special Permit from the Board of Standards and Appeals as per section 73-30 ZR;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility, which consists of three panel antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on June 17, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

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

WHEREAS, the proposed telecommunications facility will be located on the roof of a six-story mutli-family residence; and

WHEREAS, the proposed telecommunications facility is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWiN) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City’s public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications facility consists of three panel antennas

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and related equipment for public utility wireless communications; and

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

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

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

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

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

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

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

WHEREAS, the NYCWiN system is designed to streamline and enhance public safety and public service operations; 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. 08-BSA-076Q, dated April 9, 2008; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials;

Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received April 9, 2008”-(5) sheets; and *on further condition*;

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

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

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

Adopted by the Board of Standards and Appeals, July 15, 2008.

86-08-BZ

CEQR #08-BSA-077Q

APPLICANT – Slater & Beckerman, LLP, for Tuchman Associates II, LLC, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§73-30) to permit, a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWiN”). R6 zoning district.

PREMISES AFFECTED – 111-26 Corona Avenue, apx. 200’ east of Saultell Avenue, Block 1972, Lot 38, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Robert Gaudio.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

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THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 26, 2008, acting on Department of Buildings Application No. 410012025, reads in pertinent part:

“Proposed communication facility exceeds the 400 square feet allowed under Technical Policy and Procedure Notice (“TPPN”) No. 5 of 1998 and therefore will require a special permit from the Board of Standards and Appeals as per ZR § 73-30;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R6 zoning district, the proposed construction of a telecommunications facility that consists of three panel antennas and two dish antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on June 24, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, Community Board 4, Queens, recommends approval of this application, citing concerns about potential health risks associated with cell towers and data transmissions antennas; and

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

WHEREAS, the proposed telecommunications facility will be located at a site which is occupied by a six-story health care retirement facility; and

WHEREAS, the proposed telecommunications facility is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City’s public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of three panel antennas and two dish antennas and related equipment for public utility wireless communications; and

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

WHEREAS, the applicant represents that the antennas have been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility will comply with all applicable laws, that no noise or smoke, odor or dust will

be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant further represents that the height of the antennas are the minimum necessary to provide the required wireless coverage, and that the antennas 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 antennas 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. 08-BSA-077Q, dated April 9, 2008; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30 to permit, within an R6 zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless

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communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received April 9, 2008"-(6) sheets; and *on further condition*;

THAT any fencing 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, July 15, 2008.

90-08-BZ

CEQR #08-BSA-080Q

APPLICANT – Slater & Beckerman, LLP, for BNS Properties LLC, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 14, 2008 – Special Permit (§73-30) to permit a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications ("DoITT") New York City Wireless Network ("NYCWiN"). R3X zoning district.

PREMISES AFFECTED – 104-36 196th Street, northwest corner of Hollis Avenue and 196th Street, Block 10891, Lot 21, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Robert Gaudio.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 27, 2008, acting on Department of Buildings Application No. 410002189, reads in pertinent part:

"Proposed communication facility exceeds the 400 square feet allowed under Technical Policy and Procedure Notice ("TPPN") No. 5 of 1998 and therefore will require a special permit from the Board of Standards and Appeals as per ZR § 73-30;" and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3X zoning district, the proposed construction of a telecommunications facility that

consists of three panel antennas and two dish antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on June 24, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, Community Board 12, Queens, recommends disapproval of this application; and

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

WHEREAS, the proposed telecommunications facility will be located at a site which is occupied by a six-story multiple dwelling building; and

WHEREAS, the proposed telecommunications facility is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWiN) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of three panel antennas and two dish antennas and related equipment for public utility wireless communications; and

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

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

WHEREAS, the applicant further represents that the height of the antennas are the minimum necessary to provide the required wireless coverage, and that the antennas 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 antennas 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

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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. 08-BSA-080Q, dated April 14, 2008; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30 to permit, within an R3X zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received April 14, 2008"-(7) sheets; and *on further condition*;

THAT any fencing 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, July 15, 2008.

91-08-BZ

CEQR #08-BSA-081Q

APPLICANT – Slater & Becker, LLP, for NAND Limited Partnership, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 14, 2008 – Special Permit (§73-30) to permit, a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New 666 York City Wireless Network (“NYCWIn”). R6A zoning district.

PREMISES AFFECTED – 37-68 97th Street, northwest corner of 97th Street and 38th Avenue, Block 1759, Lot 30 Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Robert Gaudio.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 27, 2008, acting on Department of Buildings Application No. 402611893, reads in pertinent part:

“Proposed communication facility exceeds the 400 square feet allowed under Technical Policy and Procedure Notice (“TPPN”) No. 5 of 1998 and therefore will require a special permit from the Board of Standards and Appeals as per ZR § 73-30;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R6A zoning district, the proposed construction of a telecommunications facility that consists of three panel antennas and three dish antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS, a public hearing was held on this application on June 24, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

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

WHEREAS, the proposed telecommunications facility will be located at a site which is occupied by a six-story multiple dwelling building; and

WHEREAS, the proposed telecommunications facility is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the

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NYCWIn system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of three panel antennas and three dish antennas and related equipment for public utility wireless communications; and

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

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

WHEREAS, the applicant further represents that the height of the antennas are the minimum necessary to provide the required wireless coverage, and that the antennas 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 antennas 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. 08-BSA-081Q, dated April 14, 2008; and

WHEREAS, the EAS documents show that the project as

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30 to permit, within an R6A zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received April 14, 2008"-(5) sheets; and *on further condition*;

THAT any fencing 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, July 15, 2008.

189-07-BZ

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

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

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2008, at 1:30 P.M., for decision, hearing closed.

220-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new 4-story residential building containing 4 dwelling units on a site containing an existing legal, nonconforming 3-story multiple dwelling which is proposed to be razed; contrary to use regulations (§ 42-10). M1-1 district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300' north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

For Opposition: Elba Cornier.

ACTION OF THE BOARD – Laid over to September 16, 2008, at 1:30 P.M., for continued hearing.

243-07-BZ/244-07-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application October 29, 2007 – Variance (§72-21) to construct a three story, one family residence on a irregular, vacant, triangular lot in a Lower Density Growth Management (LDGM) area. This application seeks to vary floor area and open space (§23-141); less than the minimum front yards (§23-45) and less than the required amount of parking (§23-622) in an R3-2 zoning district.

PREMISES AFFECTED – 120 John Street, northwest corner of the intersection of John Street and Douglas Street, Block 1123, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Marie Wausnock and Vikki Palmer.

ACTION OF THE BOARD – Laid over to August 26, 2008, at 1:30 P.M., for continued hearing.

257-07-BZ

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

SUBJECT – Application November 17, 2007 – Variance (§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The proposal is contrary to sections §24-522 (height, setbacks, and sky exposure plane for community facility), §24-11

(community facility lot coverage), and §24-54 (community facility tower coverage).

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

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Gordon J. Davis, Ken Davis, John Morrison and Mustaja Abadaw.

For Opposition: Melissa Mark Viverito, Joanne Seminara, Gorman Reilly, Joel Meyers, George Sarkissian, Raymond Plumey, Elizabeth Manus, Betto June Raqhael, Elizabeth Ashley, Lo Van Der Valk, Stephanie Low and Cleha Zacharias.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2008, at 1:30 P.M., for decision, hearing closed.

291-07-BZ

APPLICANT – Eric Palatnik, P.C., for Cong. Tifereth Torna Eliezer, owner.

SUBJECT – Application December 27, 2007 – Variance (§72-21) to permit the alteration of the existing residential structure to create a Use Group 4 synagogue with accessory rabbi's quarters. The proposal is contrary to §24-35 (side yards), §24-391 (rear yard), §24-34 (front yard), and §24-521 (front wall height). R4 district.

PREMISES AFFECTED – 1912 New York Avenue, between Avenues J and K, Block 7614, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Eric Palatnik

ACTION OF THE BOARD – Laid over to August 19, 2008, at 1:30 P.M., for continued hearing.

12-08-BZ

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

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

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

COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to August
19, 2008, at 1:30 P.M., for decision, hearing closed.

89-08-BZ

APPLICANT – Eric Palatnik, P.C., for Majorie Wilpon,
owner.

SUBJECT – Application April 11, 2008 – Special Permit
(\$73-125) to allow a medical office (UG 4) in an existing
one-story commercial office building, allowed by prior
variance. R3X (HS) district.

PREMISES AFFECTED – 1101 Victory Boulevard,
northwest corner of Victory Boulevard and Melrose
Avenue, Block 247, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to
September 23, 2008, at 1:30 P.M., for continued hearing.

156-08-BZ

APPLICANT – Friedman & Gotbaum, LLP, for Hilton
Resorts Corporation, owner; Spa Chakra, LLC, lessee.

SUBJECT – Application June 5, 2008 – Special Permit
pursuant to ZR Section 73-36 to allow the proposed Physical
Culture Establishment on a portion of the ground floor of a
new hotel. The proposal is contrary to ZR Section 32-10.
The premises is located in a C5-3 zoning district.

PREMISES AFFECTED – 102 West 57th Street, Southerly
side of West 57th Street, 150 feet west of Sixth Avenue,
Block 1009, Lots 37 & 39, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Lori Cuisinier.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August
19, 2008, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.