
BULLETIN

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171-09-BZ

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172-09-A

10 Gotham Walk, West side of Gotham Walk 105.46' south of mapped Oceanside Avenue., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14.** Reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36 The proposed upgrade of the existing non complying private disposal located partly in the bed of the service road is contrary to Department of Building Policy. R4 zoning district.

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

CALENDAR

JUNE 16, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 16, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

8-96-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Shell Service Station, lessee.
SUBJECT – Application April 20, 2009 – Extension of Term for a Gasoline Service Station (Shell), located in an C2-2/R3-2 zoning district, which expired on July 16, 2006; Extension of Time/waiver to obtain a Certificate of Occupancy which expired on July 16, 2000 and an Amendment to legalize modification to the building which does not comply with previously approved plans.

PREMISES AFFECTED – 175-22 Horace Harding Expressway, southwest corner of Utopia Parkway, Block 6891, Lot 32, Borough of Queens.

COMMUNITY BOARD #8Q

174-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Phillip Pollicina, owner.

SUBJECT – Application June 19, 2008 – Extension of term and Waiver for a previously granted variance pursuant to §72-21. The application seeks the authorization to continue operation of an existing food products manufacturing establishment (Use Group 17B) within a R4 zoning district. The most recent term expired on July 1, 2007.

PREMISES AFFECTED – 1108/10 Allerton Avenue, South side of Allerton Avenue between Laconia Avenue and Yates Avenue. Block 4456, Lot 47, Borough of the Bronx.

COMMUNITY BOARD #11BX

55-97-BZ

APPLICANT – Sheldon Lobel, P.C. for Baker Tripi Realty, owner.

SUBJECT – Application March 18, 2009 – Extension of term filed pursuant to §11-411 of the Zoning Resolution requesting an extension of the term of a variance perviously granted by the Board of Standards and Appeals and an extension of time to obtain a certificate of occupancy allowing the continued operation of an automotive repair shop (Use Group 16) located in a C2-2/R3-2 zoning district. The previous term expired on September 23, 2007.

PREMISES AFFECTED – 76-36 164th Street, southwest corner of the intersection formed by 164th Street and 76th Road. Block 6848, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEALS CALENDAR

83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.

SUBJECT – Application April 9, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification and the failure to comply with ZR §12-10(d) in the formation of the zoning lot R5 SP Sheepshead Bay District.

PREMISES AFFECTED – 3218 Emmons Avenue, Emmons Avenue between Bringham Street, and Bragg Street, Block 8815, Lot 590, Borough of Brooklyn.

COMMUNITY BOARD #15BK

4-09-A

APPLICANT – NYC Department of Buildings
OWNER OF RECORD – 27-00 Queens Plaza South, LLC.

SUBJECT – Application January 13, 2009 – An appeal filed by the Department of Buildings seeking to amend the Certificate of Occupancy No. 400872631 issued on June 17, 1999 to remove the reference to "Adult " Establishment use on the second floor. M1-6/R-10 Special Mixed Use.

PREMISES AFFECTED – 27-02 Queens Plaza South, southeast corner of Queens Plaza South and 27th Street, Block 422, Lot 9, Borough of Queens.

COMMUNITY BOARD #1Q

163-09-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Joseph Lind, lessee.

SUBJECT – Application April 27, 2009 – Proposed reconstruction and enlargement of an existing single family home not fronting on a official mapped street contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 115 Beach 220th Street, east side of Beach 220th Street (unmapped street) south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

JUNE 16, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 16, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

288-08-BZ

APPLICANT – Jeffrey Geary, for Vincent Passarelli, owner; Roland Costanzo, lessee.

SUBJECT – Application November 21, 2008 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (Costanzo's Martial Arts Studio) on the second floor of a two-story commercial building. The proposal is contrary to ZR §42-10. M1-1 district.

PREMISES AFFECTED – 2955 Veterans Road West, Cross Streets, Tyrellian Avenue and West Shore Parkway, Block 7511, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

13-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 5621 21st Avenue LLC, for Congregation Tehilos Yitzchok, owner.

SUBJECT – Application January 26, 2009 – Variance (§72-21) to permit a synagogue contrary to bulk regulations ZR §24-34, §24-35, §24-11. R5 District.

PREMISES AFFECTED – 5611 21st Avenue, east side 95'-8" north of intersection of 21st Avenue and 57th Street, Block 5495, Lot 430, Borough of Brooklyn.

COMMUNITY BOARD #12BK

15-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Lafayette Astor Associates, LLC, owner; David Barton Gym, lessee.

SUBJECT – Application February 3, 2009 – Special Permit (§73-36) to allow a physical culture establishment on portions of the sub-cellar, cellar and ground floors and the entire second floor in an existing seven-story commercial building. The proposal is contrary to ZR §42-10. M1-5B district.

PREMISES AFFECTED – 8-10 Astor Place, south side between Broadway and Lafayette Street, Block 545, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #2M

36-09-BZ

APPLICANT – MetroPCS New York, LLC, for Milford House, LLC, owner; MetroPCS New York, lessee.

SUBJECT – Application March 3, 2009 – Special Permit (§§73-03, 73-30) to allow a non-accessory radio tower on the rooftop of an existing building with all accessory equipment.

PREMISES AFFECTED – 53-01 32nd Avenue, north side of 32nd Avenue between 51st Street and 54th Street, Block 1131, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

52-09-BZ

APPLICANT – Dennis Dell'Angelo, for Yehuda A. Lieberman, owner.

SUBJECT – Application April 6, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1438 East 26th Street, west side of East 26th Street, between Avenue H and Avenue O, Block 7679, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MAY 19, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

727-86-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Suco Selimaj, owner.

SUBJECT – Application January 24, 2009 – Extension of Term of a previously granted Variance (§72-21) to allow an eating and drinking establishment (UG6) at the cellar, basement and first floor of a three story building in an R8B zoning district which expired on January 17, 2009.

PREMISES AFFECTED – 240 East 58th Street, south side of East 58th Street, 140’ west of Second Avenue, Block 1331, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

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 Montanez5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the term of a previously granted variance permitting the operation of an eating and drinking establishment (Use Group 6) at the cellar, basement and first floor of a three-story mixed-use commercial/residential building, which expired on January 17, 2009; and

WHEREAS, a public hearing was held on this application on April 28, 2009 after due notice by publication in *The City Record*, and then to decision on May 19, 2009; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

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

WHEREAS, the site is located on the south side of East 58th Street, between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 17, 1989 when, under the subject calendar number, the Board granted a variance to permit an eating and drinking establishment at the cellar, basement and first floor of a three-story mixed-use commercial/residential

building, to expire on January 17, 1999; and

WHEREAS, on August 7, 2001, the grant was extended for a term of ten years from the expiration of the prior grant, to expire on January 17, 2009; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on January 17, 1999, so that as amended this portion of the resolution shall read: “to extend the term for ten years from January 17, 2009, to expire on January 17, 2019, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received January 27, 2009”-(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 17, 2019;

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

THAT a new certificate of occupancy shall be obtained by November 19, 2009;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (Alt. No. 1284/85)

Adopted by the Board of Standards and Appeals, May 19, 2009.

185-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Raymond Chakkalo, owner.

SUBJECT – Application March 23, 2009 – Extension of Time/waiver to complete construction of a previously granted Special Permit (§73-622) for the enlargement of an existing home in an R4 (Special Ocean Parkway) district which expired on January 11, 2009.

PREMISES AFFECTED – 2275 East 2nd Street, east side of 2nd Street, between Avenue W and Gravesend Neck Road, Block 7154, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Josh Rinesmtih.

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 Montanez5

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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 time to complete construction of an enlargement of an existing two-family home, which expired on January 11, 2009; and

WHEREAS, a public hearing was held on this application on April 28, 2009, after due notice by publication in *The City Record*, and then to decision on May 19, 2009; and

WHEREAS, the subject site is located on the east side of East 2nd Street, between Avenue W and Gravesend Neck Road, in an R4 zoning district within the Special Ocean Parkway District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 11, 2005 when, under the subject calendar number, the Board granted a special permit to permit the enlargement of an existing two-family home, which resulted in non-compliances as to floor area, lot coverage, rear and side yards; and

WHEREAS, substantial construction was to be completed by January 11, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction was delayed at the site due to litigation that has since been settled; and

WHEREAS, thus, the applicant requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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 January 11, 2005, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of three years from the expiration of the previous grant, to expire on January 11, 2012; *on condition*:

THAT substantial construction shall be completed by January 11, 2012;

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. 301664982)

Adopted by the Board of Standards and Appeals, May 19, 2009.

5-98-BZ

APPLICANT – Maxfield Blaufeux & Heywood Blaufeux, for Priority Landscaping Incorporated, owner.

SUBJECT – Application March 13, 2009 – Extension of Term of a previously granted Variance (§72-21) for a garden supply sales and nursery establishment (UG17) with accessory parking and storage in an R5 zoning district which expired on February 23, 2009.

PREMISES AFFECTED – 1861 McDonald Avenue, east side 200’ north of Quentin Road, Block 6633, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Heywood Blaufeux.

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 June 9, 2009, at 10 A.M., for decision, hearing closed.

336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Application filed pursuant to §73-11to Extend the term of a special permit granted pursuant to §73-36 authorizing a physical culture establishment (PCE) (Crunch Fitness), extend the PCE to include additional area in the cellar and on the first floor, permit a change in operator and extend the time to obtain a certificate of occupancy. The subject site is located in a C2-4 zoning district.

PREMISES AFFECTED – 312/18 and 324/34 Flatbush Avenue, 157’ west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 10 A.M., for an adjourned hearing.

165-93-BZ

APPLICANT – Francis R. Angelino, Esq., for Claudia Stone & Goran Sare, owners.

SUBJECT – Application April 3, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG6 art gallery on the first floor of an existing three story and cellar mixed use front building in an R8B zoning district which expired on April 12, 2009.

PREMISES AFFECTED – 113 East 90th Street, between Park and Lexington Avenues, Block 1519, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino and Claudia Stone.

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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 June 16, 2009, at 10 A.M., for decision, hearing closed.

68-94-BZ

APPLICANT – Cozen O’Connor for Bay Plaza Community Center LLC, owner; Jack Lalanne Fitness Centers, Incorporated, lessee.

SUBJECT – Application August 14, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted special for the operation of a PCE (Bally's Total Fitness) on the first and second floors of the Co-Op City Bay Plaza Shopping Center, located in an C4-3 zoning district, which expired on April 7, 2009.

PREMISES AFFECTED – 2100 Bartow Avenue, south side of Baychester Avenue, Block 5141, Lot 810, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Barbara Hair.

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 June 16, 2009, at 10 A.M., for decision, hearing closed.

7-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for HKAL 34th Street Limited Partnership, owner; TSI East 34 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application February 9, 2009 – Extension of Term of a previously granted Special Permit for the operation of Physical Culture Establishment (New York Sports Club (NYSC)), located in a C1-9 (TA) zoning district, which expired on January 11, 2009.

PREMISES AFFECTED – 300 East 34th Street, southeast corner of East 34th Street, and Second Avenue, Block 939, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

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 June 9, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

267-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Robert & Mary Baldrian, owners. SUBJECT – Application October 31, 2008 – Proposed reconstruction and enlargement of an existing single family home located within the bed of a mapped street (Oceanside Avenue) contrary to General City Law Section 35 and does not front a mapped street contrary to General City Law Section 36 with a private disposal system located within the bed of the service road contrary to Department of Buildings policy. R4 zoning district

PREMISES AFFECTED – 2 Devon Walk, east side of Devon Walk, 24’ south of paved Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

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 Montanez5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated December 22, 2008, and acting on Department of Buildings Application No. 410159634 reads, in pertinent part:

- “A1- The proposed enlargement is on a site located partially in the bed of a mapped street therefore no permit or certificate of occupancy can be issued as per Art. 3, Sect. 35 of the General City Law.
- A2- The site and building is not fronting on an official mapped street, therefore no permit or certificate of occupancy can be issued as per Art 3, Sect. 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291 (C26-401.1) of the Administrative Code of the City of New York;” and
- A3- The private disposal system is in the bed of a proposed mapped street and in the bed of a private service road which is contrary to Department of Buildings’ policy;” and

WHEREAS, a public hearing was held on this application on April 28, 2009, after due notice by publication in the *City Record*, with a continued hearing on May 19, 2009, then to closure and decision on the same date; and

WHEREAS, by letter dated December 19, 2008, the Fire Department states that it has reviewed the subject proposal and

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has no objections; and

WHEREAS, by letter dated March 2, 2009, the Department of Environmental Protection (“DEP”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated April 28, 2009, the Department of Transportation (“DOT”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the applicant’s property is not included in the agency’s ten-year capital plan; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated December 22, 2008, acting on Department of Buildings Application No. 410159634, is modified by the power vested in the Board by Sections 35 and 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received October 30, 2008” – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, May 19, 2009.

277-08-BZY thru 287-08-BZY

APPLICANT – Eric Palatnik, P.C., for Opal Builders, LLC, owner.

SUBJECT – Application November 19, 2008 – Extension of time to complete construction (§11-332) and obtain a Certificate of Occupancy of a minor development commenced prior to the text amendment of the zoning district regulations. R3-X SSRDD (Area LL).

PREMISES AFFECTED – 23, 26, 27, 35, 39, 43, 47, 55, 59, and 63 Opal Lane, bounded Idaho Avenue, Bloomingdale Road and Amboy Road, Block 6993, Lot 20, 4,19,18,17,16,15,14,12,11,10, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction of a minor development and obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on March 31, 2009, after due notice by publication in *The City Record*, with a continued hearing on April 28, 2009, and then to decision on May 19, 2009; and

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

WHEREAS, Community Board 3, Staten Island, recommends approval of this application, with conditions; and

WHEREAS, the subject premises are located on Opal Lane, between Idaho Avenue and Bloomingdale Road, within an R3X zoning district; and

WHEREAS, the instant project consists of a 22-unit development of two-family homes (the “development”); and

WHEREAS, the instant application concerns 11 units respectively located at 23 Opal Lane (Lot 20), 26 Opal Lane (Lot 4), 27 Opal Lane (Lot 19), 31 Opal Lane (Lot 18), 35 Opal Lane (Lot 17), 39 Opal Lane (Lot 16), 43 Opal Lane (Lot 15), 47 Opal Lane (Lot 14), 55 Opal Lane (Lot 12), 59 Opal Lane (Lot 11) and 63 Opal Lane (Lot 10); and

WHEREAS, the Board notes that the development includes an additional 11 completed units, respectively located at 14 Opal Lane (Lot 1), 15 Opal Lane (Lot 22), 18 Opal Lane (Lot 2), 19 Opal Lane (Lot 21), 22 Opal Lane (Lot 3), 30 Opal Lane (Lot 5), 34 Opal Lane (Lot 6), 38 Opal Lane (Lot 7), 42 Opal Lane (Lot 8), 51 Opal Lane (Lot 13), and 67 Opal Lane (Lot 9) (the “11 completed units”); and

WHEREAS, on November 15, 2006 (hereinafter, the “Enactment Date”), the City Council voted to adopt additional amendments associated with the Special South Richmond Development District (“SSRDD”) text amendments, including the creation of “Special Area LL,” which modified the SSRDD regulations; and

WHEREAS, before the enactment date, the development complied with all relevant zoning district regulations, specifically a 40’-0” minimum lot width; and

WHEREAS, the new Special Area LL text increases the required minimum lot width to 50’-0”; as a result, the subject development does not comply with the required lot width; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the entire development and had completed 100 percent of the foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (“DOB”) to determine that construction may continue under such circumstances; and

WHEREAS, however, ZR § 11-331 imposes a two-year deadline to complete construction and obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is not completed, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets

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forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

WHEREAS, for a “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits; the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permits for the proposed development were lawfully issued to the owner by DOB prior to the Enactment Date: Permit Nos. 500319470-01-NB and 500319318-01-NB, 500319461-01-NB, 500319452-01-NB, 500319443-01-NB, 500319434-01-NB, 500319425-01-NB, 500319416-01-NB, 500319390-01-NB, 500319381-01-NB, and 500319372-01-NB, (hereinafter, the “New Building Permits”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and were timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the Board notes that the total development budget for this project includes the expense of construction of the 11 completed homes, and that the instant application concerns only the remaining 11 homes of the 22-unit development, which are at various levels of completion; thus, the amount of construction that has been completed and the amount of expenditures incurred by the applicant is evaluated in the context of the entire development; and

WHEREAS, the applicant states that, in addition to the work on the 11 completed homes, the owner has completed all of the foundation work, framing, windows, exterior doors, plumbing, electric, HVAC, roofing and gutters of the units located at 23 Opal Lane (Lot 20) and 26 Opal Lane (Lot 4); and

WHEREAS, the applicant further states that all the foundation work and roof framing, and approximately 80 percent of the exterior and interior wall framing has been completed on the units located at 27 Opal Lane (Lot 19) and 39 Opal Lane (Lot 16); and

WHEREAS, the applicant further states that foundation work has been completed on the seven remaining units respectively located at 31 Opal Lane (Lot 18), 35 Opal Lane (Lot 17), 43 Opal Lane (Lot 15), 47 Opal Lane (Lot 14), 55 Opal Lane (Lot 12), 59 Opal Lane (Lot 11), and 63 Opal Lane (Lot 10); and

WHEREAS, in support of the amount of work completed the applicant has submitted the following: photographs of the site, an affidavit from the developer, and financial records; and

WHEREAS, the Board has reviewed all the documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits and prior to November 15, 2008, when the permits lapsed by operation of law; and

WHEREAS, as to costs, the applicant represents that

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the construction expenditures attributable to the entire 22-unit development total approximately \$3,817,772, or 72 percent, of the \$5,280,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted financial records in support of the stated expenditures; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the required finding of ZR § 11-332; and

WHEREAS, in response to concerns raised by the community board, the applicant has secured all open foundations with fencing and taken measures to prevent mosquito infestation; and

WHEREAS, based upon its review of all the submitted evidence and its observations made during its site visits, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the sites a two-year extension of time to complete construction and obtain a certificate of occupancy, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Permit Nos. 500319470-01-NB and 500319318-01-NB, 500319461-01-NB, 500319452-01-NB, 500319443-01-NB, 500319434-01-NB, 500319425-01-NB, 500319416-01-NB, 500319390-01-NB, 500319381-01-NB, and 500319372-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on May 19, 2011.

Adopted by the Board of Standards and Appeals, May 19, 2009.

311-08-BZY

APPLICANT – Slater & Beckerman, LLP, for D.A.B. Group LLC, owner.

SUBJECT – Application December 18, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the Zoning district regulations. C4-4A.

PREMISES AFFECTED – 77, 79 & 81 Rivington Street, Block 415, Lots 61, 62, 63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Neil Weisbard and Daniel Bossa.

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 June 16, 2009, at 10 A.M., for decision, hearing closed.

32-09-BZY thru 34-09-BZY

APPLICANT – William Alicea for Treadwell LLC, owner.
SUBJECT – Application February 27, 2009 – Extension of time to complete construction (§11-332) and obtain a Certificate of Occupancy of a major development commenced prior to the text amendment of the zoning district regulations. R3A.

PREMISES AFFECTED – 122, 124 & 126 Treadwell Avenue, southwest corner of Treadwell Avenue and Harrison Avenue, Block 1088, Lot 49, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: William Alicea.

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 June 9, 2009, at 10 A.M., for decision, hearing closed.

313-08-A

APPLICANT – Howard Goldman , LLC & Berger & Kramer , LLP for Chuck Close, for Proprietary Lessee of Studio and Basement Cooperative at 20 Bond Street , lessee.
SUBJECT – Application December 22, 2008 – Appeal seeking to revoke permits and approvals for a six story commercial building that violates the Building Code and Zoning Resolution. M1-5B zoning district.

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

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Caroline Harris, Gustavo Luchsinger, Chuck Close, Zella Jones and Peter Voledsky.

For Opposition: Lisa Orrantia and Judy Gallent.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 10 A.M., for continued hearing.

317-08-A

APPLICANT – Margaret R. Garcia, AIA, for Block 17 Lot 112 LLC, owner.

SUBJECT – Application December 23, 2009 – Proposed construction of a four story dwelling located within the bed of a mapped street contrary to General City Law Section 35. R5 Zoning District.

PREMISES AFFECTED – 124 Montgomery Avenue, west side of Montgomery Avenue, 140’ north of Victory Boulevard, Block 17, Lot 112, Borough of Staten Island.

COMMUNITY BOARD #1SI

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APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 10 A.M., for postponed hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, MAY 19, 2009
1:30 P.M.**

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

ZONING CALENDAR

45-08-BZ

APPLICANT – Rampulla Associates Architects, for 65 Androvette Street, LLC, owner.

SUBJECT – Application February 29, 2008 – Variance (§72-21) to construct a four-story, 108 unit age restricted residential building contrary to use regulations (§42-00, §107-49). M1-1 District / Special South Richmond Development District.

PREMISES AFFECTED – 55 Androvette Street, north side Androvette Street, corner of Manley Street, Block 7407, Lots 1, 80, 82, (Tent. 1), Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phil L. Rampulla.

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 Montanez5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 1, 2008, acting on Department of Buildings Application No. 510006814, reads in pertinent part:

“A mixed use three story building is proposed with community facility located at cellar and residential use at first, second and third floor. Community facility with zoning use group 3 only permitted in M1-1 district while no residential use is permitted within the zoning district. ZR 41-11, 42-00.” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-1 zoning district in Special Area M of the Special South Richmond Development District, a three-story residential building restricted to persons aged 55 and older

(U.G. 2), with 81 dwelling units, cellar-level community facility use, and 81 accessory parking spaces, which is contrary to ZR §§ 41-11 and 42-00; and

WHEREAS, a public hearing was held on this application on December 9, 2008, after due notice by publication in the *City Record*, with continued hearings on February 3, 2009, March 3, 2009, and April 7, 2009, and then to decision on May 19, 2009; and

WHEREAS, the hearing was reopened on May 19, 2009 to allow a submission by the applicant, and then to decision; and

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

WHEREAS, Community Board 3, Staten Island, recommends approval of the application; and

WHEREAS, State Senator Andrew J. Lanza provided a letter recommending approval of the application; and

WHEREAS, a representative of the Tides of Charleston Homeowners Association testified in support of the application; and

WHEREAS, State Senator Andrew J. Lanza provided a letter recommending approval of the application; and

WHEREAS, City Council Member Vincent M. Ignizio provided a letter recommending disapproval of the application; and

WHEREAS, representatives from the Staten Island Taxpayers’ Association (the “Opposition”) and other members of the public testified at hearing and made submissions to the record in opposition to the application; the arguments made by the Opposition related to the required findings for a variance, and are addressed below; and

WHEREAS, the subject premises is located on the north side of Androvette Street at the corner of Manley Street, and has 124,896 sq. ft. of lot area; and

WHEREAS, the site is located within an M1-1 zoning district within Special Area M of the Special South Richmond Development District and is occupied by three single-family homes that will be demolished; and

WHEREAS, the M1-1 zoning district does not allow residential development as-of-right; and

WHEREAS, pursuant to ZR Sec 107-69, residential use is allowed pursuant to an authorization from the City Planning Commission and the regulations of an R3X district;

WHEREAS, the applicant initially proposed a four-story, 108-unit age-restricted residential building (U.G.2) with accessory parking for 76 vehicles, a floor area of 101,036 sq. ft. (0.80 FAR), a street wall height of 48’-0” and a total building height of 48’-0”; and

WHEREAS, during the hearing process, the building height, floor area and number of units were reduced and the number of parking spaces were increased; and

WHEREAS, the applicant now proposes a three-story, 81-unit residential building with accessory parking for 81 vehicles, a floor area of 75,952 sq. ft. (0.61 FAR), a street wall height of 39’-0”, and a total building height of 39’-0”, and

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WHEREAS, the applicant states that the following unique physical conditions create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the lack of sanitary sewers; (2) the narrowness and substandard character of the adjoining roadways; and (3) the site's sloping topography; and

WHEREAS, as to the first argument, the applicant claims that due to a lack of sanitary sewers, the development of the site with a large conforming commercial or manufacturing use would require construction of pump station and a force main within the bed of Arthur Kill Road, Androvette Street and Kreisler Street and a storm sewer in the bed of Androvette Street; and

WHEREAS, an engineering plan submitted by the applicant states that construction of a pump station capable of lifting sewage over 50 feet and transporting it through a pressurized force main is necessary because the nearest NYC interceptor sewer is located in Arthur Kill Road, approximately 2,185 linear feet from the site; and

WHEREAS, engineering plans submitted by the applicant establish the cost of construction of the pump system and force main at between \$726,000 and \$727,500, and the cost of a storm sewer in the bed of Androvette Street at \$2.3 million; and

WHEREAS, the applicant states that the proposed change in use to accommodate an 81-unit residential development is needed to overcome such premium costs; and

WHEREAS, in addition to the expense attributable to the required sanitary system, the applicant states that the site's proximity to a tidal wetland complicates the provision of such a system; and

WHEREAS, a submission by the applicant states that the final 800 feet of the sanitary system will traverse a NYS Department of Environmental Conservation ("DEC") Regulated Tidal Wetland Area which is also regulated by a DEC Storm Water Pollution Prevention Plan; and

WHEREAS, the applicant further states that the DEC must therefore approve a Freshwater Wetlands Adjacent Area Permit to excavate Kreisler Street to install the force main because portions of the street are in the Freshwater Wetland Adjacent Area; and

WHEREAS, the applicant represents that the issuance of the DEC permit will require significant dewatering and treatment of effluent so it can be discharged with minimal disturbance to the tidal wetland, and the worksite and adjacent areas are likely to require protection of a cofferdam; and

WHEREAS, the applicant states that the NYC Department of Environmental Protection ("DEP") and the NYC Department of Health ("DOH") must also approve the installation of the sewer pump station and force main, and that DEP must additionally approve a storm water discharge plan; and

WHEREAS, however, the Board asked the applicant to provide more detailed testimony about this condition; and

WHEREAS, in response, during the course of the hearing process, the applicant provided additional support for the argument that the construction of the proposed sanitary system would have to be undertaken by the owner of the site

and that cost and the burden of constructing such a system is both unusual and extraordinary; and

WHEREAS, to document the necessity of such a system, the applicant submitted a copy of the New York City Storm Water and Sanitary Drainage Management Plan for South Richmond, Staten Island approved by DEP on May 2, 2003 and by DOH on August 11, 2004, indicating a force main and pumping station in the area of the subject site; and

WHEREAS, the applicant notes that a letter dated December 3, 2008 from the District Manager of Staten Island Community Board 3 states that DEP told Board members that there were no plans by the City of New York to build a pump station or sanitary sewer in the area of the subject site "for decades;" and

WHEREAS, the applicant states that the proposed development requires construction of a sanitary force main in city streets because the nearest sanitary sewer is an interceptor sewer located approximately 2,185 linear feet from the subject site and that only a street sewer may be connected to an interceptor sewer; and

WHEREAS, the applicant further states that the construction of a sanitary force main in a city street is highly unusual and that the length of the main from the subject site to the interceptor is extraordinary; and

WHEREAS, to buttress the claimed rarity of such construction, the applicant submitted a July 24, 2006 letter from an engineer originally submitted in connection with BSA Cal. No. 369-05-BZ noting that, out of 152 projects designed by his firm in the previous year, only six projects involved sanitary sewer extension projects in city streets, as compared to 146 internal drainage projects; and

WHEREAS, the applicant additionally provided a September 4, 2007 letter from another engineer, originally submitted in connection with BSA Cal. No. 227-06-BZ, that identified seven developments which involved installations of sanitary sewers; the longest distance by which such a sewer was extended was 950 linear feet and the average distance was 379 linear feet; and

WHEREAS, the applicant concludes that the extension of a sanitary force main for a distance of 2,185 linear feet, in conjunction with the installation of a sanitary pumping station is an extraordinary circumstance that uniquely burdens the subject site; and

WHEREAS, at hearing the Board asked the applicant to establish that the cost of the subject sewer connection is more burdensome than those for similar sites, such as the nearby Tides of Charleston development; and

WHEREAS, in response, a submission by the applicant states that the cost to connect a housing unit to a city sewer generally averages between \$5,000 and \$9,000 per unit; and

WHEREAS, because the cost of the sewer pumping station and force main are estimated at \$727,500, a 22-unit development (as permitted by City Planning Commission authorization) would cost \$33,068 per unit; and

WHEREAS, the applicant represents that 125 units of the nearby Tides of Charleston development are serviced by a sanitary pumping station and a shorter force main, installed at a cost of \$575,000, for a per unit cost of \$4,600; and

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WHEREAS, the applicant further represents that the unit cost for the Tides development was significantly below that of the proposed development because the Tides' site fronts an interceptor sewer and the distance to the force main is half that of the instant proposal, as well as of the economies of scale that result from a larger development; and

WHEREAS, the Board has reviewed the applicant's submissions and agrees that they establish that sewer connection costs for development on the site are unusual due to: (1) the distance to the nearest access point to an existing sewer connection within Arthur Kill Road; (2) the need to install a sanitary pumping station; and (3) the adjacency of Kreisler Street to a Tidal Wetland Area and the consequential need for dewatering and a cofferdam; and

WHEREAS, accordingly, the Board finds that the increased sewer costs contribute to the need for a change from the permitted manufacturing use to the proposed residential use; and

WHEREAS, as to the second claimed basis of uniqueness, the applicant states the site is not suitable for a conforming commercial or industrial development due to its frontage on two substandard streets that are too narrow to accommodate tractor-trailer truck traffic; and

WHEREAS, the subject site has a frontage of 438 feet on Androvette Street and a frontage of approximately 316 feet on Manley Street; and

WHEREAS the applicant states that Androvette Street is recognized in a Corporation Counsel Opinion dated May 21, 1985 as having a width of between 30 and 50 feet and a paved portion with a width of less than 32 feet; and

WHEREAS, the applicant further states that Manley Street is a record street with a width of less than 20 feet which consequently fails to meet New York City Fire Department standards and lacks a final mapped, title vested status; and

WHEREAS, the applicant further states that this condition is unique in that most streets in Staten Island are improved with wider road beds; and

WHEREAS, the applicant represents that the narrow width of both Androvette and Manley Streets precludes access by tractor-trailer trucks, thereby rendering the site infeasible for a conforming use; and

WHEREAS, the applicant further represents that development of the subject site would necessitate the widening and paving of Androvette and Manley Streets to their full mapped width, including the relocation of fire hydrants and telephone poles; and

WHEREAS, at the Board's request, the applicant provided revised drawings indicating the existing edge of pavement and the proposed improvements on Androvette Street and Manley Street; and

WHEREAS, the applicant states that the NYC Department of Transportation must further approve a Builders Pavement Plan for improvements and widening of Manley Street and Androvette Street; and

WHEREAS, the Board has reviewed this testimony, and agrees that the narrowness and substandard condition of Androvette and Manley Streets compromises its conforming commercial and industrial development; and

WHEREAS, as to the third claimed basis of uniqueness, the applicant states that the site has a 34-foot elevation grade change ranging from a low of 30 feet at the southwest corner of the site to a high of 64 feet at the northwest portion of the site; and

WHEREAS, the applicant further states that a portion of the site has a slope of 11 percent and that the center of the site has a slope in excess of 25 percent; and

WHEREAS, the applicant states that construction of a conforming development would require leveling the site to enable trucks to maneuver within it and to be able to provide ADA-compliant parking, necessitating significant excavation and the installation of large costly retaining walls; and

WHEREAS, the Opposition contends that the applicant has failed to establish the uniqueness of the subject site arguing that many sites in the South Shore of Staten Island similarly front unimproved roadways and lack access to sewers; and

WHEREAS, the Board notes that the Opposition failed to provide concrete evidence or data to support its argument concerning the alleged lack of uniqueness of the subject site; and

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

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

WHEREAS, the applicant initially submitted a feasibility study analyzing four scenarios: (1) three commercial buildings with septic systems; (2) three warehouse buildings with septic systems; (3) seven detached one-family residences, utilizing a septic system (which would avoid infrastructure construction costs) (4) 22 single-family detached residences using a sewerage pumping station; and the proposed four-story, 108-unit age restricted multiple dwelling with 81 parking spaces and a floor area of 101,036 sq. ft.; and

WHEREAS, the applicant notes that both of the residential scenarios evaluated would require authorizations by the Department of City Planning and that only the first and second scenarios could be built as-of-right; and

WHEREAS, at hearing, the Board asked the applicant to evaluate a three-story residential development with fewer units and additional parking, and to compare the financial returns generated by both a rental development and a condominium development; and

WHEREAS, the applicant subsequently submitted a revised feasibility study which analyzed the four initial scenarios as well as a fifth scenario for a three-story, 81-unit age-restricted multiple dwelling with 76 parking spaces and a floor area of 99,658 sq. ft.; and

WHEREAS, the applicant found that, because of the

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unique site conditions necessitating the construction of retaining walls, the lack of nearby sanitary sewers, necessitating the construction of a septic system and dry wells or, alternatively, construction of a pump station and force main, and the cost of improvements to Androvette Street and Manley Street, neither the as-of-right nor the lesser residential scenarios realize a reasonable financial return, and that marginal positive returns are generated by the proposed four-story 108-unit residential development and the three-story 81-unit residential alternative; and

WHEREAS, the applicant further stated there was no rental market for the 22-home scenario because the home size is larger than could be supported by the rental market in the area; and

WHEREAS, the Board additionally questioned the calculation of site value, the bases for the adjustments made and the projected financing rates; and

WHEREAS, in response, the applicant explained the bases for its adjustments, revised its analysis to eliminate the subject site and to include comparable sales with lower sales prices, and adopted financing costs confirmed with lending institutions; and

WHEREAS, the applicant additionally provided an analysis of 175 transactions in Staten Island manufacturing zones between 2006 and 2008; and

WHEREAS, the analysis identified 12 sales for properties in manufacturing zones with lot areas exceeding 80,000 sq. ft., of which only one was determined to be comparable to the subject site and to constitute the basis for an estimated market value of \$26.00 per square foot; and

WHEREAS, the Board asked the applicant to evaluate the feasibility of a three-story 81-unit age-restricted development with 76 parking spaces with a site value of \$22 per square foot, which was considered to better reflect the fair market value of the site; and

WHEREAS, the applicant provided a revised financial analysis that found that the revised proposal for a three-story, 81-unit age-restricted residential rental development with 81 parking spaces could realize a modest financial return while the conforming scenarios and the smaller residential projects could not; and

WHEREAS, the Opposition contends that the feasibility analysis did not demonstrate that the site is burdened by a hardship because it failed to demonstrate the infeasibility of the use currently existing on the site and of all alternative permissible uses; and

WHEREAS, the Opposition further argued that a reasonable return could be obtained from a conforming warehouse development or from the development of seven single-family homes using a septic system, and submitted listings of properties for sale in support of the contention; and

WHEREAS, the applicant pointed out that property sales listings cannot establish the value of another property or validate comparable sales because asking prices may not be reflective of the market and submitted an analysis that found that the average selling price of a detached single-family home in 2008 with a list price in excess of \$900,000 was 90 percent below the list price; and

WHEREAS, the applicant further states that the comparables used in the financial feasibility analysis fell within a comparable range to those of Staten Island as a whole – with selling prices that ranged from 82 percent to 85 percent of their list prices before adjustments reflecting the lack of access to a sewer and other physical hardships burdening the subject site; and

WHEREAS, the applicant estimates the cost to construct seven detached single-family homes to be \$9,880,000; and

WHEREAS; the applicant represents that the owner would be unlikely to recoup the development cost of seven single-family detached homes at the subject site because there is a limited market for homes with sales prices greater than \$900,000 in southern Staten Island, as evidenced by annual sales averaging 34 such homes, and that homes selling at higher prices were located in residential areas not characterized by the degree of industrial uses of the subject site; and

WHEREAS, with respect to the sales listings of conforming properties submitted by the Opposition said to be comparable to the subject property, the Applicant states that the property at 4878 Arthur Kill Road is readily distinguishable from the subject site by its location on an arterial street, the 6,657 sq. ft. building occupying the site and the lot area of 12,784 sq. ft., nearly one-tenth the size of the subject site; and

WHEREAS, the applicant further states that the listing of warehouses for sale offers no basis to dispute the analysis of return on equity, particularly because the sales prices of commercial and industrial properties are based on their potential income, while the applicant's feasibility analysis evaluates return on equity as well as income; and

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

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

WHEREAS, the applicant initially provided a 400-foot radius diagram indicating that the surrounding area is characterized by residential development, as well as a significant amount of open and outdoor space; and

WHEREAS, the applicant states that the subject site adjoins one-family and two-family homes and that the age-restricted Tides of Charleston residential development, consisting of 190 single-family attached homes, is located to the south of the subject site on a 58-acre parcel; and

WHEREAS, the applicant further states that a 113-unit development of senior citizen housing is proposed for a site across Arthur Kill Road; and

WHEREAS, the applicant represents that Clay Pit Pond Park is located immediately to the north and east of the subject site to the south of the site and that the Arthur Kill is located to the west of the site; and

WHEREAS, the applicant states that the proposed

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residential use will not adversely affect existing commercial or residential uses because it is located in close proximity to residential uses and will be set back by 45 feet to 55 feet from its various lot lines; and

WHEREAS, the applicant further states that an FAR of 0.60 is permitted in the adjacent R3-X zoning district; and

WHEREAS, at hearing and in submissions to the Board, the Opposition contended that the proposed residential use is inconsistent with the predominantly commercial and industrial context of the surrounding area; and

WHEREAS, the Opposition additionally contended that the character of the surrounding area was misrepresented by the applicant, because although half the lots are occupied with residential uses, the lot area typically occupied by conforming uses is substantially larger than that of the one-story and two-story homes that constitute the characteristic residential uses in the area; and

WHEREAS, in response to a request by the Board, the applicant submitted a revised map of the land uses surrounding the subject site which specifically identifies automotive repair facilities, community facilities and commercial uses, and distinguishes between uses that are permissible in residential zoning districts and those that are restricted to manufacturing districts; and

WHEREAS, the applicant further states that the immediate area surrounding the subject site has no Use Group 18 industrial uses and the block on which the site is located is occupied by ten existing homes; and

WHEREAS, the applicant initially proposed a four-story building with a total height of 48'-0"; and

WHEREAS, at hearing, the Opposition raised concerns that the height of the proposed building would be incompatible with the context of the surrounding area which is largely characterized by one-story and two-story buildings; and

WHEREAS, during the hearing process, the Board asked the applicant to explore the feasibility of reducing the building height to make the height of the building more compatible with the context of the surrounding area; and

WHEREAS, at hearing, the Board also questioned whether the 76 parking spaces initially proposed would be sufficient to satisfy the parking demand for proposed development; and

WHEREAS, in response, the applicant reduced the number of stories from four to three, thereby resulting in a nine-foot reduction in the building height, reduced the number of units from 108 to 81, and increased the number of parking spaces to 81, thereby providing a parking space for each unit in the development; and

WHEREAS, to reduce the amount of pervious area and increase the amount of landscaped area, the applicant relocated 24 parking spaces to a portion of the cellar; and

WHEREAS, the applicant states that visual impact of the building height and the pumping station would be moderated by the variance in grade of the subject site at Manley Street, and that the pumping station would be screened, and

WHEREAS, the applicant represents that the

construction of a pump station with excess capacity will be asset for the surrounding area; and

WHEREAS, at hearing the Opposition testified that the Oakwood Beach Sewer Sewage Treatment Plan was at capacity and could not accommodate sewage generated by the proposed development; and

WHEREAS, the applicant represents that the proposed development is projected to generate 14,560 gallons of waste water daily and a letter submitted by an engineering consultant states that the dry weather rated capacity of the Oakwood Beach Sewage Treatment Plant is 39.6 million gallons per day and that the plant is operating at 60 percent of its rated capacity; and

WHEREAS, the applicant concludes that the sewage generated by the proposed development would represent approximately 0.00036 percent of the permitted flow rate of the Oakwood Beach Water Pollution Control Plant; therefore, the plant has sufficient excess capacity to handle the sewage generated by the proposed development; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's use, height, bulk and design are compatible with that of other buildings in the neighborhood; and

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

WHEREAS, the applicant states that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique conditions of the lot; and

WHEREAS, the Opposition contends that the applicant's hardship is instead created by its purchase of the subject site with knowledge of the restrictions on its development; and

WHEREAS, the Board notes that the purchase of a zoning lot subject to the restriction sought be varied is specifically not a self-created hardship under ZR § 72-21(d); and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique conditions of the subject site; and

WHEREAS, during the hearing process, the applicant reduced the building height and number of units, and increased the number of parking spaces and relocated 24 spaces to the cellar level; and

WHEREAS, the applicant asserts, and the Board agrees, that the waiver associated with the proposed building represents the minimum variance; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant

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information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA103R, dated March 16, 2009; 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, the New York City Landmarks Preservation Commission (“LPC”) review of archaeological sensitivity models and historic maps indicates a potential for the recovery of remains from 19th Century and Native American occupation on the subject site; and

WHEREAS, accordingly, the applicant has agreed to conduct an archaeological documentary study to clarify these initial findings and to adhere to all requirements for archaeological identification, investigation and mitigation, pursuant to a Restrictive Declaration (“RD”) executed on March 11, 2009 and recorded against the subject property on March 16, 2009; and

WHEREAS, the New York City Department of Environmental Protection (“DEP”) Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a June 2008 EAS; (2) a June 2008 Phase I Environmental Site Assessment Report; (3) an October 2008 Phase II Workplan; and (4) the December 2008 Health and Safety Plan; and

WHEREAS, the June 2008 EAS and a June 2008 Phase I Environmental Site Assessment Report specifically examined the proposed action for Hazardous Materials; and

WHEREAS, the applicant has agreed to implement hazardous materials remediation pursuant to a Restrictive Declaration (“RD”) executed on March 11, 2009 and recorded against the subject property on March 16, 2009; and

WHEREAS, DEP has approved the Phase II Workplan and the Health and Safety Plan; and

WHEREAS, upon completion of the subsurface investigation activities, the applicant must submit a detailed Phase II investigation report to DEP for review and approval; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the

required findings under ZR § 72-21 and grants a variance to permit, in an M1-1 zoning district within Special Area M of the Special South Richmond Development District, a three-story residential building (UG 2) restricted to adults aged 55 and over, with 81 dwelling units, cellar-level community facility use, and 81 accessory parking spaces, contrary to ZR §§ 41-11 and 42-00, *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 May 18, 2009”–seven (7) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: a floor area of 75,952 sq. ft. (0.61 FAR), a street wall height of 39’-0”, and a total building height of 39’-0”;

THAT the occupancy of the building shall be limited to persons 55 years of age or older, in accordance with applicable provisions of the Housing for Older Persons Act requirements;

THAT all other Housing for Older Persons Act requirements shall be complied with for the life of the proposed building;

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

THAT a Builder’s Pavement Plan shall be filed and approved by DOT prior to the issuance of a building permit;

THAT administrative certifications shall be obtained from the City Planning Commission as required by ZR §§ 107-64 (removal of trees), 107-65 (modification of topography) and 107-23 (school seats) prior to the issuance of a building permit;

THAT the issuance of a building permit shall be conditioned on securing approval by DOH of a sewer pump station and force main and by DEP of the latter as well as of a storm water discharge plan;

THAT issuance of a building permit shall be conditioned on the issuance by DEC of a Freshwater Wetlands Adjacent Area Permit for the exaction of Kreisler Street;

THAT the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the Project, the applicant or its successor shall be conditioned on the issuance of Notices to Proceed from the LPC and DEP;

THAT the issuance of any building permit for further construction on the subject site shall be conditioned on the securing of a Notice of Objection or a Notice of Satisfaction from DEP, as applicable, and either a Notice of No Objection after field Work, or a Notice of No Objection, as applicable, from the LPC;

THAT all fencing and landscaping shall be installed and maintained as indicated on the BSA-approved plans;

THAT the issuance of a temporary Certificate of Occupancy shall be conditioned on the issuance of a Final Notice of Satisfaction by the LPC and a Notice of Satisfaction from DEP;

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

THAT construction shall be substantially completed in

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accordance with the requirements of ZR § 72-23;

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

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

Adopted by the Board of Standards and Appeals, May 19, 2009.

246-08-BZ

CEQR #09-BSA-031X

APPLICANT – Slater & Beckerman, LLP, for St. Barnabas Hospital, owner.

SUBJECT – Application October 3, 2008 – Special Permits pursuant to §73-481 and §73-49 to allow for the construction of a five story parking garage and rooftop parking and Variance pursuant to §72-21 to allow for an accessory sign contrary to §22-331 and §22-342. R7-1 District.

PREMISES AFFECTED – 4400 Third Avenue, block bounded by Third Avenue and East 184th Street, Quarry Road, and East 181st Street, Block 3064, Lot 1, 20 tent 100, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Neil Weisband.

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated September 29, 2008, acting on Department of Buildings Application No. 210058042 reads, in pertinent part:

“Proposed rooftop parking is not permitted as per ZR section 25-11.

Proposed total number of accessory parking spaces exceeds that permitted for accessory group parking spaces in this R7-1 zoning district (ZR section 25-141).

Proposed illuminated non-flashing accessory sign in an R7-1 zoning district exceeds permitted area and height from curb level (ZR sections 22-331 and 22-342);” and

WHEREAS, this is an application for a special permit under ZR §§ 73-481, 73-49 and 73-03 to permit construction of a 605-space parking garage with rooftop parking, contrary to ZR §§ 25-11 and 25-141, and for a variance under ZR § 72-21 to allow an accessory sign, contrary to ZR §§ 22-331 and 22-342; and

WHEREAS, the application is brought on behalf of St. Barnabas Hospital (the “Hospital”), a non-profit institution; and

WHEREAS, a public hearing was held on this application on March 31, 2009, after due notice by publication in the *City Record*, with a continued hearing on April 28, 2009, and then to decision on May 19, 2009; and

WHEREAS, Community Board 6, Bronx, recommends approval of this application; and

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

WHEREAS, the subject site comprises the entire block bounded by Third Avenue to the west, East 184th Street to the north, Quarry Road to the east, and East 181st Street to the south, within an R7-1 zoning district; and

WHEREAS, the subject site has a lot area of 415,518 sq. ft.; and

WHEREAS, the site is occupied by the Hospital, the St. Barnabas Nursing Home, and an attended 247-space accessory parking lot (the “existing parking lot”); and

WHEREAS, the applicant proposes to replace the existing parking lot with a five-story, 605-space, 132,561 sq. ft. accessory parking garage with rooftop parking; and

WHEREAS, the applicant proposes to subdivide Lot 1 to create (Tentative) Lot 100 at the southwestern corner of the premises; the remainder of existing Lot 1 will continue to be denominated as Lot 1; and

WHEREAS, the proposed parking facility will be located on Lot 100; and

WHEREAS, in order to meet its needs, the applicant seeks a special permit pursuant to ZR §§ 73-481 and 73-49 to permit an accessory parking facility with more than 150 spaces and rooftop parking; and

WHEREAS, pursuant to ZR § 73-481, the Board may permit accessory group parking facilities with more than 150 spaces for hospitals and related facilities in a residential district, provided that the facility is so located to draw a minimum of vehicular traffic to and through local streets, has adequate reservoir space at the vehicular entrance, and the streets providing access to such use are adequate to handle the traffic generated thereby; and

WHEREAS, the applicant represents that the proposed parking facility will have a minimal impact on existing vehicular traffic because, at its completion, the overall parking supply for the Hospital will be 716 spaces, representing a net increase of 146 spaces over the current number of spaces; and

WHEREAS, in support of this representation, the applicant submitted a traffic analysis indicating that the parking demand during the midday peak period totals 570 spaces; and

WHEREAS, the applicant states that, in addition to the existing 247-space parking lot, accessory parking is currently provided on three lots in the vicinity of the subject site: (1) the “Main Hospital Lot,” consisting of three open parking lots with a total of 127 spaces located on the north side of the premises and accessed via a driveway on the east side of Third Avenue at East 183rd Street; (2) the “Bathgate Lot,” an open parking lot with 100 spaces for Hospital employee vehicles located one block west of the premises on Bathgate Avenue and accessed

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via a driveway on the east side of Bathgate Avenue between East 182nd Street and East 183rd Street; and (3) the “Third Avenue Lot,” an open parking lot with 96 spaces located on the west side of Third Avenue, directly across from the premises, and accessed via a driveway on the west side of Third Avenue between East 181st Street and East 182nd Street; and

WHEREAS, the applicant represents that the Hospital will close the Bathgate Avenue Lot and the Main Hospital Lot after the proposed parking facility is constructed, thereby eliminating 227 spaces; and

WHEREAS, the applicant notes that an additional as-of-right open parking lot with 15 spaces will be provided at the east side of the proposed parking facility; and

WHEREAS, the applicant states that the Hospital will therefore realize a net increase of 146 spaces as a result of the addition of the proposed parking facility; and

WHEREAS, the applicant further states that the proposed parking facility will draw a minimum of vehicular traffic to and through local streets by providing a second ingress and egress point for the facility; and

WHEREAS, the applicant notes that the existing parking lot has a single ingress and egress point located on Quarry Road and that the proposed parking facility will provide a second ingress and egress point via the existing curb cut on Third Avenue, opposite East 182nd Street; and

WHEREAS, the applicant states that the additional ingress and egress point will draw traffic away from Quarry Road, further reducing the volume of traffic on local streets; and

WHEREAS, the applicant represents that the proposed parking facility has adequate reservoir space at the vehicular entrance; and

WHEREAS, the Board notes that the applicant is required to provide 20 reservoir spaces to accommodate the proposed 605-space parking facility and that the plans submitted by the applicant indicate that the proposed parking facility provides 20 reservoir spaces at the vehicular entrance; and

WHEREAS, the applicant represents that the streets providing access to the proposed facility are adequate to handle the traffic generated thereby; and

WHEREAS, in support of this representation, the applicant submitted a traffic analysis indicating that the proposed parking facility would have no significant impact on traffic conditions in the surrounding neighborhood; and

WHEREAS, based upon the above, the Board concludes that the findings required under ZR § 73-481 have been met; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit accessory off-street parking spaces to be located on the roof of a building if the parking is located so as not to impair the essential character or the future use or development of adjacent areas; and

WHEREAS, the applicant represents that the proposed rooftop parking will not impair the essential character or future use or development of adjacent areas; and

WHEREAS, the applicant submitted a 200-foot radius diagram indicating that the areas surrounding the proposed

parking facility include the Hospital to the north, several commercial and mixed-use commercial/residential buildings to the west, a commercial building to the south, and a five-acre city-owned public park to the east; and

WHEREAS, the applicant represents that the impact of the proposed facility on residential uses in the surrounding area will be limited because the roof of the proposed parking facility is approximately 30 feet higher than the residential uses; and

WHEREAS, the applicant states that rooftop lighting will be confined to the immediate roof area and be designed to minimize glare to neighboring buildings; and

WHEREAS, the applicant states that to further minimize residential impacts, the Hospital will close the rooftop parking area during evening hours and will provide a six-foot high, fire resistant spandrel with aluminum opaque panels around the perimeter of the roof; and

WHEREAS, based upon the above, the Board concludes that the findings required under ZR § 73-49 have been met; 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, the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, the applicant states that the variance request under ZR § 72-21 is necessitated by the programmatic needs of the Hospital; and

WHEREAS, the applicant proposes to install an accessory non-flashing illuminated sign with a total surface area of 54 sq. ft. (18 sq. ft. is the maximum permitted) on the East 181st Street frontage of the proposed parking facility at a height of 47’0” above curb level (20’-0” is the maximum height permitted); and

WHEREAS, because the proposed sign exceeds the maximum surface area and the maximum height permitted, the instant variance application was filed; and

WHEREAS, the applicant represents that the variance request is necessitated by the Hospital’s programmatic need to be easily identified by patrons; and

WHEREAS, the applicant states that the current lack of signage on the premises makes it difficult for visitors, patients, doctors, nurses and ambulance services to locate the Hospital; and

WHEREAS, the applicant represents that an as-of-right sign with a surface area of 18 sq. ft. is too small to readily identify the Hospital; and

WHEREAS, because Third Avenue is angled south of East 180th Street, the applicant represents that a complying sign at a height of 20 feet would not be visible to patrons traveling north on Third Avenue, south of East 180th Street; and

WHEREAS, the applicant states that the Hospital found that banners are inadequate to identify the Hospital because they are often vandalized and are easily damaged by

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the elements; and

WHEREAS, the applicant further states that a large sign is necessary to direct private visitor vehicles to the parking facility entrance at Third Avenue so that such vehicles do not instead create congestion and crowd ambulances at the entrance on the north end of the Hospital; and

WHEREAS, at hearing, the Board questioned whether signage is a legitimate programmatic need and whether other Hospitals in New York City provide large identification signs high above the street; and

WHEREAS, in response, the applicant submitted photographs of Queens Hospital Center, New York Hospital Queens, NYU Medical Center, Rockefeller University Hospital, and the Hospital for Special Surgery, indicating the use of similar-sized signs high above-grade; and

WHEREAS, the applicant states that the Hospital is an affiliated primary teaching hospital of the New York College of Osteopathic Medicine, training more than 250 physicians annually; and

WHEREAS, in analyzing the applicant's waiver requests, the Board notes at the outset that the Hospital, as a non-profit educational institution, may use its programmatic need as a basis for the requested waivers; and

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, applications for variances that are needed in order to meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (see, e.g., Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, accordingly, the Board finds it appropriate to give deference to the Hospital's programmatic need; and

WHEREAS, the Board concludes that the need for a waiver of ZR §§ 22-331 and 22-342 to accommodate the Hospital's programmatic need has been fully explained and documented by the applicant; and

WHEREAS, based upon the above, the Board finds that the programmatic need of the Hospital to be easily identified by patrons creates unnecessary hardship and practical difficulty in complying with the applicable zoning regulations; and

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

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

WHEREAS, the applicant represents that the surrounding neighborhood is primarily occupied by the Hospital, commercial and mixed-use commercial/residential buildings, a school, and a five-acre public park; and

WHEREAS, the applicant states that the property closest to the proposed sign which is not part of the Hospital is a two-story commercial building located approximately 200 feet

south of the subject site; and

WHEREAS, the applicant further states that the proposed sign will front on East 181st Street and will be internally illuminated and non-flashing; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the programmatic need of the Hospital and the constraints of the subject site; and

WHEREAS, the applicant initially proposed to install a 90 sq. ft. sign at a height of 57 feet, but reduced its request to a 54 sq. ft. sign at a height of 47 feet in response to concerns raised by the Board; and

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

WHEREAS, based upon the above, 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 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 (EAS) CEQR No. 09-BSA-031X, dated March 6, 2009; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 72-21, 73-481, 73-49, and 73-03 for a special permit to permit the construction of a 605-space parking garage and rooftop parking, contrary to ZR §§ 25-11 and 25-141, and for a variance to permit an accessory sign contrary to ZR §§ 22-331 and 22-342, in an R7-1 zoning

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district, *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 April 14, 2009”- (14) sheets; and *on further condition*:

THAT the parking facility shall be limited to 605 parking spaces and 20 reservoir spaces;

THAT the hours of operation for the rooftop parking shall be from 5:00 a.m. to 11:00 p.m., daily;

THAT screening and lighting shall be provided for the rooftop parking as per the BSA-approved plans;

THAT the proposed sign shall be back lit;

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

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

THAT construction shall proceed in accordance with ZR §§ 72-23 and 73-70; 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, May 19, 2009.

304-08-BZ

CEQR #09-BSA-050M

APPLICANT – Bryan Cave LLP, for TDS Acquisition LLC d/b/a Trevor Day School, owner.

SUBJECT – Application December 11, 2008 – Variance (§72-21) and Special Permit (§73-19) to allow a school in a C8-4 district contrary to bulk regulations (§33-123, §33-451, §33-453, §33-454, §33-26). C8-4 District.

PREMISES AFFECTED – 312-318 East 95th Street, south side of 95th Street, 215 east of Second Avenue, 350’ feet west of First Avenue, Block 1557, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Judy Gallent.

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 Montanez5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 19, 2008, acting on Department of Buildings Application No. 110347250, reads, in pertinent part:

“Proposed FAR does not comply with ZR Section 33-123 (Maximum Floor Area –Community Facility Buildings). Maximum Community

Facility FAR permitted in C8-4 is 6.5. Proposed FAR is 8.57.

Proposed tower lot coverage does not comply with ZR Section 33-454 (Towers on Small Lots). Maximum tower lot coverage permitted is 50% for a lot less than 10,500 sq. ft. in area. Proposed tower lot coverage is 59.4%.

Proposed aggregate tower area within 50 feet of a narrow street does not comply with ZR Sections 33-451 and 33-453. Maximum aggregate tower area permitted within 50 feet of a narrow street is 1,875 sq. ft. Proposed tower occupies an aggregate area of 3,288.25 sq. ft. within 50 feet of a narrow street.

Proposed rear yard does not comply with ZR Section 33-26 at the first, second and third floors. A minimum 20 foot rear yard is required. Proposed rear yard at 1st, 2nd and 3rd floors is less than 20 feet.

School in a C8-4 zoning district requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-19”; and

WHEREAS, this is an application for a special permit under ZR §§ 73-19 and 73-03, to permit a combined 12-story middle school and high school (Use Group 3) on a site within a C8-4 zoning district, and an application under ZR § 72-21 to permit the a school building contrary to ZR §§ 33-123 (maximum floor area ratio), 33-26 (required rear yard), 33-454 (tower lot coverage), 33-451 and 33-453 (maximum aggregate tower area); and

WHEREAS, the application is brought on behalf of Trevor Day School, a nonprofit corporation (“Trevor Day”); and

WHEREAS, a public hearing was held on this application February 24, 2009, after due notice by publication in the *City Record*, and then to decision on May 12, 2009; and

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

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, a number of neighborhood residents testified in favor of the application; and

WHEREAS, an adjacent owner testified in opposition to the application, citing concerns with the impact of the proposed school on his property; and

WHEREAS, the site is located in the mid-block area of the south side of East 95th Street between First Avenue and Second Avenue; and

WHEREAS, the site is located in a C8-4 zoning district and has a lot area of 10,453 sq. ft.; and

WHEREAS, the subject site is occupied by a five-story furniture factory and an adjacent two-story building which are proposed to be demolished; and

WHEREAS, the proposed 12-story combined middle school/high school (U.G. 3) (the “School”) has a four-story 84-foot high base and an eight-story tower rising to a total height

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of 204 feet; each base floor has a floor plate of approximately 10,300 sq. ft. and each tower story has a floor plate of approximately 6,200 sq. ft.; and

WHEREAS, a cellar level houses a lower lobby, student lockers, administrative space and mechanical space; the first floor and first floor mezzanine are occupied by the auditorium; the second floor is occupied by music and band rooms; the third floor and third floor mezzanine are occupied by a double height gymnasium; the fourth floor is occupied by the cafeteria and kitchen; the fifth through eighth floors contain core classrooms and common rooms, with some offices on the sixth floor; the ninth and tenth floors contain science and fine arts classrooms and laboratories; the eleventh floor contains administrative offices and a dance studio; the twelfth floor contains a half-gymnasium; and an outdoor play area of approximately 4,839 sq. ft. is located on the roof; and

WHEREAS, the applicant seeks a variance to permit: a floor area of 101,243 sq. ft. (67,944 sq. ft. is the maximum community facility floor area permitted in a C8-4 district); an FAR of 8.57 (an FAR of 6.5 is the maximum permitted); a tower lot coverage of 59.4 percent (50 percent is the maximum permitted); an aggregate tower area within 50 feet of a narrow street of approximately 3,288 sq. ft. (1,875 sq. ft. is the maximum permitted; and a rear yard of 0'-8" (20'-0" is the minimum required); and

WHEREAS, the applicant additionally seeks a special permit because the subject site is located within a C8-4 zoning district, where Use Group 3 school use is not permitted as-of-right; and

WHEREAS, the applicant represents that the special permit and variance requests are necessitated by (i) the need to replace its existing elementary school; (ii) the need for additional space based on past and projected growth in the school's enrollment; and (iii) the need for classrooms, gymnasiums, auditorium and meeting spaces adequate in size to serve its student body; and

WHEREAS, the applicant further states that the student body is currently distributed among four buildings on the Upper East Side and Upper West Side of Manhattan: (a) a pre-school/ kindergarten located at East 89th Street; (b) an elementary school in space rented from the Church of the Heavenly Rest (the "Church"); and a middle school/ high school located at (c) 1 West 88th Street and (d) 279 Central Park West; and

WHEREAS, applicant further states that the Church has indicated an intention to recapture the space occupied by Trevor Day's elementary school in 2013 and the elementary school must therefore be relocated to an alternative space; and

WHEREAS, the applicant represents that its existing middle school/high school facilities are overcrowded and outdated with classrooms, studios, labs, physical education and common areas that are inadequate in size and oddly shaped and which are insufficient to accommodate projected enrollment growth; and

WHEREAS, the applicant further represents that its existing facility cannot accommodate its entire middle

school or high school student body for assemblies, concerts, or school-wide meetings; and

WHEREAS, the applicant represents that the impending loss of its pre-school/kindergarten and the overcrowded, antiquated and inadequate space of its middle school/ high school render it impossible for Trevor Day to meet its programmatic needs; and

WHEREAS, development of the School will allow Trevor Day to relocate its elementary school to its building at 1 West 88th Street and to provide an auditorium, and modern and adequately-sized classrooms, gymnasiums, studios and labs to its middle/high school students; and

WHEREAS, the applicant represents that the School meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an C8-4 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate difficulty in obtaining land for the development of a school within the neighborhood to be served and with an adequate size, sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that a building with a floor area of least 100,000 sq. ft. is necessary to accommodate Trevor Day's program; and

WHEREAS, the applicant states that the majority of its students reside on the Upper West Side and Upper East Side neighborhoods of Manhattan; and

WHEREAS, the applicant further states that Trevor Day conducted a nearly four-year site search for existing buildings or development sites within those communities for a combined middle and high school facility of adequate size to serve the School's programmatic needs; and

WHEREAS, the applicant represents that nine potential sites, including the subject site, were seriously evaluated and that additional sites were investigated and determined to be inappropriate based on their location, size, limited access to public transportation and/or purchase price; and

WHEREAS, the applicant further represents that the sites evaluated include: (i) 165 West 86th Street (West-Park Presbyterian Church); (ii) 517-523 East 73rd Street and 512-522 East 74th Street; (iii) Amsterdam Avenue between West 99th and West 100th Streets (St. Michael's Episcopal Church); (iv) West 57 Street, mid-block between 12th Avenue and 11th Avenue; (v) Amsterdam Avenue at West 69th Street (Lincoln Square Synagogue); (vi) 23 East 91st Street (Our Lady of Good Counsel School); (vii) 515 West 57th Street; and (viii) Lexington Avenue between East 97th and East 98th Streets; and

WHEREAS; the applicant states that the potential floor area of sites at Amsterdam Avenue between West 99th and West 100th Streets, Amsterdam Avenue at West 69th Street (Lincoln Square Synagogue), 23 East 91st Street; and Lexington Avenue between East 97th and East 98th Streets was deemed inadequate to accommodate the School; and

WHEREAS, the applicant further states that the respective locations of a Con Edison substation and Department of Sanitation garage adjacent to and across from

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517-523 East 73rd Street/ 512-522 East 74th Street rendered that site unacceptable for the School; and

WHEREAS, the applicant additionally states that the owners of 515 West 57th Street and 165 West 86th Street were unwilling to transfer their properties to the School; and

WHEREAS, the applicant maintains that the results of the site search show that there is no practical possibility of obtaining a site of adequate size for the School in a district where it is permitted as of right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the School is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, evidence in the record indicates that the front lot line of the site directly abuts an R8 district in which a school would be permitted as of right; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that the School fronts on East 95th Street, directly south of an R8 zoning district, and that only the sides and rear of the School will face the surrounding non-residential zoning district; and

WHEREAS, the applicant further states that adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district is provided through the use of sound-attenuating window and wall construction; and

WHEREAS, the applicant represents that the School's design would include double-glazed windows in the front and rear walls and an alternate means of ventilation, and that the side walls would have no windows and be constructed of sound-attenuating masonry; and

WHEREAS the applicant further represents that window/wall attenuation would provide 35 dBA for all facades of the building and would therefore result in interior noise levels of less than 45 dBA within the School; and

WHEREAS, the Board accepts that the use of sound attenuating window and wall construction will adequately separate the school from noise, traffic and other adverse effects of the surrounding non-residential district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that East 95th Street is a narrow one-way street characterized by light traffic, and that children traveling and from the School would be protected by the diversion of most east-west through traffic to East 96th Street, one block to the north, which is a major cross street having two travel lanes in both directions; and

WHEREAS, the Board finds that the movement of the

traffic through the street on which the School is located can be controlled so as to protect children traveling to and from the School; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the applicant states that the School is not anticipated to have a substantial adverse impact with respect to urban design and visual resources or neighborhood character; and

WHEREAS, the applicant further states that the proposed use of the building as a school is permitted as-of-right in the C1, C2 and residential zoning districts surrounding the subject site, and is consistent with the predominant residential character of the surrounding neighborhood; and

WHEREAS, the applicant additionally states that the Life Sciences High School is located on East 95th Street directly north of the subject site in an R8 zoning district within which schools are permitted as-of-right; and

WHEREAS, the applicant represents that the height of the School is permitted by the tower regulations of the underlying C8-4 zoning district and that a number of buildings in the surrounding area are taller than the School, including: a 28-story residential tower to its east at East 94th Street and First Avenue; a 31-story residential tower to its west at East 94th Street and Second Avenue; a 16-story residential building on East 96th Street directly north of the School; the 24-story and 25-story Isaacs Houses and Holmes Towers developments of the NYC Housing Authority on First Avenue to the east and southeast of the subject block; and the 32- and 30-story residential high rises on the west side of First Avenue between East 94th Street and East 92nd Street; and

WHEREAS, the applicant further represents that the School's streetfront is consistent with those of the buildings on East 95th Street on either side of the subject site; and

WHEREAS, the applicant states that the School will benefit the surrounding community by replacing a legally conforming industrial use with a school use that is more consistent with the predominant residential character of the area and which expands educational opportunities for neighborhood residents; 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, the applicant states that preparation work is under way for the Second Avenue Subway in a portion of Second Avenue from East 91st Street to East 95th Street, and that its construction over the next eight years is expected to cause street closings and other impacts that could potentially affect the School; and

WHEREAS, the applicant states, however, that because the School is located 200 feet east of Second

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Avenue, the requested modifications of the applicable use and bulk regulations will not interfere with the Second Avenue subway project or with any other pending public improvement project; and

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

WHEREAS, the applicants states that the requested variance of the maximum allowable floor area (and FAR), maximum tower coverage, maximum aggregate tower coverage and minimum rear yard are necessary based on the programmatic needs of Trevor Day and the site's unique subsurface conditions including groundwater level, soil and bedrock conditions;

WHEREAS, as to the programmatic needs of the School, the applicant states that they are the following: (1) relieving overcrowded and suboptimal classroom conditions; (2) accommodating current enrollment while allowing for future growth; (3) offering a varied and expanded curriculum to its students; and (4) providing gymnasium and auditorium space; and

WHEREAS, as discussed above, the applicant states that its existing middle school/ high school facilities are overcrowded and outdated with classrooms, studios, labs, physical education and common areas that are inadequate in size and oddly shaped; and

WHEREAS, Trevor Day has determined that additional space is needed to better serve the 365 students currently enrolled in grades 7 through 12, and also to increase its Upper School enrollment by approximately 25 percent; and

WHEREAS, the applicant states that a planning study commissioned by Trevor Day found that the school provides an average classroom area of 115 sq. ft. per student, far less than the 162 sq. ft. per student average of comparable New York City independent schools; and

WHEREAS, the applicant represents that the paucity of adequate classroom space also limits the number of elective classes it can offer its middle and high school students as well as the extracurricular functions that are an integral part of a balanced high school program; and

WHEREAS, to accommodate the projected enrollment, the applicant states that the School must have a total of 20 core classrooms and 10 special classrooms, each with a minimum size of approximately 450 sq. ft., as well as three common rooms: one for the middle school and two for the high school, each with a minimum size of approximately 2,100 sq. ft.; and

WHEREAS, to comply with New York State Department of Health regulations which mandate three physical education classes per week, the applicant further states that the School also requires two gymnasiums – a full-size gymnasium and a 4,000 sq. ft. half-gymnasium; and

WHEREAS, the applicant further states that a minimum gymnasium ceiling height of 24 feet is required to host inter-scholastic basketball games and that the School must also have a double-height auditorium to present school-wide assemblies, as well as musical and theatrical

productions; and

WHEREAS, the applicant represents that, the tower coverage, aggregate tower area and rear yard waivers are necessary to provide the program space necessary to adequately serve its current student body and to prepare for a projected 25 percent increase in enrollment; and

WHEREAS, the applicant represents that without the waivers, the floor area of the School would be reduced by 21,633 sq. ft., and that the proposed auditorium, library/media center, half-gymnasium, and common room for science classrooms would consequently be eliminated and less space would be available for the cafeteria, kitchen and lobby, faculty and administrative office space, storage, and bathrooms; and

WHEREAS, the applicant represents that the tower floor plates of a complying development would be approximately 1,000 sq. ft. smaller than those in the School and, consequently, that core classrooms and common rooms would have to be moved from the tower to the base portion of the building and be enlarged beyond what is programmatic necessary, resulting in an inefficient waste of much-needed floor area; and

WHEREAS, the applicant further states that compliance with the 23-foot height restriction for rear yard obstructions in the subject zoning district would necessitate reduction of the height of the main gymnasium below regulation size, because the rear 20 feet could have a ceiling height of only 12'-4" – too low to accommodate a backboard and rim; and

WHEREAS, the Board acknowledges that the School, as an educational 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 Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the applicant represents, however, that its programmatic needs could be met on the subject site in an as-of-right building, were it not for the unique groundwater, soil and bedrock conditions that create practical difficulties and unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, a geotechnical engineering study submitted by the applicant found that: (a) subsurface water course traverses the subject site and groundwater is found at approximately nine feet below the existing sidewalk grade; and (b) the subject site is located in a former marsh area and subsurface soil consists of layers of sand, clay, peat and fine silt to depths beyond 170 feet; and

WHEREAS, the geotechnical study additionally found that, as a result of these conditions, below-grade construction would require dewatering approximately 25 to 30 feet below-grade and underpinning of adjacent buildings,

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and that such below-grade construction could cause damage to facades, interior finishes and structural elements and be costly; and

WHEREAS, the applicant states that three major construction firms estimated the cost of dewatering, underpinning and below-grade construction at between \$9 and \$17.4 million; and

WHEREAS, because of the site's soil, bedrock and groundwater conditions, the applicant states that Trevor Day is unable to locate essential educational spaces more than approximately six feet below-grade and therefore has instead located all required floor area above-grade, with the exception of one cellar floor; and

WHEREAS, because of the subject-site's unique below-grade conditions, the School must locate two of the three potential below grade levels, containing approximately 20,900 sq. ft., above grade, thereby exceeding the maximum allowable floor area; and

WHEREAS, the applicant represents that the need to construct almost all of the School's programmatically required floor area above-grade necessitates the requested variances of regulations relating to rear yard, tower lot coverage and aggregate tower area; and

WHEREAS, the applicant further represents that the requested floor area variance is required to recapture the as-of-right floor area that is lost due to the inability to construct below-grade space; and

WHEREAS, the applicant states that if the site were not burdened with its unique soil and groundwater conditions, the auditorium and gymnasium could have been located below-grade, rather than on the ground and third floors, respectively, and that a school building with a floor area virtually identical to that of the School could be built on the subject site as-of-right; and

WHEREAS, the proposed floor area of the School is 101,243 sq. ft.; and

WHEREAS, the applicant submitted plans indicating that approximately 31,360 sq. ft. of space could otherwise be developed in three additional below-grade levels, which would not be included in floor area, in addition to 67,944 sq. ft. of floor area that could be developed at the maximum allowable community facility FAR of 6.5, for a total floor area of 99,304 sq. ft.; and

WHEREAS, the applicant concludes that, as a result, Trevor Day is unable to fulfill its programmatic needs by developing the subject site with an as-of-right middle and high school building while complying with all underlying district regulations; and

WHEREAS, the Board finds that Trevor Day's programmatic needs are legitimate, and agrees that the proposed School is necessary to address its needs, given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the unique conditions of the site, when considered in conjunction with the programmatic needs of the School, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant represents that although the School is located on the site of a former industrial building, it is compatible with other residential and institutional uses in the surrounding neighborhood; and

WHEREAS, the applicant states that the land uses surrounding the site are characterized by a mix of residential, commercial, and institutional uses; and

WHEREAS, the applicant states that East 95th Street to the west and east of the subject site contains a variety of uses including residential uses, automotive related uses, retail and manufacturing uses and that a five-story office building is located immediately to the south of the subject site; and

WHEREAS, the applicant further states that north of the subject site on East 95th Street are several residential uses, including a 16-story residential building on East 96th Street in the mid-block portion of the block ; and

WHEREAS, the applicant further states that the proposed use of the building as a school is permitted as-of-right in the residential and C1 and C2 zoning districts surrounding the subject site, and is consistent with the predominant residential character of the surrounding neighborhood; and

WHEREAS, the applicant further states that the Life Sciences High School is located directly across East 95th Street from the subject site in an R8 zoning district within which schools are permitted as-of-right; and

WHEREAS, the applicant represents that the height and bulk of the School are compatible with the surrounding area, which is characterized by a number of additional large residential, commercial and mixed-use buildings; and

WHEREAS, the height of the School is permitted as-of-right by the tower regulations of the underlying C8-4 zoning district and a number of buildings in the surrounding area are taller than the School, including a 28-story residential tower to its east at East 94th Street and First Avenue, a 31-story residential tower to its west at East 94th Street and Second Avenue, a 16-story residential building on East 96th Street directly north of the School, the 24-story and 25-story Isaacs Houses and Holmes Towers developments of the NYC Housing Authority on First Avenue to the east and southeast of the subject block, and the 32-story and 30-story residential high rises occupying the block fronts on the west side of First Avenue between East 94th Street and East 92nd Street and the 38-story Normandy Court residential development located on the corner of Second Avenue and East 96th Street; and

WHEREAS, the applicant states that the requested

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variance of the tower lot coverage requirement allows for a tower with a slightly larger floor plate than would otherwise be permitted, thereby providing a somewhat shorter building than would be required absent the variance limiting the resulting shadows of the School on the surrounding area; and

WHEREAS, the applicant further states that a conforming community facility use could build at the subject site to a height of approximately 15 stories as-of-right under the tower bulk regulations of the subject zoning district; and

WHEREAS, the applicant states that the street wall of the School complies with the height restrictions of the C8-4 district and is consistent with the street walls of other mid-block buildings fronting on East 95th Street; and

WHEREAS, an environmental assessment indicates that the shadows cast by the School are only marginally greater than the shadows cast by a complying development, and that none of the incremental increase in shadows falls on any light sensitive elements; and

WHEREAS, a playground is located on the western half of the block directly north of the subject site between East 96th Street and East 97th Street, the shadow study demonstrates that the shadows cast by the School are blocked from falling on the playground by a 16-story building on East 96th Street located directly north of the School; and

WHEREAS, in a submission to the Board, an adjacent property owner argues that the School will block its light and air; and

WHEREAS, a submission by the applicant notes that during seven of 12 analysis periods studied, the School had no incremental shadow impacts on the adjacent property as compared to existing conditions; in two of the periods studied, the School cast the same amount of shadow as an as-of-right building; in two of the analysis periods, the School cast less shadow than an as-of-right building; and that during only one period was a small incremental shadow cast --on the northwest corner of the entrance of the adjacent building; and

WHEREAS, the adjacent owner additionally contends that as-of-right development of his property would block light from the School's classrooms; and

WHEREAS, in response, the applicant states that the School has been built without windows on its western façade abutting the lot line of the adjacent owner and that all classrooms are designed to receive light from windows located in the north and south facades of the building; and

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

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

WHEREAS, a submission by a neighboring owner

argues that the hardship is self-imposed and urges the Board to deny the subject application; and

WHEREAS, a response by the applicant points out that, pursuant to ZR § 72-21, the purchase of a property subject to the restrictions sought to be varied does not, in and of itself, constitute a self-created hardship and is not a ground to deny the application; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers for floor area, tower lot coverage, aggregate tower area and rear yard are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the applicant further represents that without the requested variances of the maximum tower lot coverage requirement from 50 percent to 59.4 percent and the maximum allowable aggregate tower area by approximately 1,413 sq. ft., an additional four stories would be required to accommodate the School's program, increasing the height of the building by approximately 53 feet to an as-of-right height of 279 feet; and

WHEREAS, the applicant states that development using sky exposure plane bulk regulations as an alternative to a tower would require a variance of the rear yard requirement for the full height of the building, as well as a variance to allow penetration of the sky exposure plane by four of the seven stories above the maximum street wall, in addition to a floor area variance; and

WHEREAS, the applicant states that a sky exposure plane development would be bulkier and would cast larger shadows than a more slender tower and that having atypical floors of varying depths as the building set back under the sky exposure plane would make it more difficult for Trevor Day to program the resulting space so as to meet its programmatic needs; and

WHEREAS, the applicant represents that the rear wall is angled inward instead of being extended straight up to the top of the fourth floor in order to minimize the variance requested; and

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

WHEREAS, therefore, 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 6 NYCRR Part 617.2; 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. 09BSA050M, dated March 2009; and

WHEREAS, the EAS documents that the School 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

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Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection (“DEP”) Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a January 2007 Phase I Environmental Site Assessment; (2) a January 2007 Phase II Investigation Report; (3) a March 2009 Environmental Assessment Statement (“EAS”); (4) a March 2009 Revised Remedial Action Plan (the “Revised RAP”) and Construction Health & Safety Plan (CHASP); and (5) Revised March 2009 Air Quality and Noise chapters; and

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

WHEREAS, to mitigate soil vapor intrusion pursuant to the Revised RAP, a Grace Florprufe 120 vapor barrier will be applied to the underside of the foundation slabs in accordance with manufacturer specifications; and

WHEREAS, a Remedial Closure Report certified by a professional engineer must be submitted to DEP at the completion of construction to confirm the effectiveness of the vapor barrier; and

WHEREAS, the proposed project is projected to generate fewer than 100 peak hour vehicle trips and therefore would not require a mobile source air quality analysis; and

WHEREAS, no nearby emission sources were identified which would have potential impacts to the School; and

WHEREAS, a screening analysis of the School’s emissions, assuming the use of No. 4 fuel oil, indicate that the proposed project would not significantly impact adjacent structures of equal or greater height; and

WHEREAS, the proposed project is not anticipated to result in significant adverse air quality impacts; and

WHEREAS, DEP has determined that sound-attenuating masonry and double-glazed windows achieving a composite window/wall noise attenuation of 35 dBA for all building facades are necessary to achieve an interior noise level of 45 dBA; and

WHEREAS, with the aforementioned measures, the proposed project would not result in a significant adverse noise impact; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and grants a

special permit to allow, within a C8-4 zoning district, a combined middle school and high school (Use Group 3) and makes each and every one of the required findings under ZR §§ 73-19 and 72-21 and grants a variance to allow the school building, which does not comply with ZR §§ 33-123, 33-26, 33-454, 33-451 and 33-453; *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 May 14, 2009” – (26) sheets; and *on further condition*:

THAT the parameters shall be: a floor area of 101,243 sq. ft. (FAR of 8.57); a tower lot coverage of 59.4 percent; an aggregate tower area within 50 feet of a narrow street of approximately 3,288 sq. ft.; and a rear yard of 0’-8”;

THAT the premises shall comply with all applicable fire safety measures, as required and as illustrated on the BSA-approved plans;

THAT the certificate of occupancy shall state that the number of students shall be limited to 500;

THAT the issuance of building permits shall be conditioned on the issuance of a DEP Notice to Proceed;

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT sound-attenuating masonry and double-glazed windows achieving a composite window/wall noise attenuation of 35 dBA shall be installed on all exposed facades of the proposed building;

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

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

THAT construction shall proceed in accordance with ZR §§ 72-23 and 73-70; and

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

Adopted by the Board of Standards and Appeals, May 19, 2009.

308-08-BZ
CEQR #09-BSA-052M

APPLICANT – Davidoff Malito & Hutcher, LLP, for 201 East 67 LLC, owner; MonQi Fitness, lessee.

SUBJECT – Application October 17, 2008 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment located on the third through fifth floors in a five-story building. The proposal is contrary to ZR §32-00. C1-9 district.

PREMISES AFFECTED – 201 East 67th Street, northeast corner of the intersection of Third Avenue and East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

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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

Negative:.....5

THE RESOLUTION:.....0

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 4, 2008, acting on Department of Buildings Application No. 110365453, reads in pertinent part:

“Physical culture establishment at third, fourth and fifth floors is not permitted as-of-right in a C1-9 zoning district and is contrary to ZR § 32-00;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9 zoning district, the legalization of a physical culture establishment (“PCE”) on the third, fourth and fifth floors of an existing six-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 7, 2009, after due notice by publication in *The City Record*; a decision was set for May 12, 2009 which was deferred to May 19, 2009; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of the intersection at East 67th Street and Third Avenue, within a C1-9 zoning district; and

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

WHEREAS, the PCE will occupy a total of 5,877 sq. ft. of floor area on the third, fourth and fifth floors; and

WHEREAS, the PCE will be operated as “MonQi Fitness;” and

WHEREAS, the applicant represents that the services at the PCE will include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 6:45 a.m. to 9:00 p.m.; Friday, from 6:45 a.m. to 8:00 p.m.; and Saturday and Sunday, from 9:00 a.m. to 3:00 p.m.; and

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

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since April 2004, 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 April 1, 2004 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 09BSA052M, dated December 12, 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 proposed action will not have a significant adverse impact on the environment; and

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 C1-9 zoning district, the establishment of a physical culture establishment on the third, fourth, and fifth floors of an existing six-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 30, 2009”- (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 1, 2014;

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 all signage shall comply with C1 zoning regulations;

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, May 19, 2009.

1-09-BZ

CEQR #09-BSA-058Q

APPLICANT – The Law Office of Fredrick A. Becker, for 39-01 QB LLC c/o Rhodes Management, owner; TSI Sunnyside LLC dba New York Sports Club, lessee.

SUBJECT – Application January 2, 2009 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on a portion of the ground floor in a three-story building. The proposal is contrary to ZR §42-00. M1-4 district.

PREMISES AFFECTED – 39-01 Queens Boulevard, northerly side of Queens Boulevard, easterly of 39th Street, Block 191, Lot 5, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

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

Negative:.....5

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated April 16, 2009, acting on Department of Buildings Application No. 410189861, reads in pertinent part:

“Proposed physical culture establishment requires a special permit from the Board of Standards and Appeals pursuant to ZR Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-4 zoning district, the legalization of a physical culture establishment (“PCE”) on a portion of the first floor of an existing three-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 7, 2009, after due notice by publication in *The City Record*, and was then set for decision May 12,

2009, on which date the decision was deferred to May 19, 2009; and

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

WHEREAS, Community Board 2, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of the intersection at Queens Boulevard and 39th Street, within an M1-4 zoning district; and

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

WHEREAS, the PCE will occupy a total of 13,640 sq. ft. of floor area on a portion of the first floor; and

WHEREAS, the PCE will be operated as “New York Sports Club;” and

WHEREAS, the applicant represents that the services at the PCE will include facilities for classes, instruction and programs for physical improvement, body building and aerobics; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 6:00 a.m. to 11:00 p.m.; Friday, from 6:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 6:00 p.m.; and

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since December 1, 2008, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period between December 1, 2008 and the date of this grant, during which the PCE operated without the special permit; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA058Q, dated March 26, 2009; and

WHEREAS, the EAS documents that the operation of

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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; and

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 an M1-4 zoning district, the legalization of a physical culture establishment on a portion of the first floor of an existing three-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 7, 2009"- (1) sheet and "Received March 26, 2009"- (1) sheet and "Received January 2, 2009"- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on December 1, 2018;

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 all signage shall comply with M1 zoning regulations;

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, May

19, 2009.

11-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Joseph Giahn, owner.

SUBJECT – Application January 9, 2007 – Variance (§72-21) to allow a five (5) story office building with ground floor retail, contrary to use regulations (§22-00). R6B district.

PREMISES AFFECTED – 41-06 Junction Boulevard, south west corner formed by Junction Boulevard and 41st Avenue, Block 1598, Lots 7 & 8, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Hirshman and Joseph Giahn.

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 June 23, 2009, at 1:30 P.M., for decision, hearing closed.

178-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Bronx Jewish Boys, owners.

SUBJECT – Application July 12, 2007 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building.

The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district.

PREMISES AFFECTED – 2261-2289 Bragg Street, 220' north from intersection of Bragg Street and Avenue W, Block 7392, Lot 57, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Hirshman and Rabbi Schorsher.

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 June 9, 2009, at 1:30 P.M., for decision, hearing closed.

203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar, Inc., owner.

SUBJECT – Application August 17, 2007 – Variance (§72-21) to allow a new thirteen (13) story mixed-use building containing twenty (20) dwelling units, ground floor retail and third and forth floor community facility (medical) uses;

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contrary to bulk and parking regulations (§35-311 & §36-21). R6/C2-2 district.

PREMISES AFFECTED – 137-35 Elder Avenue (a/k/a 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO REOPEN HEARING –

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

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

63-08-BZ

APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding , owner

SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing within a C4-2 zoning district.

PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Eric Palatnik, Nancy Neumen, H. Ruthkrug, F. Estrella and Daria Kulyk.

For Opposition: Eric Goidel, Charlotte Picot, Carole Keit, James Messemer and Nancy Jorisch.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 1:30 P.M., for continued hearing.

99-08-BZ

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

SUBJECT – Application April 21, 2008 – Variance (§72-21) to construct a three story with cellar single family home on an irregular triangular lot what does not meet the rear yard requirement (§23-47) in an R3-2 (SRD) zoning district.

PREMISES AFFECTED – 102 Drumgoole Road, South side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue, Block 5613, Lot 221, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug and Anthony S.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for continued hearing.

100-08-BZ & 101-08-A

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

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a two story with basement, single family residence on a irregularly shaped vacant lot that extends into a mapped, unbuilt street which is contrary to General City Law Section 35. This application seeks to vary front yard (§23-45) in an R3-2 zoning district.

PREMISES AFFECTED – 205 Wolverine Street, northwest of intersection of Wolverine Street and Thomas Street, Block 4421, Lot 167, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug and Anthony S.

For Opposition: Harold McGough, Marion Ciurcina, Marion O’Neil and Carol Donovan.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

188-08-BZ

APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Variance (§72-21) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to ZR §32-10.

PREMISES AFFECTED – 35 East 76th Street, (975-983 Madison; 981 Madison; 35-53 East 76th Street) northeast corner of Madison Avenue and East 76th Street, Block 1391, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Kenneth Barbina.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

229-08-BZ

APPLICANT – Sheldon Lobel, P.C. for Edward Haddad, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) for the construction of a new single family home. This applications seeks to vary floor area (§23-141), less than the minimum side yards (§23-461) and the location of the required off street parking to the front yard (§25-62) in an R2X zoning district.

PREMISES AFFECTED – 866 East 8th Street, West side of East 8th Street, north of Avenue I, and adjacent to railroad, Block 6510, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for continued hearing.

235-08-BZ

APPLICANT – Eric Palatnik, P.C., for Agudath Taharath Mishpachan, owners.

SUBJECT – Application September 16, 2008 – Variance (§72-21) to permit the expansion of a Use Group 3 Mikvah.

The proposal is contrary to ZR §33-12 (Maximum floor area ratio) and §33-431 (Maximum height of walls and required setbacks). C2-3/R4 district.

PREMISES AFFECTED – 1508 Union Street, located at the southwest corner of Union Street and Albany Avenue, Block 1279, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Eric Palatnik and David Shteirman.

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 June 23, 2009, at 1:30 P.M., for decision, hearing closed.

241-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Devonshire Enterprises, Inc., owner.

SUBJECT – Application September 25, 2008 – Variance (§72-21) to permit a one-story commercial building (Use Group 6) on a vacant lot. The proposal is contrary to ZR Section 32-10. R3-1 district.

PREMISES AFFECTED – 546 Midland Avenue, a/k/a 287 Freeborn Street, southwest corner of the intersection of Freeborn Street and Midland Avenue, Block 3803, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 1:30 P.M., for continued hearing.

259-08-BZ

APPLICANT – Jeffrey A. Chester, Esq., for AAC Douglaston Plaza, LLC, owner.

SUBJECT – Application October 20, 2008 – Variance (§72-21) to permit the proposed expansion to an existing supermarket. The proposal is contrary to ZR §52-41 (increase in the degree of non-conforming use of the building. R4 district.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway at 61st Avenue, Block 8266, Lot 185, Borough of

Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for continued hearing.

265-08-BZ

APPLICANT – Mark A. Levine for 70 Wyckoff Avenue LLC, owner.

SUBJECT – Application October 28, 2008 – Variance pursuant to §72-21 to allow for the legalization of residential units located in a manufacturing building, contrary to §42-00; M1-1 District.

PREMISES AFFECTED – 70 Wyckoff Avenue, South east corner of Wyckoff Avenue and Suydam Street, Block 3221, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Richard Bass and Jack Freedman.

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 June 23, 2009, at 1:30 P.M., for decision, hearing closed.

266-08-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Harold Willig, owner.

SUBJECT – Application October 28, 2008 – Special Permit (§73-621) for the enlargement of an existing single family home. This application seeks to vary §34-141(b) as the proposed floor area ratio (FAR) exceeds what is permitted in an R-4 zoning district.

PREMISES AFFECTED – 2007 New York Avenue, east side of New York Avenue between Avenue K and Avenue L, Block 7633, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for continued hearing.

268-08-BZ

APPLICANT – Sheldon Lobel, P.C., for 314 7th Avenue, LLC, owner.

SUBJECT – Application October 30, 2008 – Special Permit filed, pursuant to §73-621 of the New York City Zoning Resolution, to permit the enlargement of an as-of-right eating and drinking establishment (Use Group 6) into the footprint of an existing accessory parking garage of a mixed-use residential and commercial building. The subject site is located in a R6A/C1-4 zoning district.

PREMISES AFFECTED – 314 Seventh Avenue, southwest

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corner of the intersection formed by Eight Street and Seventh Avenue, Block 1006, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Josh Rinesmith.

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 June 16, 2009, at 1:30 P.M., for decision, hearing closed.

275-08-BZ

APPLICANT – Eric Palatnik, P.C., for South Side House LLC, owner.

SUBJECT – Application November 20, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the ground floor of an existing building. The proposal is contrary to ZR §42-10. M1-2/R6 (MX8) district.

PREMISES AFFECTED – 98 South 4th Street, south side of South 4th Street, between Bedford Avenue and Berry Street, Block 2443, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for deferred decision.

295-08-BZ

APPLICANT – Akerman Senterfitt Stadtmauer Bailkin, for Ronald & Meryl Bratt, owners.

SUBJECT – Application November 25, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary lot coverage and floor area (§23-141), side yards (§23-461) and does not comply with the required perimeter wall height (§23-631) in an R3-2 zoning district.

PREMISES AFFECTED – 1934 East 26th Street, east side between Avenue S and T, Block 7304, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Jessica Loeser.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for continued hearing.

301-08-BZ

APPLICANT – Fridman Saks LLP, for 2717 Quentin Realty LLC, owner.

SUBJECT – Application December 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and lot coverage (§23-141), side yard (§23-461), perimeter wall height (23-631(b)) and less than the minimum rear yard

(§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 2717 Quentin Road, between East 27th and East 28th Streets, Block 6790, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Borris Saks.

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 June 23, 2009, at 1:30 P.M., for decision, hearing closed.

25-09-BZ

APPLICANT – Law Offices of Howard Goldman LLC., for AJJ Canal LLC, owner and Champion Fitness LLC, lessee.

SUBJECT – Application February 13, 2009 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on the third floor of a three-story commercial building. The proposal is contrary to ZR §42-10. M1-5B district.

PREMISES AFFECTED – 277 Canal Street, Northwest corner of Canal and Broadway. Block 209, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Chris Wright.

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 June 23, 2009, at 1:30 P.M., for decision, hearing closed.

30-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 136-33 37th Avenue Realty, LLC, owner.

SUBJECT – Application February 23, 2009 – Special Permit pursuant to §73-44 to reduce the amount of required parking spaces for commercial and medical offices uses from 153 to 97 spaces. C4-3 zoning district.

PREMISES AFFECTED – 136-33 37th Avenue, north side of 37th Avenue, between Main Street and Union Street, Block 4977, Lot 95, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jordan Most, Shian Shin Lu and Josh Rinesmith.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 1:30 P.M., for continued hearing.

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42-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Arrow Linen Supply Company, Inc., owner.

SUBJECT – Application March 6, 2009 – Special Permit filed pursuant to §11-411 & §11-412 to permit a reinstatement of a variance which expired on July 12, 1992 which allowed the extension of a legal non conforming use within a residential zoning district. The application seeks an amendment to allow for a one-story enlargement of approximately 770 sq. ft. in the rear of the lot for additional storage for the commercial laundry. The subject site is located in a R5B zoning district.

PREMISES AFFECTED – 441-477 Prospect Avenue, between Eight Avenue and Prospect Park West, Block 1113, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Francis R. Angelino.

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 June 16, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.