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# BULLETIN

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

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Volume 93, No. 6

February 14, 2008

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### DIRECTORY

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62-07-A              7118-7124 Third Avenue, Brooklyn  
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249-07-BZ            1865 East 28<sup>th</sup> Street, Brooklyn  
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169-07-BZ            626 West 254<sup>th</sup> Street, Bronx  
209-07-BZ            187-30 Grand Central Parkway, Queens  
237-07-BZ            718 Avenue "S", Brooklyn  
263-07-BZ            1169 East 21<sup>st</sup> Street, Brooklyn

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# DOCKET

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New Case Filed Up to February 5, 2008  
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**20-08-BZ**

53-55 Beach Street, North side of Beach Street 0 feet West of Collister Street., Block 214, Lot(s) 1, Borough of **Manhattan, Community Board:1**. Special Permit (75-53) to permit a rooftop enlargement.  
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**21-08-BZ**

1601 Brondale Avenue, Westerly side of Bronxdale Avenue 675 feet southerly of Van Nest Avenue., Block 4042, Lot(s) 200, Borough of **Bronx, Community Board: 11**. Special Permit (73-36) to allow a physical culture establishment.  
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**22-08-A**

410 4th Avenue, 4th Avenue and 7th Street, Block 992, Lot(s) 38, Borough of **Brooklyn, Community Board: 6**. Appeal to lift Stop Work Order and reinstate building permit .  
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**23-08-BZ**

182-69 80th Road, Located at the northwest corner of the intersection of 80th Road and Chevy Chase Street., Block 7248, Lot(s) 44, Borough of **Queens, Community Board: 8**. Variance to allow the construction of a community facility building.  
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**24-08-BZ**

230-262 Arden Avenue, Southside of Arden Avenue directly across from Tarbes Avenue., Block 6025, Lot(s) 35, Borough of **Staten Island, Community Board: 3**. Special Permit (73-30) to allow an non-accessory radio tower and related equipment at grade.  
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**25-08-BZ**

444 Beach 6th Street, Between jarvis and Meehan Avenues, Block 15591, Lot(s) 1, Borough of **Queens, Community Board: 14**. Variance to allow for the enlargement of the existing Yeshiva.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**FEBRUARY 26, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 26, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**119-01-BZ**

APPLICANT – Edward H. Odesser, Esq., for Lawrence J. Mass, owner.

SUBJECT – Application January 11, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a previously granted variance to permit automotive repairs (light type) which expired on June 12, 2002 in a C4-2A (SBRD) zoning district.

PREMISES AFFECTED – 8818 Fourth Avenue, West side of Fourth Avenue, 120' north of 89<sup>th</sup> Street, Block 6062, Lot 40, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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**211-03-BZ**

APPLICANT – Eric Palatnik P.C., for 5-33 48th Avenue Corporation, owner.

SUBJECT – Application December 27, 2007 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the proposed expansion and the conversion of an existing warehouse to residential use, which expires on June 8, 2008, in an M1-4/R7A (LIC) zoning district.

PREMISES AFFECTED – 529-535 48<sup>th</sup> Avenue, north side of 48<sup>th</sup> Avenue between Fifth Street and Vernon Boulevard, Block 30, Lot 9, Borough of Queens.

**COMMUNITY BOARD #2Q**

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**42-06-BZ, Vol. II**

APPLICANT – Akerman Senterfitt/Stadtmauer Bailkin LLP, for New York Hospital Queens, owner.

SUBJECT – Application January 17, 2008 – Amendment to zoning variance (§ 72-21) to allow a two-story addition to previously approved five (5) story hospital building located on the campus of New York Hospital - Queens; contrary to regulations for height & setback (§ 24-522) and rear yard equivalent (§24-382). R6 district.

PREMISES AFFECTED – 56-45 Main Street, West side of Main Street between 56 and Booth Memorial Avenues, Block 5165, Lot 1, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**67-06-BZ**

APPLICANT – Joseph P. Morsellino, Esq., for Rodriguez Clove, LLC, owner.

SUBJECT – Application November 9, 2007 – SOC Amendment to reduce the required 48 parking spaces from the prior variance granted on March 20, 2007 to 42 cars. This will allow the compliance with the recent DCP Text Amendment requiring landscaping for parking areas. C2-1/R2 zoning districts.

PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149 & 168, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**APPEALS CALENDAR**

**208-07-BZY**

APPLICANT – Law Office of Fredrick Becker, for JN520, LLC/A Fishoff, owner.

SUBJECT – Application August 23, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on July 25, 2007.

PREMISES AFFECTED – 74 Grand Avenue (aka 72-96 Grand Avenue) Grand Avenue between Myrtle Avenue and Park Avenue, Block 1892, Lot 48, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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**231-07-BZY & 232-07-BZY**

APPLICANT – Sheldon Lobel, P.C., for Hooshang Vaghari & Farhad Nobari, owners.

SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on September 10, 2007. R6 zoning district.

PREMISES AFFECTED – 87-85 & 87-87 144<sup>th</sup> Street, eastside between Hillside Avenue and 88<sup>th</sup> Avenue, Block 9689, Lots 6 & 7, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**287-07-A**

APPLICANT – Greenberg Traurig by Jay A. Segal, Esq., for Jack Bendheim, owner.

SUBJECT – Application December 21, 2007 – Proposed construction of an accessory tennis court located partially within the bed of a mapped street (West 248th Street) contrary to General City Law Section 35. R1-1 SNAD.

PREMISES AFFECTED – 697 West 247<sup>th</sup> Street, north side of West 247<sup>th</sup> Street between Palisade Avenue and Independence Avenue, Block 5937, Lot 300, Borough of Bronx.

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# CALENDAR

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## COMMUNITY BOARD #8BX

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**FEBRUARY 26, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, February 26, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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### ZONING CALENDAR

#### 109-07-BZ

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

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

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

#### COMMUNITY BOARD # 2Q

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#### 145-07-BZ

APPLICANT – Akerman Senterfitt/Stadtmauer Bailkin LLP, for Maimonides Research & Development, owner.

SUBJECT – Application June 4, 2007 – Variance (§ 72-21) to allow the enlargement of an existing building to violate lot coverage requirements (§ 24-11) for a proposed community facility (medical facility). R6 district.

PREMISES AFFECTED – 1005 46th Street, Northeast corner of 46th Street and 10th Avenue Block 5614, Lot 1, Borough of Brooklyn.

#### COMMUNITY BOARD # 12BK

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#### 241-07-BZ

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

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

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

#### COMMUNITY BOARD #1SI

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#### 10-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for NYC Partnership Housing Development Fund Company, Inc., owner; TSI West 145<sup>th</sup> LLC, dba New York Sports Club, lessee.

SUBJECT – Application January 4, 2008 – Special Permit (§73-36) to allow the legalization of the existing Physical Culture Establishment on a portion of the cellar level and first floor in a nine-story mixed-use building. The proposal is contrary to section 32-10. C4-4D.

PREMISES AFFECTED – 66-68 Bradhurst Avenue, easterly side of Bradhurst Avenue, easterly of West 145<sup>th</sup> Street, Block 2045, Lot 21, Borough of Manhattan.

#### COMMUNITY BOARD #10M

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**FEBRUARY 27, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a Special public hearing, Tuesday morning, February 27, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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#### 247-07-A

APPLICANT – Soho Alliance Community Group, for Bayrock/Sapir Organization, LLC, owner.

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

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

#### COMMUNITY BOARD #2M

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, FEBRUARY 5, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**1038-80-BZ, VII**

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

SUBJECT – Application November 5, 2007 – Extension of Term of a Special Permit for the continued operation of a UG15 Amusement Arcade (Smile Arcade) in an M2-1 zoning district which expires on January 6, 2008.

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

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Ron Mandel.

**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 reopening and an extension of the term of a special permit, which expired on January 6, 2007; and

WHEREAS, a public hearing was held on this application on January 8, 2008 after due notice by publication in *The City Record*, and then to February 5, 2008 for decision; and

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

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

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

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

WHEREAS, subsequently, the term of the special permit has been extended at various times; and

WHEREAS, the Board finds that the instant application is appropriate to grant, based upon the evidence submitted.

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

having been adopted on January 6, 1981 as amended May 13, 1986, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the special permit for an additional one (1) year from January 6, 2008 expiring on January 6, 2009; *on condition* that all conditions and drawings associated with the previous grant remain in effect; and *on further condition*:

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

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

THAT there shall be no more than 130 amusement games on the subject premises;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Alt. No. 435/81)

Adopted by the Board of Standards and Appeals, February 5, 2008.

**121-95-BZ**

APPLICANT – Francis R. Angelino, Esq., for 37 West 46<sup>th</sup> Street Realty Corporation, owner.

SUBJECT – Application September 17, 2007 – Extension of Term/Waiver for a previously granted special permit (§73-36) for a physical culture establishment (Osaka Health Spa) on the third floor and mezzanine level of a six story mixed used building in a C6-4.5 zoning district which expired on February 6, 2006.

PREMISES AFFECTED – 37 West 46<sup>th</sup> Street, north/south West 46<sup>th</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup> Avenues, Block 1262, Lot 20, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Francis R. Angelino and Joseph Lee.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted special permit for a physical culture establishment (“PCE”) which expired on February 6, 2006; and

WHEREAS, a public hearing was held on this application on January 15, 2008, after due notice by

# MINUTES

publication in *The City Record*, and then to decision on February 5, 2008; and

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

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

WHEREAS, the sited is located within a C6-4.5 zoning district in the Special Midtown District and is occupied by a five-story mixed-use building, and

WHEREAS, the PCE occupies a total of approximately 2,033 sq. ft. on the third floor and third floor mezzanine; and

WHEREAS, the PCE is operated as Osaka Health Spa; and

WHEREAS, on February 6, 1996, under the subject calendar number, the Board granted a special permit to allow the PCE on the third floor and third floor mezzanine of the existing building for a term of ten years; and

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

WHEREAS, the applicant represents that the special permit was not renewed earlier due to the inability to locate the building file at the Department of Buildings and the consequential need to recreate it; and

WHEREAS, the Board notes that the PCE has remained in operation since February 6, 2006 when the prior term expired; and

WHEREAS, accordingly, the Board has determined that the new term shall be reduced for the period of time, between February 6, 2006 and the date of this grant, when the PCE operated without a valid special permit; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated February 6, 1996, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant to expire on February 6, 2016; *on condition* that the use and operation of the site shall substantially conform to the BSA-approved drawings associated with the prior approval; and *on further condition*:

THAT this grant shall expire on February 6, 2016;

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

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

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

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

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

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

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

(DOB Application No. 102961519)

Adopted by the Board of Standards and Appeals, February 5, 2008.

## 254-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Sarah Weiss.

SUBJECT – Application October 19, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 1327 East 21<sup>st</sup> Street, corner of Avenue L and East 21<sup>st</sup> Street, Block 7639, Lot 41, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

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, February 5, 2008.

## 35-07-A & 36-07-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Seven Waters Incorporated.

SUBJECT – Application January 31, 2007 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 3411 & 3413 Barker Avenue, west side of Barker Avenue between Duncomb Avenue and Magenta Street, Block 4626, Lot 25, Borough of Bronx.

## COMMUNITY BOARD #12BX

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, February 5, 2008.

# MINUTES

## 62-07-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Alberto Laniado.

SUBJECT – Application March 8, 2007 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 1582 East 17<sup>th</sup> Street, western side of East 17<sup>th</sup> Street, between Avenue O and Avenue P, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Application dismissed.

THE VOTE TO DISMISS –

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 Commissioner, dated February 6, 2007, acting on Department of Buildings Application No. 302073716, reads in pertinent part:

“Respectfully requested to permit us to continue with the construction at the premises listed above under ‘Other Construction’ as defined in ZR 11-31 not complete as of zoning change date April 5, 2006 as per ZR 11-332”; and

WHEREAS, this is an application to secure a common law vested right to continue construction of an enlargement to an existing single-family home at the subject site, which does not comply with the current zoning; and

WHEREAS, the applicant sought to enlarge an existing single-family home, which is on a site formerly within an R6 zoning district but, subsequent to the April 5, 2006 adoption of the Midwood Rezoning, is now within an R4-1 zoning district; and

WHEREAS, on April 6, 2006, DOB issued a stop work order because the enlargement did not comply with R4-1 zoning district regulations; and

WHEREAS, the vested rights application was filed on March 12, 2007; and

WHEREAS, on March 30, 2007, Board staff issued a Notice of Objections to the applicant; and

WHEREAS, subsequently, the Comptroller’s Office notified the Board that the applicant’s check submitted with the application to cover the required filing fee was returned for insufficient funds; and

WHEREAS, on multiple occasions, Board staff notified the applicant that the filing fee was outstanding and the application would not be reviewed without it; and

WHEREAS, the applicant of record stated that it was unable to obtain the required funds from the property owner and was no longer prosecuting the case on behalf of the owner; and

WHEREAS, accordingly, in the absence of the required filing fee, the Board placed the matter on the calendar for a

dismissal hearing; and.

WHEREAS, on January 10, 2008, Board staff issued a Notice of Hearing stating that the case had been scheduled for dismissal on February 5, 2008; and

WHEREAS, the Board received no subsequent response from the applicant; and

WHEREAS, neither the applicant nor the property owner appeared at the dismissal hearing on February 5, 2008; 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. 62-07-A is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, February 5, 2008.

## 6-04-BZ, Vol. II

APPLICANT – The Law Office of Fredrick A. Becker, for Glenmore Associates, owner; New York Sports Club, lessee.

SUBJECT – Application March 21, 2007 – Extension of Term of a variance granted pursuant to §72-21 allow the operation of a physical culture establishment located in a C1-3/R6 zoning district.

PREMISES AFFECTED – 7118-7124 Third Avenue, northwest corner of Third Avenue and 72<sup>nd</sup> Street, Block 5890, Lot 43, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Lyra Atlman.

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 March 4, 2008, at 10 A.M., for decision, hearing closed

## APPEALS CALENDAR

### 154-07-A

APPLICANT – Troutman Sanders, LLP, for 435 East 57<sup>th</sup> Apartments, Inc., owner.

SUBJECT – Application June 11, 2007 – Appeal seeking to revoke permits and approvals that allow a mechanical room which exceeds the maximum height permitted under §23-692(a) and is not listed as a permitted obstruction in Section §23-62. R10 Zoning district.

PREMISES AFFECTED – 441 East 57<sup>th</sup> Street, north side of east 57<sup>th</sup> Street, between 1<sup>st</sup> Avenue and Sutton, Block 1369, Lot 15, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCE –

# MINUTES

For Applicant: Caroline G. Harris.

For Opposition: Stuart Beckerman.

**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, February 5, 2008.

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## 264-07-A

**APPLICANT** – Ramulla Associates Architects, for Benjamin Rusi, owner.

**SUBJECT** – Application November 15, 2007 – Proposed legalization of an existing single family home not fronting a mapped street contrary to General City Law §36. R1-1(SNAD) (SGMD) Zoning district.

**PREMISES AFFECTED** – 76 Romer Road, east side of Romer Road, 449.51’ north of Four Corners Road, Block 870, Lot 111, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

**APPEARANCES** –

For Applicant: Philip Rampulla.

For Administration: Anthony Scaduto, FDNY.

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

## REGULAR MEETING

**TUESDAY AFTERNOON, FEBRUARY 5, 2008**

**1:30 P.M.**

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

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## ZONING CALENDAR

### 306-06-BZ

**CEQR #07-BSA-046K**

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

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

(§24-34), side yards (§24-35), and front wall (§24-52).

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

**COMMUNITY BOARD #14BK**

**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 Commissioner, dated January 17, 2008, acting on Department of Buildings Application No. 302250178, reads in pertinent part:

1. Proposed use of premises as a school (UG 3) in an M1-1 district is contrary to ZR 42-00
2. Proposed FAR in R5 district is contrary to ZR 113-11 and ZR 23-141
3. Proposed FAR in M1-1 district is contrary to ZR 43-122
4. Proposed max. lot coverage in R5 district is contrary to ZR 113-11 and ZR 23-141
5. Proposed min. open space in R5 district is contrary to ZR 113-11 and 23-141
6. Proposed height of street wall, lack of required setback and total height of building in R5 district is contrary ZR 113-11 and ZR 23-631(d)
7. Proposed height and number of stories of front wall with respect to sky exposure plane in M1-1 district is contrary to ZR 43-43
8. Proposed building with no front yard in R5 district is contrary to ZR 113-11 and ZR 23-45
9. Proposed min. side yard in R5 district is contrary to ZR 113-11 and ZR 23-461
10. Proposed building with no rear yard in R5 district beyond 100 feet of McDonald Ave is contrary to ZR 113-11 and ZR 23-47
11. Proposed building does not provide a loading berth for school, as required by ZR 113-22”; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site, partially within an R5 zoning district and partially within an M1-1 zoning district within the Special Ocean Parkway District (OP), the construction of a six-story yeshiva building with 40,788 sq. ft. of floor area (3.53 FAR and 4.63 FAR respectively within the two zoning districts) which does not comply with regulations for use, FAR, lot coverage, open space, street wall height, setback, total height, sky exposure plane, front yard, side yard, rear yard and loading berth, contrary to ZR §§ 23-141, 23-45, 23-461, 23-47, 23-631(d), 42-00, 113-11, and 113-22; and

WHEREAS, the application is brought on behalf of Talmud Torah Ohel Yochanan (the “Yeshiva”), a nonprofit religious educational institution; and

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WHEREAS, a public hearing was held on this application on April 24, 2007 after due notice by publication in the *City Record*, with continued hearings on June 5, 2007, July 24, 2007, October 2, 2007, November 20, 2007, and January 8, 2008, and then to decision on February 5, 2008; and

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

WHEREAS, an earlier iteration of the proposal provided for a six-story building with 43,200 sq. ft. (4.32 FAR across the site) and 100 percent lot coverage, except for a cutout with a depth of five feet for the front entrance area; the school bus loading zone was located around the corner on McDonald Avenue; and

WHEREAS, Community Board 14, Brooklyn, recommended approval of the earlier iteration on the condition that (1) no Use Group 9 catering facility be permitted at the premises, (2) school bus loading and unloading take place on McDonald Avenue, not Lawrence Avenue, (3) the school provide supervision each morning and afternoon so that students are accompanied when walking to and from the corner of McDonald Avenue and Lawrence Avenue, and (4) that parents be advised to drop off and pick up students on McDonald Avenue; and

WHEREAS, City Council Member Simcha Felder provided testimony in support of the application; and

WHEREAS, community members submitted approximately 80 formal and informal notices of consent in support of the proposal; and

WHEREAS, the site is located on the south side of Lawrence Avenue, between McDonald Avenue and Seton Place; and

WHEREAS, the subject site is a 100 ft. by 100 ft. square lot, with approximately 10,000 sq. ft. of lot area; and

WHEREAS, a zoning district boundary line bisects the site; the western half of the site is within an M1-1 zoning district and the eastern half is within an R5 zoning district; and

WHEREAS, each half of the zoning lot has a lot area of approximately 5,000 sq. ft. and the applicant provided separate zoning calculations for both zoning districts; and

WHEREAS, as to use, the proposed community facility use is permitted as of right in the R5 zoning district, but a use variance is required within the M1-1 zoning district; and

WHEREAS, the applicant represents that except for the non-complying bulk parameters noted below, the proposed Yeshiva meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M1-1 zoning district; and

WHEREAS, the site is currently occupied with a one-story manufacturing building, which will be demolished; and

WHEREAS, the applicant proposes to construct a six-story school building, with a one-story portion built at the rear of the building to the lot line; and

WHEREAS, the proposed building will have: a total floor area of 40,788 sq. ft., 17,663 sq. ft. of floor area (3.53 FAR) within the R5 portion of the lot, and 23,125 sq. ft. of floor area (4.63 FAR) within the M1-1 portion of the lot; 1.25

FAR and 2.4 FAR are the maximum permitted for the proposed use in the respective zoning districts; and

WHEREAS, the proposed building will not provide a front or rear setback at the first floor and will have a floor plate of approximately 9,500 sq. ft. on the first floor; due to a rear setback of 30 feet, floors two through six will have a floor plate of approximately 6,500 sq. ft.; and

WHEREAS, the proposed building will have a wall and total height of 60 feet; 30 feet is the maximum permitted wall height for both zoning districts and 40 feet and 30 feet are the maximum permitted total heights for the proposed use in the respective zoning districts; and

WHEREAS, the proposed open space is ten percent and the proposed lot coverage is 90 percent; 45 percent is the minimum permitted open space within the R5 zoning district and 55 percent is the maximum permitted lot coverage in both zoning districts; and

WHEREAS, the applicant proposes not to provide a front yard; a front yard with a minimum depth of 10 feet is required in the residential zoning district; and

WHEREAS, the applicant proposes to provide one side yard with a width of five feet on the eastern lot line adjacent to the residential use; a side yard with a minimum width of eight feet is required within the R5 zoning district; and

WHEREAS, the applicant proposes not to provide a front setback and the building will penetrate the sky exposure plane above 30 feet in the R5 zoning district and above 50 feet in the M1-1 zoning district; a setback of 15 feet is required in the R5 zoning district above 30 feet and a setback of 20 feet is required above 30 feet in the M1-1 zoning district; and

WHEREAS, the applicant proposes not to provide a rear yard at the first floor, but provides a 30-ft. setback above the first floor at the rear of the building; no rear yard is required in the M1-1 zoning district and a rear yard of 30 feet is required for a portion of the site within the R5 zoning district; and

WHEREAS, the proposal does not provide a loading berth which is required for community facility development in the R5 zoning district as per the Special Ocean Parkway District regulations; and

WHEREAS, the building will accommodate the following program: (1) the cellar level will be occupied by a dining room, two kitchens, offices, restrooms, a mikvah, and mechanical space; (2) the first floor will be occupied by a lobby, offices, a reception area, and a large multipurpose room; (3) the second floor will be occupied by five Head Start program classrooms, office space, and a teachers' lounge; (4) the third through sixth floors will be occupied by seven classrooms per floor, restrooms, and offices; and (5) an elevator will provide access to all floors; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Yeshiva; and

WHEREAS, the applicant states that the following are the programmatic needs of the Yeshiva, which necessitate the requested variance: (1) the Yeshiva has outgrown its current facility and requires significantly more space to accommodate increased enrollment, (2) the Yeshiva seeks to accommodate all grades in one centralized location for the religious sect within

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walking distance of most students' homes, and (3) the Yeshiva requires uniform floor plates to allow for efficient use of all space; and

WHEREAS, the applicant represents that the Yeshiva has outgrown its existing three-story building, which is located several blocks from the subject site and does not adequately serve an existing student body of 150 nor does it allow for any increase in enrollment; and

WHEREAS, further, the applicant represents that the existing school only accommodates kindergarten through third grade; and

WHEREAS, the proposed building will allow the Yeshiva to extend the enrollment to pre-school through ninth grade in its first year and, eventually, to twelfth grade and permits a projected student body of approximately 700; and

WHEREAS, the applicant represents that the proposed floor area and building design are required to accommodate the space needs associated with the projected student body; and

WHEREAS, at hearing, the Board asked the applicant to justify the purported need for the requested floor area and to document the space needs on a floor by floor basis; and

WHEREAS, the applicant responded by providing a chart which identified a schedule and the associated use of each room; and

WHEREAS, as to the requests for additional floor area and building height, the applicant represents that a complying design would result in inefficient floor plates and only eight classrooms, which is less than one quarter of what the Yeshiva requires in order to accommodate all grades at one site, and would be even less than what can be accommodated at the existing facility; and

WHEREAS, the applicant represents that a six-story building is required to accommodate the 33 required classrooms as well as auxiliary uses such as dining and assembly space, stairwells, restrooms, and office space; and

WHEREAS, the applicant represents that the classrooms devoted to Head Start programs, as well as certain other school facilities, will conform with program requirements and allow the school to receive funding in accordance with this program; in order to receive federal grants pursuant to the Head Start program, grades pre-school through first grade must maintain 35 sq. ft. of space per student; and

WHEREAS, the applicant proposes to accommodate 104 students within the Head Start program on the second floor and approximately 600 students on floors three through six; and

WHEREAS, the Board notes that the current proposal for 33 classrooms provides for five Head Start classrooms and two for each grade from pre-school to twelfth grade; and

WHEREAS, at hearing, the Board asked the applicant if certain of the larger spaces could be used for both dining and assembly and athletic purposes; and

WHEREAS, in response, the applicant represents that separate space is needed for dining and the large multipurpose room because both spaces will be used at the same time as there will be staggered lunchtimes and it would be difficult to move tables whenever the dining hall is needed; and

WHEREAS, additionally, the multipurpose room will be used for athletic activities and assemblies, as well as prayer

services; and

WHEREAS, as to the yard waivers, the applicant represents that they are required to provide efficient floor plates since larger, uniform floor plates allow for efficient use of the space, including shared stairways, elevator, and plumbing for restrooms communicating between floors; and

WHEREAS, additionally, uniform floor plates allow for the centralization of students by need and age group; and

WHEREAS, as to the insufficient side yard on the eastern lot line, the Board asked the applicant to explain why a required yard with a width of eight feet could not be provided adjacent to the single-family home; and

WHEREAS, in response, the applicant stated that a further increase in the side yard from five feet to eight feet would result in the loss of necessary classroom space; and

WHEREAS, the applicant represents that the addition of a fully complying side yard and the redesign of those floors from what is currently proposed would prevent the Yeshiva from being able to meet its programmatic needs with regard to number and size of classrooms; and

WHEREAS, the applicant represents that a similar reduction of space would result if a front yard with a depth of ten feet were provided; and

WHEREAS, as to the front yard, the Board notes that the front yard would only be required on the portion of the site within the R5 zoning district and that there is not a strong context for front yards in the vicinity since a number of buildings are within the M1-1 zoning district, which does not require front yards; and

WHEREAS, the Board acknowledges that the Yeshiva, 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 entitled to deference 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, accordingly, based upon the above, the Board finds that the limitations of the Yeshiva's current facility, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

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WHEREAS, as to use, the applicant states that the proposed use is permitted as of right within the R5 zoning district and by special permit in the M1-1 zoning district; and

WHEREAS, the applicant notes that the sites in the immediate vicinity are occupied by a mix of residential, community facility, commercial, and light industrial uses; and

WHEREAS, nearby uses include a four-story school building on the corner of Parkville Avenue and Seton Place and at least seven residential buildings nearby to the site which are of comparable height or are taller than the proposed Yeshiva; and

WHEREAS, the Board notes that the applicant now proposes to provide a side yard with a width of five feet at the side lot line adjacent to the single-family home; and

WHEREAS, further, the Board notes that the addition of the side yard reduced the FAR waiver, while still permitting the Yeshiva to provide a sufficient amount of classroom space for the projected student body (the applicant initially proposed 37 classrooms and now proposes 33); and

WHEREAS, additionally, the Board notes that a rear yard is only required at the first floor for a small portion of the site and that there is a 30-ft. setback from the rear lot line above the first floor; and

WHEREAS, as to the loading and drop-off area, the Board directed the applicant to seek an evaluation from the Department of Transportation (DOT) as to the safest place to locate bus loading and unloading; and

WHEREAS, in response, the applicant provided a letter from DOT's School Safety Engineering Office, which states that given the needs and design of the Yeshiva and the surrounding area, the student loading and unloading zone is best located on the south side of Lawrence Avenue in front of the Yeshiva, rather than on McDonald Avenue as initially proposed and recommended by the Community Board; and

WHEREAS, in addition to improved safety concerns, DOT notes that the proposed 40-ft. long school buses would potentially have more impact on traffic on McDonald Avenue as they would be required to maneuver to enter the traffic lane between the structural columns of the elevated subway and the eastside curb; and

WHEREAS, further, DOT stated that there would be no adverse impacts on Lawrence Avenue; and

WHEREAS, the Board notes that the applicant had initially agreed with the Community Board's request that the loading area be located on McDonald Avenue but defers to DOT's recommendation as to which location is safer and would have less impact on traffic; and

WHEREAS, the applicant represents that most transportation will be by walking or by bus and that few individual cars will drop students off at the site; and

WHEREAS, as to the Community Board's other condition, the applicant agrees that a Use Group 9 catering use will not be permitted at the Yeshiva; and

WHEREAS, the Board agrees that the proposed six-story building is compatible with the surrounding area with

respect to both use and bulk; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood or 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 as of right development at the site would meet the programmatic needs of the Yeshiva; 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 applicant reduced the amount of requested floor area by approximately 2,412 sq. ft., by providing a side yard with a width of five feet along the length of the eastern lot line where initially none was proposed; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Yeshiva to fulfill its programmatic needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA046K, dated June 18, 2007; and

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

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: October 7, 2006 EAS, the July 2006 Phase I Environmental Site Assessment Report; and the March 29, 2007 and January 15, 2007 Air Quality response submissions; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials, Air Quality and Noise; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on September 20, 2007 and submitted for proof of recording on October 11, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the

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applicant's agreement to the conditions noted below; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings application under ZR § 72-21 to permit, on a site, partially within an R5 zoning district and partially within an M1-1 zoning district within the Special Ocean Parkway District, the construction of a six-story yeshiva building which does not comply with regulations for use, FAR, lot coverage, open space, street wall height, setback, total height, sky exposure plane, front yard, side yard, rear yard and loading berth, contrary to ZR §§ 23-141, 23-45, 23-461, 23-47, 23-631(d), 42-00, 113-11, and 113-22, *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 September 26, 2007"- six (6) sheets and "Received January 22, 2008"- one (1) sheet; and *on further condition*:

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

THAT the proposed Yeshiva shall have a total floor area of 40,788 sq. ft. (4.08 FAR) in the M1-1 zoning district, a street wall and total height not to exceed 60 feet, a lot coverage not to exceed 90 percent, and one side yard with a minimum width of five feet;

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

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

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

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

plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 5, 2008.

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**65-07-BZ**

**CEQR #07-BSA-067Q**

APPLICANT – Sheldon Lobel, P.C., for Ship Management Corp., owner.

SUBJECT – Application March 15, 2007 – Variance (§72-21) to allow a one-story (UG 6) retail building to violate use regulations (§22-00), R3-2 district.

PREMISES AFFECTED – 146-93 Guy R. Brewer Boulevard, northeastern intersection of 147<sup>th</sup> Avenue and Guy R. Brewer Boulevard, Block 13354, Lot 12, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES –

For Applicant: Richard Lobel.

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

**THE VOTE TO GRANT** –

Affirmative: .....0

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

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Deputy Borough Commissioner dated February 6, 2007, acting on Department of Buildings Application No. 402506677, reads:

“A-1 The proposed commercial structure for Use Group #6 is not permitted in an R3-2 zoning district as per ZR 22-00”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an R3-2 zoning district, a one-story (UG 6) retail building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on September 25, 2007 after due publication in *The City Record*, with continued hearings on October 30, 2007, December 4, 2007 and January 15, 2008, and then to decision on February 5, 2008; and

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

WHEREAS, Community Board, 13, Queens and the Queens Borough President recommended disapproval of this application citing concerns with the presumed use and hours of the proposed commercial building and with its potential impacts on the adjacent home to its east; and

WHEREAS, the site is an irregularly-shaped lot with approximately 10,750 sq. ft. of lot area, and is located on the northeast corner of 147<sup>th</sup> Avenue and Guy R. Brewer Boulevard; and

WHEREAS, the lot is approximately 93 ft. in depth and varies in length from approximately 102 ft. to 131 ft. and is occupied with an unused one-story 1,300 sq. ft. concrete shell; and

WHEREAS, this site has been subject to Board jurisdiction since 1951 when, under BSA Cal. No. 209-51-

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BZ, the Board granted an application for a use variance within a residence district, allowing a gasoline service station with auto washing and repair services for a 15-year term; and

WHEREAS, this grant was extended by the Board at various times and the most recent extension of term was granted on October 27, 1987 for a term of ten years; and

WHEREAS, this grant expired on February 1, 1997; and

WHEREAS, the site is no longer used for automotive services; and

WHEREAS, the owner of the site now proposes a new retail development and has submitted a new application pursuant to ZR § 72-21; and

WHEREAS, the applicant proposes to demolish the existing structure and replace it with a one-story retail building (Use Group 6) with 6,000 sq. ft. of floor area and 12 accessory parking spaces; and

WHEREAS, the applicant alleges that the following are unique physical conditions that lead to practical difficulties in developing the subject site in strict compliance with underlying district regulations: (1) the location of the site at the intersection of two heavily trafficked thoroughfares; (2) the history of commercial uses at the site; and (3) the former location of underground storage tanks on the site; and

WHEREAS, for reasons set forth below, the Board does not agree that these alleged unique physical conditions create any practical difficulties or unnecessary hardship in developing the site with a fully complying development; and

WHEREAS, as to the first alleged unique physical condition, the applicant states that the site is located at the intersection of Guy R. Brewer Boulevard and 147<sup>th</sup> Avenue and that these are both heavily trafficked commercial thoroughfares; and

WHEREAS, the Board notes that it has rejected the argument that the location of the site on an allegedly busy intersection, in and of itself, constitutes a unique physical condition; and

WHEREAS, the Board further notes that the applicant has failed to prove that this intersection is significantly more active than numerous others within the area, and that expanding the definition of uniqueness to include the location of a lot at a busy intersection in a city with innumerable busy intersections is contrary to the definition of what is unique; and

WHEREAS, the Board rejects the applicant's argument as to the impact of the proximity of the subject site to the intersection for the same reasons; and

WHEREAS, in support of the argument that a location on a busy thoroughfare supports a uniqueness finding, the applicant cites to the New York Court of Appeals decision in Douglaston Civic Ass'n v. Klein, 51 N.Y.2d 963 (1980); and

WHEREAS, the Board has reviewed the Douglaston decision, and finds that the applicant has misinterpreted the Court's holding; and

WHEREAS, in that case, the Court of Appeals instead found that the swampy condition of the property in question,

not its location on a heavily trafficked street, was the unique physical condition that created a practical difficulty in complying with the zoning (51 N.Y.2d at 965); and

WHEREAS, the applicant states that the history of commercial uses of the four corners of the intersection in which the site is located supports a finding of site uniqueness; and

WHEREAS, the applicant further states that the subject site is the only corner property within a three-block radius with an R3-2 zoning classification that adjoins a commercial use; and

WHEREAS, the Board observes that this statement is not accurate and that a land use map submitted by the applicant indicates that another corner property within a three-block radius within the R3-2 zoning district adjoins a commercial site at 146<sup>th</sup> Road and Guy R. Brewer Boulevard; and

WHEREAS, the Board further observes that the subject site adjoins a solidly residential area and the lot is substantially-sized, such that it does not impose any site planning constraints that inhibit construction of a conforming development; and

WHEREAS, the land use map submitted by the applicant indicates that more than 90 percent of the sites located three blocks to the west and east of the subject site on the northern side of 147<sup>th</sup> Avenue are occupied with residential uses; and

WHEREAS, photographs submitted by the applicant furthermore indicate that the adjoining property on 147<sup>th</sup> Avenue is occupied by a single-family home; and

WHEREAS, the Board also notes that the property directly adjoining the subject site to its north has residential uses on its upper floors, and that a substantial number of additional sites north of the subject site along Guy R. Brewer Boulevard are characterized by residential uses; and

WHEREAS, the applicant also represents that the location of the site on the border of a manufacturing district at 147<sup>th</sup> Avenue constitutes a unique physical condition; and

WHEREAS, however, the Board observes that residential districts border manufacturing zones throughout New York City and a site within such a residential district would therefore not be unique, and

WHEREAS, as noted above, the preponderance of neighboring homes fronting the manufacturing zone on 147<sup>th</sup> Avenue further demonstrates that a residentially-zoned site located across from a manufacturing zone is not unique; and

WHEREAS, the Board therefore, is not persuaded that the site's location on an intersection of two thoroughfares, opposite commercial uses and across from a manufacturing zone constitutes a unique physical condition that creates a practical difficulty or unnecessary hardship conforming with the zoning requirements; and

WHEREAS, as to a second cited basis of uniqueness, the applicant states that the history of commercial use at the site and the nature of that use as a gasoline service station gives the site an "undeniable commercial flavor;" and

WHEREAS, the Board observes that the previous use of a site is not an actual unique physical condition that, in

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and of itself, causes hardship; and

WHEREAS, the Board still requires proof of actual unique physical features present at the site which cause practical difficulties or unnecessary hardship; and

WHEREAS, the applicant cites to variances granted by the Board under BSA Cal. Nos. 354-03-BZ, 261-03-BZ and 209-03-BZ in support of the argument that the Board has accepted a site's prior commercial history as a unique physical condition that leads to practical difficulty or unnecessary hardship; and

WHEREAS, however, a careful reading of these resolutions reveals that the applicant's reliance on these particular grants is misplaced, as each decision identifies specific unique physical conditions that were the basis for the hardship finding; and

WHEREAS, with respect to BSA Cal. No. 354-03-BZ, which involved the grant of a variance to permit a proposed physical culture establishment ("PCE") use in the cellar of a mixed use building located partially within an R8B zoning district and partially within a C6-6 overlay, the Board specifically found that the hardship requirement set forth at ZR § 72-21(a) was met by the lot's division by a zoning district boundary and limitations caused by the size and configuration of the cellar; and

WHEREAS, similarly, with respect to the resolution under BSA Cal. No. 209-03-BZ which also sought a variance to permit a PCE use in the lower floors of a residential building, the Board cited to the specific unique physical conditions of the awkward layout of the building's lower level due to its previous configuration for hotel use, and the lack of a sufficient street presence for a conforming commercial use; and

WHEREAS, with respect to BSA Cal. No. 261-03-BZ, a case involving the grant of a variance to legalize a one-story building as an auto repair shop in a residential zone, the Board cited to the significant slope conditions and unique shape of the lot as the bases for the hardship finding; and

WHEREAS, the Board thus finds that in no BSA decision cited by the applicant was the commercial history of a site the basis for uniqueness; and

WHEREAS, accordingly, in alignment with its past decisions, the Board finds that the previous history of a use of a site is, in and of itself, insufficient to sustain the uniqueness finding; and

WHEREAS, for this reason, the Board also rejects the applicant's third alleged basis of uniqueness, namely, that the site suffers a hardship because underground storage tanks were formerly located on its premises; and

WHEREAS, the Board notes that the applicant states that the storage tanks have been removed from the site; and

WHEREAS, further, the applicant has failed to adduce any outstanding remediation costs in connection to the former storage tanks; and

WHEREAS, thus, the applicant has failed to establish that the former underground storage tanks compromise complying development; and

WHEREAS, in the absence of documented

remediation costs, the Board observes therefore that the only apparent site preparation expense consists of the cost of removal of the abandoned shell of the site, which has not been averred to constitute a hardship; and

WHEREAS, the applicant also contends that as the site was granted a variance prior to 1961, it is eligible for a reinstatement of its previous variance under ZR § 11-411 and to seek the replacement of a Use Group 16 use with a less intensive Use Group 6 retail use; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, the extension of a term of an expired variance granted prior to 1961 requires a finding of continuous use; and

WHEREAS, the evidence in the record indicates that the use of the site as a gasoline service station has been discontinued; and

WHEREAS, the Board notes that, based on the discontinued use, the applicant is not eligible for reinstatement under ZR § 11-411; and

WHEREAS, the Board therefore believes that this argument is irrelevant and unpersuasive; and

WHEREAS, for all of the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(a); and

WHEREAS, at the final hearing, the applicant requested additional time to provide a final submission to reinforce the case for a variance; and

WHEREAS, despite the grant of additional time, the applicant submitted no additional support for its application; and

WHEREAS, because the applicant has failed to provide substantial evidence in support of the finding set forth at ZR § 72-21(a), the application also fails to meet the finding set forth at ZR § 72-21(b); and

WHEREAS, even assuming *arguendo* that the site's location and history of use should be considered unique such that the finding set forth at ZR § 72-21(a) is met, the applicant has failed to submit credible financial data – specifically, the proffered site valuation – in support of its claim that conforming residential development on the site will not realize a reasonable return; and

WHEREAS, the Board notes that an accurate site valuation that may be properly relied upon is essential in order for the finding set forth at ZR § 72-21(b) to be met; and

WHEREAS, the applicant has indicated that a complying development of three two-family homes could be accommodated on the site, and

WHEREAS, the Board observes that the applicant valued each of the three two-family homes at a price which does not generate a reasonable rate of return; and

WHEREAS, given its reservations with the applicant's claim of alleged hardship at the site, the Board asked the applicant to analyze a conforming residential scenario as if no unique physical hardships and resulting costs existed in order to assess the viability of conforming development on the site; and

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WHEREAS, such an analysis would allow the Board to ascertain how much of the applicant's claimed insufficient return for conforming development is due to generally applicable poor market conditions; and

WHEREAS, in response to a request by the Board, the applicant provided a financial analysis indicating that, if there were no hardship on the site, the selling price for each conforming two-family house would generate a reasonable rate of return; and

WHEREAS, at hearing, the Board asked to see the comparable selling prices on which the analysis was based; and

WHEREAS, the applicant failed to supply the comparable sales prices to the Board; and

WHEREAS, the applicant has failed to provide valuation information sufficient to establish the finding set forth at ZR § 72-21(b); and

WHEREAS, since the application fails to meet the findings set forth at ZR § 72-21 (a) and (b), it must be denied; and

WHEREAS, because the Board finds that the application fails to meet the findings set forth at ZR § 72-21(a) and (b), which are threshold findings that must be met for a grant of a variance, the Board declines to address the other findings.

*Therefore it is Resolved* that the decision of the Queens Deputy Borough Commissioner, dated February 6, 2007, acting on Department of Buildings Application No. 402506677, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, February 5, 2008.

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## 122-07-BZ

### CEQR #07-BSA-087K

APPLICANT – Law Office of Fredrick A. Becker, for Kingswood Partners, LLC, owner; TSI Midwood LLC, owner.

SUBJECT – Application May 15, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on portions of the first and second floors of a three-story commercial building. The proposal is contrary to §32-00. C4-4A zoning district.

PREMISES AFFECTED – 1630 East 15<sup>th</sup> Street, westerly side of East 15<sup>th</sup> Street, 50' north of Kings Highway, Block 6777, Lots 17 and 24, Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

#### APPEARANCES –

For Applicant: Lyra Altman.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated April 18, 2007, acting on Department of Buildings Application No. 301927280, reads in pertinent part:

“Proposed change in use on first floor from dance studio to physical culture establishment is not permitted as of right. A special permit by the Board of Standards and Appeals is required”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C4-4A zoning district and partially within an R5B zoning district, the operation of a physical culture establishment (PCE) on portions of the first and second floors of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 2, 2007, after due notice by publication in *The City Record*, with continued hearings on November 27, 2007 and January 15, 2008, and then to decision on February 5, 2008; and

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

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

WHEREAS, the subject site is a through-lot between East 14<sup>th</sup> Street and East 15<sup>th</sup> Street, 50 feet north of Kings Highway; and

WHEREAS, the site is located partially within a C4-4A zoning district and partially within an R5B zoning district; and

WHEREAS, the site occupies two zoning lots; and

WHEREAS, the PCE occupies a total floor area of 18,000 sq. ft. on portions of the first and second floors of the building; and

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

WHEREAS, the Board notes that the PCE has been in operation since August 2007; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time, between August 1, 2007 and the date of this grant, when the PCE operated without the special permit; and

WHEREAS, the applicant represents that the services at the PCE include cardiovascular fitness and strength training; and

WHEREAS, the hours of operation are: 6:00 a.m. to 9:00 p.m. Monday through Friday, and 8:00 a.m. to 7:00 p.m., Saturday and Sunday; and

WHEREAS, at hearing, the Board directed the applicant to clarify whether any portion of the PCE was located within the R5B zoning district; and

WHEREAS, in response, the applicant provided a site plan reflecting that only a 20 foot portion of the site extends into the R5B zoning district; and

WHEREAS, pursuant to ZR § 77-11, if a zoning lot is divided by a boundary line between districts in which different uses are permitted, the provisions applicable to the portion of the site which constitutes at least 50 percent of the zoning lot may apply to the entire zoning lot if the distance to the lot line in the zoning district which is less than 50 percent of the zoning lot is less than 25 feet; and

WHEREAS, the applicant represents that the zoning lot complies with ZR § 77-11; and

WHEREAS, based on the applicant's representations and the site plan submitted by the applicant, the Board agrees that the zoning lot complies with the requirements of ZR § 77-11; and

WHEREAS, additionally, the Board asked the applicant to confirm that the PCE would not be occupying space which had been allocated to parking on the site and did not trigger any new parking requirements; and

WHEREAS, in response, the applicant submitted the most recent Certificate of Occupancy showing that the PCE occupies space on the first and second floors formerly allocated to offices and a dance studio, while parking spaces are designated to the cellar and subcellar and that the parking requirement for the PCE is met by the parking allocated to the former uses; and

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

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

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

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

outweighed by the advantages to be derived by the community; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA087K, dated January 2, 2008; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C4-4A zoning district and partially within an R5B zoning district, the legalization of a physical culture establishment on portions of the first and second floors of a three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 3, 2008"-(2) sheets and "February 4, 2008"-(3) sheets; and *on further condition*:

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

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

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

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

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

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed

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DOB/other jurisdiction objection(s);

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

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

Adopted by the Board of Standards and Appeals, February 5, 2008.

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## 152-07-BZ

### CEQR #07-BSA-097K

APPLICANT – Eric Palatnik, P.C., for 8701 Fourth Avenue, LLC, owner.

SUBJECT – Application June 8, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on the second floor of a two-story commercial building. The proposal is contrary to section 32-00 of the Zoning Resolution. C4-2A zoning district.

PREMISES AFFECTED – 8701 Fourth Avenue, southeast corner of Fourth Avenue and 87<sup>th</sup> Street, Block 6050, Lot 8, Borough of Brooklyn.

### COMMUNITY BOARD #8BK

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 and Commissioner Montanez.....5

Negative:.....0

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 18, 2007, acting on Department of Buildings Application No. 301137963, reads in pertinent part:

“Proposed change of use to a physical culture establishment in a C4-2 zoning district requires a special permit from the Board of Standards and Appeals.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-2A zoning district in the Special Bay Ridge District, the legalization of a physical culture establishment (PCE) on the second floor of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 23, 2007, after due notice by publication in *The City Record*, and then to decision on February 5, 2008; and

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

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

WHEREAS, the subject site is located on the southeast corner of Fourth Avenue and 87<sup>th</sup> Street; and

WHEREAS, the PCE occupies the second floor of a two-story commercial building; the PCE occupies 6,930 sq. ft. of floor area; and

WHEREAS, the PCE is operated as Dolphin Fitness; and

WHEREAS, the Board notes that the PCE has been in operation since 2003, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time, between January 1, 2003 and the date of this grant, when the PCE operated without the special permit; and

WHEREAS, the applicant represents that the services at the PCE include cardiovascular exercise machines, weight-training equipment, and individual and group instruction; and

WHEREAS, the hours of operation are: Monday through Thursday, 5:00 a.m. to 12:00 a.m.; Friday, 5:00 a.m. to 10:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 8:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant to address the Fire Department’s letter stating that full sprinklering of the facility would be required; and

WHEREAS, in response, the applicant sought to modify the Fire Department’s requirement, but the Fire Department did not agree to modify it; and

WHEREAS, the Board has determined that, since the PCE has been in operation for five years without a special permit and without the appropriate fire safety measures, it must come into compliance with this grant, and specifically the Fire Department’s requirement for full sprinklering, within six months; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA097K, dated April 30, 2007; and

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

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-2A zoning district in the Special Bay Ridge District, the legalization of a physical culture establishment on the second floor of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 5, 2008"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 1, 2013;

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

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

THAT fire safety measures, including full sprinklering as per the Fire Department, shall be installed and/or maintained as shown on the BSA-approved plans;

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

THAT the PCE shall be brought into compliance with all conditions of this grant and the BSA-Approved plans within six months of this grant, by August 5, 2008;

THAT a new Certificate of Occupancy shall be obtained within one year of the date of this grant, by February 5, 2009;

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

THAT the occupancy of the PCE shall be as reviewed and approved by DOB;

THAT DOB shall inspect and approve compliance with all conditions of this grant prior to the issuance of a Certificate of Occupancy;

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

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

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

Adopted by the Board of Standards and Appeals, February 5, 2008.

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## 176-07-BZ

### CEQR #07-BSA-105Q

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Fei Guo, owner.

SUBJECT – Application June 29, 2007 – Variance (§72-21) to permit the alteration and enlargement of an existing one-story single family home for commercial use. The proposal is contrary to §22-12 (use), §23-45(a) (front yard), and §23-461(a) (required 5' side yard). R4 district.

PREMISES AFFECTED – 50-34 69<sup>th</sup> Street, a/k/a 68-18 Garfield Avenue, southwest corner of the intersection of Garfield Avenue and 69<sup>th</sup> Street, Block 2425, Lot 33, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

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

THE VOTE TO GRANT –

Affirmative: .....0

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

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 20, 2007, acting on Department of Buildings Application No. 402594849, reads in pertinent part:

“Proposed office use (UG 6) in a residence is contrary to Section 22-10 ZR.”; and

WHEREAS, a public hearing was held on this application on October 2, 2007 after due publication in *The City Record*, with continued hearings on November 20, 2007 and January 8, 2008, and then to decision on February 5, 2008; and

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

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an R4 zoning district, the alteration and enlargement of an existing building for commercial use, contrary to ZR § 22-10; and

WHEREAS, Community Board 2, Queens,

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recommended disapproval of this application; and

WHEREAS, the site is located at the southwest corner of Garfield Avenue and 69<sup>th</sup> Street; and

WHEREAS, the site has 32.66 feet of frontage on Garfield Avenue, 122.84 feet of frontage on 69<sup>th</sup> Street, and a total lot area of 3,503 sq. ft.; and

WHEREAS, due to the angle of Garfield Avenue, the site has a wider angled frontage on Garfield Avenue but otherwise is rectangular with a uniform width of approximately 30 feet across the site; and

WHEREAS, the site is currently occupied by a one-story single-family home with 1,178 sq. ft. of floor area, built in approximately 1937 as a single-family home; and

WHEREAS, the applicant represents that in recent years, the building has been used for commercial purposes contrary to the existing Certificate of Occupancy; the commercial use was discontinued in 2006; and

WHEREAS, the applicant proposes to enlarge the existing residential building to convert it into a two-story commercial building (Use Group 6) with 2,990 sq. ft. of floor area, which would maintain the existing non-complying front yard and side yard; and

WHEREAS, because the proposed Use Group 6 use is not permitted as-of-right in the subject zoning district a use variance is requested; and

WHEREAS, the applicant asserts that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in using the existing home or otherwise developing the lot in strict conformance with underlying district regulations: (1) the lot is on a corner and is irregularly-shaped; (2) the existing single-family home is obsolete due to structural cracks and basement flooding and cannot be feasibly enlarged because of the costs associated with renovation and the unmarketable location; (3) the single-family home is a unique use in the subject R4 zoning district; (4) the site fronts on a commercial thoroughfare with two lanes of traffic, two parking lanes, and a bus stop in front of the site; (5) the site is surrounded by commercial uses and is across the street from an M1-1 zoning district; and

WHEREAS, as to location on the corner and the lot's shape, the Board notes that many of the lots within the 400-ft. radius of the site have angled frontage and the subject site's angled frontage does not have significant impact on its use nor does it preclude the development of a building to be occupied by a conforming use; and

WHEREAS, as to size, the applicant states that, as a result of the lot width, the existing home has a width of 20 feet and is not marketable; and

WHEREAS, the Board disagrees and notes that (1) the site's width is not unique as there are many lots within a 400-ft. radius of the site which are comparable in width and lot area and (2) within a 400-ft. radius of the site, there are more than 25 buildings that have widths within the range of 18 to 22 feet and are occupied by residential use; and

WHEREAS, further, no evidence has been submitted into the record to support the argument that a building with a width of 20 feet is uninhabitable; and

WHEREAS, as to the purported obsolescence of the building, the Board notes that obsolescence is based on the inability to effectively use the building for its intended purpose; and

WHEREAS, the Board notes that the building was built for residential use and there is no evidence in the record to show that it is unable to continue residential occupancy; and

WHEREAS, further, the conditions that purportedly contribute to obsolescence – cracks and basement flooding – relate to the insufficient maintenance and repair of the home rather than the building's incongruity with residential use; and

WHEREAS, as to the uniqueness of the single-family use, the Board notes that there is no evidence in the record to support this claim and, further, the applicant is not limited to single-family use and may build a two- or three-family building as of right, subject to R4 zoning district parameters; and

WHEREAS, the Board notes that the applicant submitted an alternate proposal for a three-story three-family home that would be feasible; and

WHEREAS, as to the surrounding streets, the Board notes that 69<sup>th</sup> Street and Garfield Avenue both have widths of 80 feet, while major commercial corridors have widths of 100 feet or greater; and

WHEREAS, the Board also notes that two lanes of traffic and two parking lanes are common conditions in New York City as a whole and the subject area; and

WHEREAS, as to nearby uses, the Board notes that immediately adjacent to the site along 69<sup>th</sup> Street, both sides of the street are occupied by residential uses including ten, two- and three-story buildings, which are similar to potential as-of-right development of the site; and

WHEREAS, the Board agrees that there is an exception to the noted prevalence in residential use at the corner sites in the adjacent M1-1 zoning district, but notes that the subject residential zoning district and the adjacent C1-2 (R4) zoning district are occupied by a majority of residential uses or mixed-use residential/commercial uses, even on the corner sites; and

WHEREAS, the Board notes that the applicant submitted a photographic survey reflecting that there is commercial use on the ground floor of buildings along 69<sup>th</sup> Street, yet the majority of these examples were in the adjacent M1-1 or C1-2 (R4) zoning districts; and

WHEREAS, further, the Board notes that, at best, these examples reflect that the area has a mixed character and is not conclusive that either the site itself is unique or that it cannot accommodate residential use; and

WHEREAS, further the Board notes that the mere existence of certain physical conditions on, or related to, a site is insufficient to support the uniqueness finding set forth at ZR § 72-21(a); and

WHEREAS, ZR § 72-21(a) provides that the physical conditions, once proven to be unique, must also result in practical difficulties or unnecessary hardship in strictly conforming to applicable zoning provisions; and

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WHEREAS, the Board notes that the relevant inquiry in evaluating variance requests for a single-family dwelling such as the subject home is whether the dwelling is habitable without the requested waivers, or at all; and

WHEREAS, the Board observes that the home is capable of being used as a single-family residence in conformance with the applicable use regulations in an R4 zoning district; and

WHEREAS, the claimed unique features set forth above do not affect this determination: small houses with non-complying yards situated on busy streets can be both habitable and marketable, and the applicant has not provided any compelling evidence that the subject home can not be occupied residentially because of its size, non-complying yards, or location; and

WHEREAS, the Board also notes that the mere fact that commercial use of the home may be more profitable or desirable (in part based on the experience of the former illegal commercial occupancy) does not support a finding that use of the home for residential purposes imposes unnecessary hardship or practical difficulties; and

WHEREAS, the Board observes that the applicant has not provided an explanation of why the floor plate of the home is deficient for residential use or why the floor plates of any conforming use at the site are not feasible; and

WHEREAS, in fact, the Board finds that the floor plate of the home is sufficient for conforming residential use; and

WHEREAS, the Board notes that the applicant has other alternatives to develop the site with a conforming use and may use available floor area if it finds that the existing home does not provide a sufficient return; and

WHEREAS, in sum, based upon its review of the record, the Board finds that the applicant has not provided any evidence that the alleged unique physical conditions, when considered in the aggregate, compromise the habitability of the home for residential purposes to the degree where it could be said that practical difficulties or unnecessary hardship arise; and

WHEREAS, accordingly, the Board finds that the applicant has failed to provide substantial evidence in support of the finding set forth at ZR § 72-21(a); and

WHEREAS, because the Board finds that the application fails to meet the finding set forth at ZR § 72-21(a), which is a threshold finding for any variance grant, the Board declines to address the remaining findings.

*Therefore it is Resolved* that the decision of the Borough Commissioner, dated June 20, 2007, acting on Department of Buildings Application No. 402594849, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, February 5, 2008.

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## 249-07-BZ

APPLICANT – Harold Weinberg, P.E., for Varda Grodko, owner.

SUBJECT – Application November 2, 2008 – Special Permit (§73-622) for the enlargement of an existing single

family residence. This application seeks to vary side yard requirement ((§23-461) in an R3-2 zoning district.

PREMISES AFFECTED – 1865 East 28<sup>th</sup> Street, east side, 215’ north of Avenue S between Avenue R and S, Block 6834, Lot 58, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

**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 1, 2007, acting on Department of Buildings Application No. 310044886, reads in pertinent part:

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

Increases the degree of non-compliance with respect to one side yard and is contrary to Sections 23-461 and 54-31 of the Zoning Resolution”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side yard, contrary to ZR §§ 23-461 and 54-31; and

WHEREAS, a public hearing was held on this application on January 15, 2008, after due notice by publication in *The City Record*, and then to decision on February 5, 2008; and

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

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

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

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,433 sq. ft. (0.47 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,433 sq. ft. (0.47 FAR), to 2,151 sq. ft. (0.72 FAR); the maximum floor area permitted is 1,800 sq. ft. (0.60 FAR); and

WHEREAS, the proposed enlargement will maintain a non-complying side yard of 2’-10” (a minimum width of 5’-0” is required); and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor

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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 R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side yard, contrary to ZR §§ 23-461 and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 11, 2008"–(10) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 2,151 sq. ft. (0.72 FAR), as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has 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, February 5, 2008.

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## **197-05-BZ**

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

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

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

## **COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Marvin Mitzner, Robert Pauls and Felix E. Ferrer.

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

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## **31-06-BZ**

APPLICANT – Sheldon Lobel, P.C., for Frank Falanga, owner.

SUBJECT – Application February 24, 2006 – Zoning variance (§72-21) to allow the legalization of an automotive collision repair shop (Use Group 16) in an R3-1/C1-2 district; proposed use is contrary to ZR §§22-00 and 32-00. PREMISES AFFECTED – 102-10 159<sup>th</sup> Road, south side of 159<sup>th</sup> Road near the intersection of 192<sup>nd</sup> Street and 159<sup>th</sup> Road, Block 14182, Lot 88, Borough of Queens.

## **COMMUNITY BOARD #10Q**

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 1:30 P.M., for continued hearing.

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## **134-06-BZ**

APPLICANT – Sheldon Lobel, P.C., for 241-15 Northern LLC, owner.

SUBJECT – Application June 26, 2006 – Variance under § 72-21 to allow a five (5) story residential building containing 40 dwelling units and 63 accessory parking spaces. Proposal is contrary to regulations for use (§22-12), floor area and FAR (§23-141), open space (§23-141), front yard (§23-45), height and setback (§ 23-631) and maximum number of dwelling units (§23-22). R1-2 district.

PREMISES AFFECTED – 241-15 Northern Boulevard, northwest corner of the intersection between Northern Boulevard and Douglaston Parkway, Block 8092, Lot 39, Borough of Queens.

## **COMMUNITY BOARD # 11Q**

APPEARANCES –

For Applicant: Jordan Most and Robert Pauls.

For Opposition: Council Member Tony Avella, Marc Bresky, Elliott Socci, Stuart Hersh, Marie Marsina, Suzanne Campese, Irene Solland, Bruce Stuart, Margaret Nihan, Arthur Kelley, Marva Kalish, Joseph Hellmann, W.B. Sievers and Julia Soctorer.

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 1:30 P.M., for continued hearing.

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## **160-06-BZ**

APPLICANT – Rothkrug Rothkrug and Spector, for Barbara Berman, owner.

SUBJECT – Application July 24, 2006 – Variance under

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§72-21 to permit the proposed one-story and cellar Walgreens drug store with accessory parking for 24 cars. The proposal is contrary to §22-00. R3-1 district.

PREMISES AFFECTED – 2199 (a/k/a 2175) Richmond Avenue, corner of Richmond Avenue and Travis Avenue, Block 2361, Lots 1, 7, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug and Frank Tioglio.

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 1:30 P.M., for continued hearing.

## 299-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Three Partners, LLC.

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

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

## COMMUNITY BOARD #6BX

APPEARANCE –

For Applicant: Daniel Braff and Jack Freeman.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 1:30 P.M., for continued hearing.

## 51-07-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 70-50 Kissena Boulevard, LLC, owner.

SUBJECT – Application February 22, 2007 – Variance (§ 72-21) to allow a one-story retail building (U.G. 6); contrary to use regulations (§ 22-00). R4 district.

PREMISES AFFECTED – 70-44 to 58 Kissena Boulevard, northwest corner of Kissena Boulevard and 70<sup>th</sup> Road, Block 6656, Lot 52, Borough of Queens.

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most and Sandy Anagnostou.

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 1:30 P.M., for continued hearing.

## 209-07-BZ

APPLICANT – Raymond J. Irrera, for The Summit School, owner.

SUBJECT – Application August 29, 2007 – Variance (§72-21) to enlarge and maintain the use of the existing school. The proposal is contrary to floor area (§24-11), enlargement not permitted obstruction in the required front yard (§24-33), and front yard (§24-34). R1-2 district.

PREMISES AFFECTED – 187-30 Grand Parkway, southwest corner of 188<sup>th</sup> Street and Grand Central Parkway, Block 9969, Lot 12, Borough of Queens.

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Raymond J. Irrera.

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 March 4, 2008, at 1:30 P.M., for decision, hearing closed.

## 169-07-BZ

APPLICANT – Jacqueline M. Cigliano, for Chen Lai Ho, owner.

SUBJECT – Application June 18, 2007 – Variance (§72-21) to allow a single-family home; contrary to regulations for minimum lot width (§23-32). R1-1(NA-2) district.

PREMISES AFFECTED – 626 West 254<sup>th</sup> Street, southerly line of 254<sup>th</sup> Street, east of intersection of West 254<sup>th</sup> Street and Independence Avenue, Block 5942, Lot 308, Borough of Bronx.

## COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jacqueline Cigliano.

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 1:30 P.M., for continued hearing.

## 237-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Foundation for Sephardic Studies, Inc., owner.

SUBJECT – Application October 22, 2007 – Variance (§72-21) to permit the construction of a two-story community facility building to serve as an annex to the Main Building, two lots east of the subject premises. The proposal is contrary to §23-631 (maximum perimeter wall height and required setback) and §25-31 (minimum parking requirement). R5 zoning district in the Ocean Parkway Special Zoning District.

PREMISES AFFECTED – 718 Avenue S, south side of Avenue S, midblock between East 7<sup>th</sup> Street and East 8<sup>th</sup> Street, Block 7089, Lot 7, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

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 March 4, 2008, at 1:30 P.M., for decision, hearing closed.

## 263-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aliza Goldbrenner and Isaac Golfbrenner, owners.

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SUBJECT – Application November 14, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-461(a)); and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1169 East 21<sup>st</sup> Street, East 21<sup>st</sup> Street between Avenue J and Avenue K, Block 7603, Lot 29, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra Altman and David Shteierman.

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 March 4, 2008, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*