
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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

Volume 95, No. 11

March 17, 2010

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

Commissioners

Jeffrey Mulligan, *Executive Director*

Roy Starrin, *Deputy Director*

Becca Kelly, *Counsel*

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

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

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

TELEPHONE - (212) 788-8500

FAX - (212) 788-8769

CONTENTS

DOCKET147

CALENDAR of March 23, 2010

Morning148

Afternoon148/149

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, March 9, 2010**

Morning Calendar150

Affecting Calendar Numbers:

74-49-BZ	515 Seventh Avenue, Manhattan
617-80-BZ	770/780 McDonald Avenue, Brooklyn
121-02-BZ	9215 4 th Avenue, Brooklyn
369-03-BZ	99-01 Queens Boulevard, Queens
111-06-BZ	136 Norfolk Street, Brooklyn
58-07-BZ	18-02 Clintonville, Brooklyn
313-08-A	363-371 Lafayette Street, Manhattan
252-09-A	2788 Grand Concourse Boulevard, Bronx
12-10-A	1734 Saint John's Place, Brooklyn
185-09-A & 186-09-A	61 and 67 Elder Avenue, Staten Island
283-09-BZY thru 286-09-BZY	90-18 176 th Street, Queens
280-09-A	330 West 86 th Street, Manhattan

Afternoon Calendar156

Affecting Calendar Numbers:

161-09-BZ	580 Carroll Street, Brooklyn
14-09-BZ	2294 Forest Avenue, Staten Island
44-09-BZ	2175 Richmond Avenue, Staten Island
234-09-BZ	25-71 44 th Street, Queens
254-09-BZ thru 256-09-BZ	101-03/05/07 Astoria Boulevard, Queens
272-09-BZ	32-62 Steinway Street, Queens
307-09-BZ	1358-1360 East 28 th Street, Brooklyn
325-09-BZ	1364 & 1366 52 nd Street, Brooklyn
15-10-BZ	3114 Bedford Avenue, Brooklyn

Corrections162

327-04-BZ	66-35 108 th Street, Queens
-----------	--

DOCKET

New Case Filed Up to March 9, 2010

29-10-BZ

22-32/36 31st Street, Ditmas Boulevard and 23rd Avenue, Block 844, Lot(s) 49, Borough of **Queens, Community Board: 1**. Special Permit (72-42 & 73-52) to allow an enclosed eating and drinking establishment. C1-2 and R5 district.

30-10-BZ

1384 East 22nd Street, West side of East 22nd Street between Avenue M. and Avenue N., Block 7657, Lot(s) 56, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home. 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

MARCH 23, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 23, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Joykiss Management, LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Term (§11-411 & §11-413) to allow the continued operation of an Eating and Drinking establishment (UG 6) (East Manor Restaurant) which expired on March 15, 2004; Amendment to legalize alterations that were made to the structure; Waiver of the Rules of Practice and Procedure. C2-2 and R3-2 zoning districts.

PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, Northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD # 7Q

201-01-BZ

APPLICANT – Sheldon Lobel, P.C., for J.H.N. Corporation, owner.

SUBJECT – Application January 27, 2010 – Extension of Term (§72-01 & §72-22) of a previously approved variance permitting the operation of a automobile laundry, lubrication and accessory automobile supply store (UG16b); Amendment seeking to legalize changes to the previously approved plans and increase in floor area from 8,300sf to 9,125sf. Waiver of the Rules of Practice and Procedure for filing more than one year prior to the expiration of the term (April 16, 2012). C4-1 zoning district.

PREMISES AFFECTED – 2591 Atlantic Avenue, northwest corner of Atlantic Avenue and Sheffield Avenue, Block 3668, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEALS CALENDAR

157-07-BZY

APPLICANT – Howard Zipser, Akerman Senterfitt, LLP, for 55 Eckford Street Brooklyn LLC, owner.

SUBJECT – Application November 23, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6/M1-1 zoning district. M1-2 /R6A, M1-2 R6B, MX8 zoning district.

PREMISES AFFECTED – 55 Eckford Street, west side of Eckford Street, between Driggs Avenue and Engert Avenue,

Block 2698, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

287-09-BZY & 288-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Hooshang Vaghari and Farhad Nobari, owners.

SUBJECT – Application October 9, 2009 – Extension of time (§11-332) to complete construction of a major development commenced under the prior R6 zoning. R5 zoning district.

PREMISES AFFECTED – 87-85 & 87-87 144th Street, east side of 144th Street between Hillside Avenue and 85th Avenue, Block 9689, Lot 6 & 7, Borough of Queens.

COMMUNITY BOARD #12Q

7-10-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Jacklyn & Gerard Rodman, lessees.

SUBJECT – Application January 21, 2010 – Reconstruction and enlargement of an existing single family dwelling within the bed of a mapped street and the upgrade of existing non conforming private disposal system located in the bed of a mapped street contrary to General City Law Section 35 and Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 93 Hillside Avenue, north side of Hillside Avenue 130' east of the mapped Beach 180th Street, Block 16340, Lot p/o 50, Borough of Queens.

COMMUNITY BOARD #14Q

MARCH 23, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 23, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

327-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 255 Butler, LLC, owner.

SUBJECT – Application December 17, 2009 – Special Permit (§73-19) to allow a Use Group 3 charter school with first floor retail use in an existing Use Group 16 warehouse. The proposal is contrary to ZR Section 42-10, M1-2 district.

PREMISES AFFECTED – 255 Butler Street, corner lot on Nevins Street between Butler and Baltic Streets, Block 405, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #6BK

CALENDAR

9-10-BZ

APPLICANT – Eric Palatnik, P.C., for Ching Kuo Chiang, owner.

SUBJECT – Application January 22, 2010 – Variance (§72-21) to allow an existing building to continue a restaurant use, contrary to ZR 22-00. R1-2 zoning district.

PREMISES AFFECTED – 231-10 Northern Boulevard, Northwest corner of 232nd Street, Block 8164, Lot 30, Borough of Queens.

COMMUNITY BOARD #11Q

14-10-BZ

APPLICANT – Friedman & Gotbaum, LLP, for Cooper Square Associates (LP), owners.

SUBJECT – Application January 29, 2010 – Special Permit (§73-19) to allow a Use Group 3 school (*Grace Church High School*). M1-5B zoning district.

PREMISES AFFECTED – 38-50 Cooper Square, west side of Cooper Square, 326'-9" south of Astor Place, Block 544, p/o 38, Borough of Manhattan.

COMMUNITY BOARD #2M

18-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Fifty East Forty-Second Company, LLC, owner; East 42nd Street Fitness, LLC d/b/a Lucille Roberts, lessee.

SUBJECT – Application February 2, 2010 – Special Permit (§73-36) to allow a physical culture establishment (Lucille Roberts) in the cellar and a portion of the first floor in an existing twenty-six-story building. C5-3 zoning district.

PREMISES AFFECTED – 50 East 42nd Street, Southeast corner of Madison Avenue, Block 1276, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 9, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

74-49-BZ

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

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

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

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M., for continued hearing.

617-80-BZ

APPLICANT – Eric Palatnik, P.C. for J & S Simcha, Incorporated, owner.

SUBJECT – Application February 5, 2010 – Extension of Term of a previously granted Variance (§72-21) of a UG9 catering establishment which expires on December 9, 2010; an Amendment to the interior layout; Extension of Time to Complete Construction and to obtain a Certificate of Occupancy which expires on March 14, 2010 and Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 770/780 McDonald Avenue, West side of McDonald Avenue, 20' south of Ditmas Avenue. Block 5394, Lots 1 & 11, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M. for continued hearing.

121-02-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, 9215 4th Avenue, LLC, owner.

SUBJECT – Application November 11, 2010 – Amendment (§73-11) to a special permit (§73-11) for an enlargement of a Physical Culture Establishment. C8-2 zoning district.

PREMISES AFFECTED – 9215 4th Avenue, east side of 4th Avenue, 105' south of intersection with 92nd Street, Block

6108, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M. for continued hearing.

369-03-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 99-01 Queens Boulevard LLC, owner; TSI Rego Park LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application December 3, 2009 – Amendment to a variance (§72-21) for a physical culture establishment (*New York Sports Club*) to change in the owner/operator, decrease floor area, modify days and hours of operation, and eliminate parking condition. C1-2/R7-1 zoning district.

PREMISES AFFECTED – 99-01 Queens Boulevard, Northwest corner of Queens Boulevard and 67th Street, Block 2118, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M., for adjourned hearing.

111-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application to reopen pursuant to court remand (Appellate Division) to revisit the findings of a Special Permit (§73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and perimeter wall height (§23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M., for adjourned hearing.

58-07-BZ

APPLICANT – Eric Palatnik, P.C., for Vito Savino, owner.

SUBJECT – Application October 27, 2009 – Amendment to previously granted variance for a residential building to include two additional objections: dwelling unit size (§23-23) and side yard regulations (§23-461(a)). R3A zoning district.

PREMISES AFFECTED – 18-02 Clintonville, Block 4731, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

MINUTES

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

313-08-A

APPLICANT – Howard Goldman , LLC & Berger & Kramer , LLP for Chuck Close, for Proprietary Lessee of Studio and Basement Cooperative at 20 Bond Street , lessee. SUBJECT – Application December 22, 2008 – Appeal to Department of Building’s refusal to revoke permits and approvals for a six-story commercial building. M1-5B zoning district.

PREMISES AFFECTED – 363-371 Lafayette Street, east side of Lafayette Street between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, March 9, 2010.

252-09-A

APPLICANT – Marc A. Chiffert, P.E., for Gani Realty Corporation, owner.

SUBJECT – Application September 9, 2009 – Appeal challenging the NYC Fire Department determination that construction of a proposed building on a private street does not provide proper fire access for emergency vehicles. R8 zoning district.

PREMISES AFFECTED – 2788 Grand Concourse Boulevard, between Miriam Street and East 197th Street, Block 3304, Lot 103 & 171, Borough of Bronx.

COMMUNITY BOARD #15BX

APPEARANCES – None.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this appeal arises in response to a final determination from the Chief of Department, dated August 4, 2009 (the “Final Determination”), issued in response to a request that the Fire Department reconsider a determination that the subject site does not provide a fire apparatus access road with an unobstructed width of not less than 38 feet, as required by Fire Code (FC) § 503.2.1; and

WHEREAS, the Final Determination reads in pertinent part:

“The Fire Code (FC), at Section 503.2.1, requires a fire apparatus access road with an unobstructed width of thirty-eight feet (38’) to the frontage space of a building that does not directly front on a public street... The proposed development does not directly front on the Grand Concourse, and is not accessible for firefighting operations from the public street. Accordingly a fire apparatus road must be provided to a frontage space in the interior of the block;” and

WHEREAS, this appeal seeks to reverse a determination by the Fire Department that a proposed residential building does not provide the required fire access road for Fire Department emergency vehicles; and

WHEREAS, a public hearing was held on this appeal on February 2, 2010, after due notice by publication in *The City Record*, and then to decision on March 9, 2010; 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, the Fire Department provided testimony in opposition to the application; and

WHEREAS, the subject site is located on the block bound by East 197th Street, Miriam Street, the Grand Concourse, and Valentine Avenue, within an R8 zoning district; and

WHEREAS, the subject site is L-shaped and consists of two tax lots, Lot 103 and Lot 171, to be merged into a single zoning lot meeting at the interior of the block; and

WHEREAS, Lot 103 has frontage on the Grand Concourse and Lot 171 has 30 feet of frontage on East 197th Street; a five-story, 62-unit residential building occupies the portion of Lot 103, which abuts the Grand Concourse to a depth of approximately 140 feet (the “Existing Building”); and

WHEREAS, the applicant proposes to construct a 14-story 51-unit residential building (the “Proposed Building”) on the interior of the site, 30 feet behind the Existing Building (and approximately 170 feet from the Grand Concourse), with pedestrian access through the lobby of the Existing Building and vehicle access by a 30-ft. wide by 90-ft. deep private road accessed from the East 197th Street frontage; and

WHEREAS, the Fire Department has two primary concerns: (1) the Proposed Building does not have frontage on the Grand Concourse, such that it may be accessed for fire protection; and (2) accordingly, a fire apparatus access road with a minimum width of 38 feet is required to access the frontage space adjacent to the Proposed Building’s entrance at East 197th Street; and

WHEREAS, as to the frontage question, the applicant asserts that the Proposed Building will front on both the Grand Concourse and East 197th Street because it can be accessed both through the Existing Building on the Grand Concourse and through a private road at East 197th Street; and

WHEREAS, the Fire Department contends that the Proposed Building would not front on the Grand Concourse

MINUTES

because it would be separated from the Grand Concourse by the Existing Building and a distance of approximately 170 feet; and

WHEREAS, the Fire Department notes that, although the applicant proposes access through the Existing Building, it and the Proposed Building will remain separate buildings, by definition and a distance of approximately 30 feet; and

WHEREAS, the Fire Department states that although the Proposed Building can be accessed on foot by entering and walking through the Existing Building, that route only provides access to the second floor lobby and firefighters would not be able to enter the upper floors of the Proposed Building by means of the elevators or stairwells of the Existing Building, and accessing the roof of the five-story Existing Building by means of fire apparatus access ladders would not enable firefighters to access the 14-story Proposed Building 30 feet away; and

WHEREAS, accordingly, the Fire Department contends that the general pedestrian access through the Existing Building is not sufficient for fire apparatus access, thus the fire apparatus would be required to access the Proposed Building and its main entrance from the private road at the East 197th Street frontage at the interior of the site; and

WHEREAS, the Board agrees that the Proposed Building is a separate building that does not have frontage along the Grand Concourse, for Fire Department access purposes; and

WHEREAS, the Fire Department argues that the site also does not front on East 197th Street because the building is located approximately 120 feet beyond the street line, and once a building is beyond 30 feet from the street line it ceases to be considered fronting upon a public street and must be accessed by a fire apparatus access road; and

WHEREAS, the Fire Department contends that since the Proposed Building, which is proposed to be set back approximately 140 feet from the Grand Concourse and approximately 120 feet from East 197th Street, does not directly front on a public street, the following two requirements must be met: (1) a fire apparatus access road with an unobstructed width of 38 feet, as set forth in FC § 503.2.1, be provided from the street to the building's frontage space and (2) a frontage space with a width and depth of 30 feet be provided within 30 feet of the main front entrance to the building; and

WHEREAS, as to the requirement for a fire apparatus access road, the applicant agrees that one is required, but asserts that the one it proposes from East 197th Street, with a width of 30 feet (limited by the maximum width of Lot 171), satisfies the requirement; and

WHEREAS, the applicant makes two primary arguments: (1) that the Board should waive the requirement that the fire apparatus access road have a minimum width of 30 feet, because the 30-ft. width of the private road provides sufficient access for fire apparatus and the Proposed Building design provides additional fire safety measures that will enhance the building's fire safety to compensate for any deficiency in the access road's width; and (2) that the proposed road with a width of 30 feet fits within an exception, which permits the reduction in the width of the access road from 38 feet to 30 feet; and

WHEREAS, the applicant states that the road will be maintained as an unobstructed access way for fire apparatus because it will be marked as a fire lane, there will be no sidewalks installed, and a center curb cut which is low enough for fire trucks to straddle will be installed with "in" and "out" lanes that would prevent parking along the length of the private road; and

WHEREAS, the applicant asserts that, since the width of 30 feet will be maintained as an unobstructed access way it will meet the intent of the fire apparatus access road requirement; and

WHEREAS, the applicant claims that it will implement enhancements to the Proposed Building's fire safety, including sprinklering the entire building, providing a corridor with a width of three feet and a passageway with a width of six feet from the existing building on the Grand Concourse as a special access for firefighting purposes, installing a fire hydrant on the site, equipping the proposed building with a fire standpipe, and installing a Siamese connection from the Grand Concourse; and

WHEREAS, the Fire Department states that the road with a width of 30 feet and a depth of 90 feet from East 197th Street, is in the appropriate location for a fire apparatus access road required by FC § 503.2.1, however its width is deficient by eight feet and, thus, it is non-compliant; and

WHEREAS, the Fire Department states that certain of the applicant's proposed fire safety measures are required regardless of whether a fire apparatus access road is provided and the proposed measures are not viable alternative fire safety measures to providing access for emergency vehicles; and

WHEREAS, specifically, the Fire Department states that the building is required to be sprinklered pursuant to the Fire Code, the proposed passageway from the existing building would only be suitable for pedestrian access rather than emergency services, and the proposed fire hydrant would be located in the required frontage space and would prevent other fire apparatus from accessing the site; and

WHEREAS, the Fire Department notes that the proposal is for a 14-story 51-unit building, and proper fire apparatus access is required to position equipment to reach the upper floors of the building, which would be set back approximately 120 feet from its access point on East 197th Street; and

WHEREAS, as to the exceptions, the applicant cites to FC § 503.2.1, which sets forth three exceptions to the requirement that a fire apparatus access road have a minimum width of 38 feet; and

WHEREAS, the applicant contends that the proposal falls within an exception under FC § 503.2.1 that permits a fire apparatus access road with a minimum width of 30 feet, if it provides access to not more than five dwelling units, and all buildings to which the private road provides access are protected throughout by a sprinkler system; and

WHEREAS, the Board notes that although the proposed fire apparatus access road would have a width of 30 feet and the proposed building would be protected throughout by a sprinkler system, the applicant does not satisfy the noted exception because the Proposed Building, with 51 units, far exceeds the density limit of five units; and

MINUTES

WHEREAS, the Fire Department notes that the Proposed Building does not fit within any of the other exceptions to the fire apparatus access road requirements; and

WHEREAS, the Board finds that the applicant failed to provide any compelling argument or evidence that it falls within any of the exceptions; and

WHEREAS, in addition to its primary concerns regarding the fire apparatus access road, the Fire Department raised concerns that the frontage space was constrained and a portion of the required turnaround located underneath the Proposed Building is occupied by columns and parking spaces such that it would impede the ability for fire apparatus, with lengths of 30 feet to 55 feet, to utilize the turnaround, and is thus not a viable access route; and

WHEREAS, the Fire Department notes that under FC § 104.8, it has authority to modify provisions of the Fire Code for reasons of impracticability, but that due to the fire safety concerns triggered by the inaccessibility of the Proposed Building, granting a modification to approve a substandard roadway as the only means for fire apparatus to access the building would not be consistent with the interests of public safety; and

WHEREAS, the applicant requested that the Board grant its appeal on the condition that the Fire Department approves a site plan; and

WHEREAS, the Board notes that there is no legal basis to overturn the Fire Department's determination and the applicant has failed to provide a basis for waiving the Fire Code pursuant to Section 666(6) of the New York City Charter; and

WHEREAS, the Board further notes that action by the Board is not necessary in order for the applicant to continue working with the Fire Department to pursue Fire Code waivers based on alternative plans; and

WHEREAS, based on the evidence in the record, the Board concurs with the Fire Department that the proposal does not satisfy the requirements for a fire apparatus access road with a width of 38 feet, as set forth in FC § 503.2.1.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Fire Department decision dated August 4, 2009, is hereby denied.

Adopted by the Board of Standards and Appeals, March 9, 2010.

12-10-A

APPLICANT – Slater & Beckerman, LLP for Lex Rex, LLC, owner; Atlantic Commons Cornstone L.P., lessee.

SUBJECT – Application January 27, 2010 – Proposed construction of a five-story, 18-unit residential building located within the 30 foot required setback of Eastern Parkway Extension, contrary to Administrative Code §18-112. R6 zoning district.

PREMISES AFFECTED – 1734 Saint John's Place, West side of Howard Avenue, south side of St. John's Place and north side of Eastern Parkway Extension. Block 1473, Lots 34, 35, 36, 37, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Neil Weisbard.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 29, 2010, acting on Department of Buildings Application No. 320095231 reads, in pertinent part:

- “1. – Sec. 532-10 Dept. of Parks – Restrictions on Eastern Parkway: Provide 30 feet set back from the lot line fronting Eastern Parkway.
2. – NYC Administrative Code Section 18-112 – Restrictions on Eastern Parkway.
3. – 2008 NYC Building Code Section 3201.3.1- Restrictions on construction and projections on certain streets, parkways, boardwalks, and beaches;” and

WHEREAS, this is an application pursuant to New York City Charter §§ 666.6 and 666.7, to vary the prohibition against construction within 30 feet of the street line of Eastern Parkway as set forth in Administrative Code § 18-112 and cited at New York City Building Code § 3201.3.1, to allow for the construction of a five-story residential building, within an R6 zoning district, contrary to the Administrative Code and Building Code; and

WHEREAS, after due notice by publication in *The City Record*, a public hearing was held on this application on February 23, 2010 and then to decision on March 9, 2010; 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 16, Brooklyn, recommends approval of this application; and

WHEREAS, the site has an irregular L-shape with three frontages; it has approximately 90 feet of frontage to the north on St. John's Place, 93 feet of frontage to the east on Howard Avenue, and 40 feet of frontage to the south on the Eastern Parkway Extension, within an R6 zoning district; and

WHEREAS, the site comprises four tax lots, which are proposed to be merged into a single zoning lot, with a total lot area of 5,615 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a five-story building with a floor area of 16,583 sq. ft., a height of 54'-5", and 18 dwelling units of affordable housing; and

WHEREAS, the applicant states that the City has approved an Urban Development Action Area Project (UDAAP) for the site and the applicant has secured funding from the New York City Housing Development Corporation, the Department of Housing Preservation and Development (HPD), and the New York State Division of Housing and

MINUTES

Community Renewal's Homes for Working Families Program; and

WHEREAS, the City Planning Commission and the New York City Council approved (1) the UDAAP for the site and a companion parcel (that is not part of the subject application) and (2) the disposition of the lots the City owned, pursuant to the Uniform Land Use Review Procedure (ULURP) Application C08013 HAK; and

WHEREAS, the Administrative Code § 18-112 – Restrictions on Eastern parkway - (the "Eastern Parkway Restriction") prohibits construction within 30 feet of the street line of Eastern Parkway and Building Code § 3201.3.1 – Restrictions on Construction and Projections on Certain Streets, Parkways, Boardwalks, and Beaches – references and requires the enforcement of the Eastern Parkway Restriction; Administrative Code § 532-10 has been re-codified as § 18-112; and

WHEREAS, the applicant states that because the proposal reflects construction within 30 feet of the street line on the Eastern Parkway Extension, which is specifically included in the Eastern Parkway Restriction, the subject variance is required; and

HEREAS, the applicant represents that the proposed building complies with all zoning and Building Code regulations, except for the Eastern Parkway Restriction; and

WHEREAS, the Board notes that it has authority to hear appeals to final determinations of the Department of Buildings, as set forth in Charter § 666.6 and that the basis for the subject appeal is a final determination from the Department of Buildings, with objections that cite to the Administrative Code and the Building Code; and

WHEREAS, the applicant does not contest the Department of Buildings' interpretation of the cited Administrative Code and Building Code provisions, or assert that the objections are unwarranted or contrary to law; and

WHEREAS, instead, the applicant brings the subject appeal to seek a modification of the Administrative Code's Eastern Parkway Restriction and the related Building Code provision, pursuant to the Board's authority under Charter § 666.7; and

WHEREAS, if all other requirements of Charter § 666 are met, including the subject matter and source of the final determination, the Board may grant a variance pursuant to Charter § 666.7, if it finds that (1) there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law; (2) the spirit of the law shall be observed; (3) public safety shall be secured; (4) substantial justice is done; and (5) if the Housing Maintenance Code is varied it shall be limited to the extent permitted by the code and only in the manner provided for in it; and

WHEREAS, as to the practical difficulties and hardship, the applicant represents that (1) the site is L-shaped and shallow in depth, which constrains development; and (2) the affordable housing development's programmatic needs require greater lot coverage, and construction within 30 feet of Eastern Parkway; and

WHEREAS, as to the site's irregular shape and shallow depth, the applicant represents that the proposed zoning lot is

L-shaped with three street frontages, varying widths and depths, and lot lines that are not parallel to each other; and

WHEREAS, as to the configuration of the tax lots, the applicant represents that Lots 36 and 37, with frontage on the Eastern Parkway Extension are between 40 and 62 feet in depth; accordingly, viewed separately, no feasible development could occur on those lots give the Eastern Parkway Restriction, which would leave the lots with buildable footprints of between ten and 32 feet deep; and

WHEREAS, thus, these two lots, independently are shallow and irregular and when viewed as part of the merged lot, contribute to the combined irregular zoning lot; and

WHEREAS, accordingly, the proposed non-complying building has a constrained footprint due to the site's irregularity, and a building that complies with the Eastern Parkway Restriction would not be feasible because it would require a reduction of 33 percent of the number of affordable housing units; and

WHEREAS, specifically, the applicant notes that the footprint of the building cannot be reconfigured to extend to the street line of St. John's Place because zoning restricts the construction of buildings within the Quality Housing Program on wide streets in R6 zoning districts from having a street wall closer to the street line than the closest street wall of an existing building to such street line, pursuant to ZR § 23-633(a)(1); and

WHEREAS, the applicant notes that the street wall of the building on the adjacent tax lot 25, is set back 15 feet along St. John's Place and 20 feet along Howard Street; and

WHEREAS, the applicant provided building plans which reflect that a building that complies with the street wall requirements and the Eastern Parkway Restriction, built to a maximum permitted height of 70 feet, could only accommodate 12 residential units; and

WHEREAS, the applicant represents that the funding for affordable housing units, from the sources noted above, requires a minimum of 18 units at the site, and thus, a building with 12 units would be ineligible for the designated programs; and

WHEREAS, the Board agrees that due to the irregular shape of the lot and the applicant's programmatic need to provide a minimum of 18 residential units, the applicant has established that there are practical difficulties in constructing a building that complies with the Eastern Parkway Restriction and the Building Code; and

WHEREAS, as to the spirit of the law, the applicant represents that the purpose of the Eastern Parkway Restriction, which the City adopted in 1888, and the Building Code, which reinforces it, was to create a park-like setting over the several miles of the western portion of Eastern Parkway; and

WHEREAS, the applicant notes that the portions of Eastern Parkway, west of Ralph Avenue, were built in compliance with the Eastern Parkway Restriction; and

WHEREAS, in contrast, the applicant represents that the area surrounding the site along the Eastern Parkway Extension does not have an established context of Eastern Parkway Restriction compliance; and

WHEREAS, specifically, the applicant notes that the entire Eastern Parkway Extension, beginning at Ralph Avenue

MINUTES

and spanning west to Bushwick Avenue, reflects more than 155 tax lots that are occupied by buildings constructed within 30 feet of the Eastern Parkway Extension, contrary to the Eastern Parkway Restriction; and

WHEREAS, the applicant provided aerial photographs, which support this assertion; and

WHEREAS, the applicant represents that the preservation of the 30-ft. setback on Eastern Parkway was absent from the discussion at the City Planning Commission's environmental review and report and the public hearings held by the Brooklyn Borough President, the City Planning Commission, and the City Council during the ULURP process associated with the City's disposition of portions of the subject site; and

WHEREAS, the Department of Parks and Recreation provided a letter, dated March 5, 2009, stating that it did not have any objection to the proposed project; and

WHEREAS, specifically, the Department of Parks and Recreation states that the two adjacent buildings similarly do not comply with the Eastern Parkway Restriction and that the proposal provides for a sidewalk with a depth of 20 feet along the Eastern Parkway Extension and aligns with the adjacent buildings, so it finds it to be appropriate; and

WHEREAS, the Board agrees with the applicant that although the Eastern Parkway Restriction includes the Eastern Parkway Extension, that the Extension, with a number of lots with shallow depths in the 40-ft. range, and a distance from the western park blocks, was not the focus for the Eastern Parkway Restriction; and

WHEREAS, additionally, the Board notes the existing condition along the Eastern Parkway Extension, which is occupied by a stock of buildings that date back 100 years and more lacks any context for a 30-ft. setback; and

WHEREAS, accordingly, the Board finds that the proposed construction within the 30-ft. setback does not conflict with the spirit of the law; and

WHEREAS, as to public safety, the applicant states that, as part of the City approval associated with the ULURP application, an environmental review was conducted pursuant to New York State Environmental Quality Review Act, 6 NYCRR § 617 (SEQRA) and the Environmental Quality Review Rules of Procedure of 1991 and Executive Order No. 91 or 1977 (CEQR) by HPD and HPD issued a negative declaration, dated November 20, 2007; and

WHEREAS, the applicant states that the Negative Declaration reflects that the project will not have any significant effect on the quality of the environment and will not result in any significant adverse impacts; and

WHEREAS, additionally, the applicant states that in order to ensure that public safety will be secured, the applicant must submit a Phase II Sampling and Analysis Work Plan to the Department of Environmental Protection identifying the nature and extent of potential soil and groundwater contamination at the site; the applicant must submit a report of its findings, and, if remediation is required, is responsible for all necessary remediation prior to occupancy of the site; and

WHEREAS, accordingly, the Board has determined that the proposed project will not interfere with public safety; and

WHEREAS, as to substantial justice, the applicant notes

that the majority of the sites along the Eastern Parkway Extension have been developed without 30-ft. setbacks and, thus, the requirement of compliance with the Eastern Parkway Restriction would result in the loss of six required units of affordable housing, the abandonment of the proposal, and ultimately the separation of the two lots fronting on Eastern Parkway, which cannot be feasibly developed without the merger of the lots; and

WHEREAS, the Board concurs that substantial justice is maintained; and

WHEREAS, the Board notes that the applicant does not seek a variance of the Housing Maintenance Code and, thus, that finding is not relevant to the subject application; and

WHEREAS, additionally, the Board notes that, according to the applicant, the proposal will be in full compliance with all other provisions of the Administrative Code and the Building Code, as well as the Multiple Dwelling Law, and the Zoning Resolution; and

WHEREAS, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under Charter § 666.7 and varies Administrative Code § 18-112; the Board notes that the variance of the Eastern Parkway Restriction addresses the non-compliance with Building Code § 3201.3.1, by reference; and

WHEREAS, in reaching this determination, the Board notes that its finding is based on the unique facts related to the physical conditions of the site as presented in the instant application, and that this decision does not have general applicability to any pending or future Board application.

Therefore it is Resolved, that the decision of the Brooklyn Borough Commissioner, dated January 29, 2010, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received February 8, 2010" (5) sheets; and on further condition:

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

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

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

Adopted by the Board of Standards and Appeals, March 9, 2010.

185-09-A & 186-09-A

APPLICANT – Diffendale & Kubec, AIA, for G.L.M. Development Corp., owner.

SUBJECT – Application June 6, 2009 – Construction not fronting on a mapped street, contrary to Section 36 of the General City Law. R3 Zoning district.

PREMISES AFFECTED – 61 and 67 Elder Avenue, Elder Avenue prolongation 102.4' north of Kenneth Place, Block

MINUTES

6789, Lot 142, 144, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Les Newhalphen.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M. for continued hearing.

283-09-BZY thru 286-09-BZY

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Alco Builders, Inc., owners.

SUBJECT – Application October 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 90-18 176th Street, between Jamaica and 90th Avenues, Block 9811, Lot 60 (tent), Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Mark Issac.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M. for continued hearing.

280-09-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 330 West 86th Street, LLC, owner.

SUBJECT – Application January 26, 2010 – Appeal challenging Department of Building's authority under the City Charter to interpret or enforce provisions of Article 16 of the General Municipal Law as it applies to the construction of a proposed 16 story+ penthouse. R10A Zoning district.

PREMISES AFFECTED – 330 West 86th Street, south side of West 86th street, 280' west of the intersection of Riverside Drive and West 86th Street, Block 1247, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 10 A.M., for adjourned hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, MARCH 9, 2010

1:30 P.M.

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

ZONING CALENDAR

161-09-BZ

CEQR #09-BSA-106K

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

SUBJECT – Application April 23, 2009 – Variance (§72-21) for the development of two residential buildings (20 dwelling units) contrary to rear yard equivalent, floor area, lot coverage, minimum distance between buildings and minimum distance between legally required window regulations (§§23-532, 23-145, 23-711, 23-861). R6B zoning district.

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

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Richard Lobel.

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:

WHEREAS, the decision of the Department of Buildings, dated April 21, 2009, acting on Department of Buildings Application No. 302370404, reads:

“23-145 Subject application is proposing a floor area ratio that exceeds that permitted.

23-145 Subject application is proposing lot coverage that exceeds that permitted.

23-532 Subject property is a through lot that is 110 feet or more in maximum depth from street to street, required rear yard equivalent is not being provided.

23-532 Rear yard equivalent provided is non-complying in that: the open area provided does not have a minimum depth of 60 feet, midway between the two street lines.

23-71 Subject building is not exempt from minimum distance between buildings on a single zoning lot and must be provided for.

23-711 Provide required standard minimum distance between buildings on the same zoning lot in accordance with the height of such buildings and the presence of legally required windows in facing

MINUTES

building walls.

23-861 The minimum distance provided between a legally required window and any wall/a rear lot line/a side lot line is less than 30 feet, measured in a horizontal plane at the sill level of, and perpendicular to, such window for the full width of the rough window opening;" and

WHEREAS, a public hearing was held on this application on July 28, 2009, with continued hearings on November 17, 2009, and February 9, 2010, and then to decision on March 9, 2010; and

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

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an R6B zoning district, the construction of three four-story residential buildings, contrary to ZR §§ 23-145, 23-532, 23-711, and 23-861; and

WHEREAS, Community Board 6, Brooklyn, recommends disapproval of this application, citing the following concerns: (1) the subsurface conditions encountered at the site are not a unique physical condition; (2) the applicant's inability to realize a reasonable return is due to mismanagement rather than actual costs; (3) the proposed construction is out of context with the surrounding neighborhood; (4) any hardship claimed by the applicant is self-created because the applicant should have determined the extent of the subsurface conditions prior to construction; and (5) the subject proposal does not represent the minimum variance that can afford relief to the applicant; and

WHEREAS, City Council Member Brad Lander provided written and oral testimony in opposition to this application; and

WHEREAS, New York State Senator Velmanette Montgomery provided written testimony in opposition to this application; and

WHEREAS, New York State Assembly Member Joan L. Millman provided written testimony in opposition to this application; and

WHEREAS, certain neighborhood residents provided written and oral testimony in opposition to this application, citing the following primary concerns: (1) the applicant's need to use a pile foundation system is not unique, as every large building that has been recently constructed in the area has had to use a pile foundation system; (2) the project's lack of profitability is due to mismanagement and a failure to perform due diligence on the site; (3) the proposed construction is out of context with the surrounding neighborhood; (4) any claimed hardship is self-created because the applicant would have uncovered the subsurface conditions if it had performed due diligence, and could have mitigated the hardship during excavation and construction; and (5) the subject proposal does not represent the minimum variance that can afford relief to the applicant; and

WHEREAS, the subject site is a through lot located between Fourth Avenue and Fifth Avenue, with 100 feet of frontage on Garfield Place, 60 feet of frontage on Carroll

Street, and a total lot area of 10,174 sq. ft.; and

WHEREAS, the site is occupied by the partially constructed five-story condominium building with frontage on Garfield Place; and

WHEREAS, specifically, on October 18, 2007, the Department of Buildings ("DOB") approved a five-story 17-unit condominium building with a floor area of 20,348 sq. ft. on the subject site fronting Garfield Place (the "Approved Building"); and

WHEREAS, the plans associated with the Approved Building reflect that the remainder of the lot, including the frontage on Carroll Street, be maintained as open space for tenant use; and

WHEREAS, the nine required parking spaces for the Approved Building were to be located in a portion of the cellar extending to Carroll Street; and

WHEREAS, the applicant represents that in January 2008, during demolition and excavation of the site associated with the construction of the Approved Building, concrete bunkers were discovered below grade, which the applicant removed; and

WHEREAS, the applicant further represents that additional construction is necessary to compensate for the costs associated with the discovery and removal of the bunkers; and

WHEREAS, thus, the applicant now proposes to construct three four-story townhouses in addition to the five-story condominium building previously approved on the site; and

WHEREAS, the proposed development would have the following non-compliances: an FAR of 2.67 (2.0 FAR is the maximum permitted); a lot coverage of 71 percent (60 percent is the maximum permitted); a rear yard with a depth of 28'-8" (a minimum depth of 60'-0" is required); and insufficient distance between buildings and between legal required windows and lot lines; and

WHEREAS, the applicant asserts that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying district regulations: (1) the presence of underground concrete bunkers at the site; (2) subsurface soil conditions consisting of fill and clay strata; and (3) the inadequate foundation systems of the surrounding buildings; and

WHEREAS, the applicant states that, in the early stages of excavation for the Approved Building, the contractor uncovered concrete bunkers related to the site's former use by Brooklyn Edison as a subsidiary station in the first half of the 20th Century; and

WHEREAS, the applicant further states that while the perimeter walls of the underground substation extended to the Garfield Place side of the site, the majority of it, including interior concrete chambers, was located on the Carroll Street portion of the site; and

WHEREAS, the applicant represents that the discovery of the bunkers increased the costs of excavation, underpinning, demolition and foundations by \$2,868,000 above what was anticipated when they commenced

MINUTES

construction on the Approved Building; and

WHEREAS, specifically, the applicant states that special equipment and additional time was required to demolish and remove the bunker walls and that portions of the bunkers had to be preserved to protect the structural integrity of the foundations of surrounding buildings along Carroll Street; and

WHEREAS, the applicant represents that the foundation walls for the substation extended into the portion of the site on Garfield Place, which resulted in the need to perform additional underpinning to the surrounding buildings along Garfield Place; and

WHEREAS, as to the bunkers, the Board recognizes that this may be a unique condition, but it disagrees that it leads to a hardship in developing the site; and

WHEREAS, the Board finds that the time and costs associated with the discovery of the subsurface conditions cannot be the basis of the hardship; and

WHEREAS, the Board acknowledges that if it found that the existence of the claimed subsurface conditions were unique and led to a hardship, then the failure to discover these conditions at the commencement of construction would not preclude the applicant from seeking relief from the Board; and

WHEREAS, however, the Board cannot grant such relief in the instant case, where early discovery of the subsurface conditions based on due diligence by the owner would have afforded it the opportunity to construct a conforming development that could have avoided the hardship related to these conditions; and

WHEREAS, the Board notes that the subject site was used as a Brooklyn Edison substation for approximately 15 years until it was de-commissioned in 1934, and that nothing in the site history indicates excavation below grade subsequent to the de-commissioning; and

WHEREAS, the Board further notes that the presence of the substation was clearly noted on readily accessible maps from that era, such as Sanborn maps; and

WHEREAS, the Board further notes that boring samples taken on the site prior to the commencement of construction indicated the existence of obstructive concrete at seven feet below grade at one sample location near Carroll Street; and

WHEREAS, although subsequent boring samples did not uncover any obstructions, the Board notes that these later boring samples were not taken from the portion of the site near Carroll Street, where the bulk of the concrete bunkers are located; and

WHEREAS, based on the site's history of use as an electrical substation and the applicant's geotechnical borings, the Board finds that if the applicant had conducted proper due diligence on the site it would have been aware of the existence of the concrete bunkers prior to construction; and

WHEREAS, as to the extent and presence of the bunkers as a claimed hardship, the applicant represents that the removal of the bunker was required because the Approved Building included a cellar over the entire site, and

the applicant proposed to locate its required parking in the portion of the cellar on the Carroll Street side of the site; and

WHEREAS, the Board notes the bunkers are located primarily along the Carroll Street portion of the site and that the applicant's lack of due diligence is relevant insofar that early discovery of the bunkers may have resulted in a revised site plan and design that could avoid the additional costs for removing the bunker; and

WHEREAS, specifically, the applicant could have altered its proposal to provide a scheme where the cellar does not extend to Carroll Street and parking is provided at grade along Carroll Street, thus eliminating the need for significant excavation or removal of the bunker; and

WHEREAS, finally, regardless of when the bunkers were discovered, the Board notes that the elective cost to remove them has only been represented to be \$253,940, and that the bulk (approximately 92 percent) of the \$2,868,000 in additional costs claimed by the applicant are associated with the drilled pile foundations as well as the underpinning of the adjacent buildings; and

WHEREAS, accordingly, the Board rejects the assertion that the concrete bunkers, which were (1) explicitly noted on maps of the site; (2) detected during boring tests; (3) located on only a portion of the site and one which did not require their removal; and (4) only approximately eight percent of the identified hardship costs, create an unnecessary hardship in developing the site; and

WHEREAS, as to the soil and other subsurface conditions, the applicant represents that the foundation system for the Approved Building was initially designed to include driven piles, but that after commencing construction and removing the concrete bunkers, they were required to change the foundation system to drilled piles due to the presence of fill and silty clay strata and because the foundations of the neighboring homes abut the concrete bunkers on the subject site; and

WHEREAS, however, the Board notes that the engineering reports associated with the Approved Building actually advised the use of drilled piles rather than driven piles, and that the subsurface conditions were basic urban fill found throughout the city; and

WHEREAS, in order to substantiate whether the subsurface conditions that required drilled piles were indeed unique, the Board asked the applicant to provide information on the foundation system of other developments in the area; and

WHEREAS, while the applicant provided a list of buildings which it claimed were constructed on spread footings, the applicant failed to provide any evidence to support such claims; and

WHEREAS, the Board was therefore not persuaded that the subsurface conditions and the need for drilled piles instead of driven piles were unique to this site; and

WHEREAS, as to the underpinning costs, the Board notes that the applicant was required to underpin the two adjacent buildings along Garfield Place where the Approved Building is located, but that the applicant also underpinned the adjacent buildings along Carroll Street as a result of the

MINUTES

excavation and cellar construction; and

WHEREAS, the Board rejects that such conditions and associated costs are unique in the area, and observes that the surrounding neighborhood comprises old row-house and brownstone development that extend from side lot line to side lot line, and were built during generally the same era as the buildings adjacent to the subject site; and

WHEREAS, further, the Board notes that in similar contextual districts, underpinning adjacent older buildings is typically a part of construction and such costs are not unique to this site; and

WHEREAS, the Board further notes that the age and condition of the building stock also largely determined the need to have drilled piles instead of driven piles, which again are not unique to the site; and

WHEREAS, therefore the Board rejects the applicant's claim that there were \$2,868,000 in premium costs associated with the unique conditions on the site; and

WHEREAS, additionally, the Board does not consider the costs for delays, new contracts and overruns associated with the subsurface work to be hardship costs because they were created by the owner; and

WHEREAS, the Board rejects the applicant's assertion that the discovery of the bunkers, the subsurface soil conditions, and the foundation systems of the surrounding buildings are unique physical conditions which result in a hardship, and further that the costs to remove the bunker were necessary to the development of the site; and

WHEREAS, accordingly, the Board finds that the applicant has failed to provide substantial evidence in support of the finding set forth at ZR § 72-21(a); and

WHEREAS, because the applicant has failed to provide substantial evidence in support of the finding set forth at ZR §72-21(a), the application also fails to meet the finding set forth at ZR §72-21(b); and

WHEREAS, even assuming *arguendo* that the noted conditions should be considered unique such that the finding set forth at ZR § 72-21(a) is met, the applicant has failed to submit credible financial data in support of its claim that conforming residential development on the site will not realize a reasonable return; and

WHEREAS, specifically, the Board notes that the applicant submitted a financial analysis which included the \$2,868,000 overrun in the contract price as part of the estimated project costs; and

WHEREAS, the Board directed the applicant to provide a breakdown of the project costs that was not based on the applicant's contract management and delays, but the applicant failed to provide such a cost breakdown; and

WHEREAS, the Board also questioned the conforming scenarios presented by the applicant, including the proposal to build out a full cellar as the only alternative for the site; and

WHEREAS, specifically, the Board requested an analysis of a conforming development that provided only a partial cellar, thus avoiding the costs associated with the removal of the bunker and the excavation and underpinning along Carroll Street; and

WHEREAS, the applicant failed to provide an analysis of such a scenario but instead claimed that surface parking reduced revenues; and

WHEREAS, the applicant did not provide credible supportive evidence regarding a loss of revenue associated with surface parking; and

WHEREAS, in the absence of credible financial data in support of its claim that conforming residential development on the site will not realize a reasonable return, the applicant failed to make the (b) finding; and

WHEREAS, even if the Board considered the noted site conditions to be unique and that the proposed development was the only way for the applicant to realize a reasonable return, such that the findings set forth at ZR § 72-21(a) and (b) are met, the Board finds that the applicant would still fail to satisfy the finding set forth at ZR § 72-21(d), which requires that the hardship claimed as a ground for a variance has not been created by the owner or by a predecessor in title; and

WHEREAS, the Board further notes that, as stated above, if the applicant had performed due diligence on the site it would have been aware of the existence of the underground substation prior to construction and that there were alternatives to removing the bunkers once discovered, thus, the applicant chose to incur the additional costs and has not demonstrated that they were unavoidable; and

WHEREAS, accordingly, the Board considers the claimed hardship to be self-created in that the cost overruns cited by the applicant were due to the owner's decision to remove the concrete bunkers and proceed with the construction of subsurface parking on the portion of the site fronting Carroll Street, rather than revising its plans to mitigate the costs associated with the discovery of the bunkers; and

WHEREAS, thus, the application also fails to meet the finding set forth at ZR §72-21(d); and

WHEREAS, since the application fails to meet the findings set forth at ZR § 72-21 (a), (b) and (d), it must be denied.

Therefore it is Resolved that the decision of the Department of Buildings, dated April 21, 2009, acting on Department of Buildings Application No. 302370404, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, March 9, 2010.

14-09-BZ

APPLICANT – Eric Palatnik, P.C., for Orenstein Brothers, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application January 26, 2009 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store and automotive laundry (UG 16B). C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2294 Forest Avenue, Southeast intersection of Forest Avenue and South Avenue, Block 1685, Lot 15, 20, Borough of Staten Island.

COMMUNITY BOARD #ISI

MINUTES

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 1:30 P.M., for continued hearing.

44-09-BZ

APPLICANT – Philip L. Rampulla, for Tony Chrampanis, owner.

SUBJECT – Application March 11, 2009 – Variance (§72-21) to allow for a two-story commercial building (UG 6) with accessory parking, contrary to use regulations (22-00). R3-1 district.

PREMISES AFFECTED – 2175 Richmond Avenue, Eastside of Richmond Avenue 39.80' south of Saxon Avenue, Block 2361, Lot 12(tent), 14, 17, 22, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phillip Rampulla and Henry Arlin Schmon.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 1:30 P.M., for continued hearing.

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radoncic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for continued hearing.

254-09-BZ thru 256-09-BZ

APPLICANT – Ivan F. Khoury, for Kearney Realty Corporation, owner.

SUBJECT – Application September 4, 2009 – Variance (§72-21) to legalize three existing homes, contrary to front yard (§23-45) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 101-03/05/07 Astoria Boulevard aka 27-31 Kearney Street, north side of Astoria Boulevard & northeasterly side of Kearney Street, Block 1659, Lot 51, 53, 56, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Ivan F. Khoury.

For Opposition: Yvonne Bravo.

ACTION OF THE BOARD – Laid over to April 20, 2010 at 1:30 P.M., for continued hearing.

272-09-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Bob Roberts, owner; The Fitness Place Astoria N.Y. Inc., lessee.

SUBJECT – Application September 24, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Lucille Roberts*) on the second and third floors in an existing three-story building. C5-2.5 (M.D) zoning district.

PREMISES AFFECTED – 32-62 Steinway Street, north side, 281' east of 34th Avenue, Block 656, Lot 61, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for adjourned hearing.

307-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Zahava Hurwitz and Steven Hurwitz, owner.

SUBJECT – Application November 9, 2009 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to open space and floor area (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1358-1360 East 28th Street, West side of East 28th Street between Avenue M and Avenue N. Block 7663, Lot 73 & 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for continued hearing.

325-09-BZ

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

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

PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel, Howard Weiss, Rabbi Cohen and Henry Herbst.

For Opposition: Stuart A. Klein, Chaim Frenkel and Edith Frankel.

ACTION OF THE BOARD – Laid over to April 13, 2010 at 1:30 P.M., for continued hearing.

MINUTES

15-10-BZ

APPLICANT – Dennis D. Dell’Angelo, for Avraham Rosenshein, owner.

SUBJECT – Application February 1, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141); side yards (§23-461), and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 3114 Bedford Avenue, west side of Bedford Avenue, 100’ north of Avenue J, Block 7588, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis D. Dell’Angelo.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 13, 2010 at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

*CORRECTION

This resolution adopted on September 15, 2009, under Calendar No. 327-04-BZ, and printed in Volume 94, Bulletin Nos. 35-37, is hereby modified to read as follows:

327-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Beth Gavriel Bukharian Congregation, owner.

SUBJECT – Application June 5, 2009 – Extension of Time to complete construction and Extension of Time to obtain a certificate of occupancy of a previously granted Variance (§72-21) for the enlargement of an existing Synagogue and School (*Beth Gavriel*) which expired on June 7, 2009. R1-2 zoning district.

PREMISES AFFECTED – 66-35 108th Street, east side of 108th Street, east side of 108th Street, between 66th Road and 67th Avenue, Block 2175, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Elizabeth Safian.

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, an extension of time to complete the enlargement of an existing building occupied by both a synagogue and a religious school, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 21, 2009 after due notice by publication in *The City Record*, with a continued hearing on August 19, 2009, and then to decision on September 15, 2009; and

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

WHEREAS, the subject site is located on the east side of 108th Street, between 66th Road and 67th Avenue, within an R1-2 zoning district; and

WHEREAS, this application is submitted on behalf of the Beth Gavriel Bukharian Congregation (the “Synagogue”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 2005 when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the enlargement of an existing building occupied by both a synagogue and a religious school; and

WHEREAS, substantial construction was to be completed by June 7, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that due to financing issues and other unforeseen construction delays, the

construction has not been completed and the filing of an application for a certificate of occupancy has been delayed; and

WHEREAS, the applicant states that the Synagogue has obtained funding commitments and construction is now ongoing; and

WHEREAS, thus, the applicant now requests a three-year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board raised concerns about a Stop Work Order issued by DOB on September 15, 2008 in connection with the revocation of a permit issued to the subject premises; and

WHEREAS, in response, the applicant submitted a letter from DOB that rescinded the notice of revocation of the permit, and the applicant states that no work was done at the site while the Stop Work Order was in effect; 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 June 7, 2005, so that as amended this portion of the resolution shall read: “to grant a three-year extension of time to complete construction and obtain a certificate of occupancy, to expire on September 15, 2012; *on condition:*

THAT construction shall be substantially complete by March 15, 2012;

THAT a certificate of occupancy shall be obtained by September 15, 2012;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 401995828)

Adopted by the Board of Standards and Appeals, September 15, 2009.

****The resolution has been corrected in the Therefore clause. Corrected in Bulletin No. 11, Vol. 95, dated March 17, 2010.**