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AND APPEALS

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April 13, 2011

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CONTENTS

DOCKET	231
CALENDAR of May 3, 2011	
Morning	232
Afternoon	232

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, April 5, 2011**

Morning Calendar233

Affecting Calendar Numbers:

881-59-BZ 15 Vandam Street, Manhattan
198-00-BZ 4641 Hylan Boulevard, Staten Island
122-06-BZ 2671 86th Street, Brooklyn
215-09-BZ 92-16 95th Avenue, Queens
435-74-BZ 552 Madison Avenue, Staten Island
516-75-BZ 330 East 61st Street, aka 328 East 61st Street, Manhattan
866-85-BZ 2338 Cambreleng Avenue, Bronx
216-97-BZ 1384 Carroll Street, aka 352 Kingston Avenue, Brooklyn
273-00-BZ 3 West 33rd Street, Manhattan
427-05-BZ 133-47 39th Avenue, Queens
837-85-A 166-18 73rd Avenue, Queens
189-10-A 127-131 West 25th Street, Manhattan
200-10-A, 203-10-A 1359, 1361, 1365 & 1367 Davies Road, Queens
 thru 205-10-A
221-10-A 123 87th Street, Brooklyn

Afternoon Calendar248

Affecting Calendar Numbers:

194-09-BZ 2113 Utica Avenue, 2095-211 Utica Avenue, Brooklyn
192-10-BZ 39-16 College Point Boulevard, Queens
193-10-BZ 35-27 Prince Street, Queens
226-10-BZ 405/42 Hudson Street, Manhattan
606-75-BZ 405/42 Hudson Street, Manhattan
189-09-BZ 3067 Richmond Terrace, Staten Island
190-09-A 3067 Richmond Terrace, Staten Island
227-09-BZ 100-14 Roosevelt Avenue, Queens
236-09-BZ 140-148 West 28th Street, Manhattan
304-09-BZ 75-121 Junius Street, Brooklyn
95-10-BZ 2216 Quentin Road, Brooklyn
118-10-BZ 2102/24 Avenue Z, aka 2609/15 East 21st Street, Brooklyn
9-11-BZ 2129A-39A White Plains Road, aka 2129-39 White Plain Road,
 aka 626-636 Lydig Avenue, Bronx

DOCKET

New Case Filed Up to April 5, 2010

35-11-BZ

226-20 Francis Lewis Boulevard, Southerly side of Francis Lewis Boulevard, 1,105 feet westerly of Francis Lewis Boulevard where it turns south., Block 12825, Lot(s) 149, Borough of **Queens, Community Board: 13**. Variance (§72-21) to allow for the enlargement of an existing synagogue (Congregation Ohel), contrary to floor area, lot coverage (ZR 24-11), front yard (§ 24-34), side yard (ZR 24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district. R2A district.

36-11-BZ

270 Greenwich Street, Facing the west side of Joe DiMaggio Highway., Block 142, Lot(s) 7501, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (SoulCycle) located in a C6-3 zoning district. C6-3 district.

37-11-BZ

1337 East 26th Street, East side 300' east of intersection of Avenue M & East 26th Street., Block 7662, Lot(s) 32, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space §23-141; side yards §23-461 and §23-48 and less than the required rear yard §23-47. R-2 zoning district. R-2 district.

38-11-BZ

1368 East 27th Street, Between Avenue M & N., Block 7662, Lot(s) 80, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space §23-141(a); side yard §23-461(a) and less than the required rear yard §23-47. R-2 zoning district. R2 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

MAY 3, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 3, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

188-78-BZ

APPLICANT –Mark Verkhosky, for Anthony Beradi, owner; Spiro Ioannou, lessee.

SUBJECT – Application May 4, 2010 – Pursuant to (§11-412) for an Amendment to a previously granted Variance (§72-21) for the added uses of automobile body and automobile sales (UG16) to an existing (UG16) automobile repair and auto laundry. R-5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81st Street, Block 6313, Lot 31, Borough of Brooklyn.

APPEALS CALENDAR

195-10-BZY

APPLICANT – Eric Palatnik, P.C., for Michael Batalia, owner.

SUBJECT – Application October 26, 2010 –Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-2/R5B zoning district.

PREMISES AFFECTED – 38-28 27th Street, between 38th and 39th Avenue, Block 387, Lot 31, Borough of Queens.

COMMUNITY BOARD #1Q

MAY 3, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 3, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

13-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, Miriam Loeb and Chaim Loeb, owner.

SUBJECT – Application February 3, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space §23-141; side yard §23-461 and 23-48; and less than the required rear yard §23-47. R2 zoning district.

PREMISES AFFECTED – 1040 East 26th Street, west side of East 26th Street, between Avenue J and Avenue K, Block 7607, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

16-11-BZ

APPLICANT – Eric Palatnik, P.C., for Judah Rosenweig, owner.

SUBJECT – Application February 14, 2011 - Special Permit (§73-621) for the enlargement of an existing two story with attic single family home contrary to floor area and open space §23-141(a). R1-2 zoning district.

PREMISES AFFECTED – 181-30 Aberdeen Road, between Surrey and Tyron Place, Block 7224, Lot 34, Borough of Queens.

COMMUNITY BOARD #8Q

20-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 30 West 18th Associates Association, LLC, owner; Just Calm Down II, Inc., lessee.

SUBJECT – Application February 28, 2011 – Special Permit (§73-36) to allow the proposed physical culture establishment (*Just Calm Down*). C6-4A zoning district.

PREMISES AFFECTED – 30 West 18th Street, south side of West 18th Street, Block 819, Lot 59, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 5, 2011
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

881-59-BZ

APPLICANT – Dorothy Ames, owner.
SUBJECT – Application November 19, 2010 – Extension of
Term (§11-411) for the continued use of a theatre (*Soho
Playhouse*) which expires on April 11, 2011. R6 zoning
district.

PREMISES AFFECTED – 15 Vandam Street, between
Avenue of the Americas and Varick Street, Block 506, Lot
47, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and
an extension of term for the continued use of a theatre; and

WHEREAS, a public hearing was held on this
application on March 1, 2011 after due notice by publication
in *The City Record*, with a continued hearing on March 15,
2011, and then to decision on April 5, 2011; and

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

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

WHEREAS, the site is located on the north side of
Vandam Street, between Varick Street and Sixth Avenue,
within an R6 zoning district; and

WHEREAS, the subject site is occupied by a three-story
mixed-use building with theatre use at the first floor and cellar,
and residential use on the second and third floors; and

WHEREAS, the Board has exercised jurisdiction over
the subject site since May 3, 1960 when, under the subject
calendar number, the Board granted a variance to permit the
change in use of an existing building from card room to light
manufacturing and grinding of optical lenses; and

WHEREAS, on April 11, 1961, the Board granted a
variance to permit a change of use of the subject building to
theatre and dwelling, for a term of ten years; and

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

WHEREAS, most recently, on January 16, 2001, the
Board granted an extension of term for ten years from the
expiration of the prior grant, to expire on April 11, 2001;
and WHEREAS, the applicant now seeks an additional
extension of term; and

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

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

Therefore it is Resolved that the Board of Standards and
Appeals *reopens* and *amends* the resolution, dated April 11,
1961, so that as amended this portion of the resolution shall
read: “to extend the term for an additional ten years from
April 11, 2011, to expire on April 11, 2021; *on condition*
that the use and operation of the site shall comply with
BSA-approved plans associated with the prior grant; and *on
further condition*:

THAT the term of the grant shall expire on April 11,
2021;

THAT all conditions from prior resolutions 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.”
(Alt. No. 413/1971)

Adopted by the Board of Standards and Appeals April 5,
2011.

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.

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

MINUTES

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted special permit for the conversion of a portion of the first floor community facility building to medical offices, which expired on December 12, 2010; and

WHEREAS, a public hearing was held on this application on March 8, 2011, after due notice by publication in *The City Record*, and then to decision on April 5, 2011; and

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

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

WHEREAS, the site is located on the northeast corner of Hylan Boulevard and Arden Avenue, in an R1-2 zoning district within the Special South Richmond Development District; and

WHEREAS, the subject site is occupied by a two-story mixed-use building consisting of a dental office with a floor area of 1,500 sq. ft. and a medical office with a floor area of 1,091 sq. ft. on the first floor, and a one-family residence on the second floor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 12, 2000 when, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-125 to permit the conversion of a portion of the first floor to medical office use, such that more than 1,500 sq. ft. of floor area in the building is occupied by medical office use contrary to ZR § 22-14, which expired on December 12, 2010; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on December 12, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from December 12, 2010, to expire on December 12, 2020; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on further condition*:

THAT the term of this grant shall expire on December 12, 2020;

THAT the signage on the site shall be limited to the existing four double-sided signs;

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

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

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

(Alt. No. 287-1983)

Adopted by the Board of Standards and Appeals, April 5, 2011.

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction for the enlargement of an existing commercial building to be occupied by medical office and residential space; and

WHEREAS, a public hearing was held on this application on March 8, 2011, after due notice by publication in *The City Record*, and then to decision on April 5, 2011; and

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

WHEREAS, the site is located on the east side of 86th Street near the intersection with West 12th Street and between Avenue U and Avenue V; and

WHEREAS, the subject lot is triangular-shaped with a total lot area of 4,486 sq. ft., and is located partially within a C2-3 (R5) zoning district and partially within an R5 zoning district; and

WHEREAS, the portion of the site located within the C2-3 (R5) zoning district is occupied by a one-story medical office building with a floor area of 2,809 sq. ft.; the remainder of the site is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 6, 2007 when, under the subject calendar number, the Board granted a variance to permit the enlargement of the one-story commercial building to be occupied by additional medical office space and two residential dwelling units; and

MINUTES

WHEREAS, substantial construction was to be completed by February 6, 2011, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed due to financing issues; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 6, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction for a term of four years, to expire on February 6, 2015; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction shall be completed by February 6, 2015;

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 No. 320262979)

Adopted by the Board of Standards and Appeals April 5, 2011.

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.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a three-story mixed-use commercial/residential building; and

WHEREAS, a public hearing was held on this application on March 8, 2011, after due notice by publication in *The City Record*, and then to decision on April 5, 2011; and

WHEREAS, the premises is located on the southwest corner of 93rd Street and 95th Avenue, in an R5 zoning district; and

WHEREAS, the site is occupied by a three-story mixed-use commercial/residential building, with retail use on the first floor and residential uses on the second and third floors; and

WHEREAS, on September 27, 1960, under BSA Cal. No. 440-59-BZ, the Board granted a variance to permit the change in use of the first floor of the existing three-story building, with two one-story additions, from store and storage, to offices, storage and wholesale sales of imported food products for a term of ten years, to expire on September 27, 1970; and

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

WHEREAS, on November 17, 2009, under the subject calendar number, the Board reinstated the prior approval and granted an extension of term, an extension of time to obtain a certificate of occupancy, minor modifications to the previously-approved plans, and a change in use from wholesale sales of imported food products (Use Group 7) to retail use (Use Group 6) on the first floor; a condition of the grant was that a certificate of occupancy be obtained by May 17, 2010; and

WHEREAS, the applicant now requests a further extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that it was unable to obtain a certificate of occupancy by the stipulated date because the owner had not installed one fire door prior to the expiration of the time to obtain a certificate of occupancy; and

WHEREAS, the applicant notes that the fire door has since been received and installed at the site; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time 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 17, 2009, so that as amended this portion of the resolution shall read: “to extend the time to obtain a certificate of occupancy for one year, to expire on April 5, 2012; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a new certificate of occupancy be obtained by April 5, 2012;

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

MINUTES

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 420013103)

Adopted by the Board of Standards and Appeals, April 5, 2011.

435-74-BZ

APPLICANT –Eric Palatnik, P.C., for J. B. Automotive Center of New York, Inc., owner.

SUBJECT – Application January 26, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an automotive repair center which expired on January 14, 2011; waiver of the rules. R3-1 zoning district.

PREMISES AFFECTED – 552 Midland Avenue, southwest corner of Midland and Freeborn Street, Block 3804, Lot 18, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for continued hearing.

516-75-BZ

APPLICANT – Tarter Krinsky & Drogin, LLP, for Vertical Projects LLC, owner; MP Sports Club Upper Eastside LLC, lessee.

SUBJECT – Application December 17, 2010 – Amendment of a bulk variance (§72-21) for a building occupied by a Physical Culture Establishment (*The Sports Club/LA*). The amendment proposes an increase in PCE floor area and a change operator; Extension of Term which expired on October 17, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on October 17, 2002; and Waiver of the Rules. C8-4 zoning district.

PREMISES AFFECTED – 330 East 61st Street aka 328 East 61st Street, between First Avenue and ramp of Queensboro Bridge (NYS Route 25), Block 1435, Lots 16 & 37, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jonathan Grippo.

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 May 3, 2011, at 10 A.M., for decision, hearing closed.

866-85-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Anne Marie Cicciu Incorporated, owner.

SUBJECT – Application October 19, 2010 – Extension of Term of a Variance (§72-21) for a UG8 open parking lot and storage of motor vehicles which expired on May 12, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on November 23, 2000; Waiver of the Rules.

R7-1 zoning district.

PREMISES AFFECTED – 2338 Cambreleng Avenue, east side of 2338 Cambreleng Avenue, 199.25’ south of intersection of Cambreleng Avenue and Crescent Avenue, Block 3089, Lot 22, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Todd Dale.

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 May 3, 2011, at 10 A.M., for decision, hearing closed.

216-97-BZ

APPLICANT – Moshe M. Friedman, for King Carroll LLC, owner; Dr. Rosen M.D., lessee.

SUBJECT – Application December 28, 2010 – Amendment to a special permit (§73-125) to enlarge UG4 medical offices within the cellar of an existing four-story residential building. R-2 zoning district.

PREMISES AFFECTED – 1384 Carroll Street, aka 352 Kingston Avenue, south side of Carroll Street and Kingston Avenue, Block 1292, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #9BK

For Applicant: Tzvi Friedman

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 May 3, 2011, at 10 A.M., for decision, hearing closed.

273-00-BZ

APPLICANT – Mitchell Ross, Esq., for 10 West Thirty Third Joint Venture, owner; Spa Sol, Incorporated, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Spa Sol*) which expires on February 13, 2011; Amendment to legalize interior layout/increase in number of treatment rooms. C6-4 zoning district.

PREMISES AFFECTED – 3 West 33rd Street, 1.07’ southwest of West 33rd Street and Fifth Avenue, Block 834, Lot 49, Borough of Manhattan.

MINUTES

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over May 3, 2011, at 10 A.M., for continued hearing.

427-05-BZ

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application February 28, 2011 – Extension of Time to complete construction for a Special Permit (§73-44) to permit a retail, community facility and office development with less than the required parking which expired on March 20, 2011. C4-2 zoning district.

PREMISES AFFECTED – 133-47 39th Avenue, between Price Street and College Point Boulevard, Block 4972, Lot 59, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

APPEALS CALENDAR

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: Pamela Liarkos.

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 of a previously granted appeal to permit the operation of medical offices (Use Group 4) in an existing frame structure, which expired on December 17, 2010; and

WHEREAS, a public hearing was held on this application on March 8, 2011 after due notice by publication in *The City Record*, and then to decision on April 5, 2011; and

WHEREAS, Community Board 8, 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 site is located on the southwest corner of 73rd Avenue and 167th Street, within an R2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 17, 1985 when, under the subject calendar number, the Board granted an appeal of a decision by the Department of Buildings (“DOB”), to permit the use of a one-story and cellar wood frame (Class IV) building located within the Fire Limits for medical offices, for a term of five years; and

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

WHEREAS, most recently, on August 6, 2002, the Board granted a ten-year extension of the term from December 17, 2000, which expired on December 17, 2010; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on December 17, 1985, so that as amended this portion of the resolution shall read: “to extend the term for ten years from December 17, 2010, to expire on December 17, 2020; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on further condition*:

THAT the term of this grant shall expire on December 17, 2020;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB App. No. Alt. No. 457/1985)

Adopted by the Board of Standards and Appeals, April 5, 2011.

MINUTES

189-10-A

APPLICANT – Bracewell & Giuliani, LLP on behalf of Chelsea Business & Property Owners, for 127 West 25th LLC, owner; Bowery Residents’ Committee, Incorporated, lessee.

SUBJECT – Application October 8, 2010 – Appeal challenging the Department of Buildings’ interpretation that the proposed use is a transient hotel. M1-6 zoning district. PREMISES AFFECTED – 127-131 West 25th Street, between 6th and 7th Avenue, Block 801, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Daniel S. Connolly.

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:.....0

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

THE RESOLUTION: 1

WHEREAS, this appeal comes before the Board in response to a final determination letter from the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated September 9, 2010 (the “Final Determination”); and

WHEREAS, the Final Determination was issued in response to a request by a representative of the Chelsea Flatiron Committee, a group of area residents and businesspeople (the “Appellant” or “CFC”), to revoke DOB Permit No. 120288054 (the “Permit”) issued to the Bowery Residents’ Committee, a lessee/not-for-profit transitional housing and service provider (“BRC”) for the conversion of a 12-story building at 127-131 West 25th Street (the “Building”) into a homeless shelter and offices; and

WHEREAS, this appeal challenges DOB’s use classifications of the two proposed components of the Building and the resultant determination that the proposal complies with zoning and other relevant regulations; and

WHEREAS, the Final Determination reflects DOB’s position that the proposed uses are Use Group 5 Transient Hotel and Use Group 6 Professional Office, both of which are permitted as of right in the subject M1-6 zoning district; the Appellant asserts that the appropriate use classification is Use Group 3 Non-Profit Institution with Sleeping Accommodations and either Use Group 3 Health Related Facility or Use Group 4 Ambulatory Diagnostic or Treatment Health Care Facility, none of which are conforming uses in an M1-6 zoning district; and

WHEREAS, the Final Determination provides in pertinent part:

The Department of Buildings (the “Department”) is in receipt of your letter dated September 2, 2010 in which you request the revocation of Permit No.

120288054 (the “Permit”) issued by the Department based on Alteration Type-1 Application No. 120288054 (the “Application”) for 127 West 25th Street, New York, NY. The Department has conducted a review of the construction documents submitted with the Application and has determined that the Permit was lawfully issued; and

WHEREAS, a public hearing was held on this appeal on March 1, 2011, after due notice by publication in *The City Record*, and then to decision on April 5, 2011; and

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

WHEREAS, the Appellant, BRC, and DOB were represented by counsel in this proceeding; and

THE PROPOSAL

WHEREAS, the subject site is within an M1-6 zoning district and is occupied by a 12-story factory building that BRC proposes to convert to a homeless shelter and professional offices; and

WHEREAS, the DOB-approved plans reflect the following program: Cellar: Offices, Storage, Mechanical/Electrical Room, Laundry Room – Use Group 5; 1st Floor: Kitchen – Use Group 5 and Retail Space, Office – Use Group 6; 2nd Floor: Dining, Servery Station – Use Group 5; 3rd to 9th Floors: Lodging House – Use Group 5 and Offices – Use Group 6; 10th to 12th Floors: Offices – Use Group 6; and

WHEREAS, BRC provided the following supplementary information about the Building’s use and occupancy to support its application to DOB; the information reflects that the Building will include: (1) a 32-bed Chemical Dependency Crisis Center serving men and women of all ages who have a history of addiction and who are seeking to attain or maintain sobriety, on the third floor; (2) a 96-bed Reception Center serving homeless men and women of all ages who have a history of mental illness and who are seeking to attain or maintain stability in their mental health on the fourth and fifth floors; (3) a 200-bed Shelter serving homeless men of all ages who have a history of mental illness and who are seeking to attain or maintain stability in their mental health on the sixth through ninth floors; (4) an outpatient Substance Abuse Center serving approximately 65 men and women daily; and (5) an outpatient Continuing Day Treatment program serving approximately 35 men and women daily, who have a history of mental illness; and

PROCEDURAL HISTORY

WHEREAS, on December 23, 2009, BRC submitted a request for a zoning resolution determination (a “ZRD1”) that the proposed homeless shelter was permitted as an as-of-right Use Group 5 Transient Hotel in the M1-6 zoning district; and

WHEREAS, on January 4, 2010, DOB issued a determination that “a transient facility with multiple beds rented to different individuals or families located within the same dwelling unit (per the Housing Maintenance Code [HMC] § 27-2004(a)(27)) can be appropriately classified as

1 Headings are utilized only in the interest of clarity and organization.

MINUTES

Use Group 5 ‘transient hotel’ pursuant to the ZR and, as such, may be located in the subject M1-6 district;” and

WHEREAS, on March 9, 2010, BRC filed an application, based on DOB’s approval of the proposed uses, pursuant to the PW1A: Schedule A – Occupancy Use form (“Schedule A”), which reflected the following: Cellar: Offices, Storage, Mechanical/Electrical Room, Laundry Room – Use Group 5; 1st Floor: Retail Space, Kitchen, Offices – Use Group 5; 2nd Floor: Dining – Use Group 5; 3rd Floor to 9th Floor: Offices, Lodging House – Use Group 5; 10th Floor to 12th Floor: Offices – Use Group 5; and

WHEREAS, on June 24, 2010, DOB approved the application and on July 9, 2010 issued the Permit; and

WHEREAS, on June 28, 2010, DOB received a complaint from the Appellant alleging that the classification of the use as a Use Group 5 Transient Hotel was improper and, further, that the approved application and plans were not consistent with information being disseminated to the public from BRC or with documents submitted by BRC to other city, state, and federal agencies; and

WHEREAS, based on the Appellant’s complaint, DOB conducted a review of the application and BRC provided additional information about the proposed use of the site, including the information about the programs, noted above; and

WHEREAS, on August 4, 2010, BRC filed amended plans, which reflect that a firewall will separate the sleeping accommodations from the offices and that separate entrances and elevator access is provided for each use, and an amended Schedule A, which identifies the uses as Use Group 5 Transient Hotel and Use Group 6 Professional Offices; and

WHEREAS, the amended Schedule A contains the following note: “Floors occupied by lodging house (Use Group 5) and Professional Offices (Use Group 6) are separated by fire-rated walls equipped with alarmed, fireproofed self-closing doors;” and

WHEREAS, on August 5, 2010, DOB approved the amended plans; and

WHEREAS, the Appellant initiated an action against the Department of Homeless Services (DHS), DOB, the Department of Housing Preservation and Development (HPD), BRC, and others in New York State Supreme Court (Chelsea Business & Property Owners’ Association LLC v. City of New York et al, Index No. 113194/10); the case is ongoing, but the court determined that the Appellant must exhaust its administrative remedies for its claims related to DOB permits and zoning issues and, thus, the Appellant filed its case at the Board; and

RELEVANT STATUTORY PROVISIONS

ZR § 12-10 (Definitions)

A transient hotel is a building or part of a building in which:

- (a) living or sleeping accommodations are used primarily for transient occupancy, and may be rented on a daily basis;
- (b) one or more common entrances serve all such living or sleeping units; and

(c) twenty-four hour desk service is provided, in addition to one or more of the following services: housekeeping, telephone, or bellhop service, or the furnishing or laundering of linens.

Permitted accessory uses include restaurants, cocktail lounges, public banquet halls, ballrooms, or meeting rooms.

* * *

ZR § 11-22 (Applications of Overlapping Regulations)

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# of land, or over the #use# or #bulk# of #buildings or other structures#, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern . . .

* * *

ZR § 22-00 (Use Regulations – General Provisions) also ZR §§ 33-00, 42-00)

. . . Whenever a use is specifically listed in a Use Group and also could be construed to be incorporated within a more inclusive listing, either in the same or another Use Group, the more specific listing shall control . . .; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant asserts that DOB’s acceptance of the proposed homeless shelter and offices as part Use Group 5 Transient Hotel and part Use Group 6 Professional Offices is erroneous in that the facility should appropriately be characterized as Use Group 3 Non-Profit Institution with Sleeping Accommodations and either Use Group 3 Health Related Facility or Use Group 4 Ambulatory Diagnostic or Treatment Health Care Facility; and

WHEREAS, the Appellant’s primary assertions are that (1) the plain meaning of the word “hotel” dictates that the facility is not a transient hotel, (2) the proposed sleeping accommodations are a non-profit institution with sleeping accommodations, (3) the proposed facility cannot be classified alternately as Use Group 5 or Use Group 3 depending on which zoning district it is in, (4) if the offices are not Use Group 3, then they should be classified as Use Group 4 Ambulatory Diagnostic or Treatment Health Care Facility, (5) the Building cannot be a Lodging House under the Multiple Dwelling Law (MDL) and Housing Maintenance Code (HMC) and a transient hotel per zoning, and (6) the occupancy exceeds that permitted by Administrative Code § 21-312; and

1. The Definition of Hotel

WHEREAS, the Appellant asserts that the proposed facility is not a hotel according to (1) the plain meaning of “hotel,” (2) the ZR or other statutory framework, and (3) prior Board determinations; and

MINUTES

WHEREAS, the Appellant asserts that in evaluating the meaning of “hotel,” one must analyze the term hotel, which means more than just “transient accommodations;” and

WHEREAS, the Appellant cites to case law and the principles of statutory construction for the principle that “statutory language [be] interpreted according to its natural and obvious sense without resorting to an artificial or forced construction” City of New York v. Stringfellow’s of N.Y., 253 A.D.2d 110, 115-16 (1st Dep’t 1999); and

WHEREAS, accordingly, the Appellant asserts that a homeless shelter is not commonly understood to be a hotel and that fact cannot be ignored when classifying a homeless shelter for zoning purposes; and

WHEREAS, the Appellant asserts that DOB and BRC strain the definition of hotel and negated any import of having the word “hotel” in the ZR definition; and

WHEREAS, the Appellant asserts that the ZR definition is for “hotel, transient,” so the “hotel” aspect is first and foremost and cannot be ignored; the Appellant asserts that the ZR presents the definition this way so as to distinguish transient hotels from other kinds of hotels, such as “apartment hotels,” which are also defined; and

WHEREAS, the Appellant states that the common understanding of what a hotel is cannot be ignored and that the inclusion of any use that may meet the criteria of the ZR § 12-10 definition of hotel would lead to absurd results; and

WHEREAS, the Appellant states that the ZR does not require any temporary provision of sleeping accommodations that also has front-desk and laundry service to be classified as a Use Group 5 Transient Hotel; and

WHEREAS, the Appellant asserts that a use is not a transient hotel, even when it meets the criteria of the ZR § 12-10 definition, if it is not commonly understood to also be a “hotel;” and

WHEREAS, the Appellant asserts that any analysis of the “transient hotel” definition that fails to first resolve whether the facility is a hotel, as commonly understood, will lead to an unreasonable or absurd application of the law; and

WHEREAS, the Appellant cites to a case in which residents of an adult care facility sought to establish that the facility was subject to the Rent Stabilization Law for instruction on how to interpret “hotel” (Fischer v. Taub, 127 Misc.2d 518, 525 (1st Dep’t 1984)); in Fischer, the facility was determined not to be a hotel, and the court stated that “a facility is the sum of its parts and not a manifestation of any one of them;” and

WHEREAS, the Appellant asserts that, based on Fischer, merely satisfying the ZR § 12-10 criteria (including the provision of a reception desk and housekeeping) does not, in and of itself, establish that the Building is proposed to be used as a conforming Use Group 5 Transient Hotel; rather, when the facility is looked at as a whole, which includes counseling services, medical care, and rooming units, the proposed use is not consistent with a hotel; and

WHEREAS, however, the Appellant asserts that even if the ZR § 12-10 definition of transient hotel were to apply,

the use is not transient, if the definition of transient as applied by DOB is that stays are for 30 days or less; and

WHEREAS, the Appellant cites to documentation that BRC has released which states that occupants of the homeless shelter may stay for as long as nine months and beyond, upon approval from the DHS; and

WHEREAS, as to the Board’s prior decisions, the Appellant cites to a number of variance cases in which homeless shelters or similar facilities were identified as Use Group 3, for precedent that the Board has considered and accepted Use Group 3 as the appropriate classification for such use; and

WHEREAS, accordingly, the Appellant asserts that the proposed use is neither a hotel, if one applies the common understanding of what a hotel is, nor transient, because BRC materials reflect that stays could last for nine months or longer; and

2. The Appropriate Use Group Classification for the Sleeping Accommodations

WHEREAS, the Appellant asserts that the Building should be classified as a Use Group 3 Non-Profit Institution with Sleeping Accommodations, pursuant to ZR § 22-13 because there is a connection between BRC’s purpose and the facility’s sleeping accommodations; and

WHEREAS, the Appellant states that because the sleeping accommodations are part of the facility’s overall not-for-profit purpose, the facility must be characterized as a Use Group 3 Non-Profit Institution with Sleeping Accommodations; and

WHEREAS, the Appellant notes that DOB identified the facility as Use Group 3, and not Use Group 5, before BRC added the wall to provide a physical separation between the two components of the Building; and

WHEREAS, the Appellant notes that DOB stated that the facility could not be both Use Group 3 and Use Group 5; and

WHEREAS, the Appellant finds that there is a nexus between the social service programs offered in the offices and the sleeping accommodations, despite the physical separation, and, thus, the use must be classified as Use Group 3; and

WHEREAS, the Appellant cites to the Board’s decision in BSA Cal. No. 307-06-A (the “Youth Hostel Case”) (a case in which the Board upheld DOB’s determination that a youth hostel was a Use Group 5 use in part because there was no nexus between the program and the provision of sleeping accommodations) in support of its assertion that when there is a “clear” or “reasonable nexus between the not-for-profit purpose and [the] provision of sleeping accommodations,” the use is Use Group 3, rather than Use Group 5; and

WHEREAS, the Appellant cites to information released by and about the facility, which describes the interrelation between the social services and the sleeping accommodations; and

WHEREAS, the Appellant notes, specifically, that there will be a 24-hour inpatient detoxification program

MINUTES

onsite, which necessarily draws a connection between the two uses in the Building; and

WHEREAS, the Appellant cites to contracts between BRC and DHS about the provision of services to the occupants of the homeless shelter; and

WHEREAS, the Appellant is also concerned that DOB initially identified the facility as a Use Group 3 use but that BRC later, at DOB's direction, added measures to create a physical separation between the two portions of the Building while maintaining the initially proposed program; and

3. The Limitations on Use Group Classification

WHEREAS, the Appellant relies on statutory interpretation principles to conclude that the facility cannot be Use Group 5 and, in the alternate, Use Group 3, as set forth in (1) New York State case law and (2) ZR provisions; and

WHEREAS, as to New York State case law, the Appellant asserts that to permit a building or proposed development to be within two use groups at the same time would render the existence of use groups superfluous and meaningless; and

WHEREAS, the Appellant asserts that statutory construction principles assume that every provision of a statute is intended to serve some useful purpose, *See Crimmins v. Dennison*, 12 Misc. 3d 725, 729-30 (Sup. Ct. N.Y. Cty. 2006) (quoting *Allen v. Stevens*, 15 E.H. Smith 122, 145 (1899)) and that every statute should be construed to avoid rendering language superfluous; and

WHEREAS, the Appellant cites to Manton v. Board of Standards and Appeals, 117 Misc.2d 255, 265 (Sup Ct. Queens Cty) which states that “[t]he plan of the Zoning Resolution is to classify and list all permissible uses of land in ‘Use Groups,’ and to then specify which districts the various use groups may be located;” and

WHEREAS, the Appellant states that Use Group 3 Non-Profit Institutions with Sleeping Accommodations are prohibited in manufacturing districts and that Use Group 5 Transient Hotels are prohibited in residential districts, thus allowing an applicant to identify a facility as either Use Group 3 or Use Group 5, depending on which zoning district it is in would negate the ZR restrictions and run contrary to the legislature's intent; and

WHEREAS, the Appellant asserts that the possibility of identifying a specific use in more than one use group category renders the distinctions of use groups meaningless; and

WHEREAS, the Appellant cites to the Board's decision in the Youth Hostel Case for support of the position that the Board recognizes distinctions between uses and use groups so that applicants cannot “impermissibly locate . . . facilities in districts where such uses would otherwise be prohibited;” and

WHEREAS, the Appellant also expressed concern about multiple use group classifications leading to inconsistent application of the ZR and that parties should be discouraged from choosing one use group classification over another depending on the applicable zoning district; and

WHEREAS, as to instruction from the ZR, the Appellant cites to the preambles of ZR chapters (for example, ZR § 22-00) which state that “[w]henver a use is specifically listed in a Use Group and could also be construed to be incorporated within a more inclusive listing, either in the same or another Use Group, the more specific listing shall control;” and

WHEREAS, the Appellant asserts that Use Group 3 Non-Profit Institution with Sleeping Accommodations is more specific than Use Group 5 Transient Hotel, so the former is the controlling use group classification; and

WHEREAS, the Appellant cites to ZR § 11-22 (Applications of Overlapping Regulations) for a similar principle that, even if the facility could also be classified as a Use Group 5 Transient Hotel, Use Group 3 Non-Profit Institution with Sleeping Accommodations is more restrictive and should control; and

4. The Appropriate Classification for the Use Group 6 Professional Offices

WHEREAS, initially, the Appellant asserted that the proposed Use Group 6 Professional Office use must be classified as a mix of Use Group 3 Health Related Facility and a Use Group 3 Domiciliary Care Facility for Adults pursuant to ZR § 22-13 because there will be nurses, doctors, and medical professionals present in the building to assist in counseling of BRC's clients, including occupants of the shelter; and

WHEREAS, the Appellant asserted that because the sleeping accommodations portion of the Building should be classified as Use Group 3, the social service program, given its nexus to the sleeping accommodations, should be classified as Use Group 3 as well; and

WHEREAS, in the alternate, the appellant asserted that the offices were not consistent with Use Group 6 Professional Offices and should rather be classified as Use Group 4 Ambulatory Diagnostic or Treatment Health Care Facility use, given the presence of medical personnel, among other factors; and

WHEREAS, in a later submission, after DOB noted a ZR text amendment which now includes Ambulatory Diagnostic or Treatment Health Care Facilities within Use Group 6 offices, the Appellant stated that its analysis does not change since it maintains that both portions of the Building should be classified as Use Group 3; and

5. Additional Regulatory Restrictions

WHEREAS, the Appellant asserts that certain provisions of the Multiple Dwelling Law (MDL) and Housing Maintenance Code (HMC) prohibit the designation of the Building as a Transient Hotel under the ZR; and

WHEREAS, specifically, the Appellant claims that the designation of the Building as a lodging house, pursuant to the MDL and HMC is erroneous and is inconsistent with the designation of the Building as a Use Group 5 Transient Hotel; and

WHEREAS, the Appellant also asserts that the Building does not comply with Administrative Code § 21-312, which limits the occupancy of a homeless shelter to 200 beds and the total number within the Building exceeds

MINUTES

that; and

THE DEPARTMENT OF BUILDINGS' POSITION

WHEREAS, DOB has determined that that the proposed use of the Building complies with the ZR as a Use Group 5 Transient Hotel and Use Group 6 Professional Office and that pursuant to ZR § 42-00, both use groups are permitted as-of-right in the subject M1-6 zoning district; and

1. The Proposed Use is Consistent with a Use Group 5 Transient Hotel

WHEREAS, DOB states that the proposed use of the Building, as reflected in the approved plans and other information BRC submitted, complies with the definition of transient hotel set forth at ZR § 12-10; and

WHEREAS, specifically, DOB's conclusion is based on BRC's representations that the sleeping accommodations on floors three through nine will be made available on a daily basis and that the occupants will not remain in the same dwelling space for more than 30 days at a time; and

WHEREAS, secondly, the amended plans reflect and BRC has informed DOB that 24-hour desk service will be provided on the ground floor for the entrance to the Use Group 5 portion of the building and 24-hour desk service will be provided at the 3rd Floor interior entrance to the Use Group 5 sleeping accommodations; and

WHEREAS, as to the third element of the definition for transient hotel, DOB states that BRC has noted that housekeeping and laundry services will be provided and the amended plans indicate that laundry will be processed at the cellar level; and

WHEREAS, finally, DOB notes that the amended plans also indicate that the Building will be served by two separate entrances: a common entrance on the eastern portion of the building with an elevator that will exclusively serve all the living or sleeping units of the Use Group 5 Transient Hotel and an entrance on the western portion of the building with an elevator that will exclusively serve the Use Group 6 Professional Offices; and

WHEREAS, DOB states that based on the foregoing, the portion of the Building which is proposed as a Use Group 5 Transient Hotel meets the ZR § 12-10 definition of transient hotel and does not find that the fact that the occupants of the Building may be homeless or may have mental health issues precludes the proposal from meeting the definition of transient hotel in the ZR; and

WHEREAS, accordingly, DOB determined that the proposed Use Group 5 Transient Hotel complies with the ZR and is permitted as-of-right; and

WHEREAS, in response to the Appellant's assertion that the occupants in the proposed Use Group 5 Transient Hotel will not be "transient" because they claim that the occupants will be staying in excess of 30 days, DOB states that BRC has informed it that the occupants in the Chemical Dependency Crisis Center, the Reception Center, and the Shelter will only stay in the same dwelling space for a maximum of 30 days; and

WHEREAS, DOB states that it accepts BRC's representations and concludes that the occupants will occupy the Building transiently; DOB states that it cannot

withhold an approval based on a speculative non-compliance and that if DOB later determines that the occupancy is not conforming to the transient use requirement, then it would handle such a case as an enforcement issue; and

WHEREAS, in response to the Appellant's assertion that the use must be classified as Use Group 3 Non-Profit Institution with Sleeping Accommodations, pursuant to ZR § 22-13, because there is a "clear or reasonable nexus" between BRC's purpose and the facility's sleeping accommodations, DOB states that based on its review of BRC's amended plans and the information provided to it, there is no basis to assume that BRC's counseling programs, including the outpatient Substance Abuse Center and the outpatient Continuing Day Treatment program, are integral to the sleeping accommodations for the Shelter program; and

WHEREAS, DOB adds that BRC has informed it that the counseling programs provided in the Use Group 6 space will be available to the general public, not just to occupants using the Shelter, Chemical Dependency Crisis Center, and the Reception Center and the amended plans confirm that the counseling uses to be provided in the Use Group 6 Professional Office space will not only operate independently from the Use Group 5 transient use on the 3rd to 9th Floors, but that the counseling and office use will be physically separated from the transient use on those floors by fire-rated walls equipped with alarmed, fireproofed self-closing doors and independent elevators will serve the Use Group 5 use and the Use Group 6 use; and

WHEREAS, DOB concludes that based on the information BRC provided, it had a reasonable and sufficient basis for accepting the sleeping accommodations as a separate, transient use from BRC's other programs operated out of the Use Group 6 Professional Office space; and

WHEREAS, DOB disagrees with the Appellant about its application of the Youth Hostel Case, and cites to the Board's resolution for a different provision: "the language of Section 22-13 of the ZR does not unambiguously require any philanthropic or non-profit institution that also offers sleeping accommodations to be classified as a Community Facility within Use Group 3" and that the "primary purpose of a 'philanthropic or Non-Profit Institution with Sleeping Accommodations' properly classified within Use Group 3 cannot be the provision of sleeping accommodations;" and

WHEREAS, DOB states that in the Youth Hostel Case, the Board upheld DOB's determination that the youth hostel "did not demonstrate a necessary connection between its provision of sleeping accommodations and its educational and cultural mission as properly required by DOB;" and

WHEREAS, DOB does not find that the facts in the subject appeal are at odds with the Board's decision in the Youth Hostel Case since the amended plans and the information provided to DOB indicate that BRC's sleeping accommodations provided in the Use Group 5 Transient Hotel portion of the Building are separate and distinct from

MINUTES

the counseling and other services provided in the Use Group 6 Professional Offices; and

WHEREAS, DOB does not find it to be conclusive that the counseling programs are run by the same entity or might share some of the same clients and, furthermore, BRC has indicated to DOB that the primary purpose of the Shelter is to provide sleeping accommodations to homeless; DOB adds that BRC has stated that the counseling and services offered in the Use Group 6 Professional Offices will be open to the general public and is not a component, much less a necessary component, of the transient sleeping accommodations provided for the Shelter occupants; and

WHEREAS, DOB distinguished the subject case from the cited Board variance cases for Use Group 3 facilities in manufacturing districts in that a variance is not required for a Use Group 5 Transient Hotel in an M1-6 zoning district; DOB finds its approval of a homeless shelter as a Use Group 5 Transient Hotel in this case to be consistent with prior approvals including the Temporary Certificate of Occupancy No. 103051206-T issued on February 20, 2002 at 324 Lafayette Street, Manhattan for a Use Group 5 Transient Hotel operated as a homeless shelter by BRC; and

2. The Proposed Use is Consistent with Use Group 6 Professional Offices

WHEREAS, DOB states that it accepts that a portion of the third through ninth floors, as reflected on the amended plans, will be occupied by Use Group 6 Professional Offices that will be separated from the Use Group 5 Transient Hotel by fire-rated walls equipped with alarmed, fireproofed self-closing doors; and

WHEREAS, DOB states that BRC represents that these offices, as well as the offices on the 10th and 11th Floors, will provide professional and counseling services for substance abusers and for mentally ill men and women, regardless of whether they are occupants of the Use Group 5 Transient Hotel; and

WHEREAS, DOB states that although medically licensed individuals, such as nurses and psychiatrists will serve the counseling program, a significant part of services will be performed by social workers and case managers, many of whom are recovering addicts and former clients of BRC and the 12th Floor will be occupied by office space as the headquarters for BRC; and

WHEREAS, DOB states that all of the Use Group 6 Professional Office space will be accessed by a different elevator from the elevator that serves the occupants of the Use Group 5 Transient Hotel and that DOB accepts such use as being consistent with a Use Group 6 Professional Office; and

WHEREAS, DOB provided a supplemental argument that, in light of a ZR text amendment, effective February 2, 2011, Use Group 6 office uses at ZR § 32-15 (Uses Permitted As of Right – Use Group 6) now includes “offices, business, professional including ambulatory diagnostic or treatment health care, or governmental;” and

WHEREAS, accordingly, if the office use is identified as an ambulatory diagnostic or treatment facility as the Appellant suggests, in the alternate, DOB states that the ZR

now clearly classifies such use as Use Group 6, so it would be conforming either as professional offices or ambulatory diagnostic or treatment facility; and

3. The Proposed Uses are not Consistent with a Use Group 3 Health Related Facility or a Use Group 3 Domiciliary Care Facility for Adults

WHEREAS, DOB asserts that the proposed uses are not consistent with a Use Group 3 Health Related Facility or a Use Group 3 Domiciliary Care Facility for Adults because of (1) the separation between the sleeping accommodations under the Use Group 5 Transient Hotel use and the Use Group 6 Professional Office use and independent elevators serving each use, and (2) the information from BRC that the primary purpose of the facility is to provide transient living and sleeping accommodations for the homeless in the Use Group 5 portion of the Building and office space for BRC executive offices and counseling programs in the Use Group 6 portion of the building; and

WHEREAS, DOB rejects the Appellant’s claim that the entire Building is rendered a Health Care or a Domiciliary Care Facility simply because there may be doctors, nurses or other medically trained professionals present and finds it to be contrary to the ZR’s description of Use Group 3 Health Related Facilities and Domiciliary Care Facilities; and

WHEREAS, DOB states that the ZR makes it clear that the noted Use Group 3 uses do not include temporary or transient housing, but are intended to provide residents of such facilities with long-term housing and care for persons who cannot care for themselves; and

WHEREAS, DOB also cites to the ZR’s use of the term Domiciliary Care Facility, which, by its plain meaning, refers to long-term or permanent living arrangements for those who cannot live on their own, in contrast to BRC’s representations that the Building’s occupants will be transient and will not be occupying the Building for long term, institutional care; and

4. The Proposed Use is Not Prohibited by the Multiple Dwelling Law or the Housing Maintenance Code

WHEREAS, DOB states that neither the MDL nor the HMC govern land use but that Section 2 of the MDL was enacted to ensure, “the establishment and maintenance of proper housing standards requiring sufficient light, air, sanitation and protection from fire hazards” and, pursuant to Administrative Code § 27-202, the HMC was enacted to establish “minimum standards of health and safety, fire protection, light and ventilation, cleanliness, repair and maintenance, and occupancy in dwellings” in New York City; and

WHEREAS, DOB distinguishes the purposes of the MDL and the HMC from the ZR because the ZR governs land use in New York City and the 18 use groups defined in the ZR do not perfectly correlate with the definitions set forth in the MDL or the HMC; and

WHEREAS, DOB adds that there are many instances where a building’s designation under the ZR seemingly contradicts its designation under the MDL or HMC, which

MINUTES

reflects nothing more than a function of three separate regulatory schemes governing similar activity; and

WHEREAS, DOB states that the designation of the portion of the Building containing Use Group 5 Transient Hotel sleeping accommodations is appropriately characterized as a Lodging House under the MDL and HMC and designation as an MDL Lodging House on the Schedule A, and eventually on the certificate of occupancy (CO), indicates that the Building complies with the fire and safety requirements under Section 66 of the MDL, rather than Section 67 of the MDL which governs MDL Hotels; and

WHEREAS, DOB does not find that the designation as an MDL and HMC Lodging House negates the transient use of the Building; and

WHEREAS, DOB notes that the ZR only has one use group, Use Group 5, for transient occupancy, which, in contrast, may take many forms individually recognized in the MDL or HMC; and

WHEREAS, DOB states that under the ZR, the only use group that appropriately encompasses an MDL Lodging House is a Use Group 5 Transient Hotel; therefore, as is the case with the proposed use of the Subject Premises, it is possible for a building to be a Transient Hotel for purposes of the ZR, but a Lodging House under the MDL and HMC and the fact that the Schedule A and CO label a building a Lodging House for MDL and HMC fire and safety purposes does not negate the proper designation of the Subject Premises as a Transient Hotel under the ZR; and

WHEREAS, additionally, DOB notes that the Appellant claims that the approval of the Building with HMC Rooming Units is inconsistent with the approval of a Use Group 5 Transient Hotel in the ZR; however, nothing in the ZR precludes a Transient Hotel from having HMC Rooming Units; and

The Appellant's Supplemental Claims

WHEREAS, DOB has been informed by BRC and has confirmed with DHS that the proposed operation of the 200-bed Shelter at the Subject Premises will be in compliance with the applicable provisions of the Administrative Code governing the capacity of shelters and BRC's proposal to operate the Shelter is the subject of pending litigation in which the issue of permitted capacity will be addressed; and

WHEREAS, finally, DOB addresses the Appellant's claims that the plans submitted to it differ from plans and information provided to other entities, including the New York State Office of Alcoholism and Substance Abuse Services (OASAS); and

WHEREAS, DOB states that the plans and information an applicant submits to it must reflect compliance with the ZR, the 2008 Construction Codes, and other applicable rules and regulations but DOB is not required to review nor is it authorized to evaluate information provided to other entities regarding requests for funding; and

WHEREAS, DOB states that it has reviewed the application and plans and has determined that they comply with the ZR, the 2008 Construction Codes, and other applicable rules and regulations; and

BOWERY RESIDENTS' COMMITTEE'S POSITION

WHEREAS, BRC makes the following primary assertions in support of its approval, (1) the definition of "transient hotel" under the ZR is clear and unambiguous; (2) the Building is properly designated as, in part, a Use Group 5 Transient Hotel and clearly satisfies all the elements of the ZR's definition of "transient hotel;" (3) the remainder of the Building is used for a separate purpose, has separate access and separate elevators and is properly designated as, Use Group 6 Professional Offices; (4) the Building is not required to be designated a non-profit institution with sleeping accommodations, a health-related or domiciliary care facility, or a diagnostic and treatment healthcare facility under Use Groups 3 or 4; (5) the proposed Use Group 5 use of the Building is consistent with the MDL and HMC; and (6) the Appellant's claims based on the AC are not properly before the Board and, in any event, the proposed use of the Building is consistent with the AC's requirements; and

WHEREAS, as to the classification as Use Group 5, BRC states that the proposed use satisfies each element of a "transient hotel" as defined in the ZR; and

WHEREAS, BRC rejects the Appellant's invocation of the common meaning of the word hotel because the ZR definition is clear and unambiguous and it is not necessary or proper to consult outside sources; and

WHEREAS, BRC likens the proposed use to that of a hotel in that both host clients for short stays and cites to the New York Court of Appeals for the principle that "where statutory language is clear and unambiguous, *the court should construe it so as to give effect to the plain meaning of the words used.*" Raritan Dev. Corp. v. Silva, 91 N.Y.2d 98, 107 (1997) (emphasis in the original) (citation omitted); and

WHEREAS, as to the assertion that the Building is a Use Group 3 Non-Profit Institution with Sleeping Accommodations, BRC asserts that its revised plans reflect a separation between the sleeping accommodations and BRC's social service program offices and, thus, the portion that is only sleeping accommodations can only be Use Group 5 because it is occupied by transient accommodations in a facility for which the provision of sleeping accommodations is the primary purpose; and

WHEREAS, BRC cites to the Board's decision in the Youth Hostel Case for the proposition that a facility with a primary purpose of providing sleeping accommodations could not be Use Group 3 Non-Profit with Sleeping Accommodations, but must be a Use Group 5 Transient Hotel; and

WHEREAS, however, BRC disagrees with DOB and finds that absent the separation between the Use Group 5 and Use Group 6 portions of the Building, other homeless shelters and similar programs could potentially be either a Use Group 5 Transient Hotel or a Use Group 3 Non-Profit with Sleeping Accommodations; and

WHEREAS, BRC notes that homeless shelters are not identified in the ZR as belonging to any use group and, thus, may be classified as either a Use Group 5 or Use Group 3 facility; and

WHEREAS, BRC also notes that the ZR § 12-10

MINUTES

definition of transient hotel provides the threshold requirements for such use, but does not reflect an exhaustive list of elements or uses which may be present at a hotel; and

WHEREAS, BRC finds that the Board's decision in the Youth Hostel Case stated that an institution cannot be a Use Group 3 community facility unless there is "a reasonable nexus between the non-profit purpose and its provision of sleeping accommodations" but it did not determine that if there is a sufficient nexus between the non-profit purpose and the provision of sleeping accommodation, then the use cannot be classified as Use Group 5; and

WHEREAS, BRC asserts that a facility with a nexus between the non-profit purpose and the provision of sleeping accommodations could be classified as Use Group 3 or Use Group 5; and

WHEREAS, BRC notes that the Board also stated that "the language of ZR § 22-13 does not unambiguously require any philanthropic or non-profit institution that also offers sleeping accommodations to be classified as a Community Facility within Use Group 3;" and

WHEREAS, BRC asserts that even if there were no separation between the Use Group 5 accommodations and the Use Group 6 professional offices in the Building, it could still be a Use Group 5 facility; and

WHEREAS, BRC concludes that since the Building provides a separation, it is an even clearer example of a Use Group 5 Transient Hotel since the vast majority of what is provided in that portion of the Building is transient sleeping accommodations; and

WHEREAS, BRC disagrees with the Appellant that the Building must be a Use Group 3 community facility because "non-profit institution with sleeping accommodations" is "more specific" than a "transient hotel;" and

WHEREAS, in response to the Appellant's assertion that the facility cannot be classified as Use Group 5 and Use Group 3, BRC notes that "homeless shelter" does not have a specific listing in the ZR, thus, the cited preamble provisions do not apply; and

WHEREAS, BRC notes that if a term has a specific listing, as prison does, then it must apply the use group classification of that specific listing rather than another listing, which might also apply; and

WHEREAS, as to the application of ZR § 11-22, BRC states that there are no "overlapping or contradictory regulations" at issue in the subject case, but rather two definitions that could potentially apply to the same facility; and

WHEREAS, BRC states that even if ZR § 11-22 did apply, it finds the Use Group 5 designation to be more restrictive since it is permissible only in commercial and manufacturing zoning districts while if Use Group 3 and 4 uses, the facility would be permitted also in residential districts; and

CONCLUSION

WHEREAS, the Board has considered all of the arguments made by all parties in light of the entire record; and

WHEREAS, the Board concludes that the proposed

use of the Building is consistent with a Use Group 5 Transient Hotel and Use Group 6 Professional Offices under the ZR and that its classification as a lodging house and the creation of rooming units for purposes associated with the MDL and HMC requirements, does not disturb that classification; and

WHEREAS, the Board agrees with DOB that the ZR § 12-10 definition of transient hotel is clear and unambiguous and that the proposed use of the building meets the three criteria of the definition in that, as presented by BRC, it (1) provides sleeping accommodations used primarily for transient occupancy, (2) has a common entrance to serve the sleeping accommodations, and (3) provides 24-hour desk service, housekeeping, telephone, and linen laundering; and

WHEREAS, because the statute is unambiguous, the Board does not find that it is necessary or appropriate to consult sources outside of the ZR for clarity; and

WHEREAS, the Board recognizes that perhaps there may be some ambiguity to the concept of what a hotel is, but since the ZR has defined hotel, for zoning purposes, and the case at issue concerns a zoning matter, the ZR is the best and only resource for the meaning of the term for zoning purposes; and

WHEREAS, even if the word "hotel," ascribed to the ZR definition may be embedded with different common meanings, the three criteria set forth at ZR § 12-10 are not ambiguous and it is rational to apply definitions or criteria, rather than titles of definitions to a specific use that is not otherwise defined in the ZR; and

WHEREAS, the Board does not find that it is appropriate to apply definitions from common experience or from other statutes, which have different purposes other than zoning; as examples in the MDL and HMC suggest, other statutes' definitions may be more specific given their mandates and not take land use principles into consideration; and

WHEREAS, the Board finds that the Appellant's reliance on Fischer is misplaced since Fischer was not a zoning case and involved the interpretation of hotel within the context of rent stabilization, rather than the ZR; and

WHEREAS, further, the Board cites to Fischer (quoting another case that did not review the ZR definition of hotel) in a discussion about different statutes having different definitions of hotel: "[t]he word 'hotel' is not one with a fixed and unalterable meaning; in fact, whether a place is or is not a hotel in a given instance may depend on the particular statute involved or the circumstance of the individual case;" and

WHEREAS, the Board finds that to apply a common meaning would defeat the distinct purposes of individual statutes; and

WHEREAS, as to the question of transiency, the Board defers to DOB to enforce the occupancy and finds that it was reasonable for DOB to accept that the use of the homeless shelter will be transient, based on BRC's representations; and

WHEREAS, specifically, the Board notes that BRC's contract with DHS does not require it to allow stays of nine months or longer, so BRC is able to comply with the zoning (and its CO) as well as its contract with DHS; and

WHEREAS, the Board notes that the ZR also sets forth

MINUTES

certain permitted accessory uses for transient hotels, which serve as examples of common accessory uses, but, notably, do not exclude any accessory uses; and

WHEREAS, accordingly, the Board finds that it is reasonable to conclude that the Use Group 6 Professional Offices or Ambulatory Diagnostic and Treatment Health Care Facility, however it is characterized, may be able to exist in the Building with the sleeping accommodations and not necessitate the change in the use classification from Use Group 5 to Use Group 3; and

WHEREAS, the Board notes that its decision is limited to whether DOB appropriately approved the proposed project as part Use Group 5 Transient Hotel and part Use Group 6 Professional Offices and it does not address the question of whether all homeless shelters and social service programs function identically and should be classified as such; and

WHEREAS, the Board notes that the record before it is limited to the facts of BRC's Building and its program for occupancy that it has submitted to DOB; and

WHEREAS, the Board states that other similar facilities may operate differently, in terms of length of stay or the relationship between programming and sleeping accommodations, and may be appropriately classified in a different use group; and

WHEREAS, the Board does not find that the Manton decision conflicts with DOB's position and cites two principles from the court's decision: (1) any use which properly falls within a use group listing is permitted in a zoning district where such use is permitted as a matter of right and neither DOB nor the Board has discretionary authority to refuse permission and (2) on the matter of determining whether a statute is vague or ambiguous: "[t]he board is the administrative agency charged with interpreting the zoning resolution and its determination is to be given great weight" (Manton at 257 citing East Bayside Homeowners v. Board of Standards and Appeals, 77 A.D.2d 858); and

WHEREAS, as to the Appellant's assertion that the facility cannot be both a Use Group 5 Transient Hotel and a Use Group 3 Non-Profit Institution with Sleeping Accommodations because of statutory interpretation principles, the Board does not need to answer the question since it finds that the use is appropriately classified as Use Group 5, but it disagrees that statutory interpretation principles preclude a particular use from being within more than one use group, as set forth in the ZR; and

WHEREAS, the Board finds that the Appellant's concern - that allowing a use to be classified within more than one use group leads to inconsistency, uncertainty, or renders the ZR distinctions meaningless - is baseless; and

WHEREAS, the Board notes that there are 18 use groups in the ZR with a significant number of sub-groups and that allowing certain uses to be classified within more than one use group still allows for consistency and certainty when applying the ZR as there would then be at least 16 use groups that would not apply; and

WHEREAS, further, the Board notes that the ZR

classifies a significant number of uses within more than one use group, including ambulatory diagnostic or treatment health care (Use Group 4 or 6), banquet halls (Use Group 9 or 13), bicycle rental or repair shops (Use Group 7 or 14), drug stores (Use Group 6 or 12) and that one use group may be restricted in certain zoning districts where the other is permitted; and

WHEREAS, accordingly, the Board disagrees with the Appellant that the legislators intended to restrict use group classifications to the extent that the Appellant suggests since there are so many examples of uses that may be classified within more than one use group; and

WHEREAS, the Board states that if DOB determined the use could also be classified as Use Group 3, that would not preclude it from being Use Group 5, but, as noted, the Board does not need to evaluate whether or not it is also Use Group 3 because it accepts that it is Use Group 5, an as of right use in the subject zoning district; and

WHEREAS, further, the Board is not persuaded that Use Group 3 Non-Profit Institution with Sleeping Accommodations cannot objectively be determined to be more or less specific or restrictive than Use Group 5 Transient Hotel, and does not find that the chapter preambles or ZR § 11-22 (Applications of Overlapping Regulations) apply to the question of how to classify a use that is not listed in the ZR; and

WHEREAS, the Board accepts that the proposed offices meet the criteria for Use Group 6 Professional Offices and are not necessarily an ambulatory diagnostic or treatment health care facility because medical personnel will be on staff; and

WHEREAS, however, as far as ambulatory diagnostic or treatment health care facilities, the Board notes that Use Group 4 and Use Group 6 facilities are permitted in the majority of the same commercial zoning districts, but that Use Group 4 are permitted in certain residential zoning districts and Use Group 6 facilities are also permitted in certain manufacturing zoning districts; and

WHEREAS, the Board notes that the two use classifications of ambulatory diagnostic or treatment health care facilities allow them to be in a wide range of zoning districts, which demonstrates a degree of flexibility in the ZR and a reflection that certain uses are deemed to be compatible with many other uses and use groups throughout the city; and

WHEREAS, the Board finds that the Youth Hostel Case, in which it determined that a youth hostel should be classified as a Use Group 5 Transient Hotel rather than Use Group 3, does not establish that a facility with social service programs that have a clear nexus to the sleeping accommodations could not be a Use Group 5 Transient Hotel; and

WHEREAS, additionally, the Board cites the Youth Hostel Case for the proposition that, in certain circumstances, hotels may be deemed more restrictive (in that they are not permitted) than Use Group 3 uses; and

WHEREAS, the Board notes that it did not interpret the appropriateness of the Use Group 3 classification of

MINUTES

similar uses in the variance cases cited by the Appellant, so the Appellant's reliance on those cases is misplaced; and

WHEREAS, lastly, as to the question of whether or not the Building complies with Administrative Code § 21-312(2)(b), the Board notes that its jurisdiction over the subject matter on appeal, pursuant to New York City Charter § 666(6)(a), arises from a DOB determination on matters properly before DOB; and

WHEREAS, the Board notes that DHS, rather than DOB enforces the noted provision and that DOB has deferred to DHS for confirmation of compliance with AC § 21-312(2)(b); accordingly, the Board also defers to DHS for interpretation and enforcement of the cited provision and abstains from determining whether DHS has appropriately interpreted its own provision, which is now also a matter before the court.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated September 9, 2010, is hereby denied.

Adopted by the Board of Standards and Appeals, April 5, 2011.

200-10-A, 203-10-A thru 205-10-A

APPLICANT – Sheldon Lobel, P.C., for Williams Davies, LLC, owner.

SUBJECT – Application October 29, 2010 – Appeal seeking a common law vested right to continue construction commenced under the prior R5 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 1359, 1361, 1365 & 1367 Davies Road, southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lots 15, 14, 13, 12, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

221-10-A

APPLICANT – Robert W. Cunningham, R.A., for Robert W. Cunningham, owner.

SUBJECT – Application December 1, 2010 – An appeal challenging a determination by Department of Buildings that owner authorization is needed from the adjacent property owner in order to perform construction at the site in accordance with Section 28-104.8.2 of the Administrative Code. R3-1 zoning district

PREMISES AFFECTED – 123 87th Street, north side of 87th Street and Ridge Boulevard, Block 6042, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Robert W. Cunningham

For Opposition: Ticia Parente and Chris Slowik.

For Administration: Amanda Derr, Department of Buildings.

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 May 3, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, APRIL 5, 2011
1:30 P.M.**

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

ZONING CALENDAR

194-09-BZ

CEQR #09-BSA-120K

APPLICANT – Sheldon Lobel, P.C., for Dabes Realty Company, Incorporated, owner.

SUBJECT – Application June 17, 2009 – Variance to allow the construction of a four story mixed use building contrary to floor area (§23-141), open space (§23-141), lot coverage (§23-141), front yard (§23-45), height (§23-631), open space used for parking (§25-64) and parking requirements (§25-23); and to allow for the enlargement of an existing commercial use contrary to §22-10. R3-2 zoning district.

PREMISES AFFECTED – 2113 Utica Avenue, 2095-211 Utica Avenue, East side of Utica Avenue between Avenue M and N, Block 7875, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 14, 2011, acting on Department of Buildings Application No. 302310942, reads in pertinent part:

- “1. Proposed floor area exceeds that which is permitted pursuant to ZR 23-141;
2. Proposed lot coverage and open space are less than that required pursuant to ZR 23-141;
3. Proposed number of dwelling units exceeds that permitted by ZR 23-22;
4. Proposed front yard along Utica Avenue is less than required pursuant to ZR 23-45(a);
5. Proposed aggregate wall width exceeds that permitted by ZR 23-463;
6. Proposed perimeter wall height at Utica Avenue is more than permitted pursuant to ZR 23-631;
7. Proposed use of more than 50% of development’s open space for parking is contrary to ZR 25-64;
8. Proposed enlargement of existing, legal non-conforming manufacturing building in a R3-2

zoning district is contrary to ZR 22-10;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, the construction of four single-family homes, a three-story residential building, 30 accessory parking spaces, and the enlargement of an existing commercial building, which exceeds the maximum permitted floor area, lot coverage, number of dwelling units, aggregate wall width, perimeter wall height, and open space used for parking, does not provide the required front yard along Utica Avenue, and includes a non-conforming use, contrary to ZR §§ 23-141, 23-22, 23-45(a), 23-463, 23-631, 25-64, and 22-10; and

WHEREAS, a public hearing was held on this application on April 27, 2010, after due notice by publication in the *City Record*, with continued hearings on September 14, 2010, December 7, 2010 and January 25, 2011, and then to decision on April 5, 2011; and

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

WHEREAS, Community Board 18, Queens, recommended disapproval of an earlier iteration of the proposal, citing concerns about the bulk and height of the proposed project and its effect on the character of the neighborhood; and

WHEREAS, representatives of the Mill Basin Civic Association provided oral testimony in opposition to the original proposal; and

WHEREAS, certain members of the community provided oral testimony in opposition to the original proposal; and

WHEREAS, the subject premises is located on a through lot bounded by Utica Avenue to the west and East 51st Street to the east, within an R3-2 zoning district; and

WHEREAS, the site is an L-shaped lot with 240 feet of frontage on Utica Avenue, 100 feet of frontage on East 51st Street, a depth ranging between 100 feet and 200 feet, and a total lot area of 34,000 sq. ft.; and

WHEREAS, the site is occupied by a pre-existing two-story sales and storage building with a floor area of 5,383 sq. ft., which is occupied in connection with a legal non-conforming building materials supply yard operated at the site; a portion of the existing building fronting Utica Avenue is also rented to a used car dealer; and

WHEREAS, the Board notes that the applicant has gone through several iterations of the proposal throughout the hearing process; and

WHEREAS, the applicant originally proposed to construct: (1) a four-story residential building along Utica Avenue with a floor area of 37,440 sq. ft., a perimeter wall and total height of 39’-8”, and 32 dwelling units; (2) four single-family semi-detached homes along East 51st Street with a floor area of 1,500 sq. ft. each; (3) a total residential floor area on the zoning lot of 43,437 sq. ft. (1.28 FAR); (4) a 1,150 sq. ft. enlargement to the existing commercial building, for a total commercial floor area of 6,531 sq. ft. (0.19 FAR); (5) a total floor area for the zoning lot of 49,968 sq. ft. (1.47 FAR); and

MINUTES

(6) 30 accessory parking spaces; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted an interim proposal which reduced the size of the proposed residential building along Utica Avenue to a three-story building with a floor area of 28,080 sq. ft. (for a total residential floor area of 34,080 sq. ft. (1.0 FAR)), a perimeter wall and total height of 31'-6" (with no setback), and 26 dwelling units; and

WHEREAS, the Board directed the applicant to further reduce the size of the multi-family building and the number of dwelling units so that the project was more compatible with adjacent uses and the neighborhood context and so that the proposal met the minimum variance finding; and

WHEREAS, the applicant now proposes to construct: (1) a three-story residential building along Utica Avenue with a floor area of 22,667 sq. ft., a perimeter wall and total height of 31'-6" with a 20'-4" setback along Utica Avenue above a height of 21'-6", and 20 dwelling units; (2) four single-family semi-detached homes along East 51st Street with a floor area of 1,178 sq. ft. each; (3) a total residential floor area of 27,379 sq. ft. (0.81 FAR); (4) a 1,150 sq. ft. enlargement to the existing commercial building, for a total commercial floor area of 6,531 sq. ft. (0.19 FAR); (5) a total floor area for the zoning lot of 33,910 sq. ft. (1.0 FAR); and (6) a total of 30 accessory parking spaces (two spaces located adjacent to each single-family home, and an accessory parking lot with 22 spaces located behind the three-story residential building); and

WHEREAS, the applicant states that the proposal results in the following non-compliances: a residential floor area of 27,378 sq. ft. (the maximum permitted floor area is 17,000 sq. ft.); a residential FAR of 0.81 (the maximum permitted FAR is 0.50); lot coverage of 46 percent (the maximum permitted lot coverage is 35 percent); an open space of 54 percent (the minimum required open space is 65 percent); a total of 24 dwelling units (the maximum number of dwelling units permitted on the zoning lot is 19); a perimeter wall height of 31'-6" (the maximum permitted perimeter wall height is 21'-0"); a front yard with a depth of 10'-0" along Utica Avenue (a front yard with a minimum depth of 15'-0" is required); an aggregate street wall width of 180'-0" along Utica Avenue (the maximum permitted aggregated street wall width is 125'-0"); utilization of 53 percent of the zoning lot's open space for driveways and parking (a maximum of 50 percent of the zoning lot's open space may be utilized for driveways and parking); and

WHEREAS, additionally, the applicant proposes to enlarge the commercial building on the site occupied by a legal non-conforming commercial use; commercial use is not permitted in the subject R3-2 zoning district, thus, the applicant also seeks a use variance; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable zoning district regulations: (1) soil contamination due to the site's history as a legal non-conforming lumber and building supplies yard; (2) the presence of a pre-existing and obsolete building on the site; (3) the location on a heavily traveled roadway; and (4) the commercial nature of Utica Avenue; and

WHEREAS, as to the soil contamination, the applicant states that the site's history of use as a legal non-conforming open lumber and building materials supply yard, has resulted in elevated concentrations of heavy metals; and

WHEREAS, in support of the legal non-conforming status of the use on the site, the applicant submitted: (1) certificates of occupancy from 1954 which lists the site's uses as "Lumber yard-sale and storage of lumber" and "Lumber storage trim, building materials, store for retail sales. 488 sq. ft. loading and unloading space. Office;" and (2) a certificate of occupancy dated February 1, 2010 which lists the site's uses as "Open building material sales. Building materials, store for retail and storage for retail sales. Loading and unloading space. Accessory offices;" and

WHEREAS, the applicant states that properties that have been used as lumber and building supply yards for extended periods of time have the potential for the presence of elevated concentrations of heavy metals due to the chemicals that were used in the treatment of preserved lumber and galvanized building materials; and

WHEREAS, the applicant represents that the open storage of these materials at the subject site led to contamination of the soil; and

WHEREAS, the applicant submitted a subsurface investigation report which states that ten boring samples were taken from the site, which showed elevated concentrations of heavy metals including lead, arsenic, copper, chromium, nickel and zinc which exceed the soil cleanup objectives set by the New York State Department of Environmental Conservation; and

WHEREAS, the subsurface investigation report notes that the combination of heavy metals found at the site is consistent with the storage of treated lumber and galvanized building materials; and

WHEREAS, the applicant states that the presence of heavy metals at the site, some of which approach hazardous levels, will require remediation of the site prior to development with residential use; and

WHEREAS, the applicant submitted a remediation and cost analysis which estimates that the costs attributed to remediation of the site range between \$532,128 for the proposed development of the site and \$575,771 for the as-of-right development of the site; and

WHEREAS, the applicant represents that the requested waivers are necessary to overcome the premium costs associated with soil remediation on the site; and

WHEREAS, as to the existing commercial building on the site, the applicant states that the subject building was originally constructed more than 60 years ago and was designed to serve the building supply business which is no longer commercially viable at the site; and

WHEREAS, the applicant states that the L-shaped building has a width of 22 feet along the Utica Avenue frontage and a width of 40 feet along the rear portion of the building; and

WHEREAS, the applicant states that the unique L-shaped configuration creates an inefficient floor plate with the wider open space being located in the rear of the lot and not

MINUTES

along the street frontage; and

WHEREAS, the applicant states that the proposed 1,150 sq. ft. enlargement of the existing commercial building will enable the applicant to square-off the building to create a more efficient floor plate so that the building can be utilized independent of the open sales yard; and

WHEREAS, as to the site's location on a heavily traveled thoroughfare, the applicant states that Utica Avenue is a four-lane, heavily traveled commercial thoroughfare that connects the Flatlands and Mill Basin neighborhoods in southern Brooklyn via Flatbush Avenue to Atlantic Avenue in Crown Heights; and

WHEREAS, the applicant states that Utica Avenue is not only heavily traveled by the residents of this part of Brooklyn, but also by bus traffic resulting from the Metropolitan Transit Authority bus terminal located two block south of the site, and by truck traffic from the many commercial and manufacturing uses located along the 4.5 mile length of Utica Avenue; and

WHEREAS, the applicant represents that the busy nature of Utica Avenue significantly reduces the value of as-of-right, low-density residential uses; and

WHEREAS, as to the commercial nature of Utica Avenue, the applicant states that, in addition to being located on a heavily traveled thoroughfare, the site is also located on a block that is predominantly commercial/industrial in nature; and

WHEREAS, specifically, the applicant submitted a land use map reflecting that, of the 24 lots with frontage on Utica Avenue between Avenue M and Avenue N, 17 of the lots are occupied either partially or wholly by legal non-conforming commercial uses; and

WHEREAS, the applicant states that the stretch of Utica Avenue between Avenue M and Avenue N is the only portion of Utica Avenue that is zoned for low-density residential uses, as the majority of Utica Avenue's 4.5 mile length is zoned for intense commercial or manufacturing uses (C8-1, C8-2 and M1-1) and most of the remaining blocks have commercial overlays; and

WHEREAS, the applicant further states that there are only seven blocks fronting Utica Avenue that are zoned solely for residential use and the blocks fronting Utica Avenue between Avenue M and Avenue N are the only blocks along the entire length of Utica Avenue that have a zoning designation lower than R5; and

WHEREAS, the applicant represents that the commercial and manufacturing use classifications along the entire length of Utica Avenue generate far more automotive and truck traffic than a typical street that is zoned R3-2; and

WHEREAS, accordingly, the applicant represents that the commercial nature of the properties located along Utica Avenue in the vicinity of the site, in addition to the volume of traffic that travels along the roadway, significantly decreases the value of low-density residential uses at the site; and

WHEREAS, the Board does not find that the preponderance of commercial uses on Utica Avenue or the site's location on a heavily trafficked street present unique conditions that create practical difficulty or unnecessary hardship; and

WHEREAS, however, the Board agrees that the increased construction costs as a result of contamination, in combination with the preponderance of commercial uses in the vicinity and the site's location on a heavily trafficked street may inhibit the marketability of low-density residential development along Utica Avenue; and

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

WHEREAS, the applicant submitted financial analyses of: (1) a 0.60 FAR as-of-right scenario of 12 two-family homes (with eight homes fronting Utica Avenue and four homes fronting East 51st Street) and two single-family homes fronting Utica Avenue, with no commercial use at the site; (2) a 0.77 FAR alternative as-of-right scenario of four single-family homes fronting East 51st Street, two two-story residential buildings with 16 dwelling units fronting Utica Avenue, and the existing commercial building; (3) a 0.81 FAR lesser variance scenario of four single-family homes fronting East 51st Street, two two-story residential buildings with 16 dwelling units fronting Utica Avenue, and the enlargement of the existing commercial building from 5,382 sq. ft. to 6,531 sq. ft.; (4) a 0.89 FAR lesser variance scenario of four single-family homes fronting East 51st Street, one two-story residential building with 20 units fronting Utica Avenue, and the enlargement of the existing commercial building from 5,382 sq. ft. to 6,531 sq. ft.; and (5) the proposed 1.0 FAR scenario development; and

WHEREAS, the applicant concluded that the proposed 1.0 FAR scenario was the only scenario of the five analyzed that provided a reasonable rate of return; and

WHEREAS, as noted, throughout the hearing process, the Board directed the applicant to reduce the degree of waivers requested to reflect the minimum variance; thus, the applicant modified the financial analysis to reflect different scenarios and to respond to the Board's concerns; and

WHEREAS, ultimately, the applicant provided a revised financial analysis which reflects that the proposed 1.0 FAR scenario of four single-family homes fronting East 51st Street, one three-story residential building with 20 units fronting Utica Avenue, and the enlargement of the existing commercial building from 5,382 sq. ft. to 6,531 sq. ft. is the minimum capable of yielding a reasonable return; and

WHEREAS, thus, the applicant asserts that the use, number of dwelling units, FAR, open space, lot coverage, height, front yard, and aggregate wall width waivers are required to overcome the premium construction costs, construct a marketable residential use, and provide an efficient floor plate for the existing obsolete commercial building, given the constraints of the site; and

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

MINUTES

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, as to the East 51st Street frontage, the applicant states that East 51st Street is a residential street developed primarily with single-family and two-family homes; and

WHEREAS, the applicant notes that the subject proposal includes the construction of four single-family homes along East 51st Street; and

WHEREAS, the applicant states that each of the proposed single-family homes along East 51st Street will have a floor area of 1,178 sq. ft., and the homes will be fully compliant with the R3-2 district regulations if this portion of the property were to be treated as a separate zoning lot; and

WHEREAS, as to the Utica Avenue frontage, the applicant states that the section of Utica Avenue in the vicinity of the site has a great variation in building types and sizes, as well as in the types of uses; and

WHEREAS, the applicant represents that the proposed three-story multi-family residential building and the enlargement of the existing commercial building along Utica Avenue will not alter the character of the surrounding area because the diversity of use and building types on Utica Avenue supports commercial use and denser residential development than what is found on the low-density residential side streets; and

WHEREAS, as to the proposed commercial use, the applicant states that the range of uses located on Utica Avenue in the vicinity of the site include two- and three-story mixed-use buildings, automotive sales and/or warehouse buildings, attached row homes, open contractor or building supply yards, and automotive service stations or repair facilities; and

WHEREAS, the applicant notes that the proposed commercial building has existed as a legal non-conforming use at the site for more than 50 years, and the proposed enlargement will merely square-off the L-shaped building to provide a more efficient rectangular floor plate; and

WHEREAS, as noted above, the applicant submitted a land use map reflecting that, of the 24 lots with frontage on Utica Avenue between Avenue M and Avenue N, 17 of the lots are occupied either partially or wholly by legal non-conforming commercial uses; and

WHEREAS, as to the proposed bulk of the three-story residential building, the applicant submitted an FAR survey that identified all properties that front commercially-oriented streets in the vicinity of the site and have FARs exceeding 1.0; and

WHEREAS, the FAR survey reflects that of the 111 tax lots with frontage on one of the commercial streets in the study area, 46 percent have an FAR that exceeds 1.0; and

WHEREAS, the FAR survey further reflects that of the 26 lots on the subject block with frontage on Utica Avenue, 81 percent have an FAR that exceeds 1.0; and

WHEREAS, the applicant states that, based on the FAR survey, the proposed buildings along Utica Avenue are

consistent with the density of properties within the study area; and

WHEREAS, the applicant also submitted a survey of buildings stories and heights within approximately 500 feet of the site; and

WHEREAS, the height survey submitted by the applicant reflects that: (1) 14 semi-detached two-family three-story homes located on Avenue M and East 52nd Street range in height from 27'-0" to 27'-9"; (2) two semi-detached homes located on East 51st Street immediately behind the site have a height in excess of 26'-0"; (3) a three-story building on the southeast corner of Utica Avenue and Avenue N has a height of approximately 30'-0"; and (4) the row of attached mixed-use buildings directly to the south of the site have a height of approximately 25'-0"; and

WHEREAS, the applicant notes that although the proposed three-story residential building along Utica Avenue has a height of 31'-6", the front of the building is setback 20'-4" above a height of 21'-6"; and

WHEREAS, accordingly, the applicant states that there are many buildings in the vicinity of the site with comparable heights to the proposed three-story residential building along Utica Avenue; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood, nor impair the use or development of adjacent properties, nor 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 rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted, the Board does not regard the contaminated soil condition to be a self-created hardship since it can be attributed to a legal non-conforming use at the site which predates modern environmental regulations; and

WHEREAS, the Board notes that the applicant initially claimed that even greater floor area, height, and dwelling units were required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site, which require additional floor area and the other noted waivers, but disagrees that the initially proposed degree of FAR, height and dwelling count waivers were needed to make the building feasible; and

WHEREAS, the Board notes that the applicant has significantly reduced the total residential floor area on the site from 43,437 sq. ft. (1.28 FAR) to 27,379 sq. ft. (0.81 FAR), reduced the number of dwelling units from the 36 initially proposed to 24, and reduced the total height and perimeter wall height for the three-story residential building from 39'-8" to 31'-6"; and

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

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

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

MINUTES

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) 09BSA120K, dated March 29, 2011; and

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

WHEREAS, the New York City Department of Environmental Protection’s (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed the August 2010 Phase II Environmental Subsurface Investigation Report and requested that a Remedial Action Plan and Construction Health and Safety Plan be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, a Restrictive Declaration was executed on March 30, 2011 and filed for recording on April 3, 2011; and

WHEREAS, the New York City Landmarks Preservation Commission requested a Phase I archaeological documentary study; and

WHEREAS, a Restrictive Declaration regarding the preparation of this documentary study was executed on March 8, 2010 and filed for recording on April 29, 2010; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-2 zoning district, the construction of four single-family homes, a three-story residential building with 20 dwelling units, 30 accessory parking spaces, and the enlargement of an existing commercial building, contrary to ZR §§ 23-141, 23-22, 23-45(a), 23-463, 23-631, 25-64, and 22-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received February 18, 2011” – eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum residential floor area of 27,379 (0.81

FAR); a maximum commercial floor area of 6,531 sq. ft. (0.19 FAR); a maximum of 24 dwelling units; a maximum lot coverage of 46 percent; a minimum open space of 54 percent; a maximum total height and perimeter wall height of 31’-6”; a front yard with a minimum depth of 10’-0” along Utica Avenue; a maximum aggregate street wall width of 180’-0” along Utica Avenue; and 30 parking spaces, as illustrated on the BSA-approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed and from LPC a Notice of No Objection or a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP and LPC a Notice of Satisfaction;

THAT the parking spaces shall be limited to accessory parking for the proposed residential development;

THAT the parking layout shall be as approved by DOB;

THAT the commercial building shall be limited to Use Group 6 uses;

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

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

THAT construction shall be substantially completed in accordance with the requirements of ZR § 72-23; 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, April 5, 2011.

192-10-BZ

CEQR #11-BSA-033Q

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 Simichich.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

MINUTES

Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough
Commissioner, dated September 24, 2010, acting on
Department of Buildings Application No. 420057592, reads
in pertinent part:

“The proposed building height is exceeding the
maximum height limitation by the Flight
Obstruction map of La Guardia airport as per ZR
61-20...a special permit by BSA is required as per
ZR 73-66;” and

WHEREAS, this is an application under ZR §§ 73-66
and 73-03, to permit the construction of a 12-story hotel
building which exceeds the maximum height limits around
airports, contrary to ZR § 61-20; and

WHEREAS, a public hearing was held on this
application on February 8, 2011, after due notice by
publication in *The City Record*, with a continued hearing on
March 8, 2011, and then to decision on April 5, 2011; and

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

WHEREAS, Community Board 7, Queens,
recommends approval of this application; and

WHEREAS, the subject site is located on the
northwest corner of Roosevelt Avenue and College Point
Boulevard, within a C4-2 zoning district; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a 12-
story hotel building; and

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

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

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

WHEREAS, the provision also provides that, in its
review, the Board shall refer the application to the Federal

Aeronautics Administration (“FAA”) for a report as to
whether such construction will constitute a danger or disrupt
established airways; and

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

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

WHEREAS, the applicant represents that it filed an
application with the FAA for review and approval of the
subject building, and the FAA issued a Determination of No
Hazard to Air Navigation, approving the proposed building
on February 25, 2010, with the condition that FAA-required
lighting and/or markings be installed on the building; and

WHEREAS, the proposed height for the building is
146 feet Above Ground Level (“AGL”) and 184 feet Above
Mean Sea Level (“AMSL”); and

WHEREAS, the maximum height approved by the
FAA is 146 feet AGL (184 feet AMSL); and

WHEREAS, the Board notes that the FAA-approved
height includes all appurtenances to the building; and

WHEREAS, accordingly, the Board notes that the
proposed building height is within that approved by the
FAA; and

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

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

WHEREAS, as reflected in a no objection letter dated
November 24, 2010, the PA approves of the project and
references the FAA reports; and

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

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

WHEREAS, therefore, the Board has determined that
the evidence in the record supports the requisite findings
pursuant to ZR §§ 73-66 and 73-03; and

WHEREAS, the Board notes that the FAA report
states that there is a requirement that the FAA be notified
ten days prior to the start of construction (Part I) and five
days after construction reaches its greatest height (Part II);
and

WHEREAS, the project is classified as an Unlisted

MINUTES

action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 11BSA033Q, dated January 18, 2011; 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 §§ 73-66 and 73-03, to permit, within a C4-2 zoning district, the construction of a 12-story hotel building which exceeds the maximum height limits around airports, contrary to ZR § 61-20; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received March 1, 2011"- nineteen (19) sheets and *on further condition*:

THAT the maximum height of the building, including all appurtenances, is 146 feet AGL and 184 feet AMSL;

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, April 5, 2011.

193-10-BZ

CEQR #11-BSA-034Q

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.

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 September 24, 2010, acting on Department of Buildings Application No. 420113451, reads in pertinent part:

“The proposed building height is exceeding the maximum height limitation by the Flight Obstruction map of La Guardia airport as per ZR 61-20...a special permit by BSA is required as per ZR 73-66;” and

WHEREAS, this is an application under ZR §§ 73-66 and 73-03, to permit the construction of a 12-story mixed-use hotel/residential building which exceeds the maximum height limits around airports, contrary to ZR § 61-20; and

WHEREAS, a public hearing was held on this application on February 8, 2011, after due notice by publication in *The City Record*, with a continued hearing on March 8, 2011, and then to decision on April 5, 2011; and

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

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Prince Street between 37th Avenue and Northern Boulevard, partially within a C4-2 zoning district and partially within a C4-3 zoning district; and

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

WHEREAS, the applicant proposes to construct a 12-story mixed-use hotel/residential building; and

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

MINUTES

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

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

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

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

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

WHEREAS, the applicant represents that it filed an application with the FAA for review and approval of the subject building, and the FAA issued a Determination of No Hazard to Air Navigation, approving the proposed building on February 25, 2010, with the condition that FAA-required lighting and/or markings be installed on the building; and

WHEREAS, the proposed height for the building is 159 feet Above Ground Level (“AGL”) and 203 feet Above Mean Sea Level (“AMSL”); and

WHEREAS, the maximum height approved by the FAA is 159 feet AGL (203 feet AMSL); and

WHEREAS, the Board notes that the FAA-approved height includes all appurtenances to the building; and

WHEREAS, accordingly, the Board notes that the proposed building height is within that approved by the FAA; and

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

WHEREAS, the applicant has also submitted requests for approval to the Port Authority of New York/New Jersey

(PA), which operates LaGuardia Airport; and

WHEREAS, as reflected in a no objection letter dated November 24, 2010, the PA approves of the project and references the FAA reports; and

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-66 and 73-03; and

WHEREAS, the Board notes that the FAA report states that there is a requirement that the FAA be notified ten days prior to the start of construction (Part I) and five days after construction reaches its greatest height (Part II); and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 11BSA043Q, dated January 18, 2011; 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 §§ 73-66 and 73-03, to permit, partially within a C4-2 zoning district and partially within a C4-3 zoning district, the construction of a 12-story mixed-use hotel/residential building which exceeds the maximum height limits around airports, contrary to ZR § 61-20; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received March 1, 2011”-eighteen (18) sheets and *on further condition*:

THAT the maximum height of the building, including all appurtenances, is 159 feet AGL and 203 feet AMSL;

MINUTES

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, April 5, 2011.

226-10-BZ

CEQR #11-BSA-042M

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, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated January 25, 2011, acting on Department of Buildings Application No. 120527778, reads in pertinent part:

“ZR 42-10. Proposed physical culture establishment is not permitted in M1-5 zone and requires special permit from the Board of Standards and Appeals per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within an M1-5

zoning district, the legalization of a physical culture establishment (PCE) at portions of the first, ninth, and tenth floors of a ten-story mixed-use commercial/residential building, contrary to ZR § 42-10; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 606-75-BZ, to allow an amendment to a prior variance to reflect the existing conditions within the commercial space at the subject site and to permit the renovation of the health club facility for operation as part of the subject PCE; that application was granted on April 5, 2011; 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 April 5, 2011; and

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

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

WHEREAS, the subject site is located on a through lot bounded by Leroy Street to the north, Hudson Street to the east, and Clarkson Street to the south, within an M1-5 zoning district; and

WHEREAS, the site is occupied by a ten-story mixed-use commercial/residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 20, 1976 when, under BSA Cal. No. 606-75-BZ, the Board granted a variance to permit the conversion of the existing building from manufacturing use to residential use with a health facility and restaurant on the ninth and tenth floors, and commercial space on a portion of the first floor; and

WHEREAS, on July 20, 1976, under BSA Cal. No. 607-75-A, the Board also granted an administrative appeal of a Department of Buildings determination, to allow variances from the Multiple Dwelling Law required for the proposed residential uses; and

WHEREAS, the proposed PCE occupies 29,441 sq. ft. of floor area on portions of the first, ninth, and tenth floors of the subject building; and

WHEREAS, the PCE will be operated by Equinox Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 5:30 a.m. to 11:00 p.m.; Friday, from 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

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

WHEREAS, at hearing, the Board directed the applicant to clarify the noise attenuation measures that are proposed for the subject building; and

WHEREAS, in response, the applicant states that the following noise attenuation measures will be undertaken at the site: (1) all slab penetrations between the first floor and second floor will be tightly sealed; (2) a suspended gypsum board ceiling will be installed above the PCE space at the

MINUTES

first floor; (3) the group fitness studio and cycling studio at the first floor will be constructed of isolated partitions; (4) a one-inch thick rubber flooring will be provided throughout the strength area at the first floor; (5) the partitions surrounding the mechanical room at the first floor will comprise two layers of gypsum board on either side of metal studs with batt insulation in the stud cavities; (6) an isolated concrete floor will be installed in the cardio room on the ninth floor; and (7) one-inch thick resilient floor tile will be installed throughout the open fitness area on the ninth and tenth floors; and

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation by Equinox Fitness since January 1, 2011, 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 January 1, 2011 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. 11BSA042M, dated December 23, 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.

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 located within an M1-5 zoning district, the legalization of a physical culture establishment on portions of the first, ninth and tenth floors of a ten-story mixed-use commercial/residential building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 10, 2010"- 2 sheets and "Received March 2, 2011"- 4 sheets; and *on further condition*:

THAT the term of this grant shall expire on January 1, 2021;

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 following noise abatement measures shall be installed to insure that the sound level in the residential portions of the building do not exceed 45 dBA: (1) all slab penetrations between the first floor and second floor will be tightly sealed; (2) a suspended gypsum board ceiling will be installed above the PCE space at the first floor; (3) the group fitness studio and cycling studio at the first floor will be constructed with isolated partitions; (4) a one-inch thick rubber flooring will be provided throughout the strength area at the first floor; (5) the partitions surrounding the mechanical room at the first floor will comprise two layers of gypsum board on either side of metal studs with batt insulation in the stud cavities; (6) an isolated concrete floor will be installed in the cardio room on the ninth floor; and (7) one-inch thick resilient floor tile will be installed throughout the open fitness area on the ninth and tenth floors;

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

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, April 5, 2011.

MINUTES

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: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a previously approved variance for the conversion of an existing building from manufacturing use to residential use with a health facility and restaurant on the ninth and tenth floors; 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 April 5, 2011; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 226-10-BZ, for a special permit pursuant to ZR § 73-36 to allow the legalization of a physical culture establishment (PCE) on portions of the first, ninth and tenth floors of the existing ten-story mixed-use commercial/residential building; that application was granted on April 5, 2011; and

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

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

WHEREAS, the subject site is located on a through lot bounded by Leroy Street to the north, Hudson Street to the east, and Clarkson Street to the south, within an M1-5 zoning district; and

WHEREAS, the site is occupied by a ten-story mixed-use commercial/residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 20, 1976 when, under the subject calendar number, the Board granted a variance to permit the conversion of the existing building from manufacturing use to residential use with a health facility and restaurant on the ninth and tenth floors, and commercial space on a portion of the first floor; and

WHEREAS, on July 20, 1976, under BSA Cal. No. 607-75-A, the Board also granted an administrative appeal of a

Department of Buildings determination, to allow variances from the Multiple Dwelling Law required for the proposed residential uses; and

WHEREAS, the applicant states that since the original grant there have been a variety of changes to the commercial spaces within the building, including the discontinuance of the restaurant use; and

WHEREAS, the applicant notes that all commercial floor area on the first, ninth and tenth floors is currently used as part of the proposed PCE; and

WHEREAS, the applicant now seeks an amendment to reflect the existing conditions within the commercial space and to permit the renovation of the health club facility for operation as part of the proposed PCE; and

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

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, as adopted on July 20, 1976, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the BSA-approved plans; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received December 10, 2010”- (2) sheets and “Received March 2, 2011”- (4) sheets; and *on further condition*:

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 120527778)

Adopted by the Board of Standards and Appeals, April 5, 2011.

189-09-BZ

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

MINUTES

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

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for decision, hearing closed.

190-09-A

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for decision, hearing closed.

227-09-BZ

APPLICANT – Gerald J. Caliendo, R.A., for David Rosero/Chris Realty Holding Corporation, lessee.

SUBJECT – Application July 10, 2009 – Variance (§72-21) to allow a two-story commercial building, contrary to use regulations (§22-10). R6B zoning district.

PREMISES AFFECTED – 100-14 Roosevelt Avenue, south side of Roosevelt Avenue, 109.75' west of the corner of 102nd Street and Roosevelt Avenue, Block 1609, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to May 17, 2011, at 1:30 P.M., for continued hearing.

236-09-BZ

APPLICANT – Marvin Mitzner, Esq, for Crosstown West 28 LLC, owner.

SUBJECT – Application July 31, 2009 – Variance (§72-21) to allow for a 29 story mixed use commercial and residential building contrary to use regulations (§42-00), floor area (§43-12), rear yard equivalent (§43-28), height (§43-43), tower regulations (§43-45) and parking (§13-10). M1-6 zoning district.

PREMISES AFFECTED – 140-148 West 28th Street, south side of West 28th Street, between 6th Avenue and 7th Avenue,

block 803, Lots 62 and 65, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Marvin Mitzner and Jack Freeman.

For Opposition: Patricia A. Kirshner, Sueanne Kim, Tina Barth, Bill Schaffner, Henry P. Davis and Gregory Rogers.

ACTION OF THE BOARD – Laid over to May 24, 2011, at 1:30 P.M., for continued hearing.

304-09-BZ

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

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

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

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Jay Goldstein.

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 May 10, 2011, at 1:30 P.M., for decision, hearing closed.

95-10-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for continued hearing.

118-10-BZ

APPLICANT – Eric Palatnik, P.C., for Arkady Nabatov, owner.

SUBJECT – Application June 28, 2010 – Reinstatement (§11-411 & §11-413) of an approval permitting the operation of an automotive service station (UG 16B), with

MINUTES

accessory uses, which expired on December 9, 2003; amendment to legalize a change in use from automotive service station to automotive repair, auto sales and hand car washing. R4 zoning district.

PREMISES AFFECTED – 2102/24 Avenue Z, aka 2609/15 East 21st Street. Block 7441, Lot 371. Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Katherine D’Ambrosi.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for continued hearing.

9-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Riverdale Equities, LTD, owner; White Plains Road Fitness Group, LLC, lessee.

SUBJECT – Application January 31, 2011 – Special Permit (§73-36) to permit the operation of the proposed physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2129A-39A White Plains Road, a/k/a 2129-39 White Plains Road, a/k/a 626-636 Lydig Avenue, southeast corner of the intersection of White Plains Road and Lydig Avenue, Block 4286, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Elizabeth Safien, Marilyn Sopher and Chase Villofana.

For Opposition: Marcy S. Gross.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.