

---

# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

---

Volume 94, Nos. 25-28

July 24, 2009

---

### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

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

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Becca Kelly, *Counsel***

---

**OFFICE - 40 Rector Street, 9th Floor, New York, N.Y. 10006**

**HEARINGS HELD - 40 Rector Street, 6th Floor, New York, N.Y. 10006**

**BSA WEBPAGE @ <http://www.nyc.gov/html/bsa/home.html>**

**TELEPHONE - (212) 788-8500**

**FAX - (212) 788-8769**

### CONTENTS

DOCKET .....442

CALENDAR of July 28, 2009

Morning .....445

Afternoon .....446

---

# CONTENTS

---

**MINUTES of Regular Meetings,  
Tuesday, July 14, 2009**

Morning Calendar .....447

**Affecting Calendar Numbers:**

55-01-BZ	568 Broadway, Manhattan
198-66-BZ	300 East 74 <sup>th</sup> Street, Manhattan
336-98-BZ & 337-98-BZ	312/18 and 324/34 Flatbush Avenue, Brooklyn
200-00-BZ	107-24 37 <sup>th</sup> Avenue, Queens
26-02-BZ	1680 Richmond Avenue, Staten Island
322-05-BZ	69-69 Main Street, Queens
4-09-A	27-02 Queens Plaza South, Queens
140-08-BZY	1016 East 13 <sup>th</sup> Street, Brooklyn
313-08-A	363-371 Lafayette Street, Manhattan
317-08-A	124 Montgomery Avenue, Staten Island
165-09-A	150 Hendricks Avenue, Staten Island
172-09-A	10 Gotham Walk, Queens
191-09-A	1291 Carroll Street, Brooklyn

Afternoon Calendar .....451

**Affecting Calendar Numbers:**

222-07-BZ	110 West 26 <sup>th</sup> Street, Manhattan
99-08-BZ	102 Drumgoole Road, Staten Island
188-08-BZ	35 East 76 <sup>th</sup> Street, Manhattan
259-08-BZ	242-02 61 <sup>st</sup> Avenue, Queens
295-08-BZ	1934 East 26 <sup>th</sup> Street, Brooklyn
15-09-BZ	8-10 Astor Place, Manhattan
36-09-BZ	53-01 32 <sup>nd</sup> Avenue, Queens
52-09-BZ	1438 East 26 <sup>th</sup> Street, Brooklyn
139-07-BZ	328 Jackson Avenue, Bronx
203-07-BZ	137-35 Elder Avenue, Queens
97-08-BZ	84 Sanford Street, Brooklyn
100-08-BZ & 101-08-A	205 Wolverine Street, Staten Island
210-08-BZ	130-15 89 <sup>th</sup> Road, Queens
229-08-BZ	866 East 8 <sup>th</sup> Street, Brooklyn
7-09-BZ	1082 East 26 <sup>th</sup> Street, Brooklyn
42-09-BZ	441-477 Prospect Avenue, Brooklyn
46-09-BZ	122 Oxford Street, Brooklyn
50-09-BZ	29 West 35 <sup>th</sup> Street, Manhattan
56-09-BZ	6736 Hylan Boulevard, Staten Island
168-09-BZ	1435 & 1437 East 26 <sup>th</sup> Street, Brooklyn
177-09-BZ	40-22 College Point Boulevard, Queens

---

# DOCKETS

---

New Case Filed Up to July 14, 2009  
-----

**195-09-BZ**

321 AshlandPlace, East side of Ashland Place between Lafayette Avenue and Hanson Place., Block 2111, Lot(s) 11, Borough of **Brooklyn, Community Board: 2**. Variance to waive the required rear yard (ZR 33-26) for a community facility building (Brooklyn Academy of Music). C6-1 District  
-----

**196-09-BZY**

174 & 176 Clermont Avenue, West side of Clermont Avenue, 184'7" south of corner of Myrtle Avenue and Clermont Avenue., Block 2074, Lot(s) 37,38, Borough of **Brooklyn, Community Board: 2**. Extension of time (11-332) to complete construction of a minor development commenced under the prior R6 distirct regulations . R6B Zoning District  
-----

**197-09-A**

518 Browns Boulevard, Southwest side of Browns Boulevard 366.43' east of Bayside Drive., Block 16340, Lot(s) 50, Borough of **Queens, Community Board: 14**. Proposed reconstruction and enlargement of an existing building which lies within the bed of a mapped street contrary to General City Law Section 35 and the upgrade of the private disposal system located within the bed of a mapped street contrary to Section 35 GCL and the Department of Buildings Policy . R4 Zoning District .  
-----

**198-09-BZ**

143 West 19th Street, Between Sixth and Seventh Avenues, Block 795, Lot(s) 14, Borough of **Manhattan, Community Board: 4**. Special Permit (73-36) to legalize the operation of a physical culture establishment.  
-----

**199-09-A**

165 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 60, Borough of **Queens, Community Board: 2**. Proposed construction of 15 (2) story one family homes with cellar and parking not fronting on a mapped street contrary to General City Law Section 36 . R3A /R3-2 Zoning District . Series Cal.Nos. 199-213-09-A  
-----

**200-09-A**

161 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 61, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.  
-----

**201-09-A**

159 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 62, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.  
-----

**202-09-A**

155 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 63, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.  
-----

**203-09-A**

153 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 64, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.  
-----

**204-09-A**

151 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 64, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.  
-----

**205-09-A**

149 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 66, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.  
-----

**206-09-A**

145 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 67, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.  
-----

**207-09-A**

143 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 68, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.  
-----

**208-09-A**

141 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 69, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

---

# DOCKET

---

-----  
**209-09-A**

137 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 70, Borough of **Queens**, **Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

-----

**210-09-A**

135 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 71, Borough of **Queens**, **Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

-----

**211-09-A**

131 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 72, Borough of **Queens**, **Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

-----

**212-09-A**

129 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 73, Borough of **Queens**, **Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

-----

**213-09-A**

127 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 74, Borough of **Queens**, **Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

-----

**214-09-BZ**

1464 Astor Avenue, South side of Astor Avenue, 100ft. East of the intersection with Fenton Avenue., Block 4389, Lot(s) 26,45, Borough of **Bronx**, **Community Board: 11**. Special Permit (73-125) health care facility.

-----

**215-09-BZ**

92-16 95th Avenue, Southwest corner of 93rd Street and 95th Avenue., Block 9032, Lot(s) 8, Borough of **Queens**, **Community Board: 9**. Special Permit(11-411,11-412,11-413) to reinstate variance.

-----

**216-09-A**

51 West Market Street, North side of Rockaway Point Boulevard at the intersection of mapperd Bayside Drive., Block 16350, Lot(s) p/o 300, Borough of **Queens**, **Community Board: 14**. Proposed reconstruction and enlargement of a single family home and the proposed upgrade of an existing non -conforming private disposal system located in the bed of a mapped street is contrary to General City Law Section 35 . R4 zoning dsitric .

-----

**217-09-A**

514-516 East 6th Street, South side of East 6th Street, between Avenue A and Avenue B., Block 401, Lot(s) 17,18, Borough of **Manhattan**, **Community Board: 3**. Multiple Dwelling Appeal

-----

**218-09-BZ**

57 Empire Boulevard, Between Mckeever Place and Bedford Avenue, bounded by Sullivan Place on south., Block 1306, Lot(s) 1, Borough of **Brooklyn**, **Community Board: 9**. Special Permit (73-243) for accessory drive-through facility.

-----

**219-09-BZ**

802 East 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue., Block 2582, Lot(s) 10, Borough of **Bronx**, **Community Board: 1**. Variance to allow five 3-story two family residential buildings.

-----

**220-09-BZ**

804 East 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue., Block 2582, Lot(s) 11, Borough of **Bronx**, **Community Board: 1**. Variance to allow five 3-story two family residential buildings.

-----

**221-09-BZ**

806 East 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue., Block 2582, Lot(s) 110, Borough of **Bronx**, **Community Board: 1**. Variance to allow five 3-story two family residential buildings.

-----

---

# DOCKET

---

**222-09-BZ**

808 East 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue., Block 2582, Lot(s) 111, Borough of **Bronx, Community Board: 1.** Variance to allow five 3-story two family residential buildings.

-----

**223-09-BZ**

810 East 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue., Block 2582, Lot(s) 112, Borough of **Bronx, Community Board: 1.** Variance to allow five 3-story two family residential buildings.

-----

**224-09-BZ**

218-51 Hempstead Avenue, Northwest corner of intersection of Hempstead Avenue, Block 10766, Lot(s) 38,46,48,51, Borough of **Queens, Community Board: 13.** Special Permit (73-52) to allow accessory commercial parking.

-----

**225-09-BZ**

45 Beacon Avenue, Beacon Avenue c/o Luigi Place., Block 948, Lot(s) 27, Borough of **Staten Island, Community Board: 2.** Variance (72-21) to allow a one family home, contrary to use regulations.

-----

**226-09-BZ**

24 East 13th Street, South side of East 13th Street, 142'-2 & 3/4" west of University Place., Block 570, Lot(s) 17, Borough of **Manhattan, Community Board: 2.** Special Permit ( 73-36) to legalize the operation of a physical culture establishment.

-----

**227-09-BZ**

100-14 Roosevelt Avenue, South side of Roosevelt Avenue, distant 109.75' west of the corner of 102nd Street & Roosevelt Avenue., Block 1609, Lot(s) 8, Borough of **Queens, Community Board: 4.** Variance (72-21) to allow a two story commercial building, contrary to use regulations.

-----

**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

---

**JULY 28, 2009, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 28, 2009, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**441-31-BZ**

APPLICANT – Ian Peter Barnes, IPB Associates, for Gurdev Singh Kang, owner.

SUBJECT – Application April 24, 2009 – Extension of Term/waiver for a Gasoline Service Station with accessory convenience store in a C2-2/R5 zoning district which expired on April 26, 2007.

PREMISES AFFECTED – 7702 Flatlands Avenue, southeast corner of Flatlands Avenue and East 77<sup>th</sup> Street, Block 8014, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

-----

**271-81-BZ**

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corporation, owners; New York Health and Racquet Club, lessees.

SUBJECT – Application June 4, 2009 – Extension of Term (73-11) to reopen waive the rules and amend special permit for a term of ten years for physical culture establishment.

PREMISES AFFECTED – 110/112 West 56<sup>th</sup> Street, Block 1008, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #5M**

-----

**128-04-BZ**

APPLICANT – Marvin B. Mitzner, Esq., for Park East Day School, Incorporated, owner.

SUBJECT – Application June 24, 2009 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy/waiver to a previously granted Variance for the enlargement of an existing school, in an R8B zoning district, which expired on December 14, 2008.

PREMISES AFFECTED – 162-168 East 68<sup>th</sup> Street, south side of East 68<sup>th</sup> Street, 100' west of Third Avenue, Block 1402, Lots 41 & 42, Borough of Manhattan.

**COMMUNITY BOARD #8M**

-----

**197-05-BZ**

APPLICANT – Marvin Mitzner, Esq., for B&E 813 Broadway Realty, owner.

SUBJECT – Application April 17, 2009 – Reopening for an amendment to the resolution for full commercial coverage on the ground floor and commercial FAR of 0.82. Zoning District C6-1.

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

**COMMUNITY BOARD #2M**

-----

**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**

-----

**55-09-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary Kay Rail and William Kahaly, lessees.

SUBJECT – Application April 9, 2009 – Proposed reconstruction and enlargement of an existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law and the proposed upgrade of an existing no conforming private disposal system in the bed of the service road contrary to Department of Buildings policy. R4 Zoning District.

PREMISES AFFECTED – 1 Kildare Walk, southeast corner of Kildare Walk and Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

-----

---

# CALENDAR

---

**JULY 28, 2009, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 28, 2009, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**ZONING CALENDAR**

**53-09-BZ**

APPLICANT – Harold Weinberg, P.E., for David Salamon, owner.

SUBJECT – Application April 6, 2009 – Variance (§72-21) for the construction of a three-family home on a vacant undersized lot. This application seeks to vary floor area (§23-141); front yard (§23-45) side yard (§23-461) and parking (§25-161) in an R5 zoning district.

PREMISES AFFECTED – 540 Schenck Avenue, southwest corner of Dumont Avenue, between Schenck Avenue and Hendrix Street, Block 4075, Lot 118, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

-----

**161-09-BZ**

APPLICANT – Rizzo Group, for 25 Garfield Sparta, LLC, owner.

SUBJECT – Application April 23, 2009 – Variance (§72-21) for the development of two residential buildings (20 dwelling units) contrary to bulk regulations (ZR §23-533, §23-145, §23-711, §23-861). R6B District.

PREMISES AFFECTED – 580 Carroll Street (25 Garfield Place) Carroll Street/Garfield Place, between Fourth and Fifth Avenue, Block 951, Lot 13, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

-----

**176-09-BZ**

APPLICANT – Bryan Cave LLP/Margery Purlmutter, for City of New York, owner.

SUBJECT – Application May 25, 2009 – Special Permit pursuant to §73-64 to waive height and setback regulations (ZR §33-432) for a community facility building (Fashion Institute of Technology). C6-2 District.

PREMISES AFFECTED – 220-236 West 28<sup>th</sup> Street, south side of West 28<sup>th</sup> Street, between Seventh and Eighth Avenues, Block 777, Lots 1, 18, 37, Borough of Manhattan.

**COMMUNITY BOARD #5M**

-----

*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JULY 14, 2009  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**55-01-BZ**

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for 568 Broadway Perty, LLC, owner; Blissworld LLC, lessee. SUBJECT – Application March 31, 2009 – Extension of Term/waiver of a previously granted Special Permit (§73-36) for the continued operation of a PCE (Bliss Spa) located on portions of the second and third floors of an eleven-story mixed use building in an M1-5B zoning district which expired on April 1, 2007.

PREMISES AFFECTED – 568 Broadway, north side of Prince Street, between Broadway and Crosby Street, Block 511, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES – None.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on April 1, 2007, an extension of time to obtain a certificate of occupancy, and an amendment to reflect the current owners and operators of the PCE; and

WHEREAS, a public hearing was held on this application on June 9, 2009, after due notice by publication in *The City Record*, and then to decision on July 14, 2009; and

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

WHEREAS, the PCE is located on the north side of Prince Street, between Broadway and Crosby Street, in an M1-5B zoning district within the SoHo Cast Iron Historic District; and

WHEREAS, the site is located in portions of the second and third floors of a 12-story commercial building; and

WHEREAS, the PCE has a total floor area of 8,408 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 7, 2001 when, under the subject calendar number, the Board granted a special permit to legalize a physical culture establishment in the subject building, to

expire on April 1, 2007; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years and to extend the time to obtain a new certificate of occupancy ; and

WHEREAS, the applicant also seeks an amendment to reflect the change of ownership and operation of the PCE since the prior grant; and

WHEREAS, the Board notes that the Department of Investigation has approved the change of ownership and operation of the PCE; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term, extension of time to obtain a certificate of occupancy, and amendment to the previous grant 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, as adopted on August 7, 2001, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years, to expire on April 1, 2017, and to extend the time to obtain a certificate of occupancy to January 14, 2010, *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

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

THAT a certificate of occupancy shall be obtained by January 14, 2010;

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 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;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 110436939)

Adopted by the Board of Standards and Appeals, July 14, 2009.

**198-66-BZ**

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners Corporation, owner.

SUBJECT – Application June 8, 2009 – Extension of Time to complete substantial construction of an existing plaza for a residential high rise building which expires on July 28, 2009; located in a C1-9 zoning district.

PREMISES AFFECTED – 300 East 74<sup>th</sup> Street, between first and Second Avenues, Block 1448, Lot 3, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

---

# MINUTES

---

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 11, 2009, at 10 A.M., for continued hearing.  
-----

## **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 §73-11 to 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 –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to August 11, 2009, at 10 A.M., for decision, hearing closed.  
-----

## **200-00-BZ**

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owner.

SUBJECT – Application June 1, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Physical Culture Establishment (Squash Total Fitness), in a C1-4(R6B) zoning district, which expired on February 19, 2009.

PREMISES AFFECTED – 107-24 37<sup>th</sup> Avenue, southwest corner of 37<sup>th</sup> Avenue and 108<sup>th</sup> Street, Block 1773, Lot 10, Borough of Queens.

### **COMMUNITY BOARD #3Q**

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 28, 2009, at 10 A.M., for decision, hearing closed.  
-----

## **26-02-BZ**

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; A & A Automotive Corporation, lessee. SUBJECT – Application June 8, 2009 – Extension of Time to obtain a Certificate of Occupancy for a UG16 Gasoline Service Station (Mobil), in a C1-2(R3X) zoning district, which expires on July 13, 2009.

PREMISES AFFECTED – 1680 Richmond Avenue, north west corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

### **COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Cindy Bachan.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 28, 2009, at 10 A.M., for decision, hearing closed.  
-----

## **322-05-BZ**

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application June 8, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for an enlargement of a single family home and the change in use from Residential to Community Use Facility (Queens Jewish community Council), located in an R4B zoning district, which will expire on March 7, 2010.

PREMISES AFFECTED – 69-69 Main Street, Main Street and 70<sup>th</sup> Avenue, Block 6642, Lot 1, Borough of Queens.

### **COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 28, 2009, at 10 A.M., for decision, hearing closed.  
-----

# MINUTES

## APPEALS CALENDAR

### 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 27<sup>th</sup> Street, Block 422, Lot 9, Borough of Queens.

### COMMUNITY BOARD #1Q

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 Montanez.....5  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, the Department of Buildings (“DOB”) seeks to modify Certificate of Occupancy Number 400872631 (the “Current CO”), issued to the subject premises on June 17, 1999, on the basis that it improperly reflects a non-conforming adult establishment on the second floor of the existing building located at the premises; and

WHEREAS, a public hearing was held on this application on June 16, 2009, after due notice by publication in the *City Record*, and then to decision on July 14, 2009; and

WHEREAS, representatives of Queens Off Broadway Corp., the lessee of the second floor of the subject building (hereinafter, the “Opposition”), testified at hearing and made submissions to the record in opposition to the application; and

WHEREAS, the owner of the subject building testified in opposition to the application; and

WHEREAS, the subject premises is located on the southeast corner of Queens Plaza South and 27<sup>th</sup> Street, in an M1-6/R10 zoning district within the Special Long Island City Mixed-Use District; and

WHEREAS, the Current CO reflects the following uses: (i) Use Group 8 parking garage and accessory uses in the cellar; (ii) Use Group 6 retail store and office on the first floor; and (iii) Use Group 12A adult eating and drinking establishment with entertainment and a capacity of more than 200 persons or an establishment of any capacity with dancing on the second floor; and

WHEREAS, DOB asserts that the adult establishment use on the second floor became a non-conforming use on July 26, 2001, when the premises was rezoned to an M1-6/R10 zoning district within the Special Long Island City Mixed-Use District; and

WHEREAS, DOB states that, pursuant to ZR § 42-01(a), adult establishments are prohibited in manufacturing districts in which residential use is permitted as-of-right; and

WHEREAS, DOB further states that, pursuant to ZR § 123-20, Special Mixed-Use Districts, such as the subject

district, permit residential use as-of-right; and

WHEREAS, DOB further states that, pursuant to ZR § 52-77, a non-conforming adult establishment must terminate within one year from the date it becomes non-conforming; thus, because the rezoning became effective on July 26, 2001, the adult establishment use at the subject building should have terminated on or before July 26, 2002; and

WHEREAS, ZR § 52-77 provides, in pertinent part, “a non-conforming adult establishment shall terminate within one year from October 25, 1995, or from such later date that the adult establishment becomes nonconforming...However, the provisions of this Section shall not apply to an adult establishment subject to the provisions of paragraph (f) of Section 32-01 or 42-01;” and

WHEREAS, ZR § 42-01(f) provides that, “[a]dult establishments which were established on October 25, 1995 and conform to all provisions of the Zoning Resolution relating to adult establishments other than the provisions of all or any combination of paragraphs (c), (d) and (e) of this Section, shall not be subject to the provisions of Section 52-77;” and

WHEREAS, the Opposition argues that the appeal should be denied because, pursuant to ZR § 42-01(f), the premises is not subject to ZR § 52-77 since it was in existence prior to October 25, 1995; and

WHEREAS, in support of its claim that the adult establishment use on the second floor was in existence prior to October 25, 1995, the Opposition submitted an affidavit from the owner of the building and Certificate of Occupancy Number Q207752 (the “Prior CO”), issued to the subject premises on April 8, 1988, which indicated a Use Group 12 eating and drinking place with entertainment and dancing was permitted on the second floor of the subject building; and

WHEREAS, DOB asserts that the exception set forth in ZR § 42-01(f) applies only if: (1) the use was established prior to October 25, 1995; and (2) such establishment otherwise conforms to all adult establishment provisions of the Zoning Resolution other than paragraphs (c), (d) and (e) of ZR § 42-01; and

WHEREAS, thus, DOB states that an adult establishment that was in existence on October 25, 1995 but does not conform to ZR § 42-01(a) by virtue of a zoning map change adopted subsequent to October 25, 1995 is not covered by ZR § 42-01(f), and such adult establishment is required to terminate within one year from the date the adult establishment becomes non-conforming, as per ZR § 52-77; and

WHEREAS, as noted above, DOB states that the adult establishment use at the subject premises became non-conforming on July 26, 2001 when the zoning district in which it lies changed from an M1-5 district to an M1-6/R10 district within the Special Long Island City Mixed-Use District, and therefore it no longer conforms to ZR § 42-01(a) and should have terminated on or before July 26, 2002; and

WHEREAS, DOB concludes that proof of whether the subject adult establishment existed prior to October 25, 1995 is irrelevant to the question of whether the adult establishment is currently permitted because it does not comply with ZR § 42-01(a), which provides that adult establishments are not permitted in manufacturing districts in which residences are

# MINUTES

allowed as-of-right; and

WHEREAS, the Board agrees with DOB that the subject adult establishment does not conform to ZR § 42-01(a) by virtue of the rezoning of the premises to an M1-6/R10 district within the Special Long Island City Mixed-Use District on July 26, 2001, and therefore ZR § 42-01(f) is inapplicable to the subject premises; and

WHEREAS, accordingly, the Board finds that the adult establishment use should have been terminated on or before July 26, 2002, pursuant to ZR § 52-77; and

WHEREAS, therefore, the Board finds that the reference on the Current CO to adult establishment use on the second floor is contrary to the provisions of the Zoning Resolution.

*Therefore it is Resolved* that the application brought by the Deputy Commissioner of the Department of Buildings on January 13, 2009, seeking to modify Certificate of Occupancy No. 400872631 by removing any reference to "adult establishment" on the second floor, is hereby granted.

Adopted by the Board of Standards and Appeals, July 14, 2009.

-----

## **140-08-BZY**

APPLICANT – Eric Palatnik, P.C., for 1016 East 13<sup>th</sup> Realty, LLC, owner.

SUBJECT – Application April 5, 2008 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 district regulations. R5 zoning district.

PREMISES AFFECTED – 1016 East 13<sup>th</sup> Street, between Avenue J and K, Block 6714, Lot 11, Borough of Brooklyn.

### **COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 25, 2009, at 10 A.M., for an adjourned hearing.

-----

## **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.

For Opposition: Judy Gallent.

For Administration: Lisa Orrantia, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to October 27, 2009, at 10 A.M., for an adjourned 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**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to August 25, 2009, at 10 A.M., for postponed hearing.

-----

## **165-09-A**

APPLICANT – Law Office of Howard Goldman, for 13 Hendricks LLC, owner.

SUBJECT – Application April 30, 2009 – Appeal seeking a determination that the owner has acquired common law vested rights for a development commenced under the prior R4 district regulations. R3 Zoning district.

PREMISES AFFECTED – 150 Hendricks Avenue, between Jersey Street and Bismark Avenue, Block 44, Lot 15, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

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 July 28, 2009, at 10 A.M., for decision, hearing closed.

-----

## **172-09-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Susan & Brett Flynn, lessees.

SUBJECT – Application May 19, 2009 – 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.

PREMISES AFFECTED – 10 Gotham Walk, west side of Gotham Walk, 105.46' south of mapped Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

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

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 28, 2009, at 10 A.M., for postponed hearing.

-----

# MINUTES

## 191-09-A

APPLICANT – Michael T. Cetera, AIA, for Devorah Halberstam, owner.

SUBJECT – Application June 16, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced prior to the text amendment of April 30, 2008. R2 zoning district.

PREMISES AFFECTED – 1291 Carroll Street, north side, 60’ west of the intersection of Brooklyn Avenue and Carroll Street, Block 1284, Lot 48, Borough of Brooklyn.

### COMMUNITY BOARD #9BK

#### APPEARANCES –

For Applicant: Michael T. Cetera.

#### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 28, 2009, at 10 A.M., for decision, hearing closed.

-----

## REGULAR MEETING TUESDAY AFTERNOON, JULY 14, 2009 1:30 P.M.

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

-----

## ZONING CALENDAR

### 222-07-BZ

APPLICANT – Stuart A. Klein, Esq., for Century Realty Corp./Randall Co. LLC., owner.

SUBJECT – Application September 27, 2007 – Variance pursuant to §72-21 to legalize residential uses on the second and third floor of an existing building. M1-6 District.

PREMISES AFFECTED – 110 West 26<sup>th</sup> Street, between Sixth Avenue and Seventh Avenue, Block 801, Lot 49, Borough of Manhattan.

### COMMUNITY BOARD #4M

#### APPEARANCES –

For Applicant: Abigail Patterson.

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

#### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 27, 2007, acting on Department of Buildings Application No. 100495144, reads in pertinent

part:

“Proposed residential use at 2<sup>nd</sup> and 3<sup>rd</sup> floors (UG 2) in Manufacturing District M1-6 is not permitted as-of-right and is contrary to ZR 42-10;” and

WHEREAS, this is an application under ZR § 72-21, to legalize Use Group 2 residential use of the second and third floors of a seven-story mixed-use commercial/residential building, within an M1-6 zoning district, contrary to ZR §§ 42-00 and 42-133; and

WHEREAS, a public hearing was held on this application on March 31, 2009, after due notice by publication in the *City Record*, with continued hearings on April 28, 2009 and June 9, 2009, and then to decision on July 14, 2009; and

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

WHEREAS, Community Board No. 4, Manhattan, has no objection to the proposed application; and

WHEREAS, the site is located on the south side of West 26<sup>th</sup> Street, between Sixth Avenue and Seventh Avenue, within an M1-6 zoning district; and

WHEREAS, the subject zoning lot is approximately 41’-5” wide by 98’-9” deep, with a total lot area of approximately 4,090 sq. ft.; and

WHEREAS, the site is currently occupied by a seven-story mixed-use commercial/residential building, with retail uses located on the cellar level and first floor, illegal residential units located on the second and third floors, and rent-stabilized Interim Multiple Dwelling (“IMD”) units located on the fourth through seventh floors; and

WHEREAS, the applicant notes that the owner purchased the rights to four of the original eight IMD units in the building pursuant to Multiple Dwelling Law § 286.12, enabling the rental of those four units at market rate; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the subject building and zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: the building is obsolete for modern manufacturing and commercial uses in that it has small floor plates, only one passenger size elevator and no freight elevators, low floor-to-ceiling heights, columns spaced at narrow intervals, a deficient floor loading capacity, and rent-stabilized IMD units on the fourth through seventh floors; and

WHEREAS, the applicant concludes that these features combine to create unnecessary hardship and practical difficulties in using the building for a conforming use; and

WHEREAS, the applicant states that the subject building provides a floor plate size of approximately 3,700 sq. ft. per floor; and

WHEREAS, the applicant represents that the small size of the floor plates limits the efficient use of space for commercial or manufacturing uses; and

WHEREAS, as to the elevator, the applicant states that the subject building lacks a freight elevator and provides only one small passenger elevator; and

---

# MINUTES

---

WHEREAS, the applicant represents that the presence of only one small passenger elevator creates a hardship in accommodating conforming commercial or manufacturing use because it is inadequate to service such use above the first floor and it requires IMD residents and tenants of the commercial units to share an elevator; and

WHEREAS, the applicant further represents that this creates security issues for the building's residents, in that every visitor would have access to the entire residential portion of the building through the shared elevator; and

WHEREAS, the applicant further represents that any deliveries to commercial tenants would disrupt the residential tenants' access to their homes; and

WHEREAS, the Board requested that the applicant establish that the small floor plates and single elevator are in fact unique building conditions by submitting an analysis of neighboring buildings, showing whether such buildings had the same conditions as the subject building; and

WHEREAS, the applicant initially studied sites with lot widths between 36 feet and 46 feet in the area from West 24<sup>th</sup> Street to West 28<sup>th</sup> Street, from 6<sup>th</sup> Avenue to 7<sup>th</sup> Avenue, but at the request of the Board expanded the study to include all sites with lot widths of 46 feet or less; and

WHEREAS, the applicant's analysis reflects that although there are a significant number of similarly small sites, only 16 of the 61 lots included in the study area are similar to the subject site in that they provide only one elevator and have a mix of uses above the first floor; and

WHEREAS, the Board notes that the applicant's study analyzed 71 lots, however the Board discounted ten lots that are located along Sixth Avenue within a C6-4X zoning district, in which residential use is permitted as-of-right; and

WHEREAS, as to the ceiling heights, the applicant represents that the subject building provides nine-foot floor-to-ceiling heights which are more compatible with residential use, and are not suitable for conforming commercial or manufacturing use; and

WHEREAS, the applicant submitted a study by a financial consultant which reflects that the subject building's low floor-to-ceiling heights result in a competitive disadvantage for modern manufacturing and commercial use; the study notes that the subject building's floor-to-ceiling heights are 12 percent lower than those of the adjacent building; and

WHEREAS, as to the column-spacing, the applicant states that the subject building provides vertical columns that run the depth of the building at ten-foot intervals; and

WHEREAS, the applicant represents that the ten-foot intervals between the columns create narrow bays which make manufacturing or commercial use infeasible; and

WHEREAS, as to the floor loading capacity, the Board finds that the evidence submitted by the applicant reflects that the floor loading capacity for the subject building, at 100 pounds per square foot, is not unusual for the surrounding area and therefore should not be considered a unique physical condition; and

WHEREAS, as to the IMD status of certain units of the subject building, the Board disagrees that the mere presence of

IMD units and other tenancy issues is either unique or an unnecessary hardship; and

WHEREAS, the Board observes that the applicant has not demonstrated any nexus between the presence of IMD units rather than market rate units and the feasibility of conforming uses on the second and third floors; and

WHEREAS, the Board notes that such a condition is not unique since rent-controlled or rent-stabilized units are found in buildings within the surrounding area and throughout the city; and

WHEREAS, the Board further notes that the tenancy of the building does not relate to the physical conditions of the site; and

WHEREAS, based upon the above, the Board finds that certain of the conditions cited by the applicant, namely the small floor plates, the presence of one passenger elevator and no freight elevator, low floor-to-ceiling heights, and the columns spaced at ten-foot intervals create unnecessary hardship and practical difficulties in strictly conforming with the applicable provision of the Zoning Resolution; and

WHEREAS, as to the (b) finding, the applicant submitted a financial analysis of (i) an as-of-right scenario, and (ii) the proposed scenario, and concluded that the as-of-right scenario would not result in a reasonable return while the proposed scenario would result in a reasonable return; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following as-of-right scenario: retail use on the first floor, commercial use on the second and third floor, market rate residential use on the fourth and sixth floors, and IMD tenant use on the fifth and seventh floors; and

WHEREAS, the applicant notes that the feasibility analysis contemplates different types of uses on the fourth through seventh floors because the owner of the subject building purchased the rights to four of the original eight IMD units in the building, enabling the rental of those units at market rate; and

WHEREAS, the applicant concluded that such a scenario would not realize a reasonable return; and

WHEREAS, however, the Board had concerns regarding certain aspects of this study; and

WHEREAS, specifically, the Board raised concerns about the applicant's inclusion of the regulated low rents paid by some of the IMD tenants to support the lack of a reasonable return for the as-of-right scenario; and

WHEREAS, the applicant asserts that the Board has considered depressed rent rolls in past variance decisions, citing BSA Cal. No. 399-04-BZ as a case in which the Board granted a variance for a building containing two rent-stabilized IMD units; and

WHEREAS, the Board has reviewed the resolution for BSA Cal. No. 399-04-BZ and finds that the applicant has misinterpreted the Board's decision; and

WHEREAS, although the Board granted a variance for a building containing two rent-stabilized IMD units in BSA Cal. No. 399-04-BZ, the resolution specifically notes that the applicant in that case "assumed full market value for the IMD units in calculating return;" and

WHEREAS, thus, the Board disagrees with the

---

# MINUTES

---

applicant's assertion that the rent-stabilized IMD units should be included as part of the financial burden in calculating return; and

WHEREAS, in response to the Board's concerns, the applicant submitted a revised feasibility study that contemplates use of the existing building with retail on the ground floor, commercial loft use on the second, third, fifth and seventh floors, and market rate residential use on the fourth and sixth floors; and

WHEREAS, the revised feasibility study concludes that the as-of-right scenario would not realize a reasonable return, and that the financial burden is due to the physical challenges and marketability associated with the commercial loft space in the building and not because of the existing below market rental income associated with the rent-stabilized IMD units; and

WHEREAS, therefore, the Board has determined that because of the subject lot's unique physical conditions there is no reasonable possibility that development in strict conformity with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance, if granted, will not negatively impact the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant represents that the character of the community is mixed-use in nature, including a large amount of residential uses; and

WHEREAS, the applicant submitted a 400-foot radius diagram indicating that 14 of the 27 lots on the subject block include residential units; and

WHEREAS, specifically, the applicant states that the adjacent property to the east of the subject site is a 33-story mixed-use building with 227 residential units, the adjacent property to the south of the subject site is a six-story multiple dwelling, and the adjacent property to the west of the subject site is a 12-story multiple dwelling; and

WHEREAS, the applicant further states that three other buildings on the subject block have IMD units; and

WHEREAS, based upon the evidence submitted, the Board agrees that the neighborhood in which the subject site is located is best characterized as mixed-use; and

WHEREAS, the Board also finds that the proposal only contemplates the legalization of four residential units, which is compatible with the mixed-use character of the neighborhood; and

WHEREAS, accordingly, the Board finds that the variance, if granted, will not negatively impact the character of the neighborhood; and

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

WHEREAS, based upon the above, 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 6NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental

review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08-BSA-048M dated December 31, 2007; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21 and grants a variance to permit, in an M1-6 zoning district, the legalization of residential use on the second and third floors of a seven-story mixed-use commercial/residential building, contrary to ZR §§ 42-00 and 42-133; *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"– (3) sheets; and *on further condition*;

THAT required egress, light and air shall be reviewed by DOB;

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

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

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

Adopted by the Board of Standards and Appeals, July 14, 2009.

-----

## 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 that does not meet the rear yard requirement (§23-47) in an R3-2 (SRD) zoning district.

# MINUTES

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.

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

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Superintendent, dated March 19, 2008, acting on Department of Buildings Application No. 510017866, reads in pertinent part:

“Proposed construction one-family, Use Group 1, detached, three-story residential building in residential district R3-2 located in Special South Richmond District without rear yard is contrary to Section 23-47 of the Zoning Resolution and therefore referred to the Board of Standards and Appeals for variance;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-2 zoning district within the Special South Richmond Development District, the proposed construction of a three-story single-family home that does not provide the required rear yard contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on February 3, 2009, after due notice by publication in *The City Record*, with continued hearings on February 24, 2009, March 24, 2009, April 21, 2009, May 19, 2009 and June 16, 2009, and then to decision on July 14, 2009; and

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

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

WHEREAS, the site is located on the south side of Drumgoole Road, between Brandis Avenue and Wainwright Avenue, in an R3-2 zoning district within the Special South Richmond Development District; and

WHEREAS, the site has a width of approximately 103 feet, a depth of 80 feet, and a total lot area of approximately 3,586 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a three-story single-family home on the site; and

WHEREAS, the proposed home will have the following complying parameters: approximately 1,958 sq. ft. of floor area (0.54 FAR, 0.60 FAR is the maximum permitted with an attic bonus); a lot coverage of approximately 23 percent; a perimeter wall height of 20'-6"; a total height of 35'-0"; and a front yard of 20'-0"; and

WHEREAS, however, the applicant proposes to provide a rear yard with a depth of 5'-0" (a minimum depth of 30'-0" is required); and

WHEREAS, the applicant has provided documentation establishing that the subject lot was owned separately and individually from all other adjoining tracts of land as of December 15, 1961, and as of the date of application for a building permit, and is therefore an undersized lot pursuant to ZR § 23-33; and

WHEREAS, the Board notes that ZR § 23-33 exempts the lot area requirement for a single-family dwelling on a pre-existing undersized lot, but the rear yard requirement remains; and

WHEREAS, the applicant represents that rear yard relief is necessary for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the subject lot's irregular shape; and

WHEREAS, the applicant states that the site is a vacant, triangular-shaped lot that cannot feasibly accommodate as-of-right development; and

WHEREAS, the Board notes that the site is one of two triangular-shaped sites within a 200-foot radius and one of three vacant sites within a 400-foot radius; and

WHEREAS, the applicant represents that the requested rear yard waiver is necessary to develop the site with a viable home; and

WHEREAS, the applicant states that compliance with the applicable bulk regulations would result in a triangular-shaped home with a width of 17 feet, a depth of 26 feet, and a floor plate of only 221 sq. ft.; and

WHEREAS, the applicant asserts that a complying home would therefore result in narrow rooms and no interior corridors; and

WHEREAS, the applicant further states that the New York State Department of Transportation ("NYSDOT") maintains a slope easement along the length of the Drumgoole Road frontage of the site, for a depth of approximately 20 feet; and

WHEREAS, the applicant represents that, as a result of the NYSDOT easement, the applicant is unable to increase the depth of the rear yard by relocating the proposed home closer to Drumgoole Road; and

WHEREAS, the applicant submitted a letter from NYSDOT indicating that the owner was granted the right to use the easement area for storm and sewer equipment, a driveway, and a walkway only; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable rear yard regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

---

# MINUTES

---

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that the building's proposed bulk complies with zoning district regulations and is compatible with the neighborhood character; and

WHEREAS, the applicant notes that because of the orientation of the triangular site and the compliance of all other yards, the distance maintained between the subject home and homes on adjacent sites is compatible with the neighborhood character; and

WHEREAS, the applicant further notes that the abutting rear yards of adjoining lots significantly exceed the 30-foot minimum requirement of the underlying R3-2 zoning district and therefore minimize any impact of the proposed variance; and

WHEREAS, in support of this statement, the applicant submitted a survey indicating that the attached dwellings located to the east of the subject lot, adjacent to the proposed rear yard, are located 80 feet from the subject lot, and the attached dwellings located to the south of the subject lot, adjacent to the proposed rear yard, are located 40'-6" from the subject lot; and

WHEREAS, the applicant's initial proposal did not provide a rear yard setback at the third floor, such that the third floor was located five feet from the rear lot line; and

WHEREAS, at hearing, the Board questioned whether the third floor of the proposed home could be setback along the rear lot line to make the home more compatible with neighborhood character; and

WHEREAS, in response, the applicant revised its proposal to provide an 8'-4" rear yard setback at the third floor of the proposed home, such that the proposed third floor will be 13'-4" from the rear lot line; and

WHEREAS, the Board notes that the complying open space ratio and yards meet or exceed zoning district requirements; and

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

WHEREAS, the applicant states that the hardship 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 Community Board 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 to 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 a result of the historical lot dimensions; and

WHEREAS, the Board notes that the proposal complies with all R3-2 zoning district regulations except for the required rear yard; and

WHEREAS, as noted above, during the hearing process the applicant revised its plans to increase the rear yard setback at the third floor of the proposed home to 8'-4", such that the third floor will be a total of 13'-4" from the rear lot line; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, in an R3-2 zoning district within the Special South Richmond Development District, the proposed construction of a three-story single-family home that does not provide the required rear yard and is contrary to ZR § 23-47; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 9, 2009" – (12) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: approximately 1,958 sq. ft. of floor area (0.54 FAR); a maximum lot coverage of approximately 23 percent; a perimeter wall height of 20'-6"; a total height of 35'-0"; a front yard of 20'-0"; a rear yard with a minimum depth of 5'-0"; and two parking spaces, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT significant construction shall proceed in accordance with 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;

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

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

Adopted by the Board of Standards and Appeals, July 14, 2009.

-----

## **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.

# MINUTES

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

## COMMUNITY BOARD #8M

APPEARANCES – None.

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

**THE VOTE TO WITHDRAWN** –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, July 14, 2009.

-----

## 259-08-BZ

### CEQR #09-BSA-039Q

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 61<sup>st</sup> Avenue, Douglaston Parkway at 61<sup>st</sup> Avenue, Block 8266, Lot 185, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES – None.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Superintendent, dated October 16, 2008, acting on Department of Buildings Application No. 410156361, reads in pertinent part:

“Proposed enlargement will increase the degree of non-conforming use of the building. Enlargement will increase the degree of non-conforming use requires BSA approval;” and

WHEREAS, this is an application under ZR §72-21, to permit, within an R4 zoning district, the enlargement of a pre-existing non-conforming one-story commercial building (Use Group 6) which does not conform to district use regulations, contrary to ZR § 52-41; and

WHEREAS, a public hearing was held on this application on April 28, 2009, after due notice by publication in *The City Record*, with continued hearings on May 19, 2009 and June 16, 2009, and then to decision on July 14, 2009; and

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

and

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, the Queens Borough President provided written testimony in support of the application; and

WHEREAS, New York State Assembly Member Mark S. Weprin provided written testimony in support of the application; and

WHEREAS, certain community members, including a residents and representatives of the Beech Hills Cooperative, submitted written and oral testimony in support of the application; and

WHEREAS, the subject site is located within an R4 zoning district on a lot bordered on the west by Douglaston Parkway and on the north by 61<sup>st</sup> Avenue, and

WHEREAS, the site is an irregularly-shaped lot with a lot area of approximately 540,023 sq. ft.; and

WHEREAS, the site is occupied by Douglaston Plaza Shopping Mall, a three-level shopping mall with 297,516 sq. ft. of floor area and 1,282 accessory parking spaces; and

WHEREAS, the site slopes steeply down along Douglaston Parkway from its northern border along 61<sup>st</sup> Avenue; accordingly, the shopping center is built on three levels (first floor, cellar, and sub-cellar) and is occupied by four free-standing buildings with eight retail tenants; and

WHEREAS, the applicant states that the shopping center was built in approximately 1961 and was approved pursuant to the 1916 Zoning Resolution and is thus a pre-existing non-conforming use within the subject R4 zoning district; and

WHEREAS, however, due to a prior change in use from the pre-existing non-conforming use to another non-conforming use, a portion of the site is the subject of a Board grant; and

WHEREAS, on January 4, 1983, the Board granted a variance under BSA Cal. No. 370-82-BZ to permit the conversion of retail space to a seven-theater multiplex cinema (Use Group 8) use to occupy the largest building at the site; and

WHEREAS, only the sub-cellar building currently occupied by a supermarket (the “Supermarket Building”) with a 42,557 sq. ft. building is the subject of the current variance request; and

WHEREAS, the Board notes that in August 2006, the applicant proposed to convert the existing supermarket (Use Group 6) to a consumer electronics store (Use Group 10); that application was ultimately withdrawn; and

WHEREAS, the current application does not propose any changes to the other three buildings, including the one occupied by the cinema; and

WHEREAS, the applicant notes that, without a use variance for another non-conforming use, the use of the Supermarket Building is limited to Use Group 6 and the Zoning Resolution limits the size of Use Group 6 uses to 10,000 sq. ft.; and

WHEREAS, because of the large amount of floor area of the Supermarket Building, if another Use Group 6 use were introduced into the space, it would require a subdivision of the large building; and

---

# MINUTES

---

WHEREAS, the applicant notes that supermarket use is one of the few Use Group 6 uses that does not have any limitation on floor area; thus, the applicant currently seeks to replace the existing supermarket use with another supermarket use in the Supermarket Building; and

WHEREAS, the existing Waldbaum's supermarket which has occupied the site for decades is now leaving the site and a Fairway supermarket is proposed to be the new tenant; and

WHEREAS, the applicant asserts that in order to find a new viable tenant without the requirement for a use waiver, a waiver is required to permit the enlargement of the Supermarket Building to accommodate a modern supermarket use; and

WHEREAS, accordingly, the applicant seeks a variance to permit the enlargement of the pre-existing non-conforming Use Group 6 use within the Supermarket Building; and

WHEREAS, the applicant proposes to enlarge the existing Supermarket Building by adding 3,500 sq. ft. of retail space and 11,644 sq. ft. of storage and food preparation area for a total increase of 15,144 sq. ft. (a total increase from 42,557 sq. ft. to 57,701 sq. ft.); the building enlargement will be adjacent to the Supermarket Building and will occupy space currently occupied by a parking lot; the enlargement will result in the reduction of the number of parking spaces from 1,282 to 1,265 (17 spaces); and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the site's topography; (2) the historic use of the Supermarket Building; and (3) the obsolescence of the existing Supermarket Building for modern use; and

WHEREAS, as to the site's topography, the large irregularly-shaped zoning lot slopes steeply downward from its northern boundary along 61<sup>st</sup> Avenue; and

WHEREAS, the applicant asserts that in order to develop this constrained site, the shopping center was constructed on three decked levels; and

WHEREAS, the decked parking level above the lowest level creates very limited retail visibility and limits the viability of that portion of the site for retail use; and

WHEREAS, accordingly, the applicant states that if the Supermarket Building were subdivided into multiple Use Group 6 retail spaces with fewer than 10,000 sq. ft., it would not be marketable because the subdivided space would be (1) constrained in terms of narrow or shallow spaces or (2) result in a configuration where only one store benefits from the necessary visibility from the street; and

WHEREAS, as to the history of use at the Supermarket Building, the applicant notes that the building was designed for a supermarket and that, rather than seek a use variance to permit a change in use group for a retail use that exceeds the 10,000 sq. ft. floor area limitation, for example, additional floor area is required to maintain a supermarket use; and

WHEREAS, as to the obsolescence of the building, the applicant asserts that the design and demands of supermarkets have changed significantly in the decades since the shopping

center was built; and

WHEREAS, as to the design, the applicant asserts that modern supermarkets are generally in the range of 60,000 sq. ft. to 85,000 sq. ft.; and

WHEREAS, as to the demands, the applicant represents that the trend in modern supermarkets is to offer a larger selection of fresh and prepared foods; and

WHEREAS, the applicant represents that fresh foods require greater amounts of storage area and prepared foods require preparation areas for staff to cook, bake, and package food; and

WHEREAS, the applicant represents that an additional 15,144 sq. ft. above the existing 42,557 sq. ft. is required to provide enough space for a viable modern supermarket; and

WHEREAS, the applicant represents that the increase in space will be dedicated primarily to storage space and food preparation areas to serve these modern supermarket needs; and

WHEREAS, in support of this claim, the applicant submitted (1) testimony from real estate brokers who tried, without success, to market the Supermarket Building to another supermarket use, (2) a City study on the challenges confronting the supermarket industry, and (3) additional studies and analyses about modern supermarket requirements; and

WHEREAS, further, one real estate broker detailed the efforts to secure a supermarket tenant and explained that the Supermarket Building did not fit the prototype for supermarket size and would require a complete retrofit; 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 submitted a feasibility study which analyzed (1) two possible layouts for the subdivision of the Supermarket Building into five smaller Use Group 6 units, (2) a single Use Group 6 use in the existing Supermarket Building without enlargement, and (3) the proposed enlargement; and

WHEREAS, the study concluded that (1) the constrained smaller spaces would result in unmarketable space and (2) the existing space is obsolete and too small for a single Use Group 6 tenant and is thus unmarketable; and

WHEREAS, additionally, noting that street frontage and visibility are key factors in marketing a retail space, the applicant asserts that there would be a 75 percent vacancy rate due to unattractive, difficult layout and space configuration; and

WHEREAS, the feasibility study reflected that only the proposal would realize a reasonable return; and

WHEREAS, based upon the above, 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 zoning will provide a reasonable return; 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

---

# MINUTES

---

or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the Supermarket Building and supermarket use have occupied the site for decades; and

WHEREAS, in addition to compatibility with the other commercial uses at the shopping center, the supermarket use is adjacent to residential use, which it serves and with which it is deemed to be compatible; and

WHEREAS, as to the reduction of the parking lot by 17 parking spaces, the applicant notes that the increased floor area is required primarily for food storage and preparation and not additional open store space, which may generate the need for more parking; and

WHEREAS, additionally, the applicant notes that the proposed supermarket will provide an elevator to transport visitors to the upper deck parking area, which was not formerly conveniently accessible to visitors to the Supermarket Building; and

WHEREAS, the Board agrees that based on the fact that the additional floor area will be primarily dedicated to storage and food preparation, and based upon the parking survey, the proposed reduced parking appears to be sufficient; and

WHEREAS, the applicant's traffic study reflects that the anticipated increased parking demand of 42 trips during peak hours does not meet the minimum threshold for a traffic impact analysis; and

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

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

WHEREAS, the Board notes that the increase in floor area is the minimum necessary to accommodate a modern supermarket use and that the enlargement has been designed so as to limit the reduction in the number of parking spaces; 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 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. 09BSA039Q, dated March 16, 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.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R4 zoning district, the enlargement of a pre-existing non-conforming one-story commercial building (Use Group 6) which does not conform to district use regulations, contrary to ZR § 52-41; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "June 2, 2009" – Five (5) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed Supermarket Building: a maximum floor area of 57,701 sq. ft., with a minimum total of 1,265 shopping center parking spaces, as indicated on the BSA-approved plans;

THAT all signage shall comply with C1 zoning district parameters;

THAT the use of the Supermarket Building shall be limited to a Use Group 6 supermarket;

THAT all lighting shall be directed away from residences;

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

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

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

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

Adopted by the Board of Standards and Appeals, July 14, 2009.

-----

## **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.

# MINUTES

PREMISES AFFECTED – 1934 East 26<sup>th</sup> 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** – Application granted on condition.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 12, 2009, acting on Department of Buildings Application No. 310151233, reads in pertinent part:

“ZR 23-141. Proposed enlargement does not comply with floor area ratio regulations.

ZR 23-141. Proposed enlargement does not comply with lot coverage regulations.

ZR 23-46. Proposed enlargement does not comply with side yard regulations.

ZR 23-631. Proposed enlargement does not comply with wall height regulations.

ZR 23-47. Proposed enlargement does not comply with rear yard regulations;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, side yards, perimeter wall height, and rear yards contrary to ZR §§ 23-141, 23-46, 23-631, and 23-47; and

WHEREAS, a public hearing was held on this application on May 19, 2009, after due notice by publication in *The City Record*, with a continued hearing on June 19, 2009, and then to decision on July 14, 2009; 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 26<sup>th</sup> Street, between Avenue S and Avenue T, in an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of approximately 2,518 sq. ft. (1.01 FAR); and

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

WHEREAS, the applicant seeks to modify the floor area from approximately 2,518 sq. ft. (1.01 FAR) to approximately 2,350 sq. ft. (0.94 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant notes that, because the floor level of the existing basement will be excavated and lowered by 3’-7” to convert the existing basement into a cellar, the amount of zoning floor area will actually be reduced; and

WHEREAS, the applicant proposes to provide a lot coverage of approximately 47 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 0’-0” along the southern lot line (a minimum width of 5’-0” is required) and will provide a complying side yard of 5’-0” along the northern lot line; and

WHEREAS, the proposed enlargement provides a perimeter wall height of 22’-7” (a maximum perimeter wall height of 21’-0” is permitted); and

WHEREAS, the Board notes that a special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent building; and

WHEREAS, in support of making the finding, the applicant submitted a survey demonstrating that the perimeter wall height of the adjacent home is 24’-11”; therefore the perimeter wall height of the proposed home falls within the scope of the special permit; and

WHEREAS, the applicant’s original proposal included an attic and provided a perimeter wall height of 23’-3” and a total height of 34’-11”; and

WHEREAS, at hearing, the Board raised concerns as to whether the square footage in the attic should count as floor area and whether the perimeter wall height exceeded the allowable height; and

WHEREAS, in response, the applicant submitted revised plans which provided a flat roof, eliminated the attic, reduced the total height to 29’-10”, and increased the perimeter wall height to 26’-0” to match the perimeter wall height of the adjacent home, according to a survey submitted by the applicant; and

WHEREAS, in response to further concerns raised by the Board, the applicant submitted a revised survey indicating that the actual perimeter wall height of the adjacent home is 24’-11” and the actual perimeter wall height of the subject home is 22’-7”; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 25’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, the Board notes that the enlargement of the building is not located within 20’-0” of the rear lot line, as per ZR § 73-622; and

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

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

WHEREAS, the Board finds that, under the conditions

# MINUTES

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, lot coverage, side yards, perimeter wall height, and rear yards, contrary to ZR §§ 23-141, 23-46, 23-631, and 23-47; on condition that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 29, 2009"-(10) sheets; and on further condition:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 2,350 sq. ft. (0.94 FAR); a lot coverage of approximately 47 percent; a side yard with a minimum width of 5'-0" along the northern lot line and no side yard along the southern lot line; a perimeter wall height of 22'-7"; and a rear yard with a minimum depth of 25'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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

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

THAT substantial construction be completed in accordance with ZR § 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 14, 2009.

-----

## 15-09-BZ CEQR #09-BSA-064M

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

APPEARANCES –

For Applicant: Francis R. Angelino.

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

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Superintendent, dated April 27, 2009, acting on Department of Buildings Application No. 1100434741, reads in pertinent part:

"ZR 73-36. Physical culture establishment is not permitted as of right in this district. Secure approval from Board of Standards and Appeals;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the NoHo Historic District, the establishment of a physical culture establishment (PCE) on the second floor and portions of the sub-cellar, cellar and first floor of a seven-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 16, 2009 after due notice by publication in *The City Record*, and then to decision on July 14, 2009; and

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

WHEREAS, the subject site is located on the south side of Astor Place between Broadway and Lafayette Street, in an M1-5B zoning district; and

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

WHEREAS, the PCE has a total floor area of 22,567 sq. ft., which includes 6,657 sq. ft. on the first floor and 15,910 sq. ft. on the second floor, with 9,311 sq. ft. of space in the sub-cellar and 8,826 sq. ft. of space in the cellar; and

WHEREAS, the PCE will be operated as David Barton Gym; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:30 a.m. to 12:00 a.m.; Saturday, from 8:00 a.m. to 9:00 p.m.; and Sunday, from 8:00 a.m. to 11:00 p.m.; and

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

WHEREAS, the applicant represents that the proposal will not effect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission

# MINUTES

approving the proposed PCE, dated January 2, 2008; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 09BSA064M, dated May 14, 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, 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 M1-5B zoning district, the establishment of a physical culture establishment on the second floor and portions of the sub-cellar, cellar and first floor of an existing seven-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 21, 2009"- Six (6) sheets and *on further condition*:

THAT the term of this grant shall expire on July 14, 2019;

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

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

THAT the above 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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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, July 14, 2009.

-----

## 36-09-BZ

### CEQR #09-BSA-099Q

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 32<sup>nd</sup> Avenue, north side of 32<sup>nd</sup> Avenue between 51<sup>st</sup> Street and 54<sup>th</sup> Street, Block 1131, Lot 1, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Ben Weisel.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Superintendent, dated February 23, 2009, acting on Department of Buildings Application No. 410132761, reads in pertinent part:

“Proposed telecommunications facility exceeds 400 square feet allowed under TPPN # 5/98 and

---

# MINUTES

---

therefore will require a special permit from the Board of Standards and Appeals pursuant to Section 73-30 of NYC Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R5 zoning district, the proposed construction of a telecommunications facility, which consists of six panel antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on June 16, 2009, after due notice by publication in *The City Record*, and then to decision on July 14, 2009; and

WHEREAS, Community Board 1, Queens, recommends disapproval of this application, citing concerns with its potential impacts on neighborhood character and health; and

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

WHEREAS, the subject site is currently occupied by a six-story residential building; and

WHEREAS, the proposed telecommunications facility will be located on the roof of the six-story residential building, upon which existing antennas are already situated; and

WHEREAS, the applicant states that the proposed telecommunications facility consists of: (i) five panel antennas mounted to the interior of the building parapet and extending to a maximum height of six feet above the parapet; (ii) one panel antenna mounted to the building’s facade and extending to a maximum height of six feet above the facade; (iii) two new equipment cabinets, two new battery cabinets and one new PPC cabinet, to be placed on a steel equipment platform located on the rooftop; (iv) two GPS units attached to the steel equipment platform; and (v) all accessory equipment, wires, cables, conduits and other necessary appurtenances; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

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

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

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

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed facility and related

equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-099Q, dated March 3, 2009; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within an R5 zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received March 3, 2009”-(7) sheets; and *on further condition*;

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

THAT the approved plans shall be considered approved

# MINUTES

only for the portions related to the specific relief granted;  
THAT substantial construction be completed in accordance with ZR § 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, July 14, 2009.

-----  
**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 26<sup>th</sup> Street, west side of East 26<sup>th</sup> Street, between Avenue H and Avenue O, Block 7679, Lot 66, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**APPEARANCES** –

For Applicant: Marc Dell’Angelo.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated March 13, 2009, acting on Department of Buildings Application No. 310302669, reads:

- “1. The proposed FAR and OSR constitutes an increase in the degree of existing non-compliance contrary to Section 23-141 of the NYC Zoning Resolution.
2. Proposed horizontal enlargement provides less than the required rear yard contrary to Section 23-47 of the NYC Zoning Resolution;” and

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

WHEREAS, a public hearing was held on this application on June 16, 2009 after due notice by publication in *The City Record*, and then to decision on July 14, 2009; and

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

WHEREAS, Community Board 14, Brooklyn,

recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 26<sup>th</sup> Street, between Avenue N and Avenue O, in an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,667 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,418 sq. ft. (0.53 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from approximately 1,418 sq. ft. (0.53 FAR) to approximately 2,013 sq. ft. (0.75 FAR); the maximum permitted floor area is 1,333.5 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 81 percent (150 percent is the minimum required); the existing open space ratio is 133 percent; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, the applicant notes that due to the condition of the lot having a pre-existing undersized width, the existing side yards of 5’-0” along the northern lot line and approximately 5’-6” along the southern lot line comply with the applicable zoning regulations, pursuant to ZR § 23-48; and

WHEREAS, the applicant has submitted evidence establishing that the subject lot was owned separately and apart from all adjacent lots on December 15, 1961 and on the date of the application; therefore the subject lot qualifies for ZR § 23-48; and

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

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. § 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially

# MINUTES

conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 6, 2009"-(10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 2,013 sq. ft. (0.75 FAR); an open space ratio of approximately 81 percent; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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

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

THAT substantial construction be completed in accordance with ZR § 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 14, 2009.

-----

## 139-07-BZ

APPLICANT – Agusta & Ross, for 328 Realty Holding, LLC, owner.

SUBJECT – Application May 25, 2007 – Variance (§72-21) to permit the development of a two-story and cellar, two-family residence on a vacant lot. The proposal is contrary to section 42-10. M1-2 district.

PREMISES AFFECTED – 328 Jackson Avenue, easterly side of Jackson Avenue, 80' northerly of East 141<sup>st</sup> Street, Block 2573, Lot 5, Borough of Bronx.

### COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 11, 2009, at 1:30 P.M., for continued hearing.

-----

## 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;

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: Richard Lobel.

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

-----

## 97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the proposed legalization of the existing yeshiva (Use Group 3 school). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug.

**ACTION OF THE BOARD** – Laid over to August 25, 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.

For Opposition: Harold McGough, Best O'Neil and Carol Donovan.

**ACTION OF THE BOARD** – Laid over to August 18, 2009, at 1:30 P.M., for continued hearing.

-----

## 210-08-BZ

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

SUBJECT – Application August 15, 2009 – Variance (§72-21) to permit the two-story enlargement to the existing drug treatment facility which would result in a four-story drug treatment center with sleeping accommodations (Use Group 3). The proposal is contrary to use regulations (ZR §43-00)

# MINUTES

and bulk regulations (ZR §52-22) in an M1-1 district.  
PREMISES AFFECTED – 130-15 89<sup>th</sup> Road, north side of 89<sup>th</sup> Road, approximately 125' east of 130<sup>th</sup> Street, Block 9338, Lot 147, Borough of Queens.

## COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Richard Lobel and Hiram Rothkrug

**ACTION OF THE BOARD** – Laid over to August 25, 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 8<sup>th</sup> 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: Richard Lobel.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 11, 2009, at 1:30 P.M., for continued hearing.

## 7-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sandra Zagelbaum and Yechiel Zagelbaum, owners.

SUBJECT – Application January 20, 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), side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1082 East 26<sup>th</sup> Street, East 26<sup>th</sup> Street, between Avenue J and Avenue K, Block 7607, Lot 85, Borough of Brooklyn.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Michael A. Colin, Lois S. Colin and Sanford Goldhabst.

**ACTION OF THE BOARD** – Laid over to August 11, 2009, at 1:30 P.M., for continued hearing.

## 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 re-instatement 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, Anderson Hool, Frank Park and John Magliocco, Jr.

For Opposition: Michael Zlabinger and Arabella Hutter.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 11, 2009, at 1:30 P.M., for continued hearing.

## 46-09-BZ

APPLICANT – Eric Palatnik, P.C., for Igor Orak, owner.

SUBJECT – Application March 23, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, lot coverage and open space (§23-141(b)); side yards (§23-461) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 122 Oxford Street, between Shore Boulevard and Oriental Avenue, Block 8757, Lot 92, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 11, 2009, at 1:30 P.M., for continued hearing.

## 50-09-BZ

APPLICANT – Eric Palatnik, P.C., for Roni Mova, owner; Warrior Fitness, lessee.

SUBJECT – Application March 26, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on the third floor in a twelve-story building. The proposal is contrary to ZR §42-10. M1-6 district.

PREMISES AFFECTED – 29 West 35<sup>th</sup> Street, West 35<sup>th</sup> Street and Fifth Avenue, Block 837, Lot 23, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

---

# MINUTES

---

For Applicant: Eric Palatnik.  
THE VOTE TO CLOSE HEARING –  
Affirmative: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August  
11, 2009, at 1:30 P.M., for decision, hearing closed.  
-----

## 56-09-BZ

APPLICANT – Omnipoint Communications, Inc., for The  
South Shore Swimming Club, Inc., owner.  
SUBJECT – Application April 15, 2009 – Special Permit  
(\$73-30) to allow a proposed non-accessory radio tower and  
related equipment.

PREMISES AFFECTED – 6736 Hylan Boulevard, south  
side of Hylan Boulevard between Culotta Lane and Page  
Avenue, Block 7734, Lot 50, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Guardioso.

For Opposition: Julia Chazov, Carol Messina and Salvatore  
Piro

**ACTION OF THE BOARD** – Laid over to  
September 22, 2009, at 1:30 P.M., for continued hearing.  
-----

## 168-09-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Yaakov Miller,  
owner.

SUBJECT – Application May 7, 2009 – Special Permit  
(\$73-622) for the enlargement of an existing single family  
home. This application seeks to combine two semi-attached  
homes to create one single family home that varies in floor  
area and open space (ZR §23-141(a)) and less than the  
required rear yard (ZR §23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1435 & 1437 East 26<sup>th</sup> Street,  
east side of East 26<sup>th</sup> Street, 292' south of Avenue N, Block  
7680, Lots 34 and 35, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August  
11, 2009, at 1:30 P.M., for continued hearing.  
-----

## 177-09-BZ

APPLICANT – Raymond H. Levin, Esquire Wachtel Masyr,  
LLP, for FTC Residential Company III, L.P., owner.

SUBJECT – Application May 29, 2009 – Special Permit  
(\$73-66) for to seek a waiver of the height restrictions  
within the Flight Obstruction Area (ZR §61-21) for six mid-  
rise residential towers located above a three story  
commercial/retail/accessory parking base.

PREMISES AFFECTED – 40-22 College Point Boulevard,  
west side of College Point Boulevard, between Roosevelt  
Avenue and 40<sup>th</sup> Road, Block 5066, Lots 1 and 100 (tent.

9001, 9002 and 9100), Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Raymond H. Levin.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August  
11, 2009, at 1:30 P.M., for decision, hearing closed.  
-----

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*