
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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DOCKET

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218-10-BZ

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219-10-A

74-76 Adelphi Street, Location on the west side of Adelphi Street between Park and Myrtle Avenues., Block 2044, Lot(s) 52,53, Borough of **Brooklyn, Community Board: 2**. Appeal for common law vested rights to continued development under the prior zoning district. R5B 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

DECEMBER 14, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 14, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

55-45-BZ

APPLICANT – Walter C. Maffei, AIA, for Donato Passarella, owner.

SUBJECT – Application August 31, 2010 – Pursuant to ZR (§11-411) for an Extension of Term of an existing Gasoline Service Station (*Spirit*) which expired on February 27, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on May 2, 2001; waiver of the rules. C2-4/R6B zoning district.

PREMISES AFFECTED – 51 Kingsland Avenue, Woodpoint Road, Frost Street, Block 2866, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

245-49-BZ

APPLICANT – Simons & Wright LLC, for Alley Pond Owners Corporation, owner.

SUBJECT – Application October 7, 2010 – Amendment/Waiver to legalize the conversion of one residential unit to be used as an accessory residential management office and to eliminate the term. R3-2 zoning district.

PREMISES AFFECTED – 78-09 Springfield Boulevard, east side of Springfield between Kingsbury Avenue and Union Turnpike, Block 7842, Lot 33, Borough of Queens.

COMMUNITY BOARD # 11Q

827-55-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products, Incorporated, owner.

SUBJECT – Application October 5, 2010 – Pursuant to ZR (§11-411) for an Extension of Term for the continued operation of a Gasoline Service Station (*British Petroleum*) which expires on January 31, 2011. R3-2 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, southwest corner of Conduit Avenue, Block 13614, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

758-84-BZ

APPLICANT – David L. Businelli, R.A., for Richard Sgarato, owner.

SUBJECT – Application August 30, 2010 – Extension of Term of a previously approve variance (§72-21) which

permitted the legalization of a two (2) story and cellar commercial building contrary to the use regulations. R3X zoning district.

PREMISES AFFECTED – 1444 Clove Road, 61' North of intersection Tioga Street and Clove Road, Block 658, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

93-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker for Green 19 W44 Owner, LLC, owner; TSI West 44 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 25, 2010 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a physical culture establishment (New York Sports Club) which expired on July 25, 2010. C6-4.5 (MID) zoning district.

PREMISES AFFECTED – 19 West 44th Street, northerly side of West 44th Street, 150' west of 5th Avenue, Block 1260, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #3M

128-00-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for CRP/Capstone 14W Property Owner, LLC c/o CB Richard Ellis, owner; Equinox Wall Street Incorporated, lessee.

SUBJECT – Application September 30, 2010 – Extension of Term of a previously granted Special Permit (ZR §73-36) for the continued operation of a Physical Culture Establishment (*Equinox*) which expired on September 12, 2010. C5-5(LM) zoning district.

PREMISES AFFECTED – 10/16 Wall Street, north west corner of Wall Street and Nassau Street, Block 46, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEALS CALENDAR

135-10-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Incorporated, owner; James McDonough, lessee.

SUBJECT – Application August 3, 2010 – Proposed enlargement of an existing single family home not fronting a legally mapped street contrary to General City Law Section 36 . R4 zoning district.

PREMISES AFFECTED – 107 Beach 216th Street, east side of Beach 216th Street, 120' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

212-10-A

APPLICANT – NYC Board of Standards and Appeals

CALENDAR

OWNER - Augustus H. Lawrence and Company
SUBJECT – Application November 5, 2010 – Dismissal for lack of Prosecution - An appeal to the Department of Buildings Determination that the Applicant Engineer's report violated Building Code Section 28.211.1. (False Statements). C6-9M Zoning District.
PREMISES AFFECTED – 96 Greenwich Street, west side of Greenwich Street between Rector Street and Carlisle Street, Block 53, Lot 39, Borough of Manhattan.
COMMUNITY BOARD #1M

SUBJECT – Application September 20, 2010 – Variance (§72-21) for the construction of a detached two-story, two family residence contrary to the front yard requirements (ZR §23-45) and side yard requirement (ZR §23-461). R5 zoning district.
PREMISES AFFECTED – 873 Belmont Avenue aka 240 Milford Street, northwest corner of Belmont Avenue and Milford Street, Block 4024, Lot 36, Borough of Brooklyn.
COMMUNITY BOARD #5BK

Jeff Mulligan, Executive Director

DECEMBER 14, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 14, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

45-10-BZ

APPLICANT – Sheldon Lobel, PC, for Leemilt's Petroleum, Incorporated, owner.
SUBJECT – Application April 5, 2010 – Pursuant to §11-411 and §11-412 for the reinstatement of an expired Variance for the continued operation of a Gasoline Service Station (*Getty*) which expired on June 23, 1986 and an Amendment for the increase of 425 square feet to the auto laundry; Extension of Time to obtain a Certificate of Occupancy. C1-4/R7-1 zoning district.
PREMISES AFFECTED – 1413-1429 Edward L. Grant Highway, southwest corner of Plimpton Avenue and Edward L. Grant Highway, Block 2521, Lot 15, Borough of Bronx.
COMMUNITY BOARD #4BX

128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagaduyev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.
SUBJECT – Application July 13, 2010 – Variance (§72-21) to permit the proposed synagogue, religious school and Rabbi's residence contrary to floor area and lot coverage (§24-11), height, setback and sky exposure plane (§24-521), front yard (§24-34), side yards (§24-35), side setback (§24-551), and minimum distance between windows (§24-672 and §23-863). R4 zoning district.
PREMISES AFFECTED – 147-58 77th Road, 150th Street and 77th Road, Block 6688, Lot 31, Borough of Queens.
COMMUNITY BOARD #8Q

183-10-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 23, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

1493-61-BZ, 1495-61-BZ, 1497-61-BZ, 1499-61-BZ, 1501-61-BZ

APPLICANT – Bryan Cave LLP, for London Terrace Gardens, owner.

SUBJECT – Application August 12, 2010 – Extension of Term (§11-411) for transient parking in a multiple dwelling building which expired on February 27, 2002; waiver of the rules. R8A zoning district.

PREMISES AFFECTED – 415, 425, 435, 445, 455 West 23rd Street, aka 420, 430, 440, 450, 460 West 24th Street, West 23rd Street, West 24th Street, 125 feet west of Ninth Avenue, 125 feet east of Tenth Avenue. Block 721, Lot 7. Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Frank Chaney.

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 waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a transient parking garage, which expired on February 27, 2002; and

WHEREAS, a public hearing was held on this application on October 26, 2010, after due notice by publication in *The City Record*, and then to decision on November 23, 2010; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application, with the condition that the previously-imposed restrictions on the garage operation remain in effect and that the ramps be certified as ADA-compliant; and

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

WHEREAS, the subject site is located on a through lot with frontage on West 23rd Street and West 24th Street, between Ninth Avenue and Tenth Avenue, within an R8A zoning district; and

WHEREAS, the site is occupied by ten 16-story

residential buildings; and

WHEREAS, the cellar is occupied by a 185-space accessory garage; and

WHEREAS, on February 27, 1962, under the subject calendar numbers, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to permit a maximum of 149 surplus parking spaces to be used for transient parking for “pleasure-type” vehicles only, for a term of 20 years; and

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

WHEREAS, most recently, on October 27, 1992, the Board granted a ten-year extension of term, which expired on February 27, 2002, with the condition that the West 23rd Street ramp be used as an entrance only and that the West 24th Street ramp be used as an entrance and an exit; and

WHEREAS, the applicant now requests an extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, in response to concerns raised by the Community Board, the applicant submitted a letter from its architect stating that the parking garage access ramps across the sidewalks on West 23rd Street and West 24th Street are ADA-compliant; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions 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 having been adopted on February 27, 1962, so that as amended this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from February 27, 2002, to expire on February 27, 2012; *on condition:*

THAT this term shall expire on February 27, 2012;

THAT signage shall comply with the underlying zoning district regulations;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

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

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

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

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

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(DOB App. No. 110429803)

Adopted by the Board of Standards and Appeals,
November 23, 2010.

273-03-BZII thru 285-03-BZII

APPLICANT – Sheldon Lobel, P.C. for 211 Building Corporation, owner.

SUBJECT – Application October 6, 2010 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for proposed two-story, semi-detached two-family residences which expired on December 7, 2008; waiver of the rules. R2, R3-2/C1-2 zoning district.

PREMISES AFFECTED – 211-51/49/45/43/41/54/52/50/48/46/44/42 94th Road, a landlocked lot bounded by 94th Avenue, 212th Street, Jamaica Avenue and Hollis Court Boulevard. Block 10546, Lots 92, 93, 95 thru 104, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Josh Rinesmith.

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 waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction for a previously granted variance which permitted, on a site partially within an R2 zoning district and partially within an R3-2 zoning district, the construction of 12 two-story single-family homes, which expired on December 7, 2008; and

WHEREAS, a public hearing was held on this application on October 26, 2010, after due notice by publication in *The City Record*, and then to decision on November 23, 2010; and

WHEREAS, the subject site is located in the center of the block bounded by Jamaica Avenue, 94th Avenue, Hollis Court Boulevard, and 212th Street, partially within an R2 zoning district and partially within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since December 7, 2004 when, under the subject calendar numbers, the Board granted variances to permit the proposed construction of 12 two-story single-family homes; and

WHEREAS, substantial construction was to be completed by December 7, 2008, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to funding delays and delays in securing necessary approvals from the Fire Department and the Department of Environmental Protection, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the

Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 7, 2004, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on November 23, 2014; *on condition*:

THAT substantial construction shall be completed by November 23, 2014;

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

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

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

(DOB Application Nos. 401632621, 401632612, 401632603, 401632596, 401632587, 401632578, 401632569, 401632550, 401632541, 401632532, 401632523, 401632514)

Adopted by the Board of Standards and Appeals,
November 23, 2010.

74-49-BZ

APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Associates, owners.

SUBJECT – Application January 19, 2010 – Extension of Time to obtain a Certificate of Occupancy for an existing parking garage which expired on September 17, 2009; Waiver of the Rules. M1-6 (Garment Center) zoning district.

PREMISES AFFECTED – 515 Seventh Avenue, southeast corner of the intersection of Seventh Avenue and West 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safien and Calvin Wong.

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 January 11, 2011, at 10 A.M., for decision, hearing closed.

132-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms Inc., owner.

SUBJECT – Application July 9, 2010 – Extension of Term (§11-411) of a previously approved automotive service station (UG 16B) (*Gulf*) with accessory uses which expired on June 18, 2010. C1-2/R3-2 zoning district.

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PREMISES AFFECTED – 17-45 Francis Lewis Boulevard, aka 17-55 Francis Lewis Boulevard, east side of Francis Lewis Boulevard, between 17th Road and 18th Avenue, Block 4747, Lot 31, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for continued hearing.

156-73-BZ

APPLICANT – Gary Maranga, R.A., for The Design Alliance, owner.

SUBJECT – Application October 12, 2010 – Extension of Term for surplus transient parking in a multiple dwelling which is accessory to Albert Einstein College of Medicine which expired on June 26, 2008; Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1975 Eastchester Road, west side of Eastchester Road at the intersection of Eastchester Road and Morris Park Avenue, Block 4205, Lot 2, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Gary Maranga.

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 December 7, 2010, at 10 A.M., for decision, hearing closed.

914-86-BZ

APPLICANT – Stuart A. Klein, Esq., for Union Temple of Brooklyn, owner; Eastern Athletic, Incorporation, lessee.

SUBJECT – Application March 31, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (*Eastern Athletic*) which expired on May 17, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on November 12, 1998; Amendment to the interior layout and the hours of operation; Waiver of the Rules. R8X zoning district.

PREMISES AFFECTED – 1-19 Eastern Parkway, north side of Eastern Parkway, between Plaza Street, east and Underhill Avenue, Block 1172, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Abigale Patterson.

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 December

14, 2010, at 10 A.M., for decision, hearing closed.

66-90-BZ

APPLICANT – Eric Palatnik, P.C., for A.H.G. Realty Corporation, owner.

SUBJECT – Application October 5, 2010 – Extension of Term for a UG16 Gasoline Service Station (*Mobil*) which expired on October 1, 2010. R5 zoning district.

PREMISES AFFECTED – 43-03 Astoria Boulevard, northeast corner of 43rd Street, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 10 A.M., for continued hearing.

175-05-BZ

APPLICANT – Eric Palatnik, P.C., for Athanasios Amaxus, owner.

SUBJECT – Application September 9, 2010 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to construct a four-story multiple dwelling with accessory parking which expires on January 9, 2011. M1-1 zoning district.

PREMISES AFFECTED – 18-24 Luquer Street, between Hicks Street and Columbia Street, Block 520, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Trevis Savage.

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 December 14, 2010, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

237-09-A & 238-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP for Safet Dzemovski, owner.

SUBJECT – Application July 31, 2009 – Proposed construction in the bed of a mapped street, contrary to General City Law Section 35. R3X zoning district.

PREMISES AFFECTED – 81 & 85 Archwood Avenue, aka 5219 Amboy Road, east side of Archwood Avenue, 198.25' north of Amboy Road, Block 6321, Lot 152 & 151, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated July 2, 2009, acting on Department of Buildings Application Nos. 520010666 and 520010657 reads in pertinent part:

“The Proposed project is in the bed of a mapped street, which is contrary to GCL 35 and therefore it is referred to the Board of Standards for review;” and

WHEREAS, this is an application to permit the proposed construction of two single-family homes located within the bed of a mapped street, Archwood Avenue, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on June 15, 2010, after due notice by publication in the *City Record*, with continued hearings on July 27, 2010, September 14, 2010 and October 26, 2010, and then to decision on November 23, 2010; and

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

WHEREAS, during the course of the hearing process, the applicant amended its proposal and submitted a revised site plan reflecting that the proposed homes will be located completely outside the proposed lines of Archwood Avenue, which will be paved to its fully mapped width of 38'-0" in front of the proposed homes, thereby limiting the proposed encroachment to a portion of the sidewalk area; and

WHEREAS, Community Board 3, Staten Island, recommended disapproval of the initial version of the application; and

WHEREAS, Borough President James P. Molinaro recommends approval of the revised proposal, with the following conditions: (1) the portions of Archwood Avenue being opened are constructed to a width of 38'-0"; (2) the proper sidewalk treatment for a 60'-0" mapped street be

incorporated into the proposal, such that the sidewalk width is 19'-0" instead of the proposed width of 11'-0"; and (3) a Declaration of Public Use be filed against the properties; and

WHEREAS, in response to the Staten Island Borough President, the applicant states that the requested conditions cannot be accommodated for the following reasons: (1) the plans include paving Archwood Avenue to 38'-0" in width in the areas that the applicant owns all 38'-0" of the roadbed, but there are small areas that are not owned by the applicant and where a 38'-0" width therefore cannot be provided; (2) the plans include a sidewalk with a width of 11'-0", which aligns with the existing sidewalk to the north of the site, and widening the sidewalk to a width of 19'-0" would result in the further reduction in the size of the proposed homes or yards; and (3) maintenance of the proposed homes as a private area as opposed to a public street is critical to the viability of the development, as dedication of the area as a public street would result in additional requirements which would create further delays and expense to the owner; and

WHEREAS, by letter dated September 8, 2009, the Department of Environmental Protection ("DEP") states that: (1) there is an existing ten-inch diameter sanitary sewer, a 24-inch diameter storm sewer, and an eight-inch diameter city water main in Archwood Avenue between Amboy Road and Bennett Avenue; and (2) Drainage Plan No. D-11, sheet 4 of 8, calls for a future ten-inch diameter sanitary sewer and a 12-inch diameter storm sewer in Archwood Avenue between Amboy road and Bennett Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (1) the total width of the mapped street, Archwood Avenue, and the widening portion of the street between Amboy Road and Bennett Avenue; (2) the distance between the northerly lot line of tentative Lot 152 and the terminal manholes of the existing ten-inch diameter sanitary sewer and the 24-inch diameter storm sewer, the distance between the westerly lot line of tentative Lot 152 and the existing eight-inch diameter water main, and the distance from the northerly lot line of tentative Lot 152 to the water main end cap; and (3) a sewer corridor with a width of 33'-0" in the bed of the mapped street, Archwood Avenue, for the installation, maintenance, and/or reconstruction of the future ten-inch diameter sanitary sewer, the 12-inch diameter storm sewer, and the existing eight-inch diameter city water main; and

WHEREAS, in response to DEP's request, on December 1, 2009 the applicant submitted a letter from the architect regarding a meeting with DEP on September 11, 2009, where it was determined that providing a sewer corridor would not be required at the subject location because any such future extensions would pass through the private property and would not benefit any additional lots because the subject site is the last developable lot on Archwood Avenue; and

WHEREAS, additionally, on April 15, 2010 the applicant submitted a revised site plan in response to DEP's September 8, 2009; and

WHEREAS, by letter dated May 17, 2010, DEP stated that it reviewed the revised site plan and that: (1) the applicant must provide an access corridor with a width of 20'-0" along

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the eight-inch city water main in the bed of Archwood Avenue which protrudes inside Lot 152; (2) the applicant's proposal for a skewed connection for Lot 152 is not acceptable; and (3) it may be necessary to form a Homeowners Association to provide sewer connections, water connections and access to Lot 151; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that: (1) an easement will be provided in favor of DEP for the maintenance of the eight-inch city water main in the bed of Archwood Avenue; (2) the existing skewed sewer connection will be replaced with a straight extension; and (3) a Homeowners Association will be filed for the maintenance of DEP facilities, common roadway and a proposed DEP easement for access to the facilities; and

WHEREAS, by letter dated November 22, 2010, DEP states that it reviewed the proposal and has no objection; and

WHEREAS, by letter dated June 8, 2010, in response to the applicant's initial proposal, the Fire Department stated that it objects to the construction of any buildings in the bed of Archwood Avenue; and

WHEREAS, subsequently, the applicant revised its site plan to provide for the current proposal, which does not reflect any buildings in the roadbed; and

WHEREAS, by letter dated July 26, 2010, the Fire Department states that it has reviewed the revised site plan and had the following requirements as conditions for approval of the application: (1) the dwellings must be fully sprinklered in conformity with Local Law 10 of 1999 and Reference Standard 17-2B of the New York City Building Code; (2) interconnected smoke alarms must be designed and installed in the dwelling in compliance with NYC Building Code Section 907.2.10; (3) a fire apparatus access road must be constructed in accordance with the requirements of FDNY FC 503.7; (4) "No Parking" signage shall be posted at the entrance to the fire apparatus access road in accordance with the requirements of FDNY FC 503.7; and (5) the height of the dwelling must not exceed 35 feet above grade plane; and

WHEREAS, in response, the applicant submitted a revised site plan which incorporated all of the Fire Department's requirements; and

WHEREAS, by letter dated February 22, 2010, in response to the applicant's initial proposal, the Department of Transportation ("DOT") stated that it reviewed the project and would prefer an option that does not infringe on the roadbed; and

WHEREAS, subsequently, the applicant revised its site plan to provide for the current proposal, which does not include any buildings in the roadbed; and

WHEREAS, by letter dated November 5, 2010, DOT states that it reviewed the proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated July 2, 2009, acting on Department of Buildings Application Nos. 520010666 and

520010657, is modified by the power vested in the Board by Section 35 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 November 22, 2010" – (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 fire safety measures shall be installed and maintained in accordance with the BSA-approved plans;

THAT "No Parking" signage shall be posted at the entrance to the fire apparatus access road in accordance with the requirements of FDNY FC 503.7;

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

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

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

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

Adopted by the Board of Standards and Appeals, November 23, 2010.

113-10-BZY

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Plaza Group 36 LLC, owner.

SUBJECT – Application June 22, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning. R5B zoning district.

PREMISES AFFECTED – 30-86 36th Street, west side of 36th Street, 152' north of 31st Avenue, Block 650, Lot 80, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Trevis Savage.

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 under ZR §11-331 to renew a building permit and to extend the time for the completion of the foundation of a four-story residential building; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 26,

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2010, and then to decision on November 23, 2010; and

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

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

WHEREAS, City Council Member Peter F. Vallone provided written testimony in opposition to the application; and

WHEREAS, representatives of the Norwood Neighborhood Association provided written and oral testimony in opposition to this application; and

WHEREAS, a number of neighborhood residents also testified in opposition to the application; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the "Opposition;" and

WHEREAS, specifically, the Opposition raised the following concerns: (1) excavation was not completed; (2) construction took place on the site after the Enactment Date; (3) construction took place after working hours; and (4) that the applicant initially filed as a non-asbestos project; and

WHEREAS, the subject site is located on the west side of 36th Street, between 30th Avenue and 31st Avenue; and

WHEREAS, the site has a frontage of 30 feet on 36th Street, a depth of approximately 100 feet; and a total lot area of 3,005 sq. ft.; and

WHEREAS, the site is proposed to be occupied with a four-story residential building with eight dwelling units (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of approximately 6,565 sq. ft. (2.18 FAR); and

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

WHEREAS, on May 18, 2010, New Building Permit No. 420092278-01-NB (the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, on May 25, 2010 (hereinafter, the "Enactment Date"), the City Council voted to enact the Astoria Rezoning, which changed the zoning district to R5B; and

WHEREAS, the applicant represents that the Building complies with the former R6 zoning district parameters; specifically, the R6 district permitted the proposed floor area ratio ("FAR") of 2.18, the proposed eight dwelling units, no side yard, and no parking spaces; and

WHEREAS, because the site is now within an R5B zoning district, the Building would not comply with the maximum FAR of 1.35, the maximum number of dwelling units of three, the requirement of a side yard with a minimum width of 8'-0", and the minimum number of parking spaces of three; and

WHEREAS, because the Building does not comply with the subject R5B zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order ("SWO") on June 11, 2010 halting work on the

Building; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the parameters of the prior R5B zoning district; and

WHEREAS, ZR § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations"; and

WHEREAS, a threshold requirement in this application is that the Permit is valid; and

WHEREAS, ZR § 11-31(a) provides that "[a] lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution;" and

WHEREAS, the record indicates that on May 18, 2010, the Permit was issued by DOB authorizing construction of the entire Building; and

WHEREAS, by letter dated September 8, 2010, DOB states that the Permit was lawfully issued; and

WHEREAS, thus, the Board finds that the Permit was lawfully issued by DOB on May 18, 2010; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth in ZR § 11-31(a) and that a decision may be rendered provided the other findings are met; and

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of a minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, the applicant states that excavation began on May 18, 2010 and that excavation was completed and substantial progress was made on the foundation as of the

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Enactment Date; and

WHEREAS, the Opposition contends that excavation was not complete as of the Enactment Date, and submitted photographs indicating that the owner continued to remove dirt from the site after the Enactment Date; and

WHEREAS, in response, the applicant states that excavation of the site was completed prior to the Enactment Date and that any dirt remaining on the site after the rezoning was used to provide a ramp for the removal of the large excavation equipment on the site and for the completion of backfill; and

WHEREAS, the applicant submitted photographs reflecting that the site was completely excavated as of the Enactment Date; and

WHEREAS, further, an affidavit of the contractor states that the entire site was excavated as of the Enactment Date; and

WHEREAS, the Board finds that the excavation performed at the site for the foundation of the Building is complete for vesting purposes under ZR § 11-331; and

WHEREAS, as to substantial progress on the foundation, the applicant initially represented that the foundation was 99 percent complete as of the Enactment Date; and

WHEREAS, specifically, the applicant stated that as of the Enactment Date, the owner had poured 82 of the 84 total cubic yards of concrete required for the foundation, and the only portion of the foundation that remained incomplete was the pouring of concrete for three interior footings for steel columns; and

WHEREAS, the applicant notes that DOB originally determined that the foundations were 100 percent complete as of the Enactment Date, based on an inspection conducted on May 27, 2010; and

WHEREAS, however, DOB subsequently audited the plans and issued the SWO based on its determination that the foundation was not complete as of the Enactment Date because the footings for the steel columns were not complete at that time; and

WHEREAS, the applicant submitted a foundation survey reflecting that the entire foundation was complete as of the Enactment Date, except for the three footings for the steel columns; and

WHEREAS, as to the Opposition's argument that construction continued on the site after the Enactment Date, the applicant states that construction did continue on the site pursuant to valid permits between the Enactment Date and the date that the SWO was issued because DOB had initially determined that the foundation was complete; and

WHEREAS, the applicant further states that the construction which took place between the Enactment Date and the issuance of the SWO included the pouring of the three interior footings, the completion of backfill, and the delivery of construction materials, all of which the applicant notes has been omitted from its calculation of foundation work and expenditures; and

WHEREAS, the Board notes that only the work that was performed after the Permit was issued and before the Enactment Date has been considered in its analysis under

ZR § 11-331; and

WHEREAS, at hearing, the Board raised concerns about the concrete pour that took place on the Enactment Date and whether the ten cubic yards of concrete delivered on that date were poured prior to the City Council vote enacting the Astoria Rezoning; and

WHEREAS, in response, the applicant represents that the majority of the ten cubic yards of concrete were poured prior to the City Council vote, but acknowledges that it is unable to provide evidence of the exact timing of the concrete pour; and

WHEREAS, the Board notes that, even if all ten cubic yards of concrete poured on the Enactment Date are excluded from the work considered in its analysis under ZR § 11-331, the applicant has still documented that 72 out of the 84 total cubic yards required for the completion of foundation, or 86 percent, was poured prior to the Enactment Date; and

WHEREAS, in support of this statement, the applicant has submitted copies of concrete pour tickets, a foundation survey, and photographs of the foundation work as of the Enactment Date; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables, which reflect significant expenditure associated with the excavation and foundation work incurred as of the Enactment Date; and

WHEREAS, specifically, the record indicates that the applicant spent \$95,276, or approximately 99 percent, of the total estimated foundation cost of \$96,026 as of the Enactment Date; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, the Board has reviewed all of the applicant's representations and the submitted evidence and agrees that it establishes that substantial progress was made on the required foundation as of the Enactment Date; and

WHEREAS, the Opposition contends that work was performed on the site after the legal hours; and

WHEREAS, in response, the applicant submitted an after-hours variance work permit issued by DOB for the site, authorizing extended construction hours at the site; and

WHEREAS, the Opposition claims that work continued on the site beyond the extended hours authorized by DOB; and

WHEREAS, in response, the applicant submitted complaint reports from DOB reflecting that DOB inspectors visited the site on multiple occasions and did not issue any violations for work being performed beyond the approved hours; and

WHEREAS, the Opposition argues that the architect originally listed the project as a non-asbestos project and that the owner did not perform proper asbestos removal until the community notified DOB of the issue; and

WHEREAS, the Board notes that the architect's mischaracterization of the project as a non-asbestos project is not part of the Board's consideration under ZR § 11-331,

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and that, ultimately, the owner performed the necessary asbestos removal; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under ZR § 11-331 and is entitled to the requested reinstatement of the Permit, and all other related permits necessary to complete construction.

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 420092278-01-NB pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on May 23, 2011.

Adopted by the Board of Standards and Appeals, November 23, 2010.

114-10-BZY and 115-10-BZY

APPLICANT – Nikolaos Sellas, for HX Holdings LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a major development commenced under the prior R6 zoning district. R6B zoning district

PREMISES AFFECTED – 26-58 & 26-60 30th Street, north side of 30th Street, 540.78' and 565.80' west of corner formed by Astoria Boulevard and 30th Street, Block 597, Lots 223 and 124, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Nikolaos Sellas.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 10 A.M., for continued hearing.

116-10-BZY

APPLICANT – Steven Sinacori, Esq., for Akerman Senterfitt, LLP, for 3516 Development LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 35-16 Astoria Boulevard, south side of Astoria Boulevard between 35th and 36th Streets, Block 633, Lots 39 and 140, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for adjourned hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, NOVEMBER 23, 2010

1:30 P.M.

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

ZONING CALENDAR

129-07-BZ

APPLICANT – Gerald J. Caliendo, R.A., for Angel Gerasimou, owner.

SUBJECT – Application May 21, 2007 – Variance (§72-21) to allow a residential use in a manufacturing district, contrary to use regulations (§42-00). M1-4 zoning district.

PREMISES AFFECTED – 1101 Irving Avenue, corner formed by the north side of Irving Avenue and Decatur Street, Block 3542, Lot 12, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, November 23, 2010.

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130-07-BZ thru 134-07-BZ

APPLICANT – Gerald J. Caliendo, P.A., Angelo Gerasimou, owner.

SUBJECT – Application May 21, 2007 – Variance (§72-21) to allow a residential use in a manufacturing district, contrary to use regulations (§42-00). M1-4 zoning district. PREMISES AFFECTED – 1501, 1503, 1505, 1507 Cooper Avenue, corner formed by west side of Cooper Avenue and Irving Avenue, Block 3542, Lots 1, 95, 94, 93, 92, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, November 23, 2010.

92-08-BZ

CEQR #08-BSA-082M

APPLICANT – Riker Danzig, for Boquen Realty, LLC, owner.

SUBJECT – Application April 14, 2008 – Variance (§72-21) to allow for Use Group 6 below the floor level of the second story in an existing building, contrary to use, rear yard and floor area regulations (§42-14, 43-12 and 43-26). M1-5B zoning district.

PREMISES AFFECTED –13 Crosby Street, east side of Crosby Street between Grand and Howard Street, Block 233, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Juan D. Reyes.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 8, 2010, acting on Department of Buildings Application No. 110018926, reads in pertinent part:

“Proposed commercial retail use (UG 6) below the floor level of the second story is contrary to ZR 42-14(D)(2)(b); and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot in an M1-5B zoning district within the SoHo-Cast Iron Historic District Extension, the conversion of the first floor and cellar level of an existing six-story building to commercial retail use (Use Group 6), contrary to ZR § 42-14(D)(2)(b); and

WHEREAS, a public hearing was held on this

application on June 8, 2010, after due notice by publication in the *City Record*, with continued hearings on July 27, 2010, September 14, 2010, and October 19, 2010, and then to decision on November 23, 2010; 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 2, Manhattan, recommends approval of this application, with the condition no eating and drinking establishment be permitted at the site; and

WHEREAS, City Council Member Margaret Chin recommends approval of this application; and

WHEREAS, the subject premises is located on the west side of Crosby Street between Howard Street and Grand Street, within an M1-5B zoning district; and

WHEREAS, the site has 75 feet of frontage on Crosby Street, a depth of 100 feet, and a total lot area of 7,500 sq. ft.; and

WHEREAS, the site is currently occupied by a six-story building, with two conforming showrooms on the first floor and artists’ studios and offices on the upper floors; and

WHEREAS, the applicant proposes to convert the first floor and cellar level to Use Group 6 use; and

WHEREAS, in addition to the requested conversion to Use Group 6 use below the second floor, the applicant initially proposed to construct an expansion of the building into the rear yard at the cellar and first floor, resulting in an increase in the floor area ratio (“FAR”) from 5.1 to 5.25 (the maximum permitted FAR is 5.0); and

WHEREAS, the Board did not find the need for an enlargement to be substantiated and, at hearing, directed the applicant to modify its proposal; accordingly, the applicant revised its plans to eliminate an increase in FAR and expansion at the cellar level or first floor; and

WHEREAS, because Use Group 6 use is not permitted below the second floor in the subject M1-5B zoning district, the applicant seeks a use variance to permit the proposed conversion of the first floor and cellar level; 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 building has structural problems that primarily are the result of the former hydroponic bean sprout farm, a conforming use that existed in the cellar, as well as the installation of an oversized rooftop water tank related to the operation of the bean sprout farm; and (2) mold and mildew infestation in the lower levels of the building, again as a result of the bean sprout farm; and

WHEREAS, the applicant states that the cellar of the building was used as a hydroponic bean sprout farm for approximately 21 years, which was a legal use as per the certificate of occupancy; and

WHEREAS, the applicant represents that the packaging and distribution operations for the bean sprout farm required the installation of heavy refrigeration equipment and loading machinery in the cellar which caused significant vibration and put excessive stress on the floor, severely damaging the

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concrete slab which eventually had to be replaced by the owner; and

WHEREAS, the applicant states that the beans were watered constantly by means of a sprinkler system fed by a water tank on the roof of the Building, and that the runoff from the sprinklers drained through a system of trenches dug into the sand below the Building which led to water collection tanks; and

WHEREAS, the applicant represents that during the operation of the bean sprout farm, water leaked through the drainage trenches and the cracks in the floor caused by the equipment, requiring the owner to excavate the entire cellar floor and replace it with a new floor 18 inches below the original surface to ensure that the leakage had not undermined the footings of the Building; and

WHEREAS, as to the installation of the water tank, the applicant states that the bean sprout farm relied on an oversized water tank on the roof of the Building in order to feed its sprinkler system; and

WHEREAS, the applicant submitted a report from its engineer stating that the excessive weight of the water tank damaged the load bearing exterior masonry walls of the Building, and confirming that the damage to the southeast corner of the Building is the result of the added water tower load; and

WHEREAS, the engineer's report further states that water tower caused further damage to the roofing joists in the vicinity of the water tank, and that the roofing deck and waterproofing materials need to be replaced and re-flashed once removal of the water tank is complete; and

WHEREAS, the applicant states that the stone lintels beneath the water tower are cracked and that many window frames on the south and east elevations have been bent due to the excessive weight of the water tower; and

WHEREAS, as to the mold and mildew damage, the applicant represents that the humidity levels resulting from the operation of the bean sprout farm created extensive mold and mildew infestation throughout the Building; and

WHEREAS, specifically, the applicant states that the mold and mildew infestation necessitated the removal and replacement of the sheetrock walls and ceiling tiles in the cellar, and caused dry rot in the wooden structural elements comprising the flooring for the ground level, which also had to be completely removed and replaced with steel and concrete; and

WHEREAS, the applicant further states that the mold and mildew permeated the vertical ducts and elevator shafts, causing health concerns throughout the Building and requiring extensive cleaning of the ducts, shafts and elevators; and

WHEREAS, the engineer's report submitted by the applicant estimates that the total cost of the completed and remaining remediation measures related to the operation of the bean sprout farm is \$1,112,600; and

WHEREAS, in addition to the damage caused by the bean sprout farm, the applicant initially claimed the following as bases of unique hardship on the site: (1) the floor plate is interrupted by columns and divided into narrow and irregular spaces; (2) a low floor-to-ceiling height; (3) an antiquated and

undersized freight elevator which is partially blocked by stairs; (4) the lack of a functional loading dock; (5) an antiquated electrical system; (6) antiquated floors unsuitable for heavy loads; (7) the lack of modern fire protection; and (8) the need to renovate the Building's façade per LPC standards; and

WHEREAS, during the course of the hearing process the Board questioned these additional alleged bases of unique hardship, in that the Building has large floor plates which can compensate for many of the alleged hardships and because certain of them appeared to represent mere maintenance issues common to most buildings of comparable age and condition in the neighborhood; and

WHEREAS, additionally, the Board noted that the fact that the Building is fully tenanted indicates that these alleged bases of hardship have not prevented conforming uses from operating below the second floor; and

WHEREAS, further, the Board is not persuaded that any or all of the above conditions are unique to the site; and

WHEREAS, in response, the applicant revised its application to remove the additional conditions claimed as unique hardships, focused on the remediation costs related to the bean sprout farm, and removed the requested FAR waiver by revising the plans to remove the extension of the Building at the cellar level and first floor; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) the existing building; (2) an as-of-right commercial building with conforming commercial/showroom space at the first floor and office uses on the upper floors; and (3) the currently proposed building; and

WHEREAS, the study concluded that the existing building and conforming commercial scenarios would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, in order to demonstrate the need for the requested variance, the applicant also prepared a financial analysis of an alternative as-of-right commercial development unencumbered by the above-mentioned hardship costs; and

WHEREAS, this analysis showed that without the hardship costs, this alternative as-of-right commercial development would in fact be a viable development scenario; however, when the costs of repairs and remediation related to the prior use as a bean sprout farm were included, such a scenario was not viable; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot'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 radius diagram

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reflecting that ground floor commercial use (Use Group 6) is a common condition in the surrounding neighborhood; and

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

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission approving the proposal, dated October 25, 2010; and

WHEREAS, the applicant represents that the Certificate of No Effect issued by LPC indicates that the proposed change of use below the second floor will not impact the surrounding neighborhood; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant agreed not to have an eating and drinking establishment on the site; and

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

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

WHEREAS, as noted above, the applicant initially proposed to extend the cellar and ground floor of the building, thereby increasing the FAR from 5.1 to 5.25; and

WHEREAS, at the request of the Board, the applicant removed the enlargement from its proposal; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08-BSA-082M dated October 12, 2010; 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 Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a lot in an M1-5B zoning district within

the SoHo-Cast Iron Historic District Extension, the conversion of the first floor and cellar level of an existing six-story building to commercial retail use (Use Group 6) *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 October 7, 2010"- five (5) sheets; and *on further condition*:

THAT the building shall not be occupied by a Use Group 6 eating and drinking establishment;

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

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

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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, November 23, 2010.

251-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bethany House of Worship Incorporated, owner.

SUBJECT – Application August 28, 2009 – Variance (§72-21) to permit the development of a two-story community facility (*Bethany Church*). The proposal is contrary to §§ 24-34 (front yard) and 25-31 (parking). R3-2 zoning district.

PREMISES AFFECTED – 130-34 Hawtree Creek Road, West side of Hawtree Creek Road, 249.93 feet north of 133rd Avenue. Block 11727, Lot 58, Borough of Queens.

COMMUNITY BOARD #10Q

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 April 22, 2010, acting on Department of Buildings Application No. 401945393 reads, in pertinent part:

“Proposed house of worship (UG 4) without the required front yard is contrary to Section 24-34 ZR, and without the required parking contrary to Section 25-31 ZR and must be referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R3-2 zoning

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district, a two-story building to be occupied by a church (Use Group 4), which does not comply with front yard or accessory parking requirements for community facilities, contrary to ZR §§ 24-34 and 25-31; and

WHEREAS, a public hearing was held on this application on August 3, 2010, after due notice by publication in *The City Record*, with a continued hearing on October 26, 2010, and then to decision on November 23, 2010; and

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

WHEREAS, Community Board 10, Queens, recommends disapproval of this application; and

WHEREAS, an adjacent homeowner provided testimony, citing a concern that construction at the site obstructs access to his garage; and

WHEREAS, this application is being brought on behalf of Bethany House of Worship, Inc., a non-profit religious entity (the "Church"); and

WHEREAS, the subject site is located on the west side of Hawtree Creek Road, north of 133rd Avenue with a lot area of 1,948 sq. ft.; and

WHEREAS, the proposed building provides for a two-story church with the following parameters: a first floor with a floor area of 885 sq. ft.; a second floor balcony with a floor area of 325 sq. ft.; a total floor area of 1,240.5 sq. ft. (0.64 FAR); a front yard with a depth of 6'-1" (a front yard with a minimum depth of 15'-0" is required) and without any onsite accessory parking spaces (a minimum of 18 parking spaces are required); and

WHEREAS, the proposal provides for the following uses: (1) dining/meeting space, a kitchen, and an office at the cellar level; (2) a sanctuary on the first floor; and (3) additional seating on a second floor balcony; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: the lot has a shallow depth and an irregular shape; and

WHEREAS, the applicant states that the site is triangular in shape, with a width of 81.88 feet and a range of depths; and

WHEREAS, the applicant represents that, due to the site's configuration, an as-of-right building would be inefficient with a floor plate of only 542 sq. ft., tapering to an interior dimension of 5'-4" at the southern end of the site; and

WHEREAS, as to the uniqueness of the site's configuration, the Board notes that the applicant's radius diagram reflects that there are only two other triangular lots within a 400-ft. radius of the site, both of which are larger than the subject site; and

WHEREAS, in addition to the constraints of the site, the applicant states that the primary programmatic need of the Church, to accommodate the anticipated congregation of approximately 82 people, necessitate the requested variance; and

WHEREAS, the applicant notes that the provision of a

complying front yard or 18 parking spaces would diminish the usable portion of the site and would not be able to support the programmatic needs of the Church; and

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

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

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

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

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

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

WHEREAS, the applicant further states that the development of the proposed Church is entirely as-of-right, with the exception of the non-compliant front yard and parking, waivers that are necessary to permit a building that can accommodate the congregation; and

WHEREAS, the applicant states that there is not a context for complying front yards adjacent to the site along Hawtree Creek Road; and

WHEREAS, specifically, the applicant notes that the adjacent site to the north does not have a front yard and also encroaches into the mapped widening line of Hawtree Creek Road and that the sites to the south are through lots with frontage on 120th Street; and

WHEREAS, the applicant notes that the proposed front yard with a depth of 6'-1" is outside of the mapped widening line of Hawtree Creek Road; and

WHEREAS, as to traffic impacts and parking, the applicant states that the Church does not propose to attract new congregants to the area, but is designed to accommodate the existing congregation's needs and the desire of the Church to provide sufficient facilities to fulfill its programmatic needs; and

WHEREAS, the applicant provided a parking study which reflects the available on-street parking within the vicinity of the subject site during times the Church holds services; and

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WHEREAS, the study reflects that there are between 80 and 106 parking spaces available on a weekday evenings and between 71 and 117 available spaces on weekend mornings/early afternoons; and

WHEREAS, the applicant projects that at most ten families would drive to services and, thus, there is sufficient on-street parking at all times to accommodate the Church's parking demand; and

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

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

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

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

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.2 and 617.5; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination 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 R3-2 zoning district, a two-story building to be occupied by a church (Use Group 4), which does not comply with front yard or accessory parking requirements for community facilities, contrary to ZR §§ 24-34 and 25-31, *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 8, 2010" – Five (5) sheets; and *on further condition*:

THAT the building parameters shall be: a floor area of 1,240 sq. ft. (0.64 FAR) and a front yard with a minimum depth of 6'-1";

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

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

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

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

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

THAT 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, November 23, 2010.

89-10-BZ

CEQR #10-BSA-072M

APPLICANT – Francis R. Angelino, Esq., for National Sculpture Society, owner.

SUBJECT – Application May 13, 2010 – Variance (§72-21) to allow for a commercial use below the floor level of the second story, contrary to §§42-14(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 53 Mercer Street, west side between Grand and Broome Streets, Block 474, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Francis R. Angelino and Gwen Pier.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 28, 2010, acting on Department of Buildings Application No. 110296028, reads in pertinent part:

“Proposed commercial use group 6 is not permitted as of right in M1-5B zoning district, per ZR 42-10.

Proposed use is also contrary to ZR 42-14(d)(2)(b) which specifies use regulations for commercial and manufacturing uses below the floor level of the second story in M1-5B.”; and

WHEREAS, this is an application under ZR § 72-21, to permit in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the conversion of the first floor and cellar level of an existing three-story building to a commercial retail use (UG 6), contrary to ZR §§ 42-10 and 42-14(d)(2)(b); and

WHEREAS, a public hearing was held on this application on September 21, 2010, after due notice by publication in the *City Record*, with a continued hearing on October 26, 2010, and then to decision on November 23, 2010; and

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

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Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, this application was brought on behalf of the National Sculpture Society (“NSS”), a not for profit entity; and

WHEREAS, the subject site is located on the west side of Mercer Street, between Broome Street and Grand Street; and

WHEREAS, the site has 25 feet of frontage on Mercer Street, a depth of 100 feet, and a lot area of 2,500 sq. ft.; and

WHEREAS, the site is currently occupied with a three-story mixed-use building with showroom use at the first floor and cellar, office use on the second floor, and joint living and work quarters for artists (“JLWQA”) on the third floor; and

WHEREAS, the applicant proposes to convert the first floor and cellar space into Use Group 6 retail use; and

WHEREAS, the uses on the upper floors will not change and are not included in the proposal; and

WHEREAS, because Use Group 6 retail is not permitted below the second floor in the subject M1-5B zoning district, the applicant seeks a use variance to permit the proposed conversion of the first floor and cellar level; 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 conformance with underlying district regulations: (1) the lot is small, narrow and underbuilt; (2) the existing building is obsolete for manufacturing use; and (3) the history of use of the site indicates that the ground floor was never intended or manufacturing use; and

WHEREAS, as to the small size and narrowness, the applicant represents that the site is a uniquely small lot with only 25 feet of frontage and a total lot area of 2,500 sq. ft.; and

WHEREAS, the applicant states that the narrow width and size of the lot results in small, narrow floor plates that are inefficient for conforming uses, such as warehouses and wholesale showrooms; and

WHEREAS, specifically, the applicant states that the overall size of the ground floor is only approximately 2,407 sq. ft., with approximately 1,800 sq. ft. of useable space when stairs and bathrooms are deducted, making it less desirable for conforming uses; and

WHEREAS, further, the existing building is undersized at 6,853 sq. ft. (2.75 FAR), which is significantly less than the 12,500 sq. ft. (5.0 FAR) permitted in the underlying zoning district; and

WHEREAS, the applicant represents that while the building may enlarge as-of-right, an enlargement above the existing building would be structurally infeasible; and

WHEREAS, the applicant represents that, even if an enlargement was structurally feasible, it would be unlikely that LPC would approve an enlargement due to the site’s location in the SoHo-Cast Iron Historic District; and

WHEREAS, the applicant concludes that the inability of the existing building to use the ground floor space for conforming use, in conjunction with the limited amount of income-generating space available on the underbuilt lot, creates a hardship on the subject site; and

WHEREAS, as to the uniqueness of these conditions, the applicant submitted a radius diagram reflecting that within 800 feet of the subject site there are only 18 other lots, or 4 percent of all lots, with similar physical constraints as the subject lot, including a width of 25 feet or less or a floor area ratio of 2.75 or less; and

WHEREAS, the radius diagram submitted by the applicant further reflects that of the other 18 similarly situated lots, five of the lots are vacant and the remainder have ground floor retail uses; thus, the subject lot is the only one of 19 zoning lots with similar characteristics within an 800-ft. radius that does not have existing ground floor retail use; and

WHEREAS, the applicant represents that the other 356 buildings in the 800-ft. radius area benefit from their larger street frontages and multiple, larger floor sizes which give the them greater potential income than can be generated by the subject building’s three small-sized floors; and

WHEREAS, as to the obsolescence of the building for a conforming use, the applicant cites to the following limitations: (1) there is no loading berth or space to install one; (2) there is no elevator; (3) access to the building is limited by small door widths; (4) the ground floor has low floor-to-ceiling heights; and (5) the ground floor load is weak; and

WHEREAS, the applicant represents that the lack of a loading berth and elevator and the small door widths would make it difficult to receive and transfer bulk shipments and to provide adequate access to the building for a conforming use; and

WHEREAS, as to the floor-to-ceiling height, the applicant states that the floor-to-ceiling height for the majority of the first floor is 12 feet with a maximum of 13 feet at the rear of the floor, making it unsuitable as a wholesale showroom, where the typical minimum ceiling height is 14 feet, or for use for warehousing goods, which requires a minimum ceiling height of 25 feet in order to facilitate the stacking of palettes; and

WHEREAS, the applicant further states that the small door widths and ground floor load of only 100 pounds per sq. ft. also restrict NSS from reverting the ground floor to its former use as a sculpture studio, as these inefficiencies would limit any sculptor to making only smaller busts and figures on site, and the limited amount of natural light that enters the ground floor makes it even less desirable for such use; and

WHEREAS, the Board notes that several aspects of the claimed obsolescence of the building are not unique to this building or site, however, in conjunction with the above-noted site conditions the Board acknowledges that these factors contribute to the practical difficulties in using the site in conformance with the applicable zoning regulations; and

WHEREAS, as to the history of use of the site, the applicant submitted a site history from its historic preservation consultants which reflects that the subject building was constructed in 1857 and the ground floor was occupied by retail use for at least its first 70 years of existence; and

WHEREAS, the site history submitted by the applicant further reflects that in over 150 years of existence the site was never used for any manufacturing use; and

WHEREAS, the applicant represents that the history of

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use of the site supports its position that the site is unsuitable for conforming manufacturing use, as the site has never been occupied by such a use, and that the site was constructed for ground floor retail use, consistent with the current proposal; and

WHEREAS, the applicant notes that although the obsolescence affects the entire building, the second and third floors will be maintained as office use and JLWQA, respectively, and the applicant is only seeking relief for the cellar level and ground floor; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board notes that even though NSS is a not for profit organization, the finding under ZR § 72-21(b) must be made in the subject case because NSS will be receiving commercial rents as a result of the proposed variance; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios, both of which include the existing second floor office use and third floor JLWQA use: (1) a conforming showroom on the ground floor; and (2) the proposed ground floor and cellar retail use; and

WHEREAS, the study concluded that the conforming scenario would not result in a reasonable return, but that the proposal would realize a reasonable return; and

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

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

WHEREAS, the applicant notes that many of the buildings in the immediate vicinity contain ground floor retail uses; and

WHEREAS, specifically, the radius diagram submitted by the applicant reflects that all other similarly sized buildings have ground floor retail uses, that a majority of the ground floor uses are occupied by retail spaces within a 400-ft. radius of the site, and that on the subject block all of the other ground floor spaces on the block are either occupied by or approved for Use Group 6 retail use on the ground floor; and

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

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC"), approving the proposal on May 25, 2009; and

WHEREAS, the Certificate of Appropriateness contemplates the reestablishment of the building's historic storefront, which LPC has determined is in the context of the subject block and historic district, and is consistent in design with neighboring buildings; and

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

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

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, the applicant notes that there is no proposed increase in the bulk of the building; rather, the bulk of the building will be reduced through the removal of the rooftop bulkhead; and

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, 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. 10BSA072M, dated January 21, 2010; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, 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 to permit, in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the conversion of the first floor and cellar of an existing three-story building to a commercial retail use (Use Group 6), contrary to ZR §§ 42-10 and 42-14(d)(2)(b); *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 August 4, 2010"—five (5) sheets; and *on further*

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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 substantial construction shall be completed pursuant to ZR § 72-23;

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, November 23, 2010.

148-10-BZ

APPLICANT – Eric Palatnik, P.C., for Giselle E. Salamon, owner.

SUBJECT – Application August 11, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141), side yards (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED –1559 East 29th Street, Between Avenue P and Kings Highway. Block 7690, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 Brooklyn Borough Commissioner, dated July 23, 2010, acting on Department of Buildings Application No. 320155880, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to ZR 23-141(b) in that the proposed Open Space is less than the required 65%.
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage exceeds the maximum required 35%.
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0".
5. Plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0"." and

WHEREAS, this is an application under ZR §§ 73-622

and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, rear yard, and side yard, contrary to ZR §§ 23-141, 23-47, and 23-461; and

WHEREAS, a public hearing was held on this application on October 26, 2010, after due notice by publication in *The City Record*, and then to decision on November 23, 2010; and

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

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

WHEREAS, the subject site is located on the east side of East 29th Street, between Avenue P and Kings Highway, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,800 sq. ft., and is occupied by a single-family home with a floor area of 1,748 sq. ft. (0.62 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,748 sq. ft. (0.62 FAR) to 2,414 sq. ft. (0.86 FAR); the maximum permitted floor area is 1,400 sq. ft. (0.5 FAR); and

WHEREAS, the proposed enlargement will provide an open space of 1,490 sq. ft. and a lot coverage of 1,310 sq. ft. (1,820 sq. ft. is the minimum required open space and 980 sq. ft. is the maximum permitted lot coverage); and

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

WHEREAS, the proposed enlargement will maintain the existing non-complying front yard with a depth of 8'-4" (a front yard with a minimum depth of 15'-0" is required) and maintain the noncomplying side yard with a width of 3'-0" (5'-0" is the minimum width required); and

WHEREAS, at hearing, the Board inquired about the location of a fence in relation to the lot line; and

WHEREAS, in response, the applicant stated that the fence will be relocated to an appropriate location when construction of the enlargement begins; 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

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the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, rear yard, and side yard, contrary to ZR §§ 23-141, 23-47, and 23-461; *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 November 23, 2010"-(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 2,414 sq. ft. (0.86 FAR); a front yard with a depth of 8'-4"; a side yard with a minimum width of 3'-0" along the northern lot line; a side yard with a minimum width of 10'-6" along the southern lot line; and a rear yard with a minimum depth of 20'-0", 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, November 23, 2010.

173-09-BZ

APPLICANT – Law Offices of Howard Goldman LLC, for 839-45 Realty LLC, owner; 839 Broadway Realty LLC, lessee.

SUBJECT – Application May 21, 2009 – Variance (§ZR 72-21) to allow for a four story mixed use building contrary to use regulations. (ZR §32-00, §42-00) C8-2 / M1-1 zoning districts.

PREMISES AFFECTED – 845 Broadway, between Locust and Park Streets, Block 3134, Lot 5, 6, 10, 11, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for deferred decision.

304-09-BZ

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – Variance (§72-21) to allow the erection of a ten-story, mixed-use community facility (*Women In Need*) and commercial building, contrary to floor area (§42-00, 43-12 and 43-122), height and sky exposure plane (§43-43), and parking (§44-21). M1-4 zoning district.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Abigeil Patterson.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for adjourned hearing.

305-09-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, for South Queens Boys & Girls Club, Inc., owner.

SUBJECT – Application November 5, 2009 – Variance (§72-21) to permit the enlargement of an existing community facility building (*South Queens Boys & Girls Club*) contrary to floor area (§33-121) and height (§33-431). C2-2/R5 zoning district.

PREMISES AFFECTED – 110-04 Atlantic Avenue, southeast corner of Atlantic Avenue and 110th Street, Block 9396, Lot 1, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Ron Mandell.

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 December 7, 2010, at 1:30 P.M., for decision, hearing closed.

43-10-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Cammastro Corp./Maria Pilato, owner; First Club One LLC/Spiro Tsadilas, lessee.

SUBJECT – Application March 30, 2010 – Special Permit (§73-244) to allow an eating and drinking establishment without restrictions and no limitation on entertainment and dancing. C2-2/R5 zoning district.

PREMISES AFFECTED – 23-70 Steinway Street, west side of Steinway Street, 17.65' north of Astoria Boulevard North, Block 803, Lot 75, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 14, 2010 at 1:30 P.M., for adjourned hearing.

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47-10-BZ

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Corporation, owner; Airgas-East, Incorporated, lessee.

SUBJECT – Application April 8, 2010 – Variance (§72-21) to allow a manufacturing use in a residential district, contrary to ZR 22-00. M1-1/R3-2 zoning district.

PREMISES AFFECTED – 895 Zerega Avenue, aka 2352 Story Avenue, Block 3698, Lot 36, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for adjourned hearing.

95-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Kohanbash, owner.

SUBJECT – Application May 27, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2216 Quentin Road, south side of Quentin Road between East 22nd Street and East 23rd Street, Block 6805, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for adjourned hearing.

122-10-BZ

APPLICANT – Bryan Cave LLP., for Congregation Rodeph Sholom, owner.

SUBJECT – Application July 1, 2010 – Variance (§72-21) to permit the rooftop addition for a community facility use (*Rodeph Sholom School*), contrary to maximum height regulations (§23-692). R8B zoning district.

PREMISES AFFECTED – 163 West 78th Street, Between Amsterdam and Columbus Avenues, 134 feet east of Amsterdam Avenue. Block 1150, Lot 6. Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Judith M. Gallent, Paul Druzinsky, Jeff Murphy and Stephanie Rein.

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 December 14, 2010, at 1:30 P.M., for decision, hearing closed.

149-10-BZ

APPLICANT – Eric Palatnik, P.C., for Chaya Singer, owner.

SUBJECT – Application August 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and less than the minimum rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1415 East 29th Street, between Avenue N and Kings Highway, Block 7683, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for continued hearing.

150-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Lyle Broochian, owner.

SUBJECT – Application August 16, 2010 – Special Permit (§73-622) for the legalization of the enlargement of an existing single family home, contrary to floor area (23-141); side yard (§23-461) and rear yard regulations (§23-47). R2 zoning district.

PREMISES AFFECTED – 1124 East 26th Street, west side of East 26th Street, between Avenue K and Avenue L, Block 7625, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for continued hearing.

190-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Yeshiva Har Torah, owner.

SUBJECT – Application October 12, 2010 – Variance (§72-21) to permit the addition of a third floor to an existing two-story school building (*Yeshiva Har Torah*), contrary to rear yard (§24-36) and setback (§24-551) regulations. R3-2 zoning district.

PREMISES AFFECTED – 250-10 Grand Central Parkway, south side of Grand Parkway service road, between Little Neck Parkway and Commonwealth Boulevard, Block 8401, Lot 7501, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Richard Lobel and Angelo Francis Corve.

ACTION OF THE BOARD – Laid over to December 14, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on September 21, 2010, under Calendar No. 325-09-BZ and printed in Volume 95, Bulletin No. 39, is hereby corrected to read as follows:

325-09-BZ

CEQR #10-BSA-033K

APPLICANT – Sheldon Lobel, P.C., for Congregation Yetev Lev 11th Avenue, owner.

SUBJECT – Application December 7, 2009 – Variance (§72-21) to permit the proposed four-story and mezzanine synagogue (*Congregation Yetev Lev*), contrary to lot coverage (§24-11), rear yard (§24-36) and initial setback of front wall (§24-522). R6 zoning district.

PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, 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 Otley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 1, 2009, acting on Department of Buildings Application No. 302065011, reads in pertinent part:

“Proposed maximum lot coverage, community facility, is contrary to ZR 24-11.

Proposed rear yards, community facility, is contrary to ZR 24-36.

Proposed initial setback of front wall, community facility, is contrary to ZR 24-522;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R6 zoning district, the construction of a four-story and mezzanine community facility building to be occupied by a synagogue (Use Group 4), which does not comply with lot coverage, rear yard, and setback requirements for community facilities, contrary to ZR §§ 24-11, 24-36 and 24-522; and

WHEREAS, a public hearing was held on this application on March 9, 2010, after due notice by publication in *The City Record*, with continued hearings on April 13, 2010, June 15, 2010 and August 3, 2010, and then to decision on September 21, 2010; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application, with the condition that the applicant meet with the neighbor to the rear to agree on the back windows and other privacy issues; and

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

WHEREAS, City Council Member David G. Greenfield provided written testimony in support of this application; and

WHEREAS, certain members of the community provided written and oral testimony in support of this application; and

WHEREAS, an adjacent neighbor, represented by counsel, provided written and oral testimony in opposition to this application (hereinafter, the “Opposition”), with the following primary concerns: (1) the applicant has not demonstrated how the requested relief serves the congregation’s programmatic needs; (2) the applicant did not fully respond to the concerns raised by the Board at hearing; (3) the alleged growth in the congregation from 2007 to the present is not credible; and (4) the work being performed on the site does not conform to the previously approved plans; and

WHEREAS, the Opposition also objected to the Board’s decision to reopen the case on September 21, 2010 solely to accept revised drawings from the applicant prior to the closure and decision of the case on that date, and argues that the Board must postpone the decision date to afford the Opposition time to review the drawings and make an additional submission in response; and

WHEREAS, the Board notes that the revised drawings accepted into the record on September 21, 2010 represent the exact same proposal submitted to the Board for consideration on July 7, 2010, which was provided to the Opposition at that time; and

WHEREAS, further, the Board notes that the only changes to the drawings include an architect’s signature and seal on all drawings, and technical corrections, neither of which substantially changes the subject proposal; and

WHEREAS, accordingly, the Board is not persuaded by the Opposition’s contention that the Board must leave the case open to afford the Opposition additional time to respond to the applicant’s revised drawings; and

WHEREAS, this application is brought on behalf of Congregation Yetev Lev, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the south side of 52nd Street between 13th Avenue and 14th Avenue, within an R6 zoning district; and

WHEREAS, the site has a frontage of 75’-0” on 52nd Street, a depth of 100’-2”, and a total lot area of 7,512.5 sq. ft.; and

WHEREAS, the subject site is currently under construction based on plans for an as-of-right three-story synagogue approved in 2007, pursuant to New Building Permit No. 30231537-01-NB; and

WHEREAS, the applicant proposes to construct a four-story synagogue building with a mezzanine level above the second floor; and

WHEREAS the proposed synagogue will have the following parameters: a floor area of 27,414 sq. ft. (36,060 sq. ft. is the maximum permitted); an FAR of 3.65 (4.8 is the maximum permitted); a lot coverage of 93.5 percent above the first floor, at the second floor and second floor mezzanine; (65

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percent is the maximum permitted); a rear yard of 6'-0" above the first floor, at the second floor and second floor mezzanine (a rear yard of 30'-0" is required); and an initial front setback distance of 4'-0" (a minimum initial setback of 20'-0" is required at a height of 60'-0"); and

WHEREAS, the applicant initially proposed to construct a synagogue with a floor area of 28,597 sq. ft. (3.8 FAR), 100 percent lot coverage at the second floor and second floor mezzanine, and no rear yard at the second floor and second floor mezzanine; and

WHEREAS, in response to concerns raised by the Board and the Opposition, the applicant submitted revised plans reflecting the current proposal, with a floor area of 27,414 sq. ft. (3.65 FAR), a lot coverage of 93.5 percent at the second floor and second floor mezzanine and 65 percent at the third and fourth floor, a rear yard with a depth of six feet at the second floor and second floor mezzanine and 35'-0" at the third and fourth floor, and a 6'-0" reduction in the height of a portion of the building that encroaches into the rear yard; and

WHEREAS, the proposal provides for the following uses: (1) two mikvahs and a study hall at the cellar level; (2) accessory prayer rooms and space for the congregation on the first floor; (3) the main sanctuary on the second floor; (4) an observatory/prayer area for female members of the congregation on the second floor mezzanine; (5) accessory study rooms on the third floor; and (6) a library, Rabbi's office and administrative offices on the fourth floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the current congregation and the future growth in the congregation's membership; (2) to locate the accessory prayer rooms at the first floor level; (3) to provide separate areas of prayer for men and women; and (4) to accommodate the Synagogue's religious services and community outreach programs; and

WHEREAS, the applicant further states that the congregation currently worships in a rented space in a building located one block west of the subject site, at 1245 52nd Street, which is inadequate to serve the current congregation and meet the programmatic needs of the Synagogue; and

WHEREAS, the applicant represents that the requested waivers are necessary to accommodate the size of the congregation, which consists of over 1,000 dues paying families and is expected to grow steadily over the next few years; and

WHEREAS, the applicant further represents that the Synagogue anticipates approximately 400-450 daily visitors, with approximately 500 male members and 200 female members attending each Sabbath during the service and on Jewish holidays and celebrations; and

WHEREAS, the Opposition argues that the number of congregants alleged by the Synagogue is not credible, given that the as-of-right three-story synagogue proposed in 2007 had a smaller capacity, and the applicant's initial submissions listed a smaller number of congregants; and

WHEREAS, the Board notes that the applicant has submitted a list of congregants which supports the applicant's

representation regarding the number of members of the Synagogue; and

WHEREAS, the applicant states that the Synagogue will be open seven days a week from 4:30 a.m. to 12:00 a.m., hosting routine daily religious services and study programs divided into morning, mid-day, and evening services; and

WHEREAS, the applicant states that the Synagogue also provides important programs to the community, serving children, teenagers and adults in religious services and educational classes daily; and

WHEREAS, the applicant represents that the Synagogue has an additional programmatic need to locate its accessory prayer rooms at the first floor level; and

WHEREAS, the applicant states that the Synagogue requires accessory prayer rooms to accommodate daily prayers; the prayer rooms are designed to accommodate 35 to 75 people, and upwards of 100 people on the Sabbath and Jewish holidays; and

WHEREAS, the applicant states that new services in the prayer rooms begin every 15 to 20 minutes, therefore there is a programmatic need to place the prayer rooms in an efficient location for circulation purposes, as there will be a large number of congregants entering and exiting the prayer rooms at any given time; and

WHEREAS, the applicant represents that the prayer rooms must be located on the first floor because many congregants use the mikvahs in the cellar on a daily basis prior to attending the prayer sessions, and locating the prayer rooms above the first floor would create difficulties in circulation as congregants would enter the synagogue at the first floor, descend the stairs to the cellar to utilize the mikvahs, then climb up multiple flights of stairs to the prayer rooms, before ultimately exiting back on the first floor; and

WHEREAS, the applicant notes that the main sanctuary at the second floor can hold 489 occupants, which is barely sufficient to satisfy the Synagogue's programmatic needs; therefore, it is unable to place both the main sanctuary and the smaller prayer rooms on the same floor while accommodating the size of the congregation; and

WHEREAS, the applicant states that, since the prayer rooms must be located at the ground floor level, the main sanctuary must be located at the second floor; and

WHEREAS, in support of its programmatic need regarding the location of the prayer rooms and sanctuary, the applicant submitted a number of examples of other synagogues where the prayer rooms are located at or below ground level and the sanctuary space is above; and

WHEREAS, the applicant notes that the requested lot coverage and rear yard waivers are necessary in order to provide sufficient space at the second floor to accommodate the male congregants in the main sanctuary while also providing the DOB-required safe area at that level; and

WHEREAS, the applicant states that Jewish Law requires the Synagogue to have separate, private prayer spaces for the men and women of the congregation; and

WHEREAS, therefore, the Synagogue has an additional programmatic need to place the women's observatory/prayer area at the mezzanine level above the main sanctuary on the

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second floor; and

WHEREAS, the applicant represents that the requested lot coverage and rear yard waivers are required at the mezzanine level in order to both accommodate for the separate women's prayer area and the DOB-required safe area at that level, as well as to provide a large opening with a double height space above the main sanctuary that is befitting of a large sanctuary; and

WHEREAS, in support of the need for a double height space in the main sanctuary, the applicant submitted photographs of other sanctuaries with double height spaces, and provided a letter from a Rabbi regarding the religious need for the double height space in the main sanctuary; and

WHEREAS, the applicant states that the Synagogue has an additional programmatic need of accommodating its religious and educational services, as well as its community outreach programs; and

WHEREAS, the applicant represents that the requested front setback waiver is necessary in order to create a more efficient building by providing a floor plate large enough to accommodate the Kollel program and other offices used for religious and educational services at the fourth floor, rather than constructing an inefficient fifth floor and providing an additional setback to accommodate these programs; and

WHEREAS, the applicant represents that the proposed building can accommodate the religious services and programs of the Synagogue and will better accommodate the size of its congregation; and

WHEREAS, the Opposition contends that the applicant has not demonstrated a nexus between the programmatic needs of the Synagogue and the requested relief, and that the applicant has not provided the Board with all of the information requested during the hearing process; and

WHEREAS, based upon the above, the Board finds that the applicant has submitted sufficient evidence to demonstrate how the requested relief serves the Synagogue's programmatic needs, and further finds that the applicant has satisfied the concerns raised by the Board during the hearing process; and

WHEREAS, in response to concerns raised by the Board and the Opposition at hearing, the applicant submitted plans for an as-of-right scenario, as well as a lesser variance scenario in which the women's prayer room on the mezzanine level is relocated from the rear of the building to the front; the plans reflected that neither the as-of-right nor lesser variance scenarios could accommodate the programmatic needs of the Synagogue; and

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

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

application; and

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

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

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

WHEREAS, the applicant states that that the proposed use and floor area are permitted in the subject zoning district; and

WHEREAS, the Board notes that the requested waivers allow the Synagogue to accommodate its program within a four-story and mezzanine building, rather than providing additional program space in a five- or six-story building; and

WHEREAS, the applicant notes that although the first floor of the proposed synagogue is built to the rear lot line, because a community facility is a permitted obstruction up to a height of 23 feet and because the building is setback above the mezzanine level, the requested lot coverage and rear yard waivers are only necessary for the second floor and second floor mezzanine portion of the building; and

WHEREAS, specifically, the applicant notes that the building is set back at the rear yard six feet at the second floor and second floor mezzanine, and 35 feet at the third and fourth floors; and

WHEREAS, the applicant provided a shadow analysis which studied the effect of the proposal on the adjacent properties to the rear and to the west of the subject site; and

WHEREAS, the shadow analysis submitted by the applicant reflects that the proposed synagogue does not result in any potentially adverse significant shadow impacts on the adjacent properties; and

WHEREAS, the Opposition argues that the applicant has failed to explain why the Synagogue now requires a building with a greater bulk than the three-story as-of-right synagogue reflected in the approved 2007 plans for the subject site; and

WHEREAS, the Board notes that the applicant has submitted sufficient evidence to demonstrate how the Synagogue's programmatic needs necessitate the relief requested in the current proposal; and

WHEREAS, the Board further notes that the applicant's prior consideration of an as-of-right building is not relevant to the Board's analysis of the current proposal; and

WHEREAS, the Opposition also contends that work on the site does not conform to the approved plans; and

WHEREAS, in response, the applicant submitted letters from the architect and engineer confirming that the work on the site conforms with the approved plans; and

WHEREAS, the Board notes that the proposed plans are signed and sealed by a registered architect and that the

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conformance of the construction at the site to the approved plans is subject to Department of Buildings (“DOB”) review; and

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

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

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

WHEREAS, the Board notes that the development of the proposed Synagogue is entirely as-of-right, with the exception of the non-compliant lot coverage, front setback, and rear yard; and

WHEREAS, as noted above, the applicant initially proposed to construct a synagogue with a floor area of 28,597 sq. ft. (3.8 FAR), 100 percent lot coverage at the second floor and second floor mezzanine, and no rear yard at the second floor and second floor mezzanine; and

WHEREAS, in response to concerns raised by the Board and the Opposition, the applicant submitted revised plans reflecting the current proposal, with a floor area of 27,414 sq. ft. (3.65 FAR), a lot coverage of 93.5 percent at the second floor and second floor mezzanine and 65 percent at the third and fourth floor, a rear yard with a depth of six feet at the second floor and second floor mezzanine and 35’-0” at the third and fourth floor, and a 6’-0” reduction in the height of a portion of the building that encroaches into the rear yard; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 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. 10BSA033K, dated December 7, 2009; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R6 zoning district, the construction of a four-story and mezzanine community facility building to be occupied by a synagogue (Use Group 4), which does not comply with lot coverage, rear yard, and setback requirements for community facilities, contrary to ZR §§ 24-11, 24-36 and 24-522, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received September 17, 2010”–(13) sheets and “Received September 20, 2010”–(1) sheet and *on further condition*:

THAT the building parameters shall be: a floor area of 27,414 sq. ft.; an FAR of 3.65; lot coverage of 93.5 percent above the first floor; a rear yard with a depth of 6’-0” above the first floor; and an initial front setback of 4’-0” at a height of 60’-0”, as indicated on the BSA-approved plans;

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

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

THAT no commercial catering shall take place onsite;

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

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

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

THAT 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, September 21, 2010.

***The resolution has been revised to correct the plan count, which read: “Received September 17, 2010”–(12) sheets and “Received September 20, 2010”–(1) sheet, now reads: “Received September 17, 2010”–(13) sheets and “Received September 20, 2010”–(1) sheet. Corrected in Bulletin No. 48, Vol. 95, dated December 1, 2010.**