
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. 31-32

August 20, 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

DOCKET513

CALENDAR of August 25, 2009

Morning514

Afternoon515

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, August 11, 2009**

Morning Calendar516

Affecting Calendar Numbers:

853-53-BZ 2402/16 Knapp Street, Brooklyn
395-60-BZ 2557-2577 Linden Boulevard, Brooklyn
336-98-BZ & 312/18 and 324/34 Flatbush Avenue, Brooklyn
 337-98-BZ
719-56-BZ 2525 Victory Boulevard, Staten Island
198-66-BZ 300 East 74th Street, Manhattan
261-98-BZ 193 20th Street, Brooklyn
269-98-BZ 70 East 184th Street, Bronx
203-00-BZ 603 Greenwich Street, Manhattan
246-01-BZ 35-11 Prince Street, Queens
179-09-A 252-02 Rockaway Boulevard, Queens
45-09-A 142-19 Cherry Avenue, Queens
62-09-A 398 Nugent Street, Staten Island
167-09-A 820 39th Street, Brooklyn
196-09-BZY 174 and 176 Clermont Avenue, Brooklyn

Afternoon Calendar521

Affecting Calendar Numbers:

139-07-BZ 328 Jackson Avenue, Bronx
229-08-BZ 866 East 8th Street, Brooklyn
234-08-BZ 1702 Avenue Z, Brooklyn
266-08-BZ 2007 New York Avenue, Brooklyn
42-09-BZ 441-477 Prospect Avenue, Brooklyn
50-09-BZ 29 West 35th Street, Manhattan
177-09-BZ 40-22 College Point Boulevard, Queens
195-07-BZ 8-12 Bond Street, Manhattan
256-07-BZ 1978 Atlantic Avenue, Brooklyn
63-08-BZ 116-33 Queens Boulevard, Queens
314-08-BZ 437-447 West 13th Street, 862-868 Washington Street, Manhattan
7-09-BZ 1082 East 26th Street, Brooklyn
46-09-BZ 122 Oxford Street, Brooklyn
51-09-BZ 2032 17th Street, Brooklyn
168-09-BZ 1435 & 1437 East 26th Street, Brooklyn
183-09-BZ 1400 5th Avenue, Manhattan
184-09-BZ 4072 Bedford Avenue, Brooklyn
195-09-BZ 321 Ashland Place, Brooklyn

DOCKETS

New Case Filed Up to August 11, 2009

236-09-BZ

140-148 West 28th Street, South side of West 28th Street between 6th Avenue and 7th Avenue., Block 803, Lot(s) 62,65, Borough of **Manhattan, Community Board: 5.** Variance to allow a mixed use development, contrary to use regulations. M1-6 district.

237-09-A

81 Archwood Avenue, East side of Archwood Avenue, 198.25ft. North of Amboy Road., Block 6321, Lot(s) 152, Borough of **Staten Island, Community Board: 3.** Construction within a bed of a mapped street, contrary to Section 35 of the General City Law. R3X(SRD) district.

238-09-A

85 Archwood Avenue, East side of Archwood Avenue, 120 ft. north of Amboy Road, Block 6321, Lot(s) 151, Borough of **Staten Island, Community Board: 3.** Construction within a bed of a mapped street, contrary to Section 35 of the General City Law. R3X(SRD) district.

239-09-BZ

238 Thompson Street, Block bounded by Thompson and West 3rd Streets, Laguardina Place, Washington Square South., Block 538, Lot(s) 27, Borough of **Manhattan, Community Board: 2.** Variance (72-21) to develop a five-story (plus penthouse). R7-2,R7-2/C1-5 district.

239-09-BZ

238 Thompson Street, Block bounded by Thompson and West 3rd Streets, Laguardina Place, Washington Square South., Block 538, Lot(s) 27, Borough of **Manhattan, Community Board: 2.** Variance (72-21) to develop a five-story (plus penthouse). R7-2,R7-2/C1-5 district.

240-09-BZ

454 City Island Avenue, Fronts the east side of City Island Avenue and is bound by Browne Street to the north., Block 5646, Lot(s) 3, Borough of **Bronx, Community Board: 10.** Special Permit (73-30) to allow the a non-accessory radio tower on the rooftop of an existing building. C2-2/R3-A/CD district.

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

CALENDAR

AUGUST 25, 2009, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 11, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

416-87-BZ

APPLICANT – Slater & Beckerman, LLP for Trustees of Columbia University in the City of New York, owners.

SUBJECT – Application June 29, 2009 – Extension of Term of a previously granted Variance (72-21) for the continued UG16 automobile repair shop in an R7-2/C6-1 zoning district, which expired on June 27, 2009 and an Extension of Time to obtain a Certificate of Occupancy which expired on February 26, 2009.

PREMISES AFFECTED – 547-551 West 133rd Street, interior lot north side of 133rd Street, between Broadway and Amsterdam Avenue, Block 1987, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #9M

194-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Auto Service Management Corporation, owner.

SUBJECT – Application April 22, 2009 – Extension of Term to permit the continued operation of an automotive repair facility (UG 16B) (164th Street Auto Service), granted pursuant to §72-21, which expired on November 29, 2007. The application also seeks an Extension of Time to obtain a certificate of occupancy which expired on December 22, 1999. The subject application is located within a R4B zoning district.

PREMISES AFFECTED – 84-12 164th Street, northwest corner of 84th Road and 164th Street, Block 9792, Lot 31,137, Borough of Queens.

COMMUNITY BOARD #8Q

159-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for 2nd Street Development Corp., owner.

SUBJECT – Application April 16, 2009 – Proposed construction of a single family home located within the bed of a mapped street (Doane Avenue) contrary to General City Law Section 35. R2 zoning district.

PREMISES AFFECTED – 85 Woodland Avenue, 175' east of the intersection of Colon Avenue and Woodland Avenue, Block 5442, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #3SI

178-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 120 St. Marks LLC, owner;

O. Moscovich, D.V.M., P.C., lessee.

SUBJECT – Application June 1, 2009 – Appeal contesting an Order of Closure issued by the Department of Buildings that the use of the cellar at the subject premises as a Veterinarian's Office (UG6) constitutes an illegal use in a residential district pursuant to Administrative Code Section 28-212.1. R8B Zoning district.

PREMISES AFFECTED – 120 St. Marks Place (East 8th street), south side of St. Marks Place, Block 435, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #3M

CALENDAR

AUGUST 25, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 25, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

37-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Shirley Ades and Moshe Ades, owners.

SUBJECT – Application March 3, 2009 – Special Permit (§73-622) for the In-Part Legalization and enlargement of an existing single family home. This application seeks to vary floor area, open space and lot coverage (ZR §23-141(b)); side yard (ZR §23-461(a)) & (ZR §23-48); rear yard (ZR §23-47) and increases the degree of non-compliance to perimeter wall height in an R3-2 zoning district.

PREMISES AFFECTED – 3950 Bedford Avenue, Bedford Avenue between Avenue R and Avenue S, Block 6830, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #15BK

54-09-BZ

APPLICANT – Juan D. Reyes, III/Riker Danzig et al, for Lord Shivas Properties, LLC, owner; Gab & Aud, Inc., lessee.

SUBJECT – Application April 8, 2009 – Special Permit (§73-36) to allow a physical culture establishment on the cellar level of a four-story mixed-use building. The proposal is contrary to ZR §42-10. M1-5B district.

PREMISES AFFECTED – 150 Mercer Street (aka 579 Broadway) Mercer Street between Prince and Houston in SoHo, block 512, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #2M

166-09-BZ

APPLICANT – Slater & Beckerman, for Harry J. Brainum, Jr., Inc., owner.

SUBJECT – Application May 4, 2009 – Special Permit (§75-53) to permit the enlargement of a manufacturing building contrary to floor area and height and setback regulations (§43-12, §43-43). M1-1 District.

PREMISES AFFECTED – 360-366 McGuinness Boulevard and 237 Freeman Street, northeast corner of Freeman Street and McGuinness Boulevard, Block 2506, Lots 2, 4, 5, 52, Borough of Brooklyn.

COMMUNITY BOARD #1BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, AUGUST 11, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

853-53-BZ

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application March 4, 2009 – Extension of Term to permit the continued operation of a gasoline service station (*Mobil*) which expires on October 23, 2009. R3-2/C2-2 zoning district.

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for the continued use of a gasoline service station, which expires on October 23, 2009; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in *The City Record*, and then to decision on August 11, 2009; and

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

WHEREAS, the site is located on the southwest corner of Knapp Street and Avenue X, in a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 22, 1954 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station with accessory uses for a term of 15 years; and

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

WHEREAS, most recently, the grant was extended on July 22, 2008 for a term of ten years from the expiration of the prior grant, to expire on October 23, 2009; and

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

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 22, 1954, so that as amended this portion of the resolution shall read: “to extend the term for ten years from October 23, 2009, to expire on October 23, 2009; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received May 15, 2009”– (4) sheets and “Received July 27, 2009”–(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on October 23, 2019;

THAT the above condition shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by February 11, 2010;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 310091708)

Adopted by the Board of Standards and Appeals August 11, 2009.

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 – Extension of Term of a special permit (§73-36) authorizing a physical culture establishment (*Crunch Fitness*), Amendment to include additional area in the cellar and on the first floor and a change in operator; and Extension of Time to obtain a certificate of occupancy. 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 GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on November 23, 2009, an extension of time to obtain a certificate

MINUTES

of occupancy, and an amendment to reflect an extension of the PCE use and a change in the operators of the PCE; and

WHEREAS, a public hearing was held on this application on March 17, 2009, after due notice by publication in *The City Record*, with a continued hearing on April 7, 2009 and July 14, 2009, and then to decision on August 11, 2009; and

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

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

WHEREAS, the PCE is located on the northwest corner of the intersection of Flatbush Avenue and Sterling Place; and

WHEREAS, the site consists of two adjacent lots – Lot 19 (324/34 Flatbush Avenue) and Lot 14 (312/18 Flatbush Avenue) within a C4-2 (R7A) zoning district; and

WHEREAS, the site is located in portions of the cellar and on the first floor and second floors of a two-story commercial building; and

WHEREAS, the PCE has a total floor area of 16,135 sq. ft., with an additional 2,697 sq. ft. of space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 23, 1999 when, under the subject calendar numbers, the Board granted special permits for each address, to expire on November 23, 2009; 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 seeks an amendment to reflect the legalization of the use of the cellar space and the extension of the PCE use on the first floor from 629 sq. ft. of floor area to 2,515 sq. ft. of floor area at 324/34 Flatbush Avenue; 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 PCE is now operated as Crunch Fitness; 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 November 23, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years, to expire on November 23, 2019, and to extend the time to obtain a certificate of occupancy to February 11, 2010, *on condition* that the use and operation of the site shall substantially conform to approved plans dated “Received December 31, 2008”-(5) sheets and “Received July 28, 2009”-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on November

23, 2019;

THAT a certificate of occupancy shall be obtained by February 11, 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 DOB shall review egress for compliance with all relevant regulations;

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. 300740063)

Adopted by the Board of Standards and Appeals, August 11, 2009.

719-56-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Victory Service Station Incorporated, lessee.

SUBJECT – Application July 14, 2009 – Extension of Time to obtain a certificate of occupancy for a Gasoline Service Station (*Mobil*), which expires on November 10, 2009. C2-1/R3-2 zoning district.

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

COMMUNITY BOARD #1SI

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 September 15, 2009, at 10 A.M., for decision, hearing closed.

395-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Extension of Term (§11-411, §11-413) for change of use from a gasoline service station (UG16) to automotive repair establishment (UG16), which expired on December 9, 2005; Amendment to reduce the size of the subject lot and to request a UG6 designation for the convenience store; and an Extension of Time to obtain a certificate of occupancy which expired on January 19, 2000. R5 zoning district

MINUTES

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for continued hearing.

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 building which expires on July 28, 2009. C1-9 zoning district.

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

COMMUNITY BOARD #8M

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 25, 2009, at 10 A.M., for decision, hearing closed.

261-98-BZ

APPLICANT – Sheldon Lobel, P.C. for Steve Steigelfest, owner.

SUBJECT – Application May 29, 2009 – Extension of Term of a variance (§72-21) for a UG16A warehouse for HVAC related uses in a residential district which expired on April 20, 2009; Amendment for the addition of a mezzanine level within the existing building. R6B zoning district.

PREMISES AFFECTED – 193 20th Street, North side of 20th Street, between 4th and 5th Avenues. Block 637, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel and Steve Steigelfest.

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 September 15, 2009, at 10 A.M., for decision, hearing closed.

269-98-BZ

APPLICANT – Mothiur Rahman, for Mothiur Rahman, owner.

SUBJECT – Application September 15, 2008 – Extension of Time to complete construction of a variance (§72-21) for a two story building for commercial use (UG 6) in a residential district. R8 zoning district.

PREMISES AFFECTED – 70 East 184th Street, southwest corner of East 184th Street and Morris Avenue, Block 3183, Lot 42, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Mothiur Rahman.

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 25, 2009, at 10 A.M., for decision, hearing closed.

203-00-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for Sunset Warehouse Condominium, owners.

SUBJECT – Application April 29, 2009 – Amendment of variance (§72-21) which allowed conversion of upper floors of building from commercial to residential. Amendment would permit the conversion of the second floor from commercial to residential use. M1-5 zoning district.

PREMISES AFFECTED – 603 Greenwich Street, aka 43 Clarkson Street, northeast intersection of Greenwich and Clarkson Streets, Block 601, Lots 1201-1212, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Segal.

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 25, 2009, at 10 A.M., for decision, hearing closed.

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center, Inc., owner.

SUBJECT – Application January 29, 2009 – Extension of Term/Waiver for a previously granted special permit (§73-36) which expired on June 1, 2008 for the operation of Physical Culture Establishment (*Bodhi Fitness Center*). M1-1/C2-2 zoning district.

PREMISES AFFECTED – 35-11 Prince Street, between 35th Avenue and Northern Boulevard, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

MINUTES

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 25, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

179-09-A

APPLICANT – Eric Palatnik, P.C., for Zaki Turkieh, owner.
SUBJECT – Application June 1, 2009 – Proposed construction of a one-story extension to an existing commercial building not fronting on a mapped street, contrary to General City Law, Section 36. M1-1 zoning district.

PREMISES AFFECTED – 252-02 Rockaway Boulevard, corner of First Street and Rockaway Boulevard, Block 1392, Lot 69, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 20, 2009 and acting on Department of Buildings Application No. 41011211, reads in pertinent part:

“The proposed extension in the rear of the existing building which is not fronting on a mapped street shall comply with General City Law Section #36;”
and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in the *City Record*, and then to decision on August 11, 2009; and

WHEREAS, this application requests permission to build an extension in the rear to an existing commercial structure which does not front on an officially mapped street, contrary to General City Law Section 36; and

WHEREAS, by letter dated June 16, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 20, 2009, acting on Department of Buildings Application No. 41011211, is

modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received July 27, 2009”–one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

THAT the Department of Buildings shall review construction and the proposed plans to ensure compliance with all 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, August 11, 2009.

45-09-A

APPLICANT – Eric Palatnik, P.C., for Kevin Yang, owner.
SUBJECT – Application March 11, 2009 – Appeal for a common law vested right to continue construction commenced under the prior R7-1/C1-2 zoning district. R7B/C1-3 zoning district.

PREMISES AFFECTED – 142-19 Cherry Avenue, northeast corner of Cherry Avenue and Bowne Street, Block 5186, Lot 51, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik and Victor Peng.

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

62-08-A

APPLICANT – Eric Palatnik, P.C. for Benny Ulloa, owner
SUBJECT – Application March 27, 2009 – Proposed construction not fronting on a legally mapped street, contrary to General City Law, Section 36. R1-2 zoning district.

PREMISES AFFECTED – 398 Nugent Street, Nugent Street, North of Saint George Road, Block 2284, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Carol Donovan, Kathleen Meaghan and Helen Kravetz.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for continued hearing.

MINUTES

167-09-A

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.

SUBJECT – Application May 5, 2009 – Appeal challenging Department of Building’s determination that the reconstruction of non-complying building must be done in accordance with §54-41 and be required to provide a 30 foot rear yard. M1-2 zoning district.

PREMISES AFFECTED – 820 39th Street, south side, 150’ east of 8th Avenue, Block 916, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto, Sinclair Yung, Janet Huang and YFI Rong.

For Administration: Amandos Derr, DOB.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for continued hearing.

196-09-BZY

APPLICANT – Ping C. Moy, for 174 Clermont Avenue, LLC, owner.

SUBJECT – Application June 24, 2009 – Application to complete construction of a minor development (§11-332) commenced under the prior R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 174 and 176 Clermont Avenue, west side of Clermont Avenue, Block 2074, Lots 37 and 39, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Ping C. Moy.

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 25, 2009, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 11, 2009
1:30 P.M.**

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

ZONING CALENDAR

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, contrary to use regulations (§42-10). M1-2 zoning district.

PREMISES AFFECTED – 328 Jackson Avenue, easterly side of Jackson Avenue, 80’ northerly of East 141st Street, Block 2573, Lot 5, Borough of Bronx.

COMMUNITY BOARD #1BX

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 30, 2007, acting on Department of Buildings Application No. 201105909, reads in pertinent part:

“This new residential use is not permitted in an M1-2 district unless built under the conditions outlined in ZR 52-21. The applicant must provide proof of a prior existence.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-2 zoning district, a two-story residential building with two dwelling units, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 9, 2009, after due notice by publication in the *City Record*, with a continued hearing on July 14, 2009, and then to decision on August 11, 2009; and

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

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

WHEREAS, the subject site is located on the east side of Jackson Avenue, 80 feet north of East 141st Street, within an M1-2 zoning district; and

WHEREAS, the site has a width of 20 feet, a depth of 80 feet, and a lot area of 1,600 sq. ft.; and

WHEREAS, the site is adjacent to residential buildings

on either side and part of a block of similar row houses occupied by residential use; and

WHEREAS, the applicant states that the site was formerly occupied by a residential building, which was demolished; the site has been vacant since then, and has never been occupied by an industrial or manufacturing use; and

WHEREAS, the applicant proposes to construct a two-story residential building, with two dwelling units, a street wall height of 21 feet, a total height of 25 feet, a total residential floor area of 1,948 sq. ft., a total residential FAR of 1.22, and a rear yard with a depth of 20 feet; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site’s small size does not allow for the creation of a viable conforming industrial building with floor plates sufficient for modern manufacturing uses; (2) the site is vacant and adjacent to residential buildings; and (3) the history of residential use at the site; and

WHEREAS, specifically, the applicant states that due to the lot’s small size, an interior loading bay can not be accommodated, which constrains the viability for commercial or industrial use; and

WHEREAS, further, the applicant states that the interior width of 18 feet for a proposed building is insufficient to accommodate a conforming use; and

WHEREAS, additionally, the applicant notes that although the as of right FAR of 2.0 for a conforming use would generate multiple floors of floor area, such a building design would be constrained due to the inefficient movement of deliveries and other materials between floors; and

WHEREAS, the applicant states that the use of even a single floor would be constrained because it would be long and narrow and unable to accommodate modern manufacturing needs; and

WHEREAS, the Board agrees that the size of the site inhibits the development of a conforming manufacturing building, because the floor plates in a conforming building would be of insufficient size and impractical layout, and therefore not suitable for a modern conforming user; and

WHEREAS, as to the adjacency to residential buildings, the Board acknowledges that this may not always be, in of itself, a basis for a claim of unnecessary hardship, but it may contribute to a hardship claim, when other factors are present; and

WHEREAS, as to the history of residential use at the site, the Board notes that the site is within a longstanding row of two-story residential row houses and was historically occupied by such use, until the residential building was demolished; and

WHEREAS, as to the uniqueness of the noted conditions, the applicant notes that all of the sites occupied by conforming uses are much larger and that there are three other vacant lots within a 400-ft. radius of the site and within the subject zoning district; and

WHEREAS, based on the prevalence of residential use on sites similar to the subject site, the applicant asserts that no recent new construction of industrial buildings has occurred on such small lots in this area; and

MINUTES

WHEREAS, the Board confirmed on site and neighborhood visits that the site is one of the few similarly-sized vacant sites within the subject zoning district; and

WHEREAS, accordingly, the Board finds that the site's small size, its location on a solidly residential block, and the history of residential use at the site 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 analyzing (1) a conforming three-story commercial building and (2) the proposed two-family two-story building; and

WHEREAS, the applicant concluded that only the proposed would result in a reasonable return; and

WHEREAS, the applicant also states that the owner's marketing attempts for conforming use were unsuccessful; 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 applicable zoning requirements will provide a reasonable return; and

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

WHEREAS, the applicant submitted a land use map, which reflects that approximately 75 percent of the subject block within the M1-2 zoning district is occupied by pre-existing residential use, similar in scale to the proposed and to the residential building that formerly occupied the site; and

WHEREAS, the applicant also notes that the western portion of Jackson Avenue across the street from the site is within an R6 zoning district and is occupied by residential use; and

WHEREAS, the applicant concludes, and the Board agrees, that the area is best characterized as mixed-use, given both the proximity of residential units and the fact that a majority of the lots in the study area are occupied by residential use; and

WHEREAS, based upon the above, the Board finds that the introduction of two dwelling units on this street will not impact nearby conforming uses nor change the character of the neighborhood; and

WHEREAS, as to bulk, the applicant represents that the proposed building's roof line will match the height of the two adjacent residential buildings; and

WHEREAS, the Board observes that both adjacent buildings are two stories and that most of the residential buildings in the area have similar heights; and

WHEREAS, as to the rear yard, the applicant proposes to provide a rear yard with a depth of 20 feet; and

WHEREAS, the Board notes that a rear yard is not required for a residential use within the subject zoning district, but that a rear yard with a depth of 20 feet is compatible with adjacent residential uses; and

WHEREAS, therefore, 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 notes that the case is predicated on the small size of the lot and its adjacency to buildings with active or historical residential use, and the inability to develop the site in way that would be both viable and useful to a modern conforming user; and

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

WHEREAS, as to minimum variance, in a prior iteration of the proposal, the applicant proposed a rear yard with a depth of 12 feet and a floor area of 2,268 sq. ft.; and

WHEREAS, at the Board's direction, the applicant increased the rear yard to a depth of 20 feet, which would be the requirement for a conforming development and is more compatible with the requirements for residential use; and

WHEREAS, the modifications to the building associated with the provision of a rear yard with a depth of 20 feet resulted in the reduction of the floor area to 1,948 sq. ft.; and

WHEREAS, in conclusion, because the applicant proposes a use change that will facilitate the construction of a two-story residential building comparable in bulk and height to the adjacent and other area buildings, 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 Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA054X, dated February 12, 2008; and

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

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: February 12, 2008 Environmental Assessment Statement, December 2009 Phase II Investigation Report; 2009 Remedial Action Plan (RAP) and Construction Health & Safety Plan (CHASP), and December 2008 Air Quality submission; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials and air quality impacts; and

WHEREAS, DEP finds the RAP & CHASP acceptable and request that the applicant submit a P.E.-certified Remedial

MINUTES

Closure Report to DEP at the conclusion of the construction activities on the subject site; the Remedial Closure Report should contain documentation that all measures described in the RAP have been implemented and that remediation on the site has been completed; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-2 zoning district, a two-story residential development with two dwelling units, which is contrary to ZR § 42-10, on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 10, 2009"-One (1) sheet and "Received August 4, 2009"-One (1) sheet; and on further condition:

THAT the following shall be the bulk parameters of the proposed building: two stories; two dwelling units; a residential and total FAR of 1.22; a street wall height of 21 feet; a total height of 25 feet; and a rear yard with a minimum depth of 20 feet;

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

THAT the applicant shall submit a P.E.-certified Remedial Closure Report to DEP at the conclusion of the construction activities on the subject site;

THAT issuance of a permanent certificate of occupancy shall be conditioned on DEP's issuance of a Notice of Satisfaction;

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, August 11, 2009.

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, contrary to floor area (§23-141), side yards (§23-461) and

off street parking (§25-62) regulations. R2X zoning district. PREMISES AFFECTED – 866 East 8th Street, West side of East 8th Street, north of Avenue I, and adjacent to railroad, Block 6510, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated June 16, 2009, and acting on Department of Buildings Application No. 310163729 reads, in pertinent part:

"Proposed floor area and floor area ratio exceed maximum permitted pursuant to ZR Section 23-141.

Proposed side yards are less than the minimum required pursuant to ZR Section 23-461;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R2X zoning district within the Special Ocean Parkway District, the construction of a new single-family home that exceeds the permitted floor area and floor area ratio ("FAR"), and does not provide the required side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on February 24, 2009, after due notice by publication in *The City Record*, with continued hearings on March 31, 2009, April 28, 2009, May 19, 2009 and July 14, 2009, and then to decision on August 11, 2009; and

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

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

WHEREAS, the site is located on the west side of East 8th Street, approximately 450 feet north of Avenue I, abutting a fenced right-of-way of the New York, Brooklyn and Manhattan Beach Railroad Company; and

WHEREAS, the site has a width of 25'-0", a depth of 120'-6", and a total lot area of approximately 3,013 sq. ft., and is located in an R2X zoning district within the Special Ocean Parkway District; and

WHEREAS, the site is currently occupied by a two-story single-family home, which is proposed to be demolished; and

WHEREAS, the applicant has submitted evidence establishing that the subject lot was owned separately and apart from all adjacent lots on October 13, 1991, the date the R2X zoning district was established, as well as on the date of the application; and

WHEREAS, the applicant proposes to construct a two-story single-family home with the following parameters: a floor area of 3,073 sq. ft. (3,073 sq. ft. is the maximum permitted); an FAR of 1.02 (1.02 FAR with an attic bonus is the maximum

MINUTES

permitted); a side yard of 4'-4 1/4" along the southern lot line; and no side yard along the northern lot line (two side yards with a minimum width of 2'-0" each and a total width of 10'-0" are required); and

WHEREAS, the applicant notes that although the as-of-right floor area for the site is 3,073 sq. ft. (1.02 FAR), a floor area waiver is necessary because the narrow lot size prevents the applicant from adding the full 20 percent floor area bonus available under a sloping roof within an R2X zoning district as-of-right; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying zoning regulations: (i) the site has a narrow width; (ii) the existing home is obsolete for living purposes; and (iii) the site is adjacent to a railroad; and

WHEREAS, the applicant states that the lot has a width of 25'-0"; and

WHEREAS, the applicant states that any new development on the site would be limited to 15'-0" in width; therefore, the applicant requires a side yard waiver to allow for a new home with a one-story portion that is 16'-0" in width and a two-story portion that is 20'-7 3/4" in width to provide a floor plate that results in a habitable home; and

WHEREAS, as to the uniqueness of the narrow width of lots, the applicant provided an analysis of the surrounding blocks which indicated that out of 100 lots, only six lots including the subject lot have a width of 25'-0" or less and that three of those lots are occupied by semi-detached homes which each only proved one side yard; and

WHEREAS, the applicant represents that 92 percent of lots in the surrounding area have widths of 30'-0" or larger, and that homes on these lots could enlarge or redevelop with complying side yards and still have a home with a width of 20'-0"; the requested side yard waiver would therefore provide a home with a width similar to that of other homes in the surrounding area; and

WHEREAS, the applicant states that the existing home has a floor area of 1,591 sq. ft. (0.52 FAR), which is approximately half the size of what is permitted as-of-right; and

WHEREAS, the applicant further states that the existing home has a width of only 16'-3", including exterior walls; and

WHEREAS, the applicant represents that the existing home cannot be suitably enlarged since any horizontal enlargement would have to provide complying side yards with a total width of 10'-0", thereby limiting the width of the enlargement to 15'-0", and any vertical expansion would be limited to the existing narrow width of the home; therefore, enlarging the existing home is not feasible under the underlying zoning regulations; and

WHEREAS, the applicant states that neither the existing home, nor a new building that complies with the zoning regulations, is habitable as compared to other homes in the area; and

WHEREAS, the analysis provided by the applicant indicates that 95 percent of the lots within the subject R2X district have floor areas in excess of 3,000 sq. ft. and existing homes on such lots could enlarge to approximately 3,340 sq. ft.

or larger by special permit under ZR § 73-621; and

WHEREAS, the applicant notes that the existing zoning allows for a home with a floor area of 3,073 sq. ft. (1.02 FAR with attic bonus), and represents that the floor area waiver allows the applicant to utilize the 20 percent attic floor area bonus it would be permitted as-of-right if not for the narrow width of the lot, and is necessary to develop a habitable home, and; and

WHEREAS, the applicant further notes that an enlargement of the existing home to an FAR of 1.02 would fit within the FAR parameters set forth for such enlargement pursuant to ZR § 73-621; therefore, the requested floor area waiver would allow the development of the site with a home that is comparable in size to homes allowed within the district either as-of-right or by special permit; and

WHEREAS, the applicant represents that the adjacent railroad further reduces the marketability of the existing home; and

WHEREAS, as to the uniqueness of the site's location next to the railroad, the applicant submitted a radius diagram indicating that only three other homes within the subject R2X district are similarly situated adjacent to the railroad; and

WHEREAS, the applicant represents that the floor area waiver provides for a home that is comparable to other homes in the area and offsets any disadvantage due to its location adjacent to the railroad; and

WHEREAS, the applicant concludes that the requested waivers of floor area, FAR and side yard requirements are necessary to develop the site with a habitable home; 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 zoning regulations; and

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

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 notes that the proposed bulk is compatible with nearby residential development and that the height complies with zoning regulations; and

WHEREAS, the applicant notes that the requested side yard waiver has no impact on the surrounding neighborhood because it applies only to the side yard adjacent to the railroad while the other side yard complies with the underlying zoning requirements; and

WHEREAS, the applicant states that the proposed width of the home is consistent with the character of the surrounding neighborhood, wherein the majority of homes are able to provide complying side yards and still develop a home with a width of 20'-0"; and

WHEREAS, the analysis provided by the applicant indicates that at least seven homes on the subject and adjacent block exceed the as-of-right FAR of 1.02 and exceed floor areas of 4,000 sq. ft.; thus, the proposed floor area of 3,073 sq. ft. (1.02 FAR) is consistent with the size of other homes in the

MINUTES

area; 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 Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions, the existing obsolete home, and the site's adjacency to the railroad; and

WHEREAS, the applicant initially proposed a home with a floor area of approximately 3,934 sq. ft. (1.30 FAR), and with off-street parking located in the front yard, contrary to ZR § 25-62; and

WHEREAS, in response to concerns raised by the Board regarding the bulk of the proposed home, the applicant submitted revised plans reducing the requested floor area to 3,073 sq. ft. (1.02 FAR); and

WHEREAS, the applicant also revised its plans to eliminate the parking waiver and provide a complying parking space; 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 R2X zoning district within the Special Ocean Parkway District, the construction of a two-story single-family home that exceeds the permitted floor area and FAR and does not provide the required side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 23, 2009"-(11) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 3,073 sq. ft. (1.02 FAR); and a side yard of with a minimum width of 4'-4 1/4" along the southern lot line, as per the BSA-approved plans;

THAT DOB shall review the open masonry landing and stairs in the side yard for compliance with the Zoning Resolution;

THAT there shall be no habitable room in the cellar;

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

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

THAT significant construction shall proceed in accordance with ZR § 72-23;

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, August 11, 2009.

234-08-BZ

CEQR #09-BSA-025K

APPLICANT – Eric Palatnik, P.C., for 1702 Avenue Z, Inc., owner.

SUBJECT – Application September 9, 2008 – Special Permit (§73-36) to allow proposed Physical Culture Establishment at the cellar and a portion of the first and second floors in a seven-story mixed-use building. C4-2 zoning district.

PREMISES AFFECTED – 1702 Avenue Z, southeast of the corner formed by Avenue Z and East 17th Street, Block 7462, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standard and Appeals, August 11, 2009.

266-08-BZ

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

SUBJECT – Application October 28, 2008 – Special Permit (§73-621) for the enlargement of an existing single family home, contrary to FAR (§23-141(b)). R-4 zoning district.

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

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated October 3, 2008, acting on Department of Buildings Application No. 310199772, reads, in pertinent part:

"1. Proposed plans are contrary to ZR 23-141(b) in that the proposed Floor Area Ratio (FAR) exceeds that permitted."; and

WHEREAS, this is an application under ZR §§ 73-621

MINUTES

and 73-03, to permit, within an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on March 31, 2009, after due notice by publication in *The City Record*, with a continued hearing on April 28, 2009, May 19, 2009, July 21, 2009, and then to decision on August 11, 2009; and

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

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

WHEREAS, the subject site is located on the east side of New York Avenue, between Avenue K and Avenue L; and

WHEREAS, the subject site has a total lot area of 2,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,401 sq. ft. (0.70 FAR); and

WHEREAS, the applicant seeks an increase in the floor area from 1,401 sq. ft. (0.70 FAR), to 1,977 sq. ft. (0.99 FAR); the maximum floor area permitted is 1,800 sq. ft. (0.90 FAR); and

WHEREAS, the applicant represents that the proposed floor area exceeds the maximum permitted floor area by ten percent; and

WHEREAS, the applicant proposes to provide 56 percent open space and a lot coverage of 43 percent (55 percent open space is the minimum required and 45 percent lot coverage is the maximum permitted); and

WHEREAS, the Board notes that ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed floor area ratio does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the open space and lot coverage, the Board notes that the proposal reflects lot coverage and open space that are within the parameters permitted as of right in the subject zoning district; and

WHEREAS, as to floor area ratio, the Board notes that the proposed 0.99 FAR reflects 110 percent of the maximum permitted FAR of 0.90, which is the maximum permitted under the special permit; and

WHEREAS, accordingly, the Board has determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, during the hearing process, the Board directed the applicant to (1) revise the building plans so that the proposal does not exceed the building envelope permitted within the R4 zoning district and (2) to modify the building design, specifically the roof line so that it is more compatible with the streetscape; and

WHEREAS, in response, the applicant set the attic

floor back and increased the pitch of the roof; and

WHEREAS, additionally, the applicant provided axonometric drawings which reflect that the proposal, as modified, fits within the R4 building envelope; 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 §§ 73-621 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 R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, contrary to ZR § 23-141; *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 March 26, 2009”–(3) sheets and “Received July 1, 2009”–(11) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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

THAT the following shall be the bulk parameters of the building: a maximum floor area of 1,976.76 sq. ft. (0.99 FAR) and a maximum lot coverage of 43 percent, as illustrated on the BSA-approved plans;

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

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

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, August 11, 2009.

MINUTES

42-09-BZ

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

SUBJECT – Application March 6, 2009 – Special Permit (§11-411 & §11-412) for re-instatement of a variance (expired July 12, 1992) which allowed the extension of a legal non conforming commercial laundry use (*Arrow Linen Supply*) within a residential zoning district. The application seeks an amendment to allow for a one-story enlargement. 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 and Frank Park.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated October 28, 2008, acting on Department of Buildings Application No. 310203026, reads in pertinent part:

“Extension of the term of variance previously granted by the BSA pursuant to Cal. No. 58-51-BZ Vol. II under Section 21 of the Zoning Resolution, for existing non-conforming commercial use in R5B district permitted by BSA before which expired on July 12, 1992. It is also proposed one-story enlargement of approximately 770 sq. ft. in rear for such non-conforming use which requires BSA approval pursuant to Section 11-411 and 11-412 of the Zoning Resolution;” and

WHEREAS, this is an application pursuant to ZR §§ 11-411 and 11-412 for a reinstatement of a prior Board approval permitting the extension of a legal non-conforming commercial laundry use within a residential zoning district, and for an amendment to the approved plans to legalize a one-story enlargement of 763 sq. ft. in the rear of the lot for additional storage for the commercial laundry; and

WHEREAS, a public hearing was held on this application on April 21, 2009, after due notice by publication in the *City Record*, with a continued hearing on May 19, 2009, after which the hearing was closed and the application was set for decision on June 16, 2009; and

WHEREAS, on June 16, 2009, the hearing was reopened to allow additional submissions and testimony by the parties, with a continued hearing on July 14, 2009, and then to decision on August 11, 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 7, Brooklyn, recommends approval of this application; and

WHEREAS, certain members of the community testified in support of the application; and

WHEREAS, other members of the community provided written and oral testimony in opposition to the application (the “Opposition”); and

WHEREAS, the Opposition’s assertions include that (1) the commercial laundry use is not appropriate in a residential zoning district; (2) there are air pollution emissions from the laundry; (3) noise from the laundry exceeds city regulations; and (4) there is double parking of the laundry trucks outside the yard and problems with the entry of the trucks into the yard; and

WHEREAS, the site is located on the north side of Prospect Avenue, between Eighth Avenue and Prospect Park West, within an R5B zoning district; and

WHEREAS, the subject zoning lot has two frontages on Prospect Avenue: a 132-ft. frontage with a 171-ft. depth occupied by commercial laundry buildings and a yard (the “East Portion”); and a 150-ft. frontage with an approximately 150-ft. depth with a one-story building and an enclosed 36-ft. wide loading platform and shed (the “West Portion”); there is also a 153-ft. by 55-ft. rear portion which connects the two frontages and is occupied by a laundry building (the “Rear Portion”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 29, 1951 when, under BSA Cal. No. 58-51-BZ, the Board granted a variance to permit the erection of a 20,806 sq. ft. garage building on the West Portion in addition to the approximately 40,000 sq. ft. of existing laundry buildings on the East Portion and Rear Portion, and the extension of an existing garage to be used as part of the existing commercial laundry; and

WHEREAS, the applicant states that the approved 20,806 sq. ft. garage building on the West Portion was never constructed; and

WHEREAS, on May 28, 1963, the Board approved a one-story garage building, a one-story office building and a modified off-street loading platform on the West Portion of the site, in addition to the approximately 40,000 sq. ft. of existing laundry buildings on the East Portion and Rear Portion; and

WHEREAS, the applicant states that the approved one-story garage building on the West Portion was never constructed; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on September 25, 1984, the Board permitted minor modifications to the site and extended the term of the grant for ten years, to expire July 12, 1992; and

WHEREAS, although the term expired, the applicant represents that the use of the site as a commercial laundry has been continuous; and

WHEREAS, the applicant now proposes to reinstate the prior grant; and

MINUTES

WHEREAS, the applicant has requested a ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, the applicant also seeks to legalize an enlargement of 763 sq. ft. for laundry storage use on the West Portion; and

WHEREAS, pursuant to ZR § 11-412, the Board may, in appropriate cases, allow the enlargement of a building on a premises subject to a pre-1961 variance, provided that the building may not be enlarged in excess of 50 percent of the floor area of such building occupied or utilized by the use on December 15, 1961, and that no extensions shall be authorized for a new non-conforming use authorized under ZR § 11-413; and

WHEREAS, at hearing, the Board raised concerns that the resolution dated May 21, 1951, under BSA Cal. No. 58-51-BZ, permitted a building of 20,806 sq. ft., while the site currently has a floor area of approximately 45,484 sq. ft.; and

WHEREAS, in response, the applicant states that the original grant permitted a 20,806 sq. ft. garage building on the West Portion, in addition to the existing laundry buildings of approximately 40,000 sq. ft. located on the East Portion and Rear Portion of the site; and

WHEREAS, in support of this statement the applicant submitted a BSA-approved drawing dated November 12, 1950, reflecting the existing laundry buildings in the East Portion and Rear Portion of the site; and

WHEREAS, the applicant further states that the one-story garage building permitted under the original grant was never constructed; and

WHEREAS, the applicant represents that as of December 15, 1961, there was approximately 40,000 sq. ft. of floor area on the East Portion and Rear Portion of the zoning lot, and approximately 4,200 sq. ft. of floor area on the West Portion of the zoning lot, for a total of 44,200 sq. ft.; and

WHEREAS, because the proposed enlargement of 763 sq. ft. is less than 50 percent of the floor area occupied on December 15, 1961, the applicant asserts that ZR § 11-412 permits the proposed enlargement of the subject building; and

WHEREAS, during the course of the hearing the Opposition raised several issues that are discussed below; and

WHEREAS, the Opposition testified that the commercial laundry facility is not an appropriate use in a residential zoning district; and

WHEREAS, in response, the applicant states that the subject commercial laundry is a legal non-conforming use that has been in continuous occupancy at the site for nearly 100 years; and

WHEREAS, the applicant further states that the laundry facility employs 180 people and is an asset to the community and the city; and

WHEREAS, the Opposition raised concerns about air pollution emissions from the commercial laundry use; and

WHEREAS, in response, the applicant states that no violations have been issued for the site's exhaust system and

submitted a New York State Department of Environmental Conservation, Air Facility Registration Certificate, dated June 1, 2004, indicating that the commercial laundry is required to operate in accordance with all Federal and State laws and regulations applicable to air pollution control; and

WHEREAS, the applicant also submitted an Energy Star Award, dated October 26, 2005, in recognition of the site's significant pollution reduction and energy efficiency qualities; and

WHEREAS, the Opposition asserts that the noise from the laundry exceeds city regulations; and

WHEREAS, in response, the applicant states that no noise violations have been issued to the site, and submitted evidence that a sound containment wall was installed around the site's combined heat and power system, and a decibel meter was installed at the property line to monitor the system's compliance with sound regulations; and

WHEREAS, the Opposition testified that the double parking of laundry trucks outside the East Portion of the site while waiting entry to the yard, and problems with the entry of the trucks into the yard creates a significant amount of noise and is unsafe for pedestrians; and

WHEREAS, in response, the applicant submitted a memorandum distributed to all of its truck drivers, stating that: (1) no radio playing is allowed while trucks are unloading in the East Portion's yard; (2) no motor idling of any trucks is permitted outside of the site while waiting to unload into the East Portion's yard; and (3) a helper must guide a driver while a truck is backing into the East Portion's yard; and

WHEREAS, the applicant states that there will be a change in operations in an attempt to have trucks returning to the site arrive at more staggered intervals; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-412.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 11-411 and 11-412 for a reinstatement of a prior Board approval permitting the extension of a legal non-conforming commercial laundry use within a residential zoning district, and for an amendment to the approved plans to legalize a one-story enlargement of 763 sq. ft. in the rear of the lot for additional storage for the commercial laundry, within an R5B zoning district, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received May 5, 2009"-(4) sheets; and *on further condition*:

THAT this grant shall be for a term of ten years, to expire on August 11, 2019;

THAT all mechanical and ventilation equipment shall comply with the Administrative Code;

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

THAT a new certificate of occupancy shall be

MINUTES

obtained by February 11, 2010;

THAT an acoustical wall with a height of eight feet shall be installed along the western lot line, as reflected on the BSA-approved plans;

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 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, August 11, 2009.

50-09-BZ

CEQR #09-BSA-103M

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 (*Warrior Fitness Boot Camp*) on the third floor in a twelve-story building. M1-6 zoning district.

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

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated March 12, 2009, acting on Department of Buildings Application No. 110197199, reads in pertinent part:

“ZR 42-10. Proposed ‘physical culture establishment’ is not permitted as-of-right;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-6 zoning district, the legalization of a physical culture establishment (PCE) on the third floor of a 12-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 9, 2009, after due notice by publication in the *City Record*, with a continued hearing on July 14, 2009, and then to decision on August 11, 2009; and

WHEREAS, Community Board 5, Manhattan, has no

objection to this application; and

WHEREAS, the subject site is located on the north side of West 35th Street between Fifth Avenue and Avenue of the Americas, in an M1-6 zoning district; and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the PCE has a total floor area of 5,785 sq. ft. on the third floor of the building; and

WHEREAS, the PCE is operated as Warrior Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:30 a.m. to 9:30 p.m.; Saturday, from 9:00 a.m. to 3:00 p.m.; and will be closed on Sunday; and

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

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since May 12, 2008, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between May 12, 2008 and the date of this grant; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA103M, dated June 1, 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

MINUTES

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 M1-6 zoning district, the legalization of a physical culture establishment on the third floor of an existing 12-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 3, 2009"- Three (3) sheets and *on further condition*:

THAT the term of this grant shall expire on May 12, 2018;

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, August 11, 2009.

177-09-BZ

CEQR #09-BSA-113Q

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) to allow six-story residential building, contrary to height regulations around airports (ZR §61-21). R6/C4-2 zoning district.

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

9001, 9002 and 9100), Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Raymond H. Levin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Queens Borough Commissioner, dated May 20, 2009, acting on Department of Buildings Application Nos. 402192702 and 402191711, read in pertinent part:

“Building is contrary to zoning resolution ZR 61-

21. Special permit is required from BSA;” and

WHEREAS, this is an application under ZR §§ 73-66 and 73-03, to permit, within a C4-2 zoning district, the increase in height for six buildings in proximity to LaGuardia Airport, contrary to ZR § 61-21; and

WHEREAS, a public hearing was held on this application on July 14, 2009, after due notice by publication in *The City Record*, and then to decision on August 11, 2009; and

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

WHEREAS, Community Board 7, Queens, recommends approval of this application, with the condition that the Board follow the Port Authority’s determination; and

WHEREAS, the Queens Borough President recommends approval of this application; and

WHEREAS, the subject site is bounded by College Point Boulevard, Roosevelt Avenue, 40th Road, and the Flushing River; and

WHEREAS, the site is proposed to be occupied by a six-building development called Sky View Parc (formerly known as Flushing Town Center) and has a lot area of 13.4 acres; and

WHEREAS, each of the six buildings will include a three-story commercial/parking base, with residential use on the floors above; and

WHEREAS, the site is currently under construction with the commercial/parking base nearing completion and three of the six residential towers at full height; and

WHEREAS, the Board notes that ZR § 61-21 (Restriction on Highest Projection of Building or Structure) restricts the height of buildings or structures within designated flight obstruction areas; and

WHEREAS, specifically, the provision sets forth that the highest projection of any building or structure may not penetrate the most restrictive of either approach surfaces, transitional surfaces, horizontal surfaces, or conical surfaces, within an Airport Approach District of a flight obstruction

MINUTES

area; and it may not penetrate the horizontal surface or conical surface within the Airport Circling District of the flight obstruction area; and

WHEREAS, however, pursuant to ZR § 73-66 (Height Regulations around Airports) the Board may grant a special permit to permit construction in excess of the height limits established under ZR §§ 61-21 (Restriction on Highest Projection of Building or Structure) or 61-22 (Permitted Projection within any Flight Obstruction Area), only (1) subsequent to the applicant submitting a site plan, with elevations, reflecting the proposed construction in relation to such maximum height limits, and (2) if the Board finds that the proposed would not create danger and would not disrupt established airways; and

WHEREAS, the provision also provides that, in its review, the Board shall refer the application to the Federal Aeronautics Administration (FAA) for a report as to whether such construction will constitute a danger or disrupt established airways; and

WHEREAS, as to the information submitted by the applicant, the Board notes that the applicant submitted a site plan with elevations reflecting the proposed construction, which includes information about the maximum as of right height and the maximum height approved by the FAA for each building; and

WHEREAS, as to the Board's determination about the safety of the proposed construction with regard to the proximity to the airport, the Board notes that the FAA regulates the heights of buildings within proximity to airports and that since the subject site is located near and to the east of LaGuardia Airport, it falls within the area regulated by the FAA; and

WHEREAS, the applicant represents that it filed applications with the FAA in 2005 for review and approval of all buildings at the site, including a seventh building that is not currently part of the proposal, and issued a series of reports approving the proposed buildings, which became effective January 20, 2006; and

WHEREAS, pursuant to the FAA's approvals, DOB issued two new building permits for the proposed development; and

WHEREAS, the applicant has commenced construction and the project will be completed in phases; and

WHEREAS, the applicant states that a significant portion of the first phase, which includes the commercial/parking base and Towers 1, 2, and 3 (FAA approved Buildings A, B, and C), is completed; the second phase, which includes Towers 6, 7, and 8 (FAA approved Buildings E, F, and G), will be constructed at a later date; and

WHEREAS, the proposed heights for the buildings range from 204.94 feet above Average Mean Sea Level (AMSL) for Tower 2 (B) to 226 feet AMSL for Towers 7 and 8 (F and G); and

WHEREAS, the maximum heights approved by the FAA range from 205 feet above AMSL for Tower 2 (B) to 229 feet for Tower 8 (G); and

WHEREAS, the Board notes that the approved heights include all appurtenances to the buildings; and

WHEREAS, accordingly, the Board notes that the proposed building heights are equal to or below those within the range approved by the FAA; and

WHEREAS, the Board notes that the FAA regulations are similar to those found in the ZR but differ slightly based on updated reference points and runway elevations; and

WHEREAS, the applicant has also submitted requests for approval to the Port Authority of New York/New Jersey (PA), which operates LaGuardia Airport; and

WHEREAS, as reflected in two no objection letters, dated August 10, 2006 and January 20, 2009, the PA approves of the project and references the FAA reports; and

WHEREAS, the applicant represents that the development and use of the site, other than the proposed height, complies and conforms with all zoning district regulations; and

WHEREAS, accordingly, the Board's review was limited to the request for an increase in height above that permitted as of right, pursuant to the special permit; and

WHEREAS, based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use 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 §§ 73-66 and 73-03; and

WHEREAS, the applicant acknowledges that the FAA reports state that there is a requirement that the FAA be notified ten days prior to the start of construction (Part I) and five days after reaching the greatest height of each building (Part II); and

WHEREAS, the applicant states that it has performed the required Part I notification for the first phase of its construction for Towers 1 through 8 (A through G), which have all commenced construction; the applicant has submitted Part II notification for Towers 1, 2, and 3 (A, B, and C) as these buildings have reached their greatest heights; and

WHEREAS, the applicant states that Part II notification for Towers 5 through 8 (D through G) is forthcoming as those buildings reach their greatest height during the second phase of construction at the site; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-113Q, dated May 14, 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

MINUTES

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 §§ 73-66 and 73-03, to permit, within a C4-2 zoning district, the increase in height for six buildings in proximity to LaGuardia Airport, contrary to ZR § 61-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received June 23, 2009"-(12) sheets and *on further condition*:

THAT the maximum heights, including all appurtenances, shall be as follows: Tower 1 (A) - 208.11 feet, Tower 2 (B) - 204.94 feet, Tower 3 (C) - 210.61 feet, Tower 6 (E) - 217 feet, Tower 7 (F) - 226 feet, and Tower 8 (G) - 226 feet;

THAT the relief granted is only that associated with ZR § 73-66 and all construction at the site shall be as approved by DOB and must comply with all relevant Building Code and zoning district regulations;

THAT the applicant must comply with all FAA notification requirements associated with the construction at the site;

THAT substantial construction be completed in accordance with ZR § 73-70;

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 of 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, August 11, 2009.

195-07-BZ

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance (§72-21) to allow hotel and retail uses below the floor level of the second story, contrary to use regulations (§42-14(d)(2)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Diedra Carson, Alan Popel and Jack Freeman.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

256-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Hayden Rester, owner.

SUBJECT – Application November 5, 2007 – Variance (§72-21) to permit a three-story, five-unit residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph. Block 1339, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD # 8BK

APPEARANCES –

For Applicant: Adam Rothkrug and Todd Dale.

ACTION OF THE BOARD – Laid over to September 15, 2009, at 1:30 P.M., for continued hearing.

63-08-BZ

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

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

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

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO REOPEN HEARING –

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

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 September 15, 2009, at 1:30 P.M., for decision, hearing closed.

MINUTES

314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 437-51 West 13th Street, LLC, owner.

SUBJECT – Application December 22, 2008 – Variance (§72-21) to allow for the construction of a 12-story commercial building (office and UG10 retail), contrary to FAR, height and setback and rear yard regulations (§43-12, §43-43, §43-26) and use regulations (§42-12). M1-5 zoning district.

PREMISES AFFECTED – 437-447 West 13th Street, 862-868 Washington Street, southeast portion, block bounded by West 13th, West 14th and Washington Streets, Tenth Avenue, Block 646, Lots 19, 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Gary Tarnoff, and Jamie Barr, Jack Freeman and Jeff Rusin.

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

7-09-BZ

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

SUBJECT – Application January 20, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141), side yards (§23-461) and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 1082 East 26th Street, East 26th 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 September 15, 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, contrary to floor area, lot coverage and open space (§23-141(b)), side yards (§23-461) and rear yard (§23-47) regulations. 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 September 15, 2009, at 1:30 P.M., for continued hearing.

51-09-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi, owner.

SUBJECT – Application April 3, 2009 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to side yard requirements (§461). R-5 zoning district.

PREMISES AFFECTED – 2032 East 17th Street, East 17th Street and Avenue T, Block 7321, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Joseph Bonsignore.

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) to combine two semi-attached homes to create one single family home, contrary to floor area and open space (ZR §23-141(a)), and rear yard (ZR §23-47) regulations. R2 zoning district.

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

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

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 September 15, 2009, at 1:30 P.M., for decision, hearing closed.

183-09-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 1400 5th Commercial LLC, owner; TSI West 115th Street LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application June 4, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*NY Sports Club*) on a portion of the ground floor and cellar in an eight-story mixed-use building. C4-5X zoning district.

PREMISES AFFECTED – 1400 5th Avenue, Northeast corner of 5th Avenue and West 115th Street. Block 1599, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Fredrick A. Becker.

MINUTES

ACTION OF THE BOARD – Laid over to September 15, 2009, at 1:30 P.M., for continued hearing.

184-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie Daniel and Elliot Daniel, owners.

SUBJECT – Application June 4, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space, lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 4072 Bedford Avenue, west side of Bedford Avenue, between Avenue S and Avenue T, Block 7303, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to September 25, 2009, at 1:30 P.M., for continued hearing.

195-09-BZ

APPLICANT – Mark Levine, Esq., Herrick, Feinstein LLP, for Brooklyn Academy of Music, Incorporated, owner.

SUBJECT – Application June 24, 2009 – Variance (§72-21) for a community facility building (*Brooklyn Academy of Music*), contrary to required rear yard (§33-26). C6-1 zoning district.

PREMISES AFFECTED – 321 Ashland Place, east side of Ashland Place between Lafayette Avenue and Hanson Place, Block 2111, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Mark Levine, Jamel Gaines, Nigel Capbell, Council Member James, Doly Gicliano and other.

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 September 15, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.