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AND APPEALS

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March 16, 2011

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23-11-BZ

409 Fulton Street, A corner through lot on the west side of Bond Street between Fulton Street and Livingston Street., Block 159, Lot(s) 1, Borough of **Brooklyn, Community Board: 2.** Special Permit 973-36) to allow the operation of a physical culture establishment. C5-4/DB district.

24-11-BZ

44-50 East 2nd Street, North side of East 2nd Street between First Street and Second Avenues., Block 444, Lot(s) 59, Borough of **Manhattan, Community Board: 3.** C6-2A & R8B 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

MARCH 29, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 29, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

406-82-BZ

APPLICANT – Eric Palatnik, P.C., for Adolf Clause & Theodore Thomas, owner; Hendel Products, lessee.

SUBJECT – Application February 7, 2011 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Special Permit (§73-243), an eating and drinking establishment (McDonald's) with accessory drive-thru, which expired on January 22, 2009; waiver of the rules. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86th Street, northeast corner of 24th Avenue and 86th Street, Block 6859, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

289-99-BZ

APPLICANT – Vito J. Fossella, LPEC, for Frances Gomez, owner.

SUBJECT – Application January 22, 2010 – Extension of Term of a previously granted variance (§72-21) which permitted on a site divided by zoning district boundary a parking facility accessory to a permitted use (UG16 automotive repair with accessory retail sales) which expired on December 12, 2010. C8-1/R3-1 zoning district.

PREMISES AFFECTED – 265 Hull Avenue, northeast side of Hull Avenue, 100' southeast of corner formed by the intersection of Hull Avenue and Hylan Boulevard, Block 3668, Lots 12, 13, 14, 27, 28 & 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEALS CALENDAR

137-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Richard & Jane O'Brien, lessees.

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

PREMISES AFFECTED – 103 Beach 217th Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

185-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Raymond & Regina Walsh, lessees.

SUBJECT – Application September 24, 2010 – Proposed construction not fronting on a mapped street contrary to General City Law Section 36 within an R4 zoning district. PREMISES AFFECTED – 115 Beach 216th Street, east side Beach 216th south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

12-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner.

SUBJECT – Application February 3, 2011 – Reconstruction and enlargement of an existing single family dwelling not fronting a mapped street contrary to General City Section 36. R4 Zoning district.

PREMISES AFFECTED – 44 Beach 221st Street, west side of Beach 221st Street, 100' north of Breezy Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

MARCH 29, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 29, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

169-09-BZ

APPLICANT – Sheldon Lobel, for Saint Georges Crescent, LLC, owner.

SUBJECT – Application June 8, 2009 – Variance (§72-21) to allow a multi-family residential building, contrary to floor area (§23-145), rear yard (§23-47), height and setback (§23-633), rear setback (§23-663), minimum distance between windows and lot lines (§23-861), and maximum number of dwelling units (§23-22) regulations. R8 zoning district.

PREMISES AFFECTED – 186 Saint George's Crescent, east side of St. George's Crescent, 170' southeast of the corner formed by the intersection of Van Cortland Avenue, and Grand Concourse, Block 3312, Lot 12, Borough of Bronx.

COMMUNITY BOARD # 7BX

CALENDAR

177-10-BZ

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

SUBJECT – Application September 9, 2010 – Variance (§72-21) for the construction of a detached three-story single family home contrary to open space (ZR §23-141); front yard (ZR §23-45); side yard (ZR §23-461) and location of the two parking spaces (ZR §23-622). R3A zoning district.

PREMISES AFFECTED – 8 Orange Avenue, south west corner of Decker Avenue and Orange Avenue, Block 1061, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

7-11-BZ

APPLICANT – Sheldon Lobel, P.C., for NRP LLC II, owners; Dyckman Fitness Group, LLC, lessee.

SUBJECT – Application January 26, 2011–Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Planet Fitness*) in a C4-4 zoning district.

PREMISES AFFECTED – 177 Dyckman Street, southeast corner of the intersection of Dyckman Street and Vermilyea Avenue, Block 2224, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #12M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 15, 2011
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

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.

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: Irving Minkin and 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 reopening and an extension of term for the continued use of an automobile service station with accessory uses, which expired on June 18, 2010, and for an amendment to permit limited automotive repair services on Sundays; and

WHEREAS, a public hearing was held on this application on November 23, 2010 after due notice by publication in *The City Record*, with continued hearings on January 11, 2011 and February 8, 2011, and then to decision on March 8, 2011; 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 7, Queens, recommends approval of this application, on condition that the hours of operation be limited to 7:00 a.m. to 7:00 p.m., and that the site be closed on Sundays; and

WHEREAS, the site is located on the east side of Francis Lewis Boulevard, between 17th Road and 18th Avenue, within a C1-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 31, 1959 when, under the subject calendar number, the Board granted a variance to

permit the premises to be occupied by a gasoline service station with accessory uses, for a term of 15 years; and

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

WHEREAS, most recently, on June 12, 2001, the grant was amended to permit a reduction in the number of pump islands from six to five and to allow a redesigning of the overhead canopy, and the term was extended for ten years from the expiration of the prior grant, to expire on June 18, 2010; and

WHEREAS, the applicant now seeks a ten-year extension of term; and

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

WHEREAS, the applicant also seeks an amendment to legalize Sunday hours of operation at the site for limited automotive repair services; and

WHEREAS, the Board notes that a condition of the prior grant stipulated that the hours of operation for the automotive repair service would be limited to Monday through Saturday, from 7:00 a.m. to 7:00 p.m., and closed on Sundays; and

WHEREAS, the applicant states that it complies with the hours of operation for the automotive repair service on Mondays through Saturdays, but seeks to operate the automotive repair service on Sundays from 8:00 a.m. to 6:00 p.m., with services limited to oil changes, tire repairs and rotations/changes, and New York State Inspections; and

WHEREAS, the applicant states that all work on Sundays will be conducted within the enclosed service station building, and if any vehicles require additional work their owners will be informed that the work will not commence until a certified mechanic arrives on Monday; and

WHEREAS, as to the Community Board's request that the automotive repair service remain closed on Sundays, the Board notes that the Community Board voted on an earlier iteration of the proposal which did not include a request for an amendment to allow Sunday hours of operation and an explanation of the limited nature of services that will be offered on Sundays; therefore, the requested amendment was not considered by the Community Board; and

WHEREAS, at hearing, the Board questioned whether the site is in compliance with the underlying C1 district signage regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that excess signage has been removed from the site, and submitted signage analyses indicating that the site is now in compliance with C1 district signage regulations; and

WHEREAS, at hearing, the Board raised concerns about the use of Lot 41, and directed the applicant to provide street trees and landscaping on the site; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that Lot 41 will remain a fenced-in grassed area, and reflecting the planting of street trees along 17th Road, 18th Avenue, and Francis Lewis Boulevard,

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and the addition of landscaping behind the convenience store building; and

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

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, dated March 31, 1959, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the expiration of the prior grant, to expire on June 18, 2020, and to permit the noted amendment to the hours of operation on the site; on condition that all use and operations shall substantially conform to plans filed with this application marked "Received February 18, 2011"- (8) sheets; and on further condition:

THAT the term of the grant shall expire on June 18, 2020;

THAT the hours of operation for the automotive repair service shall be limited to: Monday through Saturday, from 7:00 a.m. to 7:00 p.m., and Sunday, from 8:00 a.m. to 6:00 p.m.;

THAT the Sunday operation of the automotive repair service shall be limited to oil changes, tire repairs and rotations/changes, and New York State inspections;

THAT all signage shall comply with C1 district regulations;

THAT landscaping shall be provided and maintained on the site in accordance with the BSA-approved plans;

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

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

THAT a new certificate of occupancy shall be obtained by March 8, 2012;

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

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

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. 401839793 & 400479601)

Adopted by the Board of Standards and Appeals March 8, 2011.

749-65-BZ

APPLICANT – Sheldon Lobel, P.C., for Henry Koch, owner.

SUBJECT – Application October 14, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG16 Gasoline Service Station (Getty) with accessory uses which expired on November 3,

2010; Extension of Time to obtain a Certificate of Occupancy which expired on December 19, 2002; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 1820 Richmond Road, southeast corner of Richmond Road and Stobe Avenue, Block 3552, Lot 39, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Irving Minkin.

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, an extension of term for the continued use of an automotive service station, which expired on November 3, 2010, and an extension of time to obtain a certificate of occupancy, which expired on December 19, 2002; and

WHEREAS, a public hearing was held on this application on January 11, 2011, after due notice by publication in *The City Record*, with a continued hearing on February 8, 2011, and then to decision on March 8, 2011; and

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

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

WHEREAS, the site is located on the southeast corner of Richmond Road and Stobe Avenue, within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 3, 1965 when, under the subject calendar number, the Board granted a variance to permit the reconstruction and rehabilitation of an automotive service station with accessory uses, for a term of 15 years; and

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

WHEREAS, most recently, on December 19, 2000, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire on November 3, 2010, and permitted the construction of a new metal canopy over the existing pump islands; a condition of the grant was that a new certificate of occupancy be obtained by December 19, 2002; and

WHEREAS, the applicant now requests an additional ten-year term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board questioned what the hours of operation are at the site, and whether truck parking is permitted on the site; and

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WHEREAS, in response, the applicant states that the gasoline sales use operates Monday through Saturday, from 6:00 a.m. to 11:00 p.m., and Sunday from 6:00 a.m. to 10:00 p.m., and the automotive repair use operates Monday through Friday from 7:00 a.m. to 5:00 p.m., and Saturday from 7:00 a.m. to 12:00 p.m.; and

WHEREAS, in addition, the applicant states that the operator of the site does not permit the parking of any vehicles on the site that are not being serviced; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 3, 1965, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the expiration of the prior grant, to expire on November 3, 2020, and to grant an extension of time to obtain a certificate of occupancy to March 8, 2012; *on condition* that all use and operations shall substantially conform to plans filed with this application marked 'October 14, 2010'-(5) sheets; and *on further condition*:

THAT the term of the grant shall expire on November 3, 2020;

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

THAT a new certificate of occupancy shall be obtained by March 8, 2012;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 520045816)

Adopted by the Board of Standards and Appeals March 8, 2011.

677-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.

SUBJECT – Application April 22, 2010 – Extension of Term (§11-411) of a Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building; Waiver of the Rules. R4/C2-2 zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289' northerly of the intersection with 65th Avenue, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to April 12, 2011, at 10 A.M., for continued hearing.

230-98-BZ

APPLICANT – Mitchell S. Ross, Esq., for JC's Auto Enterprises, Limited, owners.

SUBJECT – Application July 22, 2010 – Extension of Term of a previously granted Variance (§72-21) for an automotive repair shop and car sales which expired on June 22, 2010. R-5 zoning district.

PREMISES AFFECTED – 5820 Bay Parkway, northwest corner of 59th Street, Block 55508, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to March 8, 2011, at 10 A.M., for decision, hearing closed.

198-00-BZ

APPLICANT – C. Anthony LoPresti, owner.

SUBJECT – Application January 31, 2011 – Extension of Term of a Special Permit (§73-125) for the conversion of a portion of the first floor community facility to medical offices, which expired on December 12, 2010. R1-2 zoning district.

PREMISES AFFECTED – 4641 Hylan Boulevard, Hylan Boulevard and Arden Avenue, Block 5386, Lot 76, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: C. Anthony LoPresti.

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 April 5, 2011, at 10 A.M., for decision, hearing closed.

122-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Revlation Development Incorporated, owner. Bensonhurst MRI, P.C., lessee.

SUBJECT – Application January 26, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) for the enlargement of an existing medical office building and the construction of residences, which expired on February 6, 2011. R5 and C2-3/R5 zoning district.

PREMISES AFFECTED – 2671 86th Street, West 11th and

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West 12th Streets, Block 7115, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Irving Minkin.

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 April 5, 2011, at 10 A.M., for decision, hearing closed.

215-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 92-16 95th Avenue Realty Corporation by Alfred Smith, owners. **SUBJECT** – Application February 17, 2011 – Extension of Time to obtain a Certificate of Occupancy, which expired on May 17, 2010, for a previously approved amendment (§§11-411 & 11-413) which permitted a change of use from a wholesale (Use Group 7) to a retail (Use Group 6) use on the ground floor of a three-story building; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 92-16 95th Avenue, southwest corner of 93rd Street and 95th Avenue, Block 9032, Lot 8, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Lyra Altman.

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 April 5, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

70-08-A thru 72-08-A

APPLICANT – Eric Palatnik, P.C., for TOCS Developers Incorporated, owner.

SUBJECT – Application December 17, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law vesting which expired on January 13, 2011. R3A zoning district.

PREMISES AFFECTED – 215A, 215B, 215C Van Name Avenue, north of the corner formed by intersection of Van Name and Forest Avenues, Block 1194, Lot 42, 41 & 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previous grant to permit an extension of time to complete construction and obtain a certificate of occupancy for three detached two-family homes which the Board permitted to proceed under the common law doctrine of vested rights; and

WHEREAS, this application was heard concurrently with applications under BSA Cal. Nos. 73-08-A through 75-08-A, decided the date hereof, which also request an extension of time to complete construction and obtain a certificate of occupancy under the common law doctrine of vested rights for the site located at 345A, 345B, and 345C Van Name Avenue; and

WHEREAS, a public hearing was held on this application on February 1, after due notice by publication in *The City Record*, and then to decision on March 8, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the subject site is located on the east side of Van Name Avenue between Forest Avenue and Netherland Avenue, within an R3A zoning district; and

WHEREAS, the subject site has a total lot area of 11,011 sq. ft.; and

WHEREAS, pursuant to a proposed subdivision, the subject site will comprise Block 1194, Tax Lot 40 (215C Van Name Avenue), Tax Lot 41 (215B Van Name Avenue) and Tax Lot 42 (215A Van Name Avenue); and

WHEREAS, the applicant proposed to construct a detached two-story, two-family dwelling on each tax lot (collectively, the “Proposed Development”); and

WHEREAS, on August 12, 2004 (the “Enactment Date”) the City Council adopted the Lower Density Growth Management Text Amendments (“LDGMA”); and

WHEREAS, New Building Permit Nos. 500705766, 500705775 and 500705784 were issued to the owner permitting the construction of the subject homes by the Department of Buildings (“DOB”) on June 29, 2004 (collectively, the “Permits”), prior to the Enactment Date; and

WHEREAS, the Proposed Development does not comply with the LDGMA regulations concerning open space, minimum distance between buildings, minimum distance between lot lines and building walls, maximum driveway grade, and parking; and

WHEREAS, the applicant represents that the Proposed Development complies with the relevant provisions of the Zoning Resolution prior to the adoption of the LDGMA text amendments; and

WHEREAS, the Board notes that the Proposed Development meets the definition of a “major development” pursuant to ZR § 11-31(c), and that construction was vested by DOB under ZR § 11-331 because the foundations for one of the homes on the site was complete as of the Enactment Date;

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and

WHEREAS, however, because construction on the site was not completed within two years of the Enactment Date, the Permits lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on March 13, 2008, halting construction of the Proposed Development; and

WHEREAS, because the Proposed Development was vested by DOB pursuant to ZR § 11-331, the developer would have been eligible to apply for an extension of time to complete construction under ZR § 11-332 within 30 days from the date the Permits lapsed; however, such an application was not filed; and

WHEREAS, because DOB did not find that work was completed within two years of the Enactment Date, and the applicant did not file an application for an extension of time to complete construction under ZR § 11-332, the applicant filed a request to continue construction pursuant to the common law doctrine of vested rights; and

WHEREAS, on January 13, 2009, the Board determined that, as of the Enactment Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights; and

WHEREAS, the Board granted the applicant two years to complete construction and obtain a certificate of occupancy, which expired on January 13, 2011; and

WHEREAS, accordingly, the applicant is now seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that the Building was not completed by the stipulated date due to financing delays and a 16-month delay related to the need to replace the engineering firm that was hired to update the paving plan and internal water main in order to install utilities at the site; and

WHEREAS, however, the applicant states that, since January 13, 2009, drywells have been installed at the site and the owner has expended an additional \$120,052 in construction related costs; and

WHEREAS, the Board has reviewed the evidence and has determined that an extension of time is warranted; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction and obtain certificates of occupancy; and

Therefore it is Resolved that this application to renew New Building Permit Nos. 500705766, 500705775, and 500705784, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed building and obtain a certificate of occupancy for two years from the date of this resolution, to expire on March 8, 2013.

Adopted by the Board of Standards and Appeals, March 8, 2011.

73-08-A thru 75-08-A

APPLICANT – Eric Palatnik, P.C., for S. B. Holding, owner.

SUBJECT – Application December 17, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law vesting which expired on January 13, 2011. R3-A zoning district.

PREMISES AFFECTED – 345A, 345B, 345C Van Name Avenue, northeast of the corner formed by Van Name and Forest Avenues, Block 1198, Lot 42, 43, 44, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....5

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previous grant to permit an extension of time to complete construction and obtain a certificate of occupancy for three detached two-family homes which the Board permitted to proceed under the common law doctrine of vested rights; and

WHEREAS, this application was heard concurrently with applications under BSA Cal. Nos. 70-08-A through 72-08-A, decided the date hereof, which also request an extension of time to complete construction and obtain a certificate of occupancy under the common law doctrine of vested rights for the site located at 215A, 215B, and 215C Van Name Avenue; and

WHEREAS, a public hearing was held on this application on February 1, 2011, after due notice by publication in *The City Record*, and then to decision on March 8, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the subject site is located on the east side of Van Name Avenue between Forest Avenue and Netherland Avenue, within an R3A zoning district; and

WHEREAS, the subject site has a total lot area of 11,009 sq. ft.; and

WHEREAS, pursuant to a proposed subdivision, the subject site will comprise Block 1198, Tax Lot 42 (345A Van Name Avenue), Tax Lot 43 (345B Van Name Avenue) and Tax Lot 44 (345C Van Name Avenue); and

WHEREAS, the applicant proposed to construct a detached two-story, two-family dwelling on each tax lot (collectively, the “Proposed Development”); and

WHEREAS, on August 12, 2004 (the “Enactment Date”) the City Council adopted the Lower Density Growth Management Text Amendments (“LDGMA”); and

WHEREAS, New Building Permit Nos. 500706364, 500706373, and 500706382 were issued to the owner permitting the construction of the subject homes by the

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Department of Buildings (“DOB”) on June 29, 2004 (collectively, the “Permits”), prior to the Enactment Date; and

WHEREAS, the Proposed Development does not comply with the LDGMA regulations concerning open space, minimum distance between buildings, minimum distance between lot lines and building walls, maximum driveway grade, and parking; and

WHEREAS, the applicant represents that the Proposed Development complies with the relevant provisions of the Zoning Resolution prior to the adoption of the LDGMA text amendments; and

WHEREAS, the Board notes that the Proposed Development meets the definition of a “major development” pursuant to ZR § 11-31(c), and that construction was vested by DOB under ZR § 11-331 because the foundations for one of the homes on the site was complete as of the Enactment Date; and

WHEREAS, however, because construction on the site was not completed within two years of the Enactment Date, the Permits lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on March 13, 2008, halting construction of the Proposed Development; and

WHEREAS, because the Proposed Development was vested by DOB pursuant to ZR § 11-331, the developer would have been eligible to apply for an extension of time to complete construction under ZR § 11-332 within 30 days from the date the Permits lapsed; however, such an application was not filed; and

WHEREAS, because DOB did not find that work was completed within two years of the Enactment Date, and the applicant did not file an application for an extension of time to complete construction under ZR § 11-332, the applicant filed a request to continue construction pursuant to the common law doctrine of vested rights; and

WHEREAS, on January 13, 2009, the Board determined that, as of the Enactment Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights; and

WHEREAS, the Board granted the applicant two years to complete construction and obtain a certificate of occupancy, which expired on January 13, 2011; and

WHEREAS, accordingly, the applicant is now seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that the Building was not completed by the stipulated date due to financing delays and a 16-month delay related to the need to replace the engineering firm that was hired to update the paving plan and internal water main in order to install utilities at the site; and

WHEREAS, however, the applicant states that, since January 13, 2009, drywells have been installed at the site and the interior of the home at 345A Van Name Avenue has been finished, and the owner has expended an additional \$171,204 in construction related costs; and

WHEREAS, the Board has reviewed the evidence and has determined that an extension of time is warranted; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction and obtain certificates of occupancy; and

Therefore it is Resolved that this application to renew New Building Permit Nos. 500706364, 500706373, and 500706382, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed building and obtain a certificate of occupancy for two years from the date of this resolution, to expire on March 8, 2013.

Adopted by the Board of Standards and Appeals, March 8, 2011.

215-10-A

APPLICANT – James Chin et al, for Saint Mary’s Hospital for Children, owner.

SUBJECT – Application November 20, 2010 – An appeal challenging the issuance of permits and approvals for the expansion of a community facility (*St. Mary’s Hospital*) related to use (§22-14), floor area (§24-111) and setbacks (§24-34). R2A Zoning District.

PREMISES AFFECTED – 29-01 216th Street, west of Cross Island Expressway, east of intersection of 29th Avenue and 216th Street, Block 6059, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Albert K. Butzel

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination dated October 12, 2010 by the Queens Borough Commissioner of the Department of Buildings (“DOB”) (the “Final Determination”) addressed to the Appellant’s counsel, with respect to Alteration Application No. 420042689; and

WHEREAS, the appeal is brought on behalf of four property owners whose properties abut the subject site, and the Weeks Woodlands Association (the “Appellant” or “Appellants”), and who oppose the construction of the proposed enlargement to St. Mary’s Hospital for Children in Bayside (“St. Mary’s”); and

WHEREAS, the Final Determination states, in pertinent part:

Your letters claim the permit is improper for the following reasons: 1) it authorizes floor area that exceeds the maximum floor area ratio established by New York City Zoning Resolution (“ZR”) Section 24-111(a); 2) the proposed use should be

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characterized as a Use Group 4 ambulatory health care facility which is a prohibited use in the zoning district pursuant to ZR § 22-14; and 3) the eastern wall of the St. Mary's building does not comply with front yard requirements under ZR § 24-34 and maximum front wall height and setbacks under § 24-521 that are triggered by the adjoining Cross Island Parkway, which is a "street" as defined by the ZR. Your letters do not present a basis for revoking the permit.

Contrary to your claim that ZR § 24-111(a) requires the maximum floor area ratio¹ ("FAR") for the St. Mary's building to be .5, this provision is not applicable. ZR 24-11 establishes the maximum FAR of 1 for the St. Mary's building, a community facility building in the R2 district. The permit properly allows an enlargement of the St. Mary's building that brings the FAR to .77 in accordance with ZR § 24-11. Although ZR § 24-11 also states that the FAR specified under that section would not apply. The last sentence of ZR § 24-111(a) provides that buildings are not subject to this section if plans were filed with the Department prior to November 15, 1972, including any subsequent amendments thereof. According to Certificate of Occupancy No. 79089 dated January 23, 1952, plans for the St. Mary's building were filed in 1948. A copy of the CO is attached. Therefore, ZR § 24-11 establishes the 1 FAR for the St. Mary's building and the permit properly allows the building to enlarge up to .77 FAR.

Your claim that the use is improperly characterized as a Use Group 4 non-profit hospital, and should be characterized as a prohibited Use Group 4 ambulatory health care facility because the enlargement does not add sleeping accommodations for admitted patients, is incorrect. The current certificate of occupancy for the premises, Certificate of Occupancy No. 4P0004012, authorizes Use Group 4 hospital and accessory uses in the cellar through 4th floors of the St. Mary's building. The permit application proposes an enlargement of the Use Group 4 hospital, which is a permitted use in the R2 district.

According to the plans for the enlarged portion, the basement contains laboratories and treatment rooms, and sleeping/recovery rooms on the 1st, 2nd, 3rd and 4th floor. Therefore, the permit correctly authorizes a Use Group 4 hospital since the proposed uses serve admitted patients.

Finally, your claim that the Cross Island Parkway

adjoining the eastern boundary of the St. Mary's property is a "street" as defined by ZR §12-10 that triggers front yard requirements under ZR § 24-34 and maximum front wall height and setbacks under § 24-521 along the eastern side of the St. Mary's building, is incorrect. The roadway portion of the Cross Island Parkway meets the ZR § 12-10 definition of both a "public park" and a "street," however, the portion of the Cross Island Parkway that adjoins St. Mary's property is a landscaped area and is not a "street." ZR § 12-10 defines "public park," in part, as "any publicly owned park...within the jurisdiction and control of the Commissioner of Parks..." A letter is attached dated May 5, 2010 from the Department of Parks and Recreation ("DPR") that identifies the Cross Island Parkway between the Whitestone Bridge Approach and the Southern Parkway as a public park under DPR's jurisdiction. The ZR defines a "street" in part, as a way shown on the City Map. The landscaped area abutting the St. Mary's property is not a way or means of approach, but rather functions as a buffer between the roadway of the Cross Island Parkway and neighboring properties. Therefore, the eastern boundary of the St. Mary's property abuts park land and the permit is proper in that it does not subject the eastern portion of St. Mary's building to height and setback requirements that would apply if this portion of the building fronted on a street.

WHEREAS, a public hearing was held on this appeal on February 1, 2011, after due notice by publication in *The City Record*, and then to decision on March 8, 2011; and

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

WHEREAS, the individual property owners prosecuting the appeal provided oral and written testimony in support of the appeal; and

WHEREAS, New York State Senator Tony Avella provided written testimony in support of the appeal; and

WHEREAS, City Council Member Daniel J. Halloran, III provided written testimony in opposition to the appeal; and

WHEREAS, Queens Borough President Helen Marshall provided written testimony in opposition to the appeal; and

WHEREAS, St. Mary's, the owner of the subject site, provided written and oral testimony in opposition to the appeal; and

WHEREAS, DOB, Appellant, and St. Mary's have been represented by counsel throughout the appeal; and

PROCEDURAL HISTORY

WHEREAS, the appeal concerns the construction of a four-story horizontal addition with 90,000 sq. ft. of floor area to abut the east side of the existing building at St. Mary's Hospital for Children, within an R2A zoning district; and

WHEREAS, by letter dated October 6, 2008, St. Mary's

¹ (note copied from the original) ZR § 12-10 defines "floor area ratio" as "the total *floor area* on a *zoning lot*, divided by the *lot area* of that *zoning lot*." Words in italics are terms defined in the ZR.

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sought confirmation from DOB that the proposal could be built to an FAR of 0.77, rather than be limited to 0.5, based on an exception set forth at ZR § 24-111(a); and

WHEREAS, on October 6, 2008, DOB denied the request and stated that 0.5 FAR was the maximum permitted for the proposal; and

WHEREAS, after a supplemental inquiry from St. Mary's, by determination dated October 20, 2008, DOB stated that 1.0 FAR would be permitted since the existing building was built prior to November 15, 1972; and

WHEREAS, on May 10, 2010, St. Mary's filed a Zoning Resolution Determination Form (ZRD1) requesting a determination from DOB that the Cross Island Parkway be considered a public park and therefore that height and setback regulations associated with street frontage not apply to the proposal; and

WHEREAS, on May 13, 2010, DOB issued its determination that the Cross Island Parkway¹ adjacent to the eastern lot line is parkland (the "Green Area") and St. Mary's land running immediately parallel to the parkway is a side yard, rather than a front yard, for zoning purposes; and

WHEREAS, on July 12, 2010, DOB issued an alteration permit in connection with Alteration Application No. 420042689 for the proposed four-story horizontal enlargement; and

WHEREAS, by letters dated August 10, August 19, and September 21, 2010, the Appellants requested that DOB revoke the permits and reject the plans, which they found to be in violation of bulk and use regulations; and

WHEREAS, on August 18, 2010, by Order to Show Cause in Supreme Court, New York County, the Appellants moved for a temporary restraining order (TRO) and a preliminary injunction to stop construction at the site²; and

WHEREAS, on August 20, 2010, the court denied the Appellant's request for a TRO; and

WHEREAS, DOB moved to dismiss the case on the basis that Appellant failed to exhaust its administrative remedies by failing to appeal DOB's determination to the Board; and

WHEREAS, the Appellant initially conceded that all three zoning questions were within the scope of the administrative exhaustion requirement; and

WHEREAS, on October 12, 2010, DOB issued its Final Determination in response to the Appellant, which states its refusal to revoke the permits or reject the plans and sets forth its conclusions on the three zoning questions; and

WHEREAS, on October 29, 2010, the Appellant made a request to the court to withdraw its concession concerning administrative exhaustion, arguing that where an issue of law is involved, as in the interpretation of ZR § 24-111(a),

administrative exhaustion is not required; and

WHEREAS, DOB objected to the Appellant's change in position and maintained its own position that the Appellant be required to exhaust administrative remedies for all of the questions against DOB; and

WHEREAS, on January 5, 2011, the court denied the Appellant's request for a preliminary injunction and granted DOB's request to dismiss the case for failure to exhaust administrative remedies for two of the three questions; as to the third question – the applicability of ZR § 24-111(a) – the court agreed with the Appellant and determined that it was a question purely of law and "the applicability of the grandfathering provision is to be decided by the court"; and

DISCUSSION

WHEREAS, the Appellant seeks the revocation of the permit on the three following grounds: (1) it authorizes floor area that exceeds the maximum floor area ratio established by ZR § 24-111(a); (2) the eastern wall of St. Mary's proposal does not comply with front yard requirements under ZR § 24-34 and maximum front wall height and setbacks under ZR § 24-521 that are triggered by the adjacent Cross Island Parkway, which is a "street" as defined by the ZR; and (3) the proposed use should be characterized as a Use Group 4 ambulatory health care facility which is a prohibited use in the zoning district pursuant to ZR § 22-14; and

A. Community Facility Floor Area Regulations Pursuant to ZR § 24-111(a)

WHEREAS, the Appellant contends that pursuant to ZR § 24-111(a), the maximum permitted FAR for a community facility in an R2A zoning district is the same as that permitted for residential use - 0.5 FAR - and that since the alteration was proposed in 2008, and not prior to November 15, 1972, the grandfathering exception is not applicable; and

WHEREAS, the relevant provision is as follows:

ZR § 24-111 - Maximum floor area ratio for certain community facility uses

R1 R2

(a) In the districts indicated, for any #zoning lot# containing #community facility uses# . . . the maximum #floor area ratio# shall not exceed the #floor area# permitted for #residential uses# by the applicable district regulations. The provisions of this paragraph shall not apply to #buildings# for which plans were filed with the Department of Buildings prior to November 15, 1972, including any subsequent amendments thereof; and

WHEREAS, the Appellant asserts that the exception clause should be construed narrowly and, thus, would only apply to applications that had already been filed by November 15, 1972; and

WHEREAS, as reflected in the Final Determination, DOB disagrees with the Appellant's conclusion and finds that an amendment to the hospital plans is within the exception to the FAR limit and thus, the new building could reach a maximum FAR of 1.0; and

WHEREAS, however, DOB takes the position that, in light of the court's January 2011 decision, the question is properly before the court and urges the Board not to consider it;

¹ DOB's determination erroneously referenced the Grand Central Parkway, rather than the Cross Island Parkway. Subsequent communication from DOB clarifies that the intent was to identify the Cross Island Parkway.

² See Matter of Weeks Woodlands et al. v. Dormitory Authority of the State of New York et al., Sup Ct. New York County, Index No. 110502/10.

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accordingly, DOB has not submitted any analysis of the ZR § 24-111 question within the context of the subject appeal; and

WHEREAS, St. Mary's concurs with DOB that the question of ZR § 24-111 is now properly before the court and the Board must defer to the court; however, in the alternate, St. Mary's provided its analysis of the ZR § 24-111 question and its conclusion that the exception provision applies to its plans since the original building plans were filed with DOB prior to November 15, 1972 and the proposal reflects an amendment of those plans; and

WHEREAS, as noted above, in the course of the parallel litigation, the City argued that all three of the Appellant's zoning issues were subject to the rule that the Appellant exhaust its administrative remedies and first file an appeal before the Board before seeking a remedy in court; and

WHEREAS, the Appellant originally agreed that all matters were properly before the Board, but ultimately (it explained to the Board, to try to obtain a decision on the merits and avoid the need to post a bond) presented the argument that the ZR § 24-111 question was purely a matter of law and an exception to the administrative exhaustion requirement; and

WHEREAS, the Board has determined that it will not analyze the ZR § 24-111(a) question for reasons including the following: (1) the matter was first raised and argued, preliminarily, in the context of an ongoing court proceeding in which the Appellant asserted that the question was properly before the court, (2) the court granted the Appellant's request and took jurisdiction of the matter before the case was even before the Board for consideration, (3) DOB and St. Mary's, who are defendants in the litigation and initially requested to have the Appellant first appeal the matter before the Board, now defer to the court and find that the court is the appropriate forum for the analysis of ZR § 24-111(a), given the January 2011 decision, which states that the court will decide the question; and (4) the interest of judicial economy disfavors two bodies hearing and determining the same question at the same time; and

WHEREAS, however, the Board does not adopt the court's determination that the interpretation of ZR § 24-111 is purely a question of law; and

WHEREAS, similarly, the Board does not adopt St. Mary's position that the Board is prohibited from acting on the ZR § 24-111 question since it is now before the court; and

WHEREAS, the Board notes that within the review of a request for a preliminary injunction, the court determined that the Appellant was not required to exhaust its administrative remedies on one of the three questions; and

WHEREAS, the Board notes that there is a distinction between an exception to the administrative exhaustion requirement and the court determining that the Board lacks jurisdiction; and

WHEREAS, the Board concludes that it has concurrent jurisdiction over the ZR § 24-111 question and notes that the court's decision was limited to whether a preliminary injunction to stop construction was appropriate (denied) and whether the Appellant was required to appeal all three questions to the Board prior to pursuing the matters in court (denied in part, granted in part); and

WHEREAS, the Board finds that the court did not state that the Board did not have jurisdiction over the question, nor did it say that it had exclusive jurisdiction over the question, rather, the court simply stated that it would decide the matter; and

WHEREAS, the Appellant submitted supplemental arguments to support its position that the Board should hear the ZR § 24-111(a) question, primarily that (1) the Appellant should not be penalized for first filing an action in court to try to stop construction, (2) judicial economy is supported by the Board hearing all three matters at once, and (3) the Board is the appropriate body to evaluate the zoning question; and

WHEREAS, the Board is not persuaded by the Appellant's supplemental arguments and maintains its position that the court, which took jurisdiction over the ZR § 24-111(a) question, but not the other two zoning questions, before the Board's public hearing process began, should continue sole review of the question, rather than have an administrative body and the court review it contemporaneously; and

WHEREAS, the Board notes that its position is not based on an interest in being punitive or in a concern that the Board might not agree with the court, as the Appellant contends; and

WHEREAS, the Board notes that the court is the body that reviews the Board's decisions and, thus, having the court review the question in the first instance and potentially also review the Board's determination is inconsistent with the principles of judicial economy; and

WHEREAS, the Board adds that the Appellant will have the opportunity to set forth its position in court and to appeal any decision not in its favor in that venue, thus, an opportunity for a thorough prosecution of the ZR § 24-111 question is not threatened; and

WHEREAS, lastly, the Board's evaluation of whether or not to hear a matter is not guided by a party's explanation of its strategy in parallel litigation; and

WHEREAS, accordingly, the Board will not act on the question of whether DOB has appropriately interpreted ZR § 24-111(a); and

B. The Required Setback at St. Mary's Eastern Lot Line

WHEREAS, the Appellant asserts that the proposal does not comply with the setback requirements at the eastern boundary of the site nearest to the Cross Island Parkway; and

WHEREAS, specifically, the Appellant states that the site's eastern boundary is a front lot line, because the Cross Island Parkway is a "street," as defined by the ZR and, thus the front yard and front setback regulations, set forth at ZR §§ 24-34 (Minimum Required Front Yards) and 24-521 (Front Setbacks in Districts Where Front Yards Are Required) must be followed; and

WHEREAS, ZR § 24-34 requires that a front yard with a minimum depth of 15 feet be provided for lots within R1 zoning districts and ZR § 24-521 requires that above a building height of 25 feet, the building must be set back at a ratio of 1 to 1 (vertical distance to horizontal distance); and

WHEREAS, the relevant definitions set forth at ZR § 12-10 are, in relevant part:

Public park

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A "public park" is any publicly-owned park, playground, beach, parkway, or roadway within the jurisdiction and control of the Commissioner of Parks, except for park strips or malls in a #street# the roadways of which are not within the Commissioner's jurisdiction and control.

* * *

Street

A "street" is:

(a) a way shown on the City Map; or
(b) a way designed or intended for general public use, connecting two ways shown on the City Map, that:

- (1) performs the functions usually associated with a way shown on the City Map;
- (2) is at least 50 feet in width throughout its entire length; and
- (3) is covenanted by its owner to remain open and unobstructed throughout the life of any #building# or #use# that depends thereon to satisfy any requirement of this Resolution; or
- (c) any other open area intended for general public use and providing a principal means of approach for vehicles or pedestrians from a way shown on the City Map to a #building# or other structure#, that:

- (1) performs the functions usually associated with a way shown on the City Map;
- (2) is at least 50 feet in width throughout its entire length;
- (3) is approved by the City Planning Commission as a "street" to satisfy any requirement of this Resolution; and
- (4) is covenanted by its owner to remain open and unobstructed throughout the life of any #building# or #use# that depends thereon to satisfy any requirement of this Resolution; or
- (d) any other public way that on December 15, 1961, was performing the functions usually associated with a way shown on the City Map; or
- (e) a #covered pedestrian space# that directly links two parallel or substantially parallel ways shown on the City Map . . . ; and

WHEREAS, the Appellant objects to DOB's determination that the eastern boundary is a side lot line and that the proposal with a yard width of 35 feet and a height of 71 feet without any setback is permitted because the setbacks from the eastern lot line must be determined by tracing the eastern boundary as a front lot line; and

WHEREAS, the Appellant notes that DOB initially identified the eastern boundary line as a front lot line and found the proposal to be non-complying with the setback requirements; and

WHEREAS, the Appellant notes that after St. Mary's provided additional information to DOB, which asserted that the area between the roadway and St. Mary's lot line is a public park as defined by ZR § 12-10, DOB accepted St. Mary's arguments and reversed its position on the setback

requirements; and

WHEREAS, the Appellant asserts that DOB's current interpretation is erroneous because (1) the Cross Island Parkway is a "street," as defined at ZR § 12-10, comprising a roadway and the adjacent Green Area; (2) the Green Area is not a "public park," as defined at ZR § 12-10; (3) even if the Green Area were a "public park," it is also part of the "street" which consists of all land within the property lines defining the parkway; and (4) the principle set forth at ZR § 11-22 that whenever there are conflicting regulations in the ZR, the more restrictive controls, leads to the application of the front lot line regulations since they are more restrictive than side lot line regulations; and

1. The Definition of Street

WHEREAS, the Appellant asserts that the entire Cross Island Parkway, from property line to property line, is a street, as defined by the ZR; and

WHEREAS, the Appellant relies on the following subsections of the ZR § 12-10 definition of street: (a) "a way shown on the City Map" (in conjunction with a dictionary definition of "way" as a "passage, path, road, or street") and concludes that a parkway is a "way" and it is on the City Map, so therefore it is a street; and

WHEREAS, the Appellant also looks to subsection (c) which states that a street may consist of "open area intended for general public use" including vehicular and pedestrian use; and finally, the Appellant refers to subsection (e) which includes "a covered pedestrian space" for the proposition that space for purposes other than vehicular use are contemplated in the definition of street; and

WHEREAS, the Appellant also asserts that the law is clear that a parkway – a roadway and landscaped open space – is a unified whole, all of which is a street; and

WHEREAS, the Appellant refers to multiple sources outside of the ZR to support its argument that the Green Area should be classified as a street; these sources include: (1) New York City's Administrative Code (AC) §§ 1-112 and 19-101; (2) New York State's Vehicle and Traffic Law (VTL); (3) New York State case law (Lyman v. Village of Potsdam, 228 N.Y. (1920); Kupelian v. Andrews, 233 N.Y. 278 (1922); and People v. Westchester County, 282 N.Y.224 (1940); and (4) the City Map; and

WHEREAS, the Appellant notes that (1) the definition of street at AC § 1-112 subsection (13) includes "public street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct, square or place, except marginal streets;" (2) the Department of Transportation's definition of street at AC § 19-101 references AC § 1-112; (3) the VTL identifies the Cross Island Parkway as an arterial highway; and (4) the City Map's heavy black lines at the outer eastern and western boundaries of the parkway define the street, in contrast to lighter lines, which identify the roadway; and

WHEREAS, as to the case law, the Appellant cites to (1) Lyman for the principle that a street consists of a roadway, grass alongside it, and the sidewalk, (2) Kupelian for the principle that a parkway includes the land at its borders, and (3) Westchester County for the principle that

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landscaping cannot transform a highway into a park; and

WHEREAS, the Appellant asserts that in other instances, DOB takes the position that the street includes all land lying between adjacent property lines, including sidewalks, landscaped center malls, or landscaped strips at the edge of the street; and

WHEREAS, accordingly, the Appellant concludes that the Cross Island Parkway is a street, which includes the surrounding landscape, from property line to property line; and

2. The Definition of Park

WHEREAS, the Appellant asserts that the Green Area is not a public park because it is not within the Parks Department's jurisdiction and control as specified at ZR § 12-10; and

WHEREAS, the Appellant rejects the letter from the Parks Department, submitted by St. Mary's, on the question of jurisdiction because it does not indicate that it has *control* over the parkway, as required by the ZR definition, but only *jurisdiction* and *management*; and

3. The Result if the Green Area is a Street and a Park

WHEREAS, in the alternate, the Appellant asserts that if the Green Area is found to be a public park, then DOB should apply ZR § 11-22 (Applications of Overlapping Regulations) which states that

Whenever any provision of this Resolution and any other provisions of law, whether set forth in this Resolution or in any other law, ordinance or resolution of any kind, impose overlapping or contradictory regulations over . . . the #use# or #bulk# of #buildings or other structures# . . . that provision which is more restrictive or imposes higher standards or requirements shall govern; and

WHEREAS, the Appellant asserts that if the Green Area can be defined as a street and a park, ZR § 11-22 requires that the more restrictive regulation apply, which it finds to be the street regulations; and

WHEREAS, the Appellant contrasts (1) the applicable provisions if the Green Area is a park: ZR § 24-35 (Minimum Required Side Yards) requirement for two side yards of eight feet each and the ability to reach the maximum allowable height without a setback to (2) the applicable provisions if the Green Area is a street: ZR § 24-34 (Minimum Required Front Yards) which requires an initial setback of 15 feet and then ZR § 24-521, which imposes a setback by the sky exposure plane beginning at a height of 25 feet; and

4. DOB's and St. Mary's Interpretations

WHEREAS, DOB asserts that (1) the roadway portion of the Cross Island Parkway meets the ZR § 12-10 definitions of "public park" and "street" and (2) the Green Area is only a "public park" and not a "street;" and

WHEREAS, DOB relies on a letter from the Parks Department which identifies the Cross Island Parkway between the Whitestone Bridge Approach and the Southern Parkway as a public park under its jurisdiction; and

WHEREAS, DOB does not find that the definition of

"street," in part, as a way shown on the City Map and an open area that provides a means of approach for vehicles and pedestrians as encompassing the Green Area that is neither (1) within the street bed (like a park strip or mall) nor (2) a means of approach for vehicles or pedestrians; and

WHEREAS, DOB notes that the Green Area is not part of the way since it is not a path for vehicles or pedestrians, so it is only a public park; and

WHEREAS, DOB also states that it has consulted with the Borough President's office on how to interpret the City Map since the map's legend does not identify how street lines on the Cross Island Parkway are represented and the Borough President's Office interprets the subject portion of the City Map as indicating a street within solid black boundary lines and a separate landscaped park area that is not a street, marked by cross-hatched boundary lines; St. Mary's submitted a letter into the record from the Borough President's Office which states that "the cross-hatching line that is shown on the Queens Borough President's Map No. 3250 directly to the east of Block 6059, Lot 1 indicates the symbol for a park line;" and

WHEREAS, DOB relies on the Parks Department's letter to conclude that the Green Area is identified as and operates as a park and asserts that, because the ZR definitions of street and public park are clear, it is not appropriate to consult outside sources such as the AC or case law, which are irrelevant; and

WHEREAS, St. Mary's relies on the definitions of street and public park set forth in ZR § 12-10 and concludes that the Cross Island Parkway meets the definition of park, but not street; and

WHEREAS, St. Mary's also concurs with DOB in its acceptance of (1) the Parks Department's statement that the Green Area is within its jurisdiction and (2) the Borough President's Office's, who oversees the City Map, in its interpretation of the cross-hatching as reflecting park area, rather than a component of the street; and

WHEREAS, St. Mary's submitted the 1939 acquisition record of the Cross Island Parkway, which reflects its purpose as for parkland, in further support that the Parks Department has jurisdiction over the Green Area and recognizes it as a park; and

WHEREAS, St. Mary's asserts that because the Green Area is a park and not a street, there is no reason to discuss the overlapping regulations principle set forth at ZR § 11-22; but, in the event ZR § 11-22 were to apply, St. Mary's contends that the zoning regulations associated with parks are exceedingly restrictive; and

C. The Use Classification for St. Mary's Hospital for Children

WHEREAS, the Appellant asserts that the proposed use should be classified as an ambulatory diagnostic or treatment health care use, which is not permitted in the subject zoning district, pursuant to ZR § 22-14 (Use Regulations); and

WHEREAS, specifically, the Appellant asserts that a significant portion of the existing use is ambulatory diagnostic or treatment, which is not permitted in the R2A zoning district and any expansion of the non-conforming use

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is in violation of ZR § 52-40 (Enlargement of Non-Conforming Uses), which addresses expansion of existing non-conforming uses; and

WHEREAS, the Appellant asserts that St. Mary's increased ambulatory programs have brought increased traffic and are not compatible with the neighborhood; and

WHEREAS, DOB states that St. Mary's existing facility has been identified as and used as a hospital since 1952, as reflected on its certificate of occupancy, which includes Use Group 4 hospital and accessory uses in the cellar through fourth floors; and

WHEREAS, DOB accepts that the proposed enlargement of the Use Group 4 hospital is consistent with the approved conforming use, as reflected on the proposed plans for a laboratory, treatment rooms, work rooms, and patient rooms; and

WHEREAS, St. Mary's states that hospital is not defined in the ZR, but that ambulatory care facility is and that it excludes facilities with admitted patients and beds; and

WHEREAS, St. Mary's states that it intends to maintain the existing number of beds in the hospital, but to move the majority of patients from existing four-bed rooms to single or double rooms; to create a rehabilitation wing; to create a permanent space for the public school that operates for St. Mary's in-patients; and to modernize the building infrastructure; and

WHEREAS, St. Mary's states that it will function as and provide the services of a modern hospital; and

CONCLUSION

WHEREAS, as to the Green Area question, the Board is not persuaded by the Appellant's assertions that it is a component of the street and finds that DOB was correct to identify it as a park based primarily on (1) the City Map, (2) the definition of street, and (3) recognition of the Green Area as a park; and

WHEREAS, specifically, the Board agrees with DOB, as informed by the Borough President's Office, in giving meaning to the map's cross-hatching along the Green Area's edge and accepts that it distinguishes the Green Area from the adjacent properties and the street; and

WHEREAS, the Board finds that the Green Area does not fit within the ZR definition of street in that it (1) can be distinguished from the roadway on the City Map; (2) is not part of the actual "way" or path for travel; and (3) does not provide an approach for vehicles and pedestrians; and

WHEREAS, the Board finds that the Green Area, which neither serves as a way for vehicle or pedestrian travellers nor provides access to the Cross Island Parkway roadway or any other, is therefore not part of the "way" such as a sidewalk along a roadway might be; and

WHEREAS, the Board accepts the Parks Department's letter stating that the Green Area is "mapped parkland/landscaped areas situated along the Cross Island Parkway" and under its jurisdiction and management over the Green Area and does not identify any conflict between the Parks Department's letter and the ZR definition of public park; the Board also notes that public Parks Department information identifies the Cross Island Parkway as part of

the park system; and

WHEREAS, in response to the Appellant's references to statutory definitions and case law, the Board notes that it is not appropriate to import definitions from other sources, which may serve different purposes unrelated to zoning, onto ZR definitions; and

WHEREAS, that said, the Board distinguishes the Appellant's three cited cases on the subject of the street/park issue; first, the Board notes that none of the cases is a New York City case and none has a relevant context; even if the cases were from New York City, they date from 1920, 1922, and 1940, prior to the 1961 adoption of the current ZR and the definitions at issue (the 1916 ZR did not define street or park); and

WHEREAS, additionally, of the three cases, the Board notes that only Kupelian, which relies on the dictionary definition of parkway, really addresses the question before the Board in any meaningful way; in that case, the court decided that there was a distinction between a park and the green strips along a parkway, but that was in another jurisdiction, which is not subject to the City Map, the New York City Parks Department system, or the ZR and the court did not examine city maps or consult the body that oversaw the green strips in Syracuse, where the case is set; and

WHEREAS, the Board agrees with DOB and St. Mary's that the Green Area is a public park and not a street, so it is not necessary to turn to ZR § 11-22 and the discussion of overlapping provisions; and

WHEREAS, additionally, the Board finds that the Appellant's reliance on ZR § 11-22 for the conclusion that the front lot line regulations, rather than the side lot line regulations, should be applied is misplaced since the Board does not agree that ZR § 11-22 is intended to clarify the subject question, which is one of ZR definitions, not a conflict of rules and regulations, as contemplated by ZR § 11-22; and

WHEREAS, the Board does not find the question of whether the Green Area is a street or a public park to be an overlapping regulation, but rather a statutory interpretation question; and

WHEREAS, as to whether DOB was correct in accepting the proposal as the enlargement of a Use Group 4 hospital rather than the expansion of a pre-existing non-conforming ambulatory diagnostic facility, the Board agrees with DOB and St. Mary's and finds that the proposed hospital with a combination of in-patient and out-patient programs is consistent with a modern hospital use; and

WHEREAS, finally, the Board does not find that the Appellant's evidence about the percentages of in-patient and out-patient activities and the amount of income associated with each program supports its position that the hospital use was an improper designation; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated October 12, 2010, stating that the St. Mary's proposal complies with all relevant zoning regulations, is hereby denied.

Adopted by the Board of Standards and Appeals, March

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8, 2011.

**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 8, 2011
1:30 P.M.**

837-85-A

APPLICANT – Angelo F. Liarkos, R.A., for Cesar A. Linares, D.D.S., owner.

SUBJECT – Application December 23, 2010 – Extension of term to allow the continued operation of a medical office (UG4) in an existing frame structure which expired on December 17, 2010. R2 Zoning District.

PREMISES AFFECTED – 166-18 73rd Avenue, southwest corner of 73rd Avenue and 167th Street, Block 6974, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Angelo F. Liarkos.

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 April 5, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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

ZONING CALENDAR

35-10-BZ

APPLICATION – Sheldon Lobel, PC for Yuriy Pirov, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to permit the legalization of an existing synagogue (*Congregation Torath Haim Ohel Sara*), contrary to front yard (§24-34), side yard (§24-35) and rear yard (§24-36). R4 zoning district.

PREMISES AFFECTED – 144-11 77th Avenue, approximately 65 feet east of the northeast corner of Main Street and 77th Avenue. Block 6667, Lot 45, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Nora Martins.

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 November 9, 2010, acting on Department of Buildings Application No. 420113308 reads, in pertinent part:

- “1. Building does not provide the minimum side yard requirements pursuant to ZR Sec. 24-35.
2. Building does not provide the minimum rear yard requirements as per ZR Sec. 24 36.
3. Building does not provide the minimum front yard requirements as per ZR Sec. 24-34.
4. Building requests a waiver of minimum parking requirements as per ZR Sec. 25-31;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R4 zoning district, the legalization of a three-story synagogue (Use Group 4), which does not comply with the zoning requirements for side yards, rear yard, front yard, and parking for community facilities, contrary to ZR §§ 24-35, 24-36, 24-34 and 25-31; and

WHEREAS, a public hearing was held on this application on August 24, 2010, after due notice by publication in *The City Record*, with continued hearings on October 5, 2010, November 9, 2010, and February 1, 2011.,

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and then to decision on March 8, 2011; 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 8, Queens, recommends disapproval of this application; and

WHEREAS, this application is being brought on behalf of Congregation Torath Haim Ohel Sara, a non-profit religious entity (the "Congregation"); and

WHEREAS, the subject site is located on the north side of 77th Avenue between Main Street and 147th Street, within an R4 zoning district; and

WHEREAS, the site has 40 feet of frontage on 77th Avenue, a depth of 100 feet, and a lot area of 4,000 sq. ft.; and

WHEREAS, the subject site is currently occupied by a three-story synagogue, which the applicant proposes to legalize; and

WHEREAS, the new building provides for a three-story synagogue with the following parameters: a floor area of 7,265 sq. ft. (1.84 FAR); a side yard with a width of 8'-0" along the western lot line and a side yard with a width of 5'-0" along the eastern lot line (two side yards with a width of 8'-0" each are required); a rear yard with a depth of 7'-0" (a rear yard with a minimum depth of 30'-0" is required); a front yard with a depth of 13'-0" (a front yard with a minimum depth of 15'-0" is required); and two parking spaces (a minimum of 12 parking spaces are required); and

WHEREAS, the applicant states that the site was formerly occupied by a one and one-half -story single-family home which had an existing front yard depth of 13'-0" and an existing side yard width along the eastern lot line of 5'-0"; the existing front and side yard dimensions comply with the underlying R4 zoning district regulations for residential buildings, but do not comply with the regulations for community facility buildings; and

WHEREAS, the applicant states that the building was enlarged pursuant to plans filed with the Department of Buildings ("DOB") in May 2008 to convert and enlarge the former single-family home on the site into a three-story synagogue; the Congregation subsequently enlarged the building beyond what was permitted in the plans submitted to DOB such that the enlarged building encroaches upon the required rear yard on the second and third floors and does not provide the required number of parking spaces; and

WHEREAS, the proposal provides for the following uses: (1) a religious sanctuary on the first floor; (2) a women's balcony on the second floor; and (3) a classroom/study area on the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Congregation which necessitate the requested variances: (1) to accommodate its growing congregation; (2) to provide a separate space for men and women during religious services; and (3) to provide adequate space for classrooms; and

WHEREAS, the applicant represents that the size, layout and design of a complying synagogue building would be inadequate to serve its congregation of more than 250

members; and

WHEREAS, the applicant states that the Congregation operates seven days per week, and includes classes attended by up to 30 students and prayer services attended by more than 100 congregants on weekends and approximately 250 congregants during holidays; and

WHEREAS, the applicant states that a complying building would result in a floor plate of 1,350 sq. ft. that could only provide 1,050 sq. ft. of floor area for the main sanctuary and 820 sq. ft. of floor area for the women's balcony, which would be inadequate to accommodate more than 105 congregants in the main sanctuary and 82 congregants in the women's balcony; and

WHEREAS, the applicant further states that the subject building provides 1,700 sq. ft. of floor area for the main sanctuary and 1,250 sq. ft. of floor area for the women's balcony, which is sufficient to accommodate 168 congregants and one rabbi in the main sanctuary and 120 congregants in the women's balcony; and

WHEREAS, accordingly, the applicant represents that the requested waivers enable the Congregation to provide adequate space for worship services in the first floor sanctuary and the women's balcony, while allowing for the future growth of the Congregation; and

WHEREAS, the applicant states that the subject building also provides a separate worship space for men and women; and

WHEREAS, the applicant represents that worship space which separates men and women is critical to its religious practice; and

WHEREAS, the applicant states that the Congregation has an additional programmatic need of providing space for classes and other programs; and

WHEREAS, specifically, the applicant states that classes are held in groups on the third floor throughout the week, and that separate classroom space is necessary apart from the main sanctuary and women's balcony space; and

WHEREAS, the Board acknowledges that the Congregation, 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 Congregation 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 Congregation is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

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

WHEREAS, the applicant further states that the front and side yard conditions existed prior to the Congregation's enlargement of the subject building, and that the front yard with a depth of 13 feet and the side yards with depths of eight feet and five feet, respectively, are compliant for residential use; and

WHEREAS, the applicant notes that the non-complying side yard condition for a community facility use along the eastern lot line only applies to the pre-existing portion of the building; the portion of the building which encroaches into the required rear yard provides two complying side yards of eight feet each, and therefore does not increase the degree of the side yard non-compliance; and

WHEREAS, the applicant states that the requested rear yard waiver is only necessary for the second and third floor of the building, as the rear yard encroachment at the first floor would otherwise be a permitted obstruction; and

WHEREAS, however, the applicant notes that providing the required 12 accessory parking spaces at the site would prevent the enlargement of the building's floor plate, even on the first floor; and

WHEREAS, the applicant represents that, while the building does not provide complying yard conditions, the existing front yard with a depth of 13'-0", two side yards with widths of 8'-0" and 5'-0", respectively, and a rear yard with a depth of 7'-0", provide sufficient separation between the synagogue and the adjacent residences; and

WHEREAS, further, the applicant notes that the third floor level of the building is setback at the rear, such that the rear yard increases to 26'-3" at the third floor; and

WHEREAS, the applicant notes that the subject building complies with the zoning requirements related to floor area, FAR, open space, lot coverage and height, and that the only non-compliances are related to yards and parking; and

WHEREAS, as to traffic impacts and parking, the applicant noted that the impacts would be minimal as a majority of congregants live nearby and would walk to services, specifically to worship services on religious holidays or on the Sabbath when they are not permitted to drive; and

WHEREAS, a submission by the applicant indicates that approximately 98 percent of the congregants live within three-quarters of a mile from the subject site; 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 Congregation could occur

within a complying building; 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 Congregation 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 617.12 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 R4 zoning district, the legalization of a three-story synagogue, which does not comply with the zoning requirements for side yards, rear yard, front yard, and parking requirements for community facilities, contrary to ZR §§ 24-35, 24-36, 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 February 16, 2011" – (10) sheets; and *on further condition*:

THAT the building parameters shall be: a floor area of 7,265 sq. ft. (1.84 FAR); a front yard with a minimum depth of 13'-0"; a side yard with a minimum width of 8'-0" along the western lot line; a side yard with a minimum width of 5'-0" along the eastern lot line; a rear yard with a minimum depth of 7'-0" at the first and second floor, and 26'-3" at the third floor; and two accessory parking spaces, 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 a new certificate of occupancy shall be obtained by March 8, 2012;

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

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

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

Adopted by the Board of Standards and Appeals, March

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8, 2011.

68-10-BZ

CEQR #10-BSA-070Q

APPLICANT – Eric Palatnik, P.C., for CDI Lefferts Boulevard, LLC, owner.

SUBJECT – Application May 4, 2010 – Variance (§72-21) to allow a commercial building, contrary to use regulations (§22-00). R5 zoning district.

PREMISES AFFECTED – 80-15 Lefferts Boulevard, between Kew Gardens Road and Talbot Street, Block 3354, Lot 38, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Adam Rothkrug.

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 26, 2010, acting on Department of Buildings Application No. 401846179, reads in pertinent part:

“As per ZR 22-00 and ZR 23-00 proposed bulk and footprint as well as proposed use group 6 are not permitted in residential district R5;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R5 zoning district, the construction of a two-story commercial office building (Use Group 6) which does not conform to district use regulations, contrary to ZR §§ 22-00 and 23-00; and

WHEREAS, a public hearing was held on this application on October 26, 2010 after due notice by publication in *The City Record*, with continued hearings on December 7, 2010 and February 1, 2010, and then to decision on March 8, 2011; and

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

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, New York City Council Member Karen E. Koslowitz recommends approval of this application; and

WHEREAS, the Kew Gardens Civic Association, Inc., and the Kew Gardens Improvement Association provided written testimony in support of this application; and

WHEREAS, the subject site is located on a through lot with frontage on Lefferts Boulevard and 83rd Drive, between Talbot Street and Kew Gardens Road, within an R5 zoning district; and

WHEREAS, the site is irregularly-shaped with approximately 42 feet of frontage on Lefferts Boulevard and 17 feet of frontage on 83rd Drive, a depth of 200 feet, and a lot

area of approximately 6,244 sq. ft.; and

WHEREAS, the site is currently vacant aside from an existing foundation system which was constructed as part of the applicant’s efforts to develop the site in conjunction with the adjacent school building located immediately to the north of the site; and

WHEREAS, the applicant states that its efforts to utilize the site in conjunction with the adjacent school building have been abandoned and that it is not seeking to rely upon the work undertaken on the foundation system as part of its hardship argument; and

WHEREAS, the applicant proposes to construct a two-story and cellar professional office building with a total floor area of 7,792 sq. ft. (1.24 FAR), and no parking; and

WHEREAS, commercial use is not permitted in the subject R5 zoning district, thus the applicant seeks a use variance to permit the proposed Use Group 6 use; and

WHEREAS, the applicant states that the following is a unique physical condition which creates unnecessary hardship and practical difficulties in developing the site with a complying development: the site’s irregular shape; and

WHEREAS, as to the site’s irregular shape, the applicant notes that the width of the site tapers from a maximum width of approximately 42 feet along Lefferts Boulevard to a minimum width of approximately 17 feet along 83rd Drive; and

WHEREAS, the applicant states that the irregular shape of the site makes as-of-right residential or community facility development infeasible; and

WHEREAS, specifically, the applicant states that the yard requirements for residential and community facility uses in the underlying R5 zoning district require two side yards with a width of eight feet each, which would result in a building with a maximum width of 26 feet, which would quickly taper to an infeasible width of nine feet; and

WHEREAS, the applicant further states that its previous efforts to construct an as-of-right community facility building were predicated on the building being connected to, and used in conjunction with, the adjacent school building, and that an as-of-right community facility building is not a viable use as a stand-alone building; and

WHEREAS, the applicant represents that the irregular shape of the lot also makes lesser variance alternatives involving residential or community facility use of the site with side yard relief infeasible; and

WHEREAS, the applicant submitted a letter from a realty management company in support of its claim that community facility use at the site is not viable even with side yard relief, stating that the site’s inability to provide parking, in conjunction with the inefficient floor plates and poor operational layout, make the site deficient for Use Group 4 medical use; and

WHEREAS, the applicant states that a lesser variance alternative involving residential use of the site with side yard relief is similarly compromised by the irregular shape of the site, due to the inefficient floor plates that would result; and

WHEREAS, the applicant notes that the non-complying residential scenario would also eliminate all of the northern windows and force ventilation of the entire building from the

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east and western walls; and

WHEREAS, at hearing, the Board directed the applicant to provide evidence that the subject lot existed in its current configuration and has been owned separately and individually from all other adjoining tracts of land since December 15, 1961; and

WHEREAS, in response, the applicant submitted deeds and a title report reflecting that the subject lot has been owned separately and individually since December 15, 1961; and

WHEREAS, based upon the above, the Board finds that the irregular shape of the site creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) an as-of-right community facility development; (2) an as-of-right residential development; (3) a community facility development with non-complying side yards; (4) a residential development with non-complying side yards; and (5) the proposed Use Group 6 office development; and

WHEREAS, the study concluded that the as-of-right scenarios and the lesser variance alternatives would not result in a reasonable return, but that the proposed building would realize a reasonable return; 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 compliance with zoning 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 represents that the surrounding area is occupied by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant submitted a land use map reflecting that there are multiple community facility and commercial uses located within a 400-ft. radius of the site, including a school located immediately adjacent to the north of the site, and commercial uses located east of the site at the corner of Kew Gardens Road and 83rd Drive, and at the corner of Lefferts Boulevard and Austin Street; and

WHEREAS, the applicant states that the site is also located one block southwest of Queens Boulevard, which includes an array of commercial uses, several courthouses, and government offices; and

WHEREAS, in response to concerns raised by the Board, the applicant states that the use of the subject site will be limited to professional offices with limited hours of operation of Monday through Friday, from 8:00 a.m. to 6:00 p.m., which will be compatible with the residential uses located immediately adjacent to the south of the site and across from the site on Lefferts Boulevard; and

WHEREAS, as to bulk, the applicant notes that the site will be compatible with the underlying R5 zoning district, except as to yard requirements; and

WHEREAS, as to traffic and parking impacts, the applicant states that the site will have no impact on traffic and parking in the immediate area, due to its use being limited to professional offices and its proximity to mass transit, including the Long Island Railroad, the Kew Gardens – Union Turnpike subway entrance, and numerous bus lines, along with the availability of on-street parking and a municipal parking lot on Queens Boulevard; and

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

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

WHEREAS, as noted above, the applicant analyzed lesser variance alternatives consisting of as-of-right community facility and residential uses with side yard relief, but determined that the lesser variance alternatives were not feasible due to the site's unique physical conditions; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA070Q, dated September 22, 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 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 site within an R5 zoning district, the proposed construction of a two-story commercial office building (Use Group 6), which does not conform with

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applicable zoning use regulations, contrary to ZR §§ 22-00 and 23-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received September 16, 2010”- five (5) sheets and “Received February 22, 2011 – three (3) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 7,792 sq. ft. (1.24 FAR); and a total height of 30’-0”, as indicated on the BSA-approved plans;

THAT the use of the site shall be limited to Use Group 6 professional offices;

THAT the hours of operation shall be limited to Monday through Friday, from 8:00 a.m. to 6:00 p.m.;

THAT signage shall be as shown on the BSA-approved plans;

THAT landscaping shall be provided and maintained as per the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 8, 2011.

213-10-BZ

CEQR #11-BSA-039R

APPLICANT – EPDSO, Inc., for 2071 Clove LLC, owner; Grasmere Bodybuilding Inc. (d/b/a Dolphin Fitness), lessee. SUBJECT – Application November 9, 2010 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (*Dolphin Fitness Center*). C8-1 zoning district.

PREMISES AFFECTED – 2071 Clove Road, Clove Road (Grasmere Commons Shopping Center) between Mosel Avenue and Hillcrest Terrace, Block 2921, Lot 6, Borough of Staten Island.

COMMUNITY BOARD #6SI

APPEARANCES –

For Applicant: Adam Rothkrug.

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 Staten Island Borough

Commissioner, dated October 29, 2010, acting on Department of Buildings Application No. 500470395, reads in pertinent part:

“The proposed physical culture establishment...is not permitted in a (C8-1) zoning district as per Sec. (32-00) (ZR). Therefore obtain (BS&A) approval as per Sec. 73-36 (ZR);” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C8-1 zoning district, the legalization of a physical culture establishment (PCE) within a three-story commercial building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on February 1, 2011 after due notice by publication in *The City Record*, and then to decision on March 8, 2011; and

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

WHEREAS, the subject site is located on the east side of Clove Road, between Mosel Avenue and Hillcrest Terrace, within a C8-1 zoning district; and

WHEREAS, the subject site consists of a one- and two-story commercial shopping center occupied by several tenants, and an attached three-story commercial building occupied by the subject PCE; and

WHEREAS, the PCE has a total floor area of 10,472 sq. ft. on the second and a portion of the third floor of the subject building; and

WHEREAS, the PCE is operated as Dolphin Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:00 a.m. to 11:00 p.m.; Saturday, from 8:00 a.m. to 8:00 p.m., and Sunday, from 8:00 a.m. to 6:00 p.m.; and

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

WHEREAS, on December 18, 2002, under BSA Cal. No. 388-01-BZ, the Board granted a special permit to allow a PCE, operated by Dolphin Fitness, on the first floor of a portion of the one- and two-story commercial shopping center located at the site; and

WHEREAS, the applicant notes that the PCE continued to operate pursuant to the prior grant until it relocated into the subject three-story building in the spring of 2010; and

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

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

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

WHEREAS, the Board notes that the PCE has been in operation at the current location since April 1, 2010 without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between April 1, 2010 and the date of this grant; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 11BSA039R, dated November 9, 2010; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C8-1 zoning district, the legalization of a physical culture establishment within an existing three-story commercial building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 20, 2011"- Eight (8) sheets and *on further condition*:

THAT the term of this grant shall expire on April 1, 2020;

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, March 8, 2011.

217-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Elizabeth Kopolovich & Harry Kopolovich, owner.

SUBJECT – Application November 15, 2010 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and lot coverage (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 4009 Bedford Avenue, Bedford Avenue between Avenue S and Avenue T. Block 7304, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 15, 2010, acting on Department of Buildings Application No. 320228035, reads in pertinent part:

“The proposed enlargement of 2-story and conversion to one family residence in an R3-2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to the lot coverage and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yards by not meeting the minimum

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requirements of Section 23-461 of the Zoning Resolution.

4. Creates non-compliance with respect to the rear yard and is contrary to Section 23-47 of the Zoning Resolution.
5. Creates non-compliance with respect to the open space and is contrary to Section 23-141 of the Zoning Resolution;" 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 an existing two-family residence, to be converted into a single-family home which does not comply with the zoning requirements for floor area ratio, lot coverage, side yards, rear yard, and open space, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on January 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on February 15, 2011, and then to decision on March 8, 2011; and

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

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

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue S and Avenue T, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a two-family home with a floor area of 1,983 sq. ft. (0.50 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 1,983 sq. ft. (0.50 FAR) to 4,066 sq. ft. (1.02 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide a lot coverage of 44 percent (35 percent is the maximum permitted lot coverage); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard along the northern lot line with a width of 3'-9½" (5'-0" is the minimum width required); 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 provide an open space of 2,237 sq. ft. (2,600 sq. ft. is the minimum required open space); and

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

WHEREAS, the Board finds that the proposed project

will not interfere with any pending public improvement project; and

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing two-family residence, to be converted into a single-family home which does not comply with the zoning requirements for floor area ratio, lot coverage, side yards, rear yard, and open space, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received February 16, 2011"-(14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 4,066 sq. ft. (1.02 FAR); a lot coverage of 44 percent; an open space of 2,237 sq. ft.; a side yard with a minimum width of 3'-9½" along the northern lot line; a side yard with a minimum width of 9'-3" along the southern lot line; a rear yard with a minimum depth of 20'-0"; and a perimeter wall height of 21'-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, March 8, 2011.

234-10-BZ

APPLICANT – Moshe M. Friedman, for Labe Twerski, owner.

SUBJECT – Application December 28, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-

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141(a)) and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 2115 Avenue K, north side, 100' east of intersection of Avenue K and East 21st Street, Block 7603, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Yosf Gekfdiener.

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 December 15, 2010, acting on Department of Buildings Application No. 320224146, reads:

“Proposed extension of an existing one family dwelling is contrary to:

ZR Sec 23-141(a) Floor Area Ratio

ZR Sec 23-141(a) Open Space Ratio

ZR Sec 23-47 Rear Yards

And requires a special permit from the Board of Standards and Appeals as per Sec 73-622;” and

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

WHEREAS, a public hearing was held on this application on February 15, 2011 after due notice by publication in *The City Record*, and then to decision on March 8, 2011; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Avenue K, between East 21st Street and East 22nd Street, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of 2,881 sq. ft. (0.58 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 2,881 sq. ft. (0.58 FAR) to 4,659 sq. ft. (0.93 FAR); the maximum permitted floor area is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 64 percent (150 percent is the minimum required); 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, at hearing, the Board raised concerns about the maneuverability of the proposed driveway; and

WHEREAS, in response, the applicant submitted a parking maneuverability study reflecting that the dimensions of the proposed driveway are sufficient for vehicle maneuverability; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received February 1, 2011”-(10) sheets and “February 18, 2011”-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,659 sq. ft. (0.93 FAR); an open space ratio of 64 percent; 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

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

Adopted by the Board of Standards and Appeals, March 8, 2011.

201-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for For Our Children, Inc., owner.

SUBJECT – Application August 1, 2008 – Variance (§72-21) to allow a one story commercial building (UG 6); contrary to use regulations (§22-00). R3X zoning district.

PREMISES AFFECTED – 40-38 216th Street, between 215th Place and 216th Street, 200' south of 40th Avenue, Block 6290, Lot 70, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Henry Euler, Tommy Meara, Xavier San Miguel, Gerda Soria, Catherine M. Les, Kathleen Cronin, Adosfo Broegg, James R. Grayshan and Nancy Adams.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for continued hearing.

61-10-BZ

APPLICANT – James Chin & Associates, LLC, for Norman Wong, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-21) to legalize an existing building contrary to height (§23-692), lot coverage (§23-245), rear yard (§23-532) and floor area (§23-145) regulations. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 183 East Broadway, 43.5' frontage on Henry Street and 26.1 frontage on East Broadway, Block 284, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Patrick Jones and Matt D. Viggiano.

For Opposition: Adam Spiegel, Charles Pehlivanina and Susan Tayldrson.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M. for continued hearing.

127-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aleksandr Goldshmidt and Inna Goldshmidt, owners.

SUBJECT – Application July 12, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space, lot coverage (§23-141), exceeds the maximum perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 45 Coleridge Street, east side of Coleridge Street, between Shore Boulevard and Hampton Avenue, Block 8729, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 1:30 P.M., for continued hearing.

192-10-BZ

APPLICANT – Vincent L. Petraro, PLLC, for The Leavitt Street LLC, owner.

SUBJECT – Application October 20, 2010 – Special Permit (§73-66) to allow for a waiver of height restrictions around airports. C4-2 zoning district.

PREMISES AFFECTED – 39-16 College Point Boulevard, west side of College Point Boulevard, at the cross section of Roosevelt Avenue and College Point Boulevard, Block 462, Lot 4, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Simicich.

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 April 5, 2011, at 1:30 P.M., for decision, hearing closed.

193-10-BZ

APPLICANT – Vincent L. Petraro, PLLC, for Jia Ye Realty, LLC, owner.

SUBJECT – Application October 20, 2010 – Special Permit (§73-66) to allow for a waiver of height restrictions around airports. C4-3 zoning district.

PREMISES AFFECTED – 35-27 Prince Street, at the congruence of 36th Road and Prince Street, Block 4971, Lot 8, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Simicich.

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 April 5, 2011, at 1:30 P.M., for decision, hearing closed.

226-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Montbatten Equities, LLP, owner; Equinox Fitness, lessee.

SUBJECT – Application December 10, 2010 – Special Permit (§73-36) to allow a Physical Culture Establishment (*Equinox Fitness*) on the first, ninth and tenth floors of an existing 10-story mixed-use building; Amendment to a prior variance (§72-21) to reflect the proposed establishment. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58,

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Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Adam Rothkrug.

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 April 5, 2011, at 1:30 P.M., for decision, hearing closed.

606-75-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Montbatten Equites, LP, owner; Equinox Fitness, lessee.

SUBJECT – Application December 10, 2010 – Special Permit (§73-36) to allow a Physical Culture Establishment (*Equinox Fitness*) on the first, ninth and tenth floors of an existing 10-story mixed-use building; Amendment to a prior variance (§72-21) to reflect the proposed establishment. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Adam Rothkrug.

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 April 5, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

*CORRECTION

This resolution adopted on May 11, 2010, under Calendar No. 389-37-BZ and printed in Volume 95, Bulletin Nos. 19-20, is hereby corrected to read as follows:

389-37-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Rosemarie Fiore, Georgette Fiore and George Fiore, owner. SUBJECT – Application June 10, 2009 – Extension of Term (§11-411) of a previously granted Variance for the operation of a UG8 parking lot which expired on June 13, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on December 12, 2004 and Waiver of the Rules. R5/C1-2 zoning district.

PREMISES AFFECTED – 44-16 and 44-14 31st Avenue and 44-09 Newton Road and 31-08/12 45th Street, southwest corner of 45th Street and 31st Avenue, Block 710, Lot 5, 6, 17, 18, 19, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term for a previously granted variance for the operation of a Use Group 8 parking lot, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in *The City Record*, with continued hearings on January 12, 2010, February 23, 2010 and April 13, 2010, and then to decision on May 11, 2010; and

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

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

WHEREAS, the subject site is located on the southwest corner of 45th Street and 31st Avenue, within a C1-2 (R5) zoning district; and

WHEREAS, the site is occupied by an open parking lot; and

WHEREAS, the Board has exercised jurisdiction over the site since April 5, 1938 when, under the subject calendar number, the Board granted a variance to permit the parking and storage of more than five motor vehicles on the site, for a term of two years; and

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

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WHEREAS, most recently, on December 16, 2003, the Board granted a five-year extension of term, which expired on June 13, 2008; a condition of the grant was that a certificate of occupancy be obtained by December 16, 2004; and

WHEREAS, the applicant now seeks a ten-year extension of the term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that it was unable to obtain a certificate of occupancy within the stipulated time in part due to procedural issues at the Department of Buildings; and

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

WHEREAS, the applicant also seeks to remove the condition of the previous grant requiring the applicant to submit a financial study examining the feasibility of residential use at the site; and

WHEREAS, the applicant states that the condition requiring a financial analysis for residential development was not due to any problem with the operation or appearance of the site, but was included to encourage as-of-right development of the site; and

WHEREAS, the applicant further states that the subject parking lot has operated continuously on the site for over 70 years and is a benefit to the community, as parking is scarce in the surrounding area; and

WHEREAS, the applicant represents that the as-of-right residential development of the site is not feasible; and

WHEREAS, the applicant also seeks to amend the approved plans to reflect that the fencing does not provide 50 percent opaque screening; and

WHEREAS, the applicant states that the installation of screening would create a safety hazard for the users of the lot because it would block visual access into the lot; and

WHEREAS, the Board has determined that the removal of the condition requiring a financial analysis for residential development, and the amendment of the approved plans to remove the note requiring 50 percent opaque screening is appropriate; and

WHEREAS, at hearing, the Board questioned whether the applicant had a Department of Consumer Affairs (“DCA”) license that allows the parking of vehicles at the site; and

WHEREAS, in response, the applicant submitted a DCA license which is valid through March 2011; and

WHEREAS, based upon the above, the Board finds that the requested extension of term, extension of time to obtain a certificate of occupancy, and the amendment to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the resolution, dated April 5, 1938, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 13, 2008, to expire on June 13, 2018, to extend the time to obtain a certificate of occupancy to May 11, 2011, and to eliminate two specified conditions from prior approvals; *on condition* that all use and

operations shall substantially conform to plans filed with this application marked “Received April 15, 2010”-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on June 13, 2018;

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

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

THAT a new certificate of occupancy shall be obtained by May 11, 2011;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 410230245)

Adopted by the Board of Standards and Appeals May 11, 2010.

***The resolution has been corrected to add the additional address to Premises Affected. Corrected in Bulletin No. 11, Vol. 96, dated March 16, 2011.**

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*CORRECTION

This resolution adopted on December 14, 2010, under Calendar No. 103-10-BZ and printed in Volume 95, Bulletin No. 51, is hereby corrected to read as follows:

103-10-BZ

APPLICANT – Law Office of Frederick A. Becker, for Zehava Kraitenberg and Larry Kraitenberg, owners.

SUBJECT – Application June 7, 2010 – Special Permit (§73-622) for the enlargement and in-part legalization of an existing single family home contrary to floor area, open space (§23-141), side yard requirement (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1036 East 24th Street, west side of East 24th Street, between Avenue J and Avenue K, Block 7605, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 6, 2010, acting on Department of Buildings Application No. 300352838, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space ratio

Proposed plans are contrary to ZR 23-461 in that the proposed straight line extension of the side yard provides less than the minimum required side yard

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than that of the minimum required rear yard;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on October 19, 2010, after due notice by publication in *The City Record*, with a continued hearing on November 16, 2010, and then to decision on December 14, 2010; and

WHEREAS, the premises and surrounding area had

site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 24th Street, between Avenue J and Avenue K, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,390 sq. ft., and is occupied by a single-family home with a floor area of 3,500 sq. ft. (0.80 FAR); and

WHEREAS, the applicant states that the subject home was enlarged pursuant to plans approved by the Department of Buildings in 1994, which permitted a second floor extension at the front, a two-story extension at the side, a new interior layout, air conditioning, plumbing, windows, stucco and porches; and

WHEREAS, the applicant further states that the owner subsequently performed additional alterations, including the enlargement of the dining room through the enclosure of an approved porch, the addition of a small den at the rear of the home, and the enlargement of the kitchen; these additional alterations resulted in non-compliances associated with FAR, open space ratio and rear yard depth, which the owner now proposes to legalize; 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 3,500 sq. ft. (0.80 FAR) to 3,967 sq. ft. (0.90 FAR); the maximum permitted floor area is 2,195 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 61 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes a side yard with a width of 4’-8½” for the enlarged portion at the rear of the home along the northern lot line (a minimum width of 5’-0” is required); and

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

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

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

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

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

Therefore it is resolved, that the Board of Standards

MINUTES

and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received June 7, 2010”-(10) sheets and “Received October 14, 2010”-(3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,967 sq. ft. (0.90 FAR); a minimum open space ratio of 61 percent; a side yard with a minimum width of 4’-8½” for the enlarged portion at the rear of the home along the northern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, December 14, 2010.

***The resolution has been revised. Corrected in Bulletin No. 11, Vol. 96, dated March 16, 2011.**