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CONTENTS

CONTENTS

DOCKET

New Case Filed Up to October 18, 2005

293-05-BZ B. BK 8751 18th Avenue, between 18th Avenue and Bay 19th Street approximately 100 feet East of Bath Avenue, Block 6403, Lot 6, Borough of Brooklyn, Application # 302003506. This application is filed pursuant to §73-44 of the ZR, to request a Special Permit to allow a reduction of required parking for an as-of-right commercial building located within a C8-1 district.
COMMUNITY BOARD #11BK

294-05-A B. Q 146-34 Pleasant Place, West side of Pleasant Place, 100ft north of intersection with 146th Drive, Block 13351, Lot 100, Borough of Queens, Application # 402147299. Appeal pursuant to Article III, Sec. 36 of the General City Law, to permit construction of a building that does not front a final mapped Street.
COMMUNITY BOARD #13Q

295-05-A B. Q 146-36 Pleasant Place, West side of Pleasant Place, 100ft north of intersection with 146th Drive, Block 13351, Lot 101, Borough of Queens, Application # 402147271. Appeal pursuant to Article III, Sec. 36 of the General City Law, to permit construction of a building that does not front a final mapped Street.
COMMUNITY BOARD #13Q

296-05-A B. Q 146-38 Pleasant Place, West side of Pleasant Place, 100ft north of intersection with 146th Drive, Block 13351, Lot 103, Borough of Queens, Application # 402147280. Appeal pursuant to Article III, Sec. 36 of the General City Law, to permit construction of a building that does not front a final mapped Street.
COMMUNITY BOARD #13Q

297-05-BZ B. M 31-33 Vestry Street, Southerly side of Vestry Street 100 ft. West of Hudson Street, Block 219, Lot 18, Borough of Manhattan, Application # 104014781. Propose to construct a nine story residential structure that will contain seven dwellings and nine underground parking spaces on the site of a former parking lot.
COMMUNITY BOARD #1M

298-05-BZ B. S. I. 1390 Richmond Avenue, Bounded by Richmond Avenue, Lamberts Lane and Globe Avenue, Block 1612, Lot 2, Borough of Staten island, Application # 500794349. Construct a new 2-story building consisting of an eating and drinking establishment on the 1st floor and offices on the 2nd floor.
COMMUNITY BOARD #2S I

299-05-A B. S. I. 369 Wilson Avenue, North side of Wilson Avenue between Etingville Boulevard and Ridgewood, Block 5507, Lot 13, Borough of Staten Island, Application # 500667904. To permit one, 2-story 1-family home within the bed of a mapped Street, Getz Avenue, pursuant to Section 35 of the GCL. There are no plans to build this portion of Getz Avenue in the foreseeable future.
COMMUNITY BOARD #3SI

300-05-A B. Q 995 Bayside, East of Bayside, 0 ft North of West Market Street, Block 16350, Lot 300, Borough of Queens, Application # 402178754. The building is not fronting on a mapped Street, Art. III Sec. 36 of the General City Law & upgrade private disposal system, contrary to Department policy.
COMMUNITY BOARD #14Q

301-05-BZ B. M 410 8th Avenue, located on the East side of 8th Avenue between 30th and 31st Streets, Block 780, Lot 76, Borough of Manhattan, Application # 104165653. To permit the operation of a Physical Culture Eastablishment on the second floor mezzanine of a building located within a C6-3X.
COMMUNITY BOARD #5M

302-05-BZ B. BK 262-276 Atlantic Avenue, on the South side of Atlantic Avenue between Boerum Place and Smith Street, Block 181, Lot 11, Borough of Brooklyn, Application # 301504272. To permit a transient hotel with non-complying bulk, height and curb cut.
COMMUNITY BOARD #2BK

DOCKET

303-05-BZ B. M 428 East 75th Street, between York and First Avenues, Block 1469, Lot 36, Borough of Manhattan, Application # 104086775. To permit the legalization of the second floor of the existing two story commercial structure for use as a Physical Culture Establishment. Said use is not permitted as of right within any zoning district in the City of N.Y and within the underlying R B zoning district, requires a variance from the BSA.
COMMUNITY BOARD #9M

304-05-A B. Q 38 Ocean Avenue, East side 294.86 north of Rockaway Point Blvd, Block 16350, Lot 300, Borough of Queens, Application # 402176015. Building not fronting a mapped Street contrary to Art. III, Sec. 36 GCL and Sec. 27-291 Admin. Code of the City of N. Y.
COMMUNITY BOARD #14Q

305-05-A B. Q 19 Queens Walk, East side 416.39 north of Breezy Point Blvd., Block 16350, Block 400, Borough of Queens, Application # 402176006. Building not fronting a mapped Street contrary to Art. III, Sec. 36 GCL and Sec. 27-291 Admin. Code of the City of N. Y & the private disposal system is in the bed of a private service road contrary to DOB policy.
COMMUNITY BOARD #14Q

306-05-BZY B. Q 206A Beach 3rd Street, Block 15601, Lot 34, Borough of Queens, Application # 402190874. Extend the time to complete construction for a major or minor development pursuant to Z.R §11-331.
COMMNITY BOARD #14Q

307-05-BZY B. Q 606 Seagirt Avenue, On Siegert Avenue, Block 15604, Lot 292, Borough of Queens, application # 402204011. Extend the time to complete construction for a major or minor development pursuant to Z.R §11-331.
COMMNITY BOARD #14Q

308-05-BZY B. Q 712/714 Seagirt Avenue, On Seagirt Avenue, Blocks 15604 and 15605, Lots 293 and 45, Borough of Queens, Application #'s 402172246 and 402172251. Extend the time to complete construction for a major or minor development pursuant to Z.R §11-331.
COMMNITY BOARD #14Q

309-05-BZ B. Q 53-03 Broadway, North side of Broadway on the corner of Broadway and 53rd Place, Block 1155, Lot 36, Borough of Queens, Application #402116884. Proposed construction of a new six story mixed use building consisting of commercial, community facility and residential uses in a C1-2 in an R5 zoning district which does not comply with the bulk regulations.
COMMUNITY BOARD #1Q

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

NOVEMBER 22, 2005, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 22, 2005, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

871-46-BZ
APPLICANT – Joseph P. Morsellino, Esq, for Boulevard Leasing, LLC, owner.
SUBJECT - Application September 9, 2005 - Extension of Time/Waiver to obtain a Certificate of Occupancy which expired December 11, 2002. The premise is located in a C4-2 zoning district.
PREMISES AFFECTED – 97-45 Queens Boulevard, northwest corner of 64th Road, Block 2091, Lot 1, Borough of Queens.
COMMUNITY BOARD #6Q

7-51-BZ
APPLICANT – Eric Palatnik, P.C., for 6717 4th Avenue, LLC, owner.
SUBJECT – Application December 29, 2004 -Extension of Term/Waiver permitting in a business use district, Use Group 6, using more than the permitted area and to permit the parking of patron's motor vehicles in a residence use portion of the lot. The subject premises is located in an R-6/R7-1(C1-3) zoning districts.
PREMISES AFFECTED – 6717/35 Fourth Avenue, northeast corner of Senator Street, Block 5851, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #8BK

643-60-BZ
APPLICANT – Kenneth H. Koons, for Poplar Street Parking, Inc., owner.
SUBJECT – Application May 24, 2005 – Extension of Term of a variance for an existing public parking lot. The premise is located in an R4 zoning district.
PREMISES AFFECTED – 2443 Poplar Street, aka 2443-49 Poplar Street, north side of Poplar Street, 165' west of Paulding Avenue, The Bronx.
COMMUNITY BOARD #11BX

386-74-BZ
APPLICANT – Stadtmauer Bailkin/Steve Sinacori, for Riverside Radio Dispatcher, Inc., owner.
SUBJECT - Application October 19, 2005 - Reopening for an amendment to ZR 72-21 a Variance application to permit the erection of a one story building for use as an automobile repair shop which is not a permitted use. The proposed amendment pursuant to ZR 52-35 for the change of use from one non-conforming use (Automotive Repair Shop UG16) to another non-conforming use (Auto Laundry UG16) is contrary to the previously approved plans. The premise is located in C4-4 zoning district.
PREMISES AFFECTED – 4184/4186 Park Avenue, east side of Park Avenue, between East Tremont Avenue and 176th Street, Block 2909, Lot 8, Borough of The Bronx.
COMMUNITY BOARD #6BX

122-93-BZ
APPLICANT – Adam Rothkrug, Esq., for Equinox Fitness Club, lessee; 895 Broadway LLC, owner.
SUBJECT - Application - March 31, 2005- Waiver of the rules, extension of term and amendment for a legalization of an enlargement to a physical cultural establishment that added 7, 605 square feet on the second floor and an addition of 743sq.ft on the first floor mezzanine.
PREMISES AFFECTED - 895/99 Broadway, W/S Broadway, 27'6"souht of corner of East 20th Street, Block 648, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #5M

77-99-BZ
APPLICANT – The Agusta Group, for Turnpike Auto Laundry, Inc., owner.
SUBJECT - Application March 8, 2005 - Extension of Term for an auto laundry Extension of Time to obtain a Certificate of Occupancy. The premise is located in a CD8-1 & R-2 zoning district.
PREMISES AFFECTED - 255-39 Jamaica Avenue, aka Jericho Turnpike, north side of Jamaica Avenue, 80' west of 256th Street, Block 8830, Lot 52, Borough of Queens.
COMMUNITY BOARD #13Q

162-05-A
APPLICANT – Jay Segal, Esq., Greenberg & Traurig, LLP, for William R. Rupp, owner.
SUBJECT - Application filed July 15, 2005 - to appeal a final determination from the Department of Buildings dated June 15, 2005 in which they contend that the a privacy wall must be demolished because it exceeds the height limitation set by the Building Code and that the project engineer has failed to show that the Wall has been engineered and built according to code.
PREMISES AFFECTED - 19-21 Beekman Place, a/k/a 461 East 50th Street, located at east side of Beekman Place between East 50th Street and East 51st Street, Block 1361, Lot 117, Borough of Manhattan.

CALENDAR

COMMUNITY BOARD#6BK

191-05-A/192-05-A
APPLICANT – Eric Palatnik, P.C., for Juliana Forbes, owner.
SUBJECT - Application filed on August 15, 2005 - Proposed construction of a two - two story , two family dwellings, which lies partially within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.
PREMISES AFFECTED - 12-09 116th Street, and 12-11 116th Street, at the intersection of 116th Street and 12th Avenue, Block 4023, Lots 44 & 45, Borough of Queens.
COMMUNITY BOARD #7Q

200-05-A & 201-05-A
APPLICANT – Joseph P. Morsellino, for Randolph Mastronardi, et al, owners.
SUBJECT – Application August 23, 2005 – to permit the building of two conforming dwellings in the bed of mapped 157th Street as per GCL Section 35.
PREMISES AFFECTED – 20-17 and 20-21 Clintonville Street, Clintonville Street between 20th Avenue and 20th Road, Block 4750, Lots 3 and Tent. 6. Borough of Queens.
COMMUNITY BOARD #8Q

203-05-A
APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Donna Gallagher, lessee.
SUBJECT – Application August 26, 2005 – Appeal to Department of Buildings to enlarge an existing single family frame dwelling not fronting on a mapped street contrary to General City Law Article 3, Section 36. Premises is located within an R4 zoning district.
PREMISES AFFECTED – 39 Ocean Avenue, east/south 294.86 N/O Rockaway Point Boulevard, Block 16350, Part of Lot 300, Borough of Queens.
COMMUNITY BOARD #14Q

NOVEMBER 22, 2005, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 22, 2005, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

40-05-BZ
APPLICANT – Petraro & Jones for Rafael Sassouni, owner; Graceful Services, Inc., lessee.
SUBJECT - Application April 21, 2005 - under Z.R. §73-36 to permit a legalization of a physical cultural establishment to be located on the second floor of four story mixed use building. The PCE use will contain 285 square feet to be used in conjunction with an existing physical cultural establishment on the second floor (988 Square feet)located at 1097 Second Avenue, Manhattan.
PREMISES AFFECTED – 1095 Second Avenue, west side of Second Avenue , 60.5 feet south of intersection with East 58th Street, Block1331, Lot 25, Borough of Manhattan.
COMMUNITY BOARD #6M

94-05-BZ
APPLICANT – Eric Palatnik, P.C., for Abraham Bergman, owner.
SUBJECT – Application April 20, 2005 - under Special Permit ZR §73-622 to permit the enlargement of a single family residence to vary ZR sections 23-141 for the increase in floor area and open space, 23-461 for less than the required side yards and 23-47 for less than the required rear yard. The premise is located in an R-2 zoning district.
PREMISES AFFECTED – 1283 East 29th Street, East 29th Street, north of Avenue M, Block 7647, Lot 11, Borough of Brooklyn.
COMMUNITY BOARD #14BK

96-05-BZ
APPLICANT – Petraro & Jones for Graceful Spa, lessee, 205 LLC, owner.
SUBJECT - Application April 21, 2005 - under Z.R. §73-36 to permit a legalization of physical cultural establishment located on the second floor of a five story mixed-use building. The PCE use will contain 1,465 square feet . The site is located in a C6-3-A Zoning District.
PREMISES AFFECTED – 205 West 14th Street, north side of West 14th Street, 50' west on intersection with 7th Avenue, Block 764, Lot 35, Borough of Manhattan.
COMMUNITY BOARD #4M

119-05-BZ
APPLICANT – Sheldon Lobel, P.C., for Sam Malamud, owner.

SUBJECT – Application May 16, 2005 - under Z.R.§72-21 to permit the proposed enlargement to an existing one and two story warehouse building, with an accessory office, Use Group 16, located in a C4-3 and R6 zoning district, which does not comply with the zoning requirements for floor area, floor area ratio, perimeter wall height, parking and loading berths, is contrary to Z.R. §52-41, §33-122, §33-432, §36-21 and §36-62.
PREMISES AFFECTED - 834 Sterling Place, south side, 80' west of Nostrand Avenue, Block 1247, Lot 30, Borough of Brooklyn.
COMMUNITY BOARD #8BK

138-05-BZ
APPLICANT – Lewis Garfinkel, for Devorah Fuchs, owner.
SUBJECT – Application June 6, 2005 - under Z.R.§ 73-22 to request a special permit to allow the enlargement of a single family residence which exceeds the allowable floor area and open space per ZR23-141(a), the side yard ZR23-461(a) and the rear yard ZR 23-47 is less than the minimum required of the Zoning Resolution. The premise is located in an R-2 zoning district.
PREMISES AFFECTED – 1227 East 27th Street, east side of 27th Street, Block 7645, Lot 34, Borough of Brooklyn.
COMMUNITY BOARD #14BK

187-05-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Salvatore Porretta and Vincenza Porretto, owners.
SUBJECT – Application August 9, 2005 - under Z.R.§72-21 - Propose to build a two family dwelling that will comply with all zoning requirements with the exception of two non-complying side yards and undersized lot area due to a pre-existing condition.
PREMISES AFFECTED - 78-20 67th Road, Southerly side of 67th Road, 170' easterly of 78th Street, Block 3777, Lot 17, Borough of Queens.
COMMUNITY BOARD #5Q

Pasquale Pacifico, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, OCTOBER 18, 2005
10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar, and Commissioner Chin.

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, July 26, 2005, were approved as printed in the Bulletin of August 4, 2005, Volume 90, Nos. 31-32.

SPECIAL ORDER CALENDAR

130-39-A
APPLICANT – Greenberg & Traurig, for Ann Rauch, owner.
SUBJECT – Application December 7, 2004 – reopening for an amendment to permit an existing building constructed in the bed of a mapped street, pursuant to Board resolution, and subsequently expanded pursuant to approval from the Department of Buildings, to be further enlarged and that such enlargement include second and third stories that continue a non-complying side yard condition, located in R1-2 zoning district.
PREMISES AFFECTED – 2 Ploughman's Bush (a/k/a 665 W. 246th Street). Block 5924, Lot 523, Borough of The Bronx.
COMMUNITY BOARD #8BX
APPEARANCES –
For Applicant: Deidre Carson.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO REOPEN HEARING **–**
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3
Negative:.....0
THE VOTE TO CLOSE HEARING **–**
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3
Negative:.....0
THE VOTE TO GRANT **–**
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated December 3, 2004, acting on Department of Buildings Application No. 200849207, reads, in pertinent part:
"1. Proposed enlargement [in] the bed of a mapped street is contrary to General City Law Section 35 Subchapter 2."; and

WHEREAS, this is an application for a reopening and an amendment to permit an enlargement to a building constructed in the bed of a mapped street pursuant to a prior General City Law §35 grant; and

WHEREAS, Community Board No. 8, Bronx, recommends approval of this application; and

WHEREAS, a public hearing was held on this application on September 13, 2005 after due notice by publication in *The City Record*, and then to decision on October 18, 2005; and

WHEREAS, the premises is located on the northwest corner of 246th Street and Independence Avenue and is within an R1-2 zoning district and the Special Natural Area District; and

WHEREAS, in 1939, under the subject calendar, the Board granted a General City Law §35 waiver, allowing a proposed single-family home enlargement that did not comply with applicable requirements for floor area ratio and open space ratio; and

WHEREAS, the resolution for this grant included a condition that in the event that land was taken for the construction of Independence Avenue by the City, no claim would be made against the City and the owner would remove the house from the bed of the mapped street; and

WHEREAS**,** in 1990, the Board amended the resolution to eliminate this condition; and

WHEREAS**,** in 1997, DOB allowed an attached carport to be enclosed as living space; and

WHEREAS, the applicant now seeks an amendment to the plans to allow for an enlargement that will increase the bulk of the building within the mapped street; and

WHEREAS, the original application also included a request for a waiver of a side yard requirement pursuant to ZR §72-01(g); and

WHEREAS**,** in order to expedite the application the applicant modified the proposal such that the proposed enlargement has been setback from the western edge of the property so that it does not encroach into the side yard; and

WHEREAS, thus, no zoning waiver is necessary and the Board notes that the proposed enlargement must comply with all applicable zoning provisions; and

WHEREAS, by letter dated April 1, 2005, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated July 25, 2005, the Department of Environmental Protection has reviewed the above project and states that a "Sewer Corridor" should be provided on the applicant's property for future placement of a sewer; and

WHEREAS**,** accordingly, 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 waives the Rules of Practice and Procedure, and *reopens and amends* the resolution, adopted in 1939, as amended in 1990, so that as amended this portion of the resolution shall read: "to allow amendment to the approved plans; *on condition* that all work shall substantially conform to drawings filed with this application marked 'Received October 7, 2005'–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with;

and *on further condition*:

THAT a "Sewer Corridor" will be provided as shown on the BSA-approved plan;

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

(DOB Application No. 200849207)

Adopted by the Board of Standards and Appeals, October 18, 2005.

62-83-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Shaya B. Pacific, LLC, owner.

SUBJECT - Application June 1, 2004 and updated 3/15/05 - reopening for an amendment to the resolution to allow the redesign of landscaped areas and the elimination of loading docks.

PREMISES AFFECTED - 696 Pacific Street, between Carlton and 6th Avenues, Block 1128, Lot 1002, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Chris Wright.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE RESOLUTION -

WHEREAS**,** this is an application for a re-opening and an amendment to the previously issued resolution; and

WHEREAS, a public hearing was held on this application on May 10, 2005, after due notice by publication in the *City Record*, with continued hearings on July 12, 2005 and September 13, 2005, and then to October 18, 2005 for decision; and

WHEREAS**,** Community Board No. 8, Brooklyn, recommends approval of this application as long as the applicant commits to the reconstruction of the Dean Street Playground; the Community Board stated the same in two resolutions, one dated December 20, 2004 and one dated September 26, 2005; and

WHEREAS, certain community groups, including the Dean Street Block Association and the Friends of Dean Street Playground, have submitted papers and appeared at the hearings in support of the applicant's proposal, but have also voiced certain concerns about the applicant's proposal; and

WHEREAS**,** on June 14, 1983, under the subject calendar number, the Board approved a variance to permit, on a site then divided by an M1-1 and R6 district boundary, the enlargement of an existing newspaper establishment extending into the R6 portion (along Dean Street), which encroached into the required rear yard, side yard and rear yard equivalent, penetrated the sky exposure plane, and allowed accessory loading docks in the R6 portion; and

WHEREAS, the applicant represents that subsequent to the construction of the loading docks, the newspaper establishment vacated the building; and

WHEREAS, in 2000, the site was rezoned to R6B/C4-4A; accordingly, the owner proposed to convert the existing structure primarily to residential use, with some office and retail use on the ground floor; and

WHEREAS, on March 27, 2001, the Board approved an amendment to the variance to allow the owner to retain two of the five loading docks that were previously approved by the Board, and to create a lobby, driveway and seating area with modified landscaping on the Dean Street portion of the lot in an area that was previously designated as green space; and

WHEREAS, the Board included certain conditions to the amendment, including that entry to the landscaped, residential entrance was to be open to the public between 7AM and 7PM, and that landscaping was to be provided in certain open spaces on the site; and

WHEREAS, the site is now currently developed with 178 residential condominium units; and

WHEREAS, prior to the filing of this application, the Board scheduled a compliance hearing because it had received complaints that the residential entrance area on Dean Street was not held open to the public as required by the March 27, 2001 resolution; and

WHEREAS**,** during the compliance hearing, the applicant committed to remedying the situation and the instant amendment application was subsequently filed; and

WHEREAS, this application seeks to eliminate the remaining two loading docks and convert them into an accessory two-car garage, utilize the landscaped areas adjacent to the loading docks as rear yards for the residential tenants, and close the residential entrance area on Dean Street to the public, but maintain it as a private landscaped entrance area; and

WHEREAS, the applicant represents that because the loading docks are being removed there will be no more negative commercial impacts on the residential neighbors; therefore, the owner should be entitled to convert the open space previously accessible to the public to private area for residents of the condominium; and

WHEREAS, the applicant also represents that keeping certain of these areas open to the public creates security issues for the residential tenants; and

WHEREAS, the applicant initially proposed to relocate the public seating area to a portion of the landscaped areas adjacent to the loading docks; and

WHEREAS, the applicant then modified its proposal to retain the entire landscaped area adjacent to the loading docks for private use, and instead make a financial contribution to the NYC Parks Department for the renovation of the nearby Dean Street playground; and

WHEREAS, the applicant has submitted to the Board a copy of an executed agreement between the owner and the Parks Department, dated September 9, 2005, in which the owner agrees to pay the Parks Department $1,400,000 as a capital allocation to the reconstruction of the Dean Street Playground; the applicant has also submitted a copy of the check for such sum; and

WHEREAS, certain community groups requested that the following conditions be included in the Board resolution: limit the garage to two cars; place a buffer between the private rear yards and the street at the landscaped areas adjacent to the loading docks; and no sanitation pickup on Dean Street; and

WHEREAS, the applicant has proposed to construct a 6'-0" wrought iron fence on the property's frontage on Dean Street that will match the fence at the residential entrance, has limited the garage to two cars, and has reduced the curb cut in front of the former loading docks to 22'-0"; and

WHEREAS, additionally, at the request of the Board, the applicant has made certain plan corrections to accurately reflect current site conditions; and

WHEREAS, the Board has reviewed the application and has determined that this application is appropriate to grant, with certain conditions.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, so that as amended this portion of the resolution shall read: "to permit the conversion of the remaining two loading docks into a two-car garage, the utilization of the landscaped areas adjacent to the loading docks as rear yards for the residential tenants, and the closure of the residential entrance area on Dean Street; *on condition* that all work shall substantially conform to drawings as filed with this application, marked "Received September 30, 2005"–(1) sheet; and *on further condition*;

THAT the landscaping at the residential entrance area on Dean Street shall continue to be maintained, as indicated on the BSA-approved plans;

THAT fencing shall be installed and maintained as indicated on the BSA-approved plans;

THAT no sanitation pick-up shall occur on the Dean Street side of the premises;

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

THAT all conditions from prior resolutions not waived herein by the Board through this resolution or the approved plans 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 App. No. 301092699)

Adopted by the Board of Standards and Appeals, October 18, 2005.

272-03-BZ

APPLICANT - Rampulla Associates Architects, for 4102 Hylan Realty, LLC, owner.

SUBJECT - Application June 28, 2005 - Reopening for an amendment to a variance to modify the design of the building and to add a bank teller drive through window. The premise is located in an R3-1 SRD zoning district.

PREMISES AFFECTED - 4106 Hylan Boulevard, south side of Hylan Boulevard and Goodall Street, Block 5307, Lot 6, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE RESOLUTION –

WHEREAS**,** this is an application for a re-opening and an amendment to the previously issued resolution; and

WHEREAS, a public hearing was held on this application on September 20, 2005, after due notice by publication in the *City Record*, and then to October 18, 2005 for decision; and

WHEREAS**,** Community Board No. 3, Staten Island, recommends approval of this application; and

WHEREAS**,** on January 27, 2004, the Board approved an application to permit, in an R3-1 zoning district within the Special South Richmond District, the construction of a two-story plus cellar retail building (Use Group 6) with 25 accessory off-street parking spaces, as well as an addition of a curb cut on Hylan Boulevard; and

WHEREAS, the instant application seeks to revise the BSA-approved plans to: install a drive through teller's window at the rear of the building; install a free standing sign near the parking lot entrance that complies with C1-1 signage regulations; reconfigure the parking lot to accommodate the drive through; add a refuse/garbage area at the rear of the parking lot; and re-design the exterior of the building; and

WHEREAS**,** the applicant states that the changes are necessitated by the occupancy of the building by a bank; and

WHEREAS, the Board has reviewed the application and has determined that this application is appropriate to grant, with certain conditions.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, so that as amended this portion of the resolution shall read: "to permit the proposed reconfiguration of the site and the addition of a bank teller drive through window; *on condition* that all work shall substantially conform to drawings as filed with this application, marked "Received October 4, 2005"- (6) sheets; and *on further condition*;

THAT all signage shall comply with C1-1 district regulations;

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

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

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

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

(DOB App. No. 500634619)

Adopted by the Board of Standards and Appeals, October 18, 2005.

436-53-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for 141-50 Union Turnpike, owner.

SUBJECT – Application September 7, 2005 - Pursuant to ZR 11-411 for the Extension of Term/Waiver for the operation of a gasoline service station which expired in February 24, 2004. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 141-50 Union Turnpike, south side of Union Turnpike, 44.96' west of the corner of Union Turnpike and Main Street, Block 6634, Lot 34, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Laid over to November 22, 2005, at 10 A.M., for continued hearing.

952-66-BZ

APPLICANT – Gerald J. Caliendo, RA, for Rajnikant Gandhi, owner.

SUBJECT – Application April 4, 2005 - Reopening for an Amendment/Extension of Time/Waiver to a gasoline service station with minor auto repair. The amendment is to convert the auto repair building to a convenience store accessory to the gasoline service station; and the extension of time to obtain a certificate of occupancy which expired in October 31, 2002. The premise is located in a C2-2 in R-5 zoning district.

PREMISES AFFECTED – 88-14 101st Street, northwest corner of 89th Street, Block 9090, Lot 21, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Sandy Ana.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to November 1, 2005, at 10 A.M., for decision, hearing closed.

248-78-BZ

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

SUBJECT – Application March 29, 2005 -Extension of Time to obtain a C of O/Amendment to install a new retaining wall, replace underground tanks, pump islands and fuel dispensers. The premise is located in C2-2 in a R-6 zoning district.

PREMISES AFFECTED – 60-50 Woodhaven Boulevard, southwest corner of 60th Road, Block 2885, Lot 12, Borough of Queens

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to November 1, 2005, at 10 A.M., for decision, hearing closed.

289-79-BZ

APPLICANT – David L. Businelli, for Patsy Serra, owner.

SUBJECT – Application April 26, 2005 – Extension of Term/Waiver for the continued use of a commercial vehicle and storage establishment (UG 16). The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 547 Midland Avenue, north side of Midland Avenue, Block 3799, Lot 1, Staten Island

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 15, 2005, at 10 A.M., for continued hearing.

878-80-BZ

APPLICANT – Kim Lee Vauss, for Nexus Property Management, LLC, owner.

SUBJECT – Application April 19, 2005 – reopening for an amendment to previous granted variance to convert the existing commercial UG6 on the second and fourth floors to residential/studio UG 2 and 9. The premise is located in an M1-6 zoning district.

PREMISES AFFECTED – 41 West 24th Street, Block 800, Lot 16, Borough of Manhattan

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Kim Vauss.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to November 15, 2005, at 10 A.M., for decision, hearing closed.

983-83-BZ

APPLICANT – Sullivan, Chester & Gardner P.C., for Sutphin Rochdale Realty, LLC, owner.

SUBJECT – Application January 14, 2005 – Proposed

Amendment to a Variance to enlarge a portion of the existing building by 700 sq. ft. and to eliminate the single use on site to house four (4) commercial tenants. The subject premise is located in an R3-2 zoning district.
PREMISES AFFECTED – 34-42/60 Guy R. Brewerb Boulevard, northwest corner of 137th Avenue, Block 12300, Lot 30, Borough of Queens
COMMUNITY BOARD #12Q
APPEARANCES – None.
ACTION OF THE BOARD – Laid over to November 15, 2005, at 10 A.M., for decision, hearing closed.

132-97-BZ
APPLICANT – Alan R. Gaines, Esq., for Deti Land, LLC, owner; Fiore Di Mare LLC, lessee.
SUBJECT – Application June 7, 2005 – Extension of Term/Amendment/Waiver for an eating and drinking establishment with no entertainment or dancing and occupancy of less than 200 patrons, UG 6 located in a C-3 (SRD) zoning district.
PREMISES AFFECTED – 227 Mansion Avenue, Block 5206, Lot 26, Borough of Staten Island
COMMUNITY BOARD# 3SI
APPEARANCES –
For Applicant: Joseph D. Manno, Esq.
ACTION OF THE BOARD – Laid over to December 6, 2005, at 10 A.M., for continued hearing.

165-02-BZ thru 190-02-BZ
APPLICANT – Stuart A. Klein, Esq.,/Steve Sinacori, Esq., for Park Side Estates, LLC., owner.
SUBJECT – Application March 31, 2005- Reopening for an amendment to BSA resolution granted under calendar numbers 167-02-BZ, 169-02-BZ, 171-02-BZ, 173-02-BZ and 175-02-BZ. The application seeks to add 5 residential units to the overall development (encompassing lots 21 & 28) for a total of 37, increase the maximum wall height by 2'-0", and increase the number of underground parking spaces from 11 to 20, while remaining complaint with the FAR granted under the original variance, located in an M1-1 zoning district.
PREMISES AFFECTED – 143-147 Classon Avenue, aka 380-388 Park Avenue and 149-159 Classon Avenue, southeast corner of Park and Classon Avenues, Block 1896, Lot 21, Borough of Brooklyn
COMMUNITY BOARD #2BK
APPEARANCES –
For Applicant: Steven Sinacori.
ACTION OF THE BOARD – Laid over to December 6, 2005, at 10 A.M., for continued hearing.

APPEALS CALENDAR

95-05-A
APPLICANT – Anderson Kill & Olick, P.C., for 9th & 10th Street, LLC, owner.
Subject – Application April 20, 2005 – An appeal challenging the Department of Buildings' decision dated March 21, 2005, as to whether they have sufficient documentation to determine the proposed use of said premises as a college student dormitory.
PREMISES AFFECTED – 605 East Ninth Street, between East Ninth and East Tenth Streets, 93' east of Avenue "B", Block 392, Lot 10, Borough of Manhattan.
COMMUNITY BOARD #3M
APPEARANCES – None.
ACTION OF THE BOARD – Appeal denied.
THE VOTE TO GRANT -
Affirmative: ….....0
Negative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin……3
THE RESOLUTION -

WHEREAS, the instant appeal comes before the Board in response to a final determination of the Manhattan Borough Commissioner, dated March 21, 2005 (the "Final Determination"), stating that the Department of Buildings ("DOB") would not reconsider removing an objection to plans submitted with a building permit application to develop the referenced premises with a Use Group 3 "College or School Student Dormitory" ("UG 3 Dormitory") absent the submission of additional information; and

WHEREAS, the subject premises is located between East 9th and 10th Streets, 93 feet east of Avenue B, within an R7-2 zoning district, and is currently improved upon with a former school building; and

WHEREAS, 9th and 10th Street, LLC, the owner of the premises and the appellant in this appeal (hereinafter, the "appellant"), took title of the premises from the City in 1999 after purchasing it at auction; and

WHEREAS, title was transferred subject to a deed with the following restriction: "Use and development of this subject property is restricted and limited to a 'Community Facility Use' as defined in the New York City Zoning Resolution as existing on the date of the auction" (the "Deed Restriction"); and

WHEREAS, the Owner filed an application with DOB under Application No. 103948338 (the "Application") for construction of a 19-story UG 3 "College or School Student Dormitory" building (the "Proposed Dormitory"), which is a Community Facility ("CF") use as defined in the Zoning Resolution ("ZR"); and

WHEREAS, in an R7-2 zoning district, a UG 3 Dormitory, because it is a defined CF use listed in UG 3A (set forth at ZR § 22-13), may be developed with a Floor Area Ratio ("FAR") of 6.5, as opposed to a maximum FAR of 3.44 for a non-CF UG 2 residential building; and

WHEREAS, the DOB objection, noted as objection #4 on the DOB objection sheet for the Application (the "Objection"), was issued on November 29, 2004, and reads: "Substantiate Dormitory Use (UG3). This use is permitted for 'College or School Student' housing only as per Z.R. (Floors 3-19 indicates Res. Apartments layout)"; and

WHEREAS, following the issuance of this objection,

Anderson Kill & Olick, P.C., representing the appellant, sent a letter to the Manhattan Borough Commissioner dated March 1, 2005, contending, in sum and substance, that: (1) development on the site was subject to the Deed Restriction, and therefore the appellant could not develop the site with anything but a CF use; (2) DOB did not have the authority to condition issuance of a permit based upon speculation that the building will be operated contrary to permitted uses after it is constructed, and consequently could not ask for substantiation of the represented dormitory use; and (3) that DOB's lack of authority to so condition issuance of the permit was settled in DiMilia v. Bennett, 149 AD2d 592 (2d Dep't 1989), in which the court held that DOB may not deny a permit based upon speculation that the future use may violate zoning; and

WHEREAS, in response, DOB issued the Final Determination; and

WHEREAS, the Final Determination reads, in pertinent part: "I write in response to your letter dated March 1, 2005 in which you respond to Objection #4, dated November 29, 2004, and request that the proposed use be accepted as a "student dormitory," as that term is used in Section 22-13 of the Zoning Resolution of the City of New York (Use Group 3 uses), notwithstanding that your client has failed to submit the documentation requested by the Department to substantiate a dormitory use.

As you know, the Department requires an institutional nexus in order for construction to be classified as a dormitory. This is necessary to distinguish a "student dormitory" which is a community facility use and entitled to extra floor area, from other types of housing that are classified as Use Group 2, including buildings that house students, and that are not eligible for additional bulk. To reflect the nexus, the Department asks for either a deed or a lease from a school. You respond 1) that the premises is subject to a deed restriction from the City that prohibits residential use, and 2) that the Department must accept the applicant's representation that the premises will be a dormitory, without requiring further substantiation. In support of this latter argument, you cite DiMilia v. Bennett, 149 AD2d 592 (2d Dep't 1989). In DiMilia, the court held that it was improper to deny an application to amend plans for construction of single-family houses on the theory that the design and arrangement of the proposed amendment would enable the proposed buildings to be readily convertible into illegal, non-conforming, two-family homes.

We disagree with your arguments. Although the premises is subject to a deed restriction that would prohibit residential use, this is not sufficient to establish its use as a dormitory. Where two uses appear very similar on plan, yet result in very different zoning benefits (such as the Use Group 2 residences and Use Group 3 dormitory), it is incumbent upon the Department to ask for documentation to substantiate the particular community facility use. While the deed restriction may be an incentive to the owner to classify the building's use as a student dormitory and not a Use Group 2 residence, it is not sufficient to justify deviating from the Department's general requirement that a dormitory use be substantiated prior to permit. Moreover, DiMilia is not controlling here, as the Department's issue is not whether the proposed dormitory use will easily convert to an unlawful use, but rather whether we have sufficient documentation to determine that the proposed use is a dormitory. Without a deed or lease with an educational institution, the Department is not satisfied that a dormitory use is being established.

As such, your request for reconsideration of the Objection dated November 29, 2004 is denied."; and

WHEREAS, during the Spring of 2005, while this exchange between DOB and the appellant was occurring, DOB announced its intent to adopt a rule setting forth certain pre-permit requirements for construction of UG 3 College or School Student Dormitories (the "Proposed Rule"); and

WHEREAS, the Proposed Rule provided that in order to obtain a permit for construction of a UG 3 Dormitory, a permit applicant must establish institutional control by submitting either: (1) documentary evidence of ownership by an educational institution; (2) documentary evidence of a lease by an educational institution; or (3) documentary evidence of the formation of a non-profit entity to provide dormitory housing for students, the board of directors of which shall be exclusively the representatives of participating educational institutions, plus a copy of a lease for a 10- year period for such non-profit entity; and

WHEREAS, the Proposed Rule also requires the execution and recording of a restrictive declaration, providing, among other things, that the building shall only be used as a UG 3 Dormitory; and

WHEREAS, in a letter to DOB dated March 24, 2005, the appellant commented upon the Proposed Rule, stating, in sum and substance, that the Proposed Rule did not comply with the law applicable to issuance of building permits, as it imposed a pre-permit requirement of establishment of a nexus of control between an education institution and the Proposed Dormitory; and

WHEREAS, however, the appellant also indicated that the Application would nonetheless be amended to comply with the Proposed Rule provisions; and

WHEREAS, the Proposed Rule was ultimately adopted by DOB on May 16, 2005 as Rule 51-01 of the Rules of the City of New York, but only became effective 30 days later on June 15, 2005; and

WHEREAS, accordingly, as discussed more fully before, DOB never applied Rule 51-01 applied to the Application; rather, DOB applied pre-permit conditions consistent with its current practice that would later be incorporated into this Rule; and

WHEREAS, the appellant filed the instant appeal on April 20, 2005, noting in its Statement that it reserved the right to supplement the record of the appeal pending the receipt of additional correspondence from DOB in response to a March 28, 2005 letter it sent to DOB regarding the Final Determination; and

WHEREAS, in the March 28 Letter, the appellant states, in sum and substance, that: (1) the provisions as set forth in the Proposed Rule allow a permit to be issued for a dormitory upon submission of copies of documents evidencing the

establishment of a not-profit entity chartered for the benefit of participating educational institutions, and that this provision was complied with through the formation of such a non-profit, University House Corp. ("UHC"); and (2) based upon DiMilia, DOB has no authority to require evidence of a institutional nexus between a proposed dormitory and an educational institution; and

WHEREAS, the Manhattan Borough Commissioner subsequently issued a letter dated March 29, 2005, in which DOB again refused to remove the Objection; and

WHEREAS, DOB's March 29 Letter reads, in pertinent part: "I am responding to your letters dated March 24, 2005 and March 28, 2005, wherein you submit that the proposed dormitory at the referenced premises meets the requirements of the Department's proposed rule on dormitories and that we should therefore issue a building permit for a student dormitory use.

As set forth in my letter to you dated March 21, 2005, the Department requires a deed or a lease from an acceptable school prior to issuance of a permit to establish a dormitory use. You respond that under Section (c)(1) of the proposed rule the Department will accept "a non-profit entity chartered for the benefit of participating educational institutions…" as proof of the control needed for a Use Group 3 dormitory. However, the proposed rule also requires a copy of the deed or lease of the premises for a minimum ten-year term as evidence of such entity's control of the premises, prior to issuance of the permit. While you state that the premises will be leased for a ten-year term to an entity that qualifies as a non-profit entity under the terms of the proposed rule, you have failed to provide a lease of the premises by such an entity. It is not sufficient that you intend to enter into a lease with a qualifying entity, or that you intend to enter into a restrictive declaration that would meet the Department's requirements. Until a satisfactory lease is submitted together with the restrictive declaration, the Department can not issue a permit for a Use Group 3 dormitory use.

In addition, the documentation that you attached regarding the establishment of University Housing Corporation does not require the board members of the non-profit entity to consist of each of the participating educational institutions, as is our intent. We appreciate your comments on the draft rule and will consider clarifying the language.

Moreover, as stated in my letter to you dated March 21, 2005, this matter is distinguished from DiMilia in that the Department is not objecting on the grounds that the use might convert to a Use Group 2 residence. Rather, the Department is seeking documentation necessary to establish that the proposed use is a Use Group 3 dormitory. To the extent the proposed non-profit entity currently lacks control of the premises, you have not established that the premises is a dormitory. Unlike most other uses that can be established by any party, a dormitory use can only be established by controlling educational institutions. Please submit to this office any appropriate documentation you may have to demonstrate that a qualified educational institution(s) has control over the subject premises, so that we may consider issuing the requested building permit."; and

WHEREAS, in response, the appellant, in a letter dated May 3, 2005, states, in sum and substance, that it would: (1) prepare a lease for a period of not less than 10 years between the appellant and UHC, which would have a board of directors consisting solely of persons appointed by educational institutions which refer students as prospective tenants of UHC within the Proposed Dormitory, and submit a draft of said lease for DOB approval; (2) prepare a restrictive declaration in accordance with the Proposed Rule provision, and submit a draft of said restrictive declaration for DOB approval; and (3) prepare an amendment to the bylaws or certificate of incorporation of UHC providing that, prior to occupancy of the Proposed Dormitory, the UHC board shall consist solely of members appointed by participating educational institutions; and

WHEREAS, in a letter dated May 19, 2005, the Manhattan Borough Commissioner responded to the appellant's May 3 letter; and

WHEREAS, DOB's May 19 letter states, in sum and substance, that: (1) the appellant's proposal provides no assurance that the educational institutions will operate the Proposed Dormitory since no contractual arrangements currently exist; and (2) the proposal is speculative and improper since the board of directors of UHC will only be composed of persons appointed by participating educational institutions prior to occupancy, not prior to issuance of a permit; and

WHEREAS, since DOB did not retreat from its position as set forth in the Final Determination and waive the Objection, the appellant maintained the instant appeal, although it updated its Statement of Facts and Discussion to include a discussion of the additional correspondence and the adoption of the Proposed Rule by DOB, as well as a discussion of additional legal authority in purported support of its position; and

WHEREAS, a public hearing was held on this appeal on August 16, 2005 after due notice by publication in the City Record, on which date the matter was closed and a decision date of October 18, 2005 was set; the record was left open for additional written submissions from both the appellant and DOB; and

WHEREAS, Community Board 3, Manhattan, supports DOB's denial of a permit for construction of the Proposed Dormitory; and

WHEREAS, the following elected officials and other parties also appeared or made submissions in opposition to the instant appeal: Congresswoman Velazquez, Assembly Member Glick, State Senator Connor, Council Member Lopez, Democratic District Leader Mendez, the Greenwich Village Society for Historic Preservation, representatives of the East Village Community Coalition, the Municipal Art Society, various neighbors to the referenced premises, and other City residents; and

WHEREAS, in its September 16, 2005 submission, the appellant argues that much of the testimony given at the August 16 hearing was either irrelevant to the issue presented in the instant appeal, untimely or inaccurate; and

WHEREAS, the Board agrees that a significant amount

of the testimony presented at the hearing was not relevant to the instant appeal since it related to tangential matters such as the history of the premises, the intentions of the Owner as to the use of the premises, or the impact of the bulk of the proposed building on the character of the community; and

WHEREAS, the Board further notes that certain of the individuals testifying did not have standing to address the appeal because they were not residents or occupants of property within close proximity to the subject premises; and

WHEREAS, accordingly, the Board bases its decision herein solely on its analysis of the legal arguments made by the appellant and DOB at hearing and in written submissions; and

WHEREAS, as noted above, DOB issued and maintained the Objection in response to the Application after it determined that sufficient evidence of institutional control over the Proposed Dormitory had not been submitted by the appellant; and

WHEREAS, DOB states that if it issued a permit based upon plans showing what could be UG 2 residences – even if identified as a UG 3 Dormitory on the plans and application materials – without some additional evidence of institutional control, it would not have certainty that it was properly permitting a UG 3 Dormitory as opposed to improperly permitting UG 2 residences; and

WHEREAS, DOB asserts that since the plans submitted with the Application reflect an FAR in excess of what is permitted by regulations applicable to UG 2 residences, approval of such plans would be in error; and

WHEREAS, the appellant disagrees, and in its original Statement (submitted in response to the Final Determination, but not the subsequent correspondence between the appellant and DOB), makes the following arguments: (1) DOB does not have the power to require an institutional nexus between a dormitory and an educational institution; (2) DOB does not have the power to require the appellant to substantiate dormitory use as a condition of issuing a construction permit under DOB Job No. 103948338; and (3) in the Final Determination, DOB imposes a documentation requirement on the appellant greater than that generally applied by DOB to applicants for permits to construct dormitories; and

WHEREAS, in its updated Statement of Facts and Discussion, submitted subsequent to the issuance of the above-noted correspondence, the appellant makes the additional argument that DOB's adoption of Rule 51-01, as applied to the Application, is an illegal usurpation of legislative authority; and

WHEREAS, finally, during the course of the hearing process, the appellant made supplemental arguments, which are addressed below; and

WHEREAS, as to the first argument (DOB does not have the power to require an institutional nexus between a UG 3 Dormitory and an educational institution), the appellant argues that there has never been any requirement of an "institutional nexus" anywhere in the Zoning Resolution, and that the imposition of such a requirement as to the Application is tantamount to DOB changing statutory criteria through "administrative fiat"; and

WHEREAS, the appellant states that once a certificate of occupancy ("CO") is issued, then reasonable conditions upon the management and rental structure of a UG 3 Dormitory may be fashioned, and that any such conditions, if lawful for DOB to impose, may be set forth in the CO; and

WHEREAS, in response, DOB first notes that the phrase "college or school student dormitory" as set forth at ZR §22-13 is not a defined phrase in the Z.R., and thus it is appropriate for it to interpret the phrase; and

WHEREAS, the Board agrees, and observes that DOB's authority to engage in such interpretation where necessary to carry out its administrative and enforcement mandates is well-established and evidenced by the Board's own ability to review DOB interpretations as part of its appellate jurisdiction; and

WHEREAS, specifically, the Board notes that ZR §71-00 provides that the Commissioner of DOB shall administer and enforce the ZR, and that this will necessarily require occasional interpretation of its provisions; and

WHEREAS, moreover, the Board notes that ZR §72-01(a) gives it the power to "hear and decide appeals from and to review interpretations" of the ZR made by DOB; and

WHEREAS, in interpreting the phrase "college or school student dormitory", DOB states that some institutional control by an educational institution over the building or space therein is necessary; otherwise, a UG 3 Dormitory would be indistinguishable from UG2 residences for students; and

WHEREAS, in support of its interpretation, DOB submits a letter from the counsel to the Department of City Planning ("DCP"), dated August 9, 2005; and

WHEREAS, in this letter, DCP's counsel states that for UG 3 uses that include sleeping facilities, "it is not merely the identity of the individuals residing within the facility that makes it a 'community facility.' It is also the fact of institutional management and control of the facility."; and

WHEREAS, DCP's counsel also states that for a building to qualify as a UG 3 Dormitory under the ZR, "the dwelling units must be provided by an educational institution in the performance of its educational mission."; and

WHEREAS, DCP's counsel cites both to the plain language of the UG 3 listing for dormitories and to a City Planning Commission report regarding a text amendment to the CF provisions of the ZR (including the subject UG 3 listing), which reads, in pertinent part: "The proposal adds language clarifying that college and school dormitories or fraternity and sorority house are accommodations provided by the educational institution for its students."; and

WHEREAS, thus, DCP supports the interpretation made by DOB and its position in this appeal; and

WHEREAS, the Board agrees with DOB and DCP, for the reasons set forth below; and

WHEREAS, first, other UG 3 CF uses that allow sleeping accommodations are clearly related to, and controlled by, the primary community facility use; and

WHEREAS, for instance, a non-profit hospital controls its facilities for doctor and nurse housing; and

WHEREAS, likewise, a religious institution controls its

sleeping facilities for its religious officials, such as monks or nuns; and

WHEREAS, without some form of established college or school control of a building occupied by students, a proposed building ceases to be a UG 3 Dormitory and instead is better characterized as UG 2 residences designed for general student occupancy; and

WHEREAS, while plans for such a building might still illustrate features common to a UG 3 Dormitory (e.g. joint kitchens and bathrooms, communal laundry rooms), they would not reflect an actual UG 3 Dormitory because no institutional control would have been established; and

WHEREAS, second, CF uses are presumed to have a benefit for the neighborhood in which they are situated; and

WHEREAS, ZR § 22-13 provides that CF uses are allowed in residential areas "to serve educational needs or to provide other essential services for residents"; and

WHEREAS, accordingly, the ZR allows the development of buildings for such uses with generous bulk increases not afforded to non-community facility development, as set forth in detail in Article 2, Chapter 4 of the ZR "Bulk Regulations for Community Facility Buildings in Residence Districts"; and

WHEREAS, the Board notes that ZR § 24-01 specifically provides that while CF buildings enjoy bulk increases and bonuses, regular residential buildings do not enjoy such increases since the residential bulk regulations apply; and

WHEREAS, if there was no requirement of institutional control, any private party could build UG 2 residences and market them to students from any school, negating the presumed beneficial effect for a specific community-based educational institution and thus for the community as a whole, and resulting in an unjustified financial windfall (in terms of developable floor area) for the private developer; and

WHEREAS, while the appellant may see the current development proposal as the most personally profitable use of a parcel of land restricted to CF use, the Board concludes that not establishing institutional control prior to permitting subverts the public policy of favor towards CF uses as reflected in the ZR's additional bulk allowances for such uses; and

WHEREAS, the appellant notes that the CPC report cited in the letter from DCP concerns a text amendment to the UG 3 listing for "College or School Student Dormitory", which clarified that a UG 3 Dormitory must be occupied by students, as opposed to faculty; and

WHEREAS, the appellant argues that this change leads to the conclusion that there is no requirement in the ZR that an educational institution own or control the dorm, only that students occupy it; and

WHEREAS, while the Board agrees that this is an accurate portrayal of the goal of the text amendment, this does not mean that institutional control is not an essential requirement for a UG 3 Dormitory building permit application; and

WHEREAS, if the appellant's position was accepted, this would mean that any building where students lived would qualify as a UG 3 Dormitory, which would render this UG designation meaningless; and

WHEREAS, moreover, while the appellant is correct in noting that it is bound by the Deed Restriction to comply with the zoning for CF uses as it existed when the title was transferred, this does not mean that an institutional nexus is not required; it merely raises the possibility that a UG 3 Dormitory that houses faculty could be developed by the appellant if desired, subject to DOB permitting requirements; and

WHEREAS, the appellant also argues that a strict application of DCP's interpretation of the subject ZR language would not allow for control of the building to be vested in a not-for-profit such as UHC; and

WHEREAS, again, the Board does not agree: the requirement imposed by DOB is that any such non-profit have as its sole purpose the provision of an educational institution-controlled UG 3 Dormitory, and that the participating educational institutions are the sole directors of the non-profit's board; and

WHEREAS, thus, an institutional nexus, and resulting control over a proposed UG 3 Dormitory, is preserved; and

WHEREAS, for the above reasons, the Board concludes that DOB possesses the authority to interpret the UG 3 language at issue here, and that said interpretation was correct; and

WHEREAS, furthermore, the Board finds appellant's arguments to the contrary unpersuasive; and

WHEREAS, as to the second argument (DOB has no power to ask for substantiation of dormitory use as a pre-permit condition), the appellant states that DOB is inappropriately imposing the requirement because it fears that the future use of the Proposed Dormitory will be for a use other than a UG 3 Dormitory; and

WHEREAS, the appellant cites to DiMilia for the proposition that DOB cannot deny a permit because it suspects a "possible future illegal use."; and

WHEREAS, however, the Board agrees with DOB that DiMilia is inapplicable; and

WHEREAS, in DiMilia, DOB refused to issue a permit where the amended plans for a single-family dwelling submitted in the permit application showed the addition of a full bathroom, a private entrance, and a division of a large room into two on the dwelling's first floor; and

WHEREAS, DOB refused to approve the amended plans because it believed the proposed single-family dwelling would then be readily convertible to two-family dwellings, which were not permitted; and

WHEREAS, the Board upheld DOB in an appeal of DOB's refusal to approve the amended plans; and

WHEREAS, the Supreme Court annulled the Board determination and the Second Department affirmed, holding that "the standard to be applied herein is the actual use of the building in question, not its possible future use"; and

WHEREAS, the Board disagrees that the basis of DOB's refusal to permit the construction of the Proposed Dormitory is analogous to its refusal to approve the amended plans in

DiMilia; and

WHEREAS, here, DOB has not stated that the basis of the pre-permit requirements is fear that the proposed building will be occupied as something besides a UG 3 Dormitory, nor is there any evidence in the record that its stated position is a subterfuge for such fear; and

WHEREAS, instead, DOB claims that it may only approve an application and plans where it can be shown that such application and plans conform to all applicable laws, including the ZR; and

WHEREAS, this requirement is set forth at Building Code §27-191, which provides, in part: "All applications for permits and any accompanying plans and papers, including any amendments thereto, shall be examined promptly after their submission for compliance with the provisions of this code and other applicable laws and regulations."; and

WHEREAS, the Board agrees with DOB that the submitted application materials related to construction of the Proposed Dormitory do not show compliance with the ZR; and

WHEREAS, the permitted FAR for community facilities reflects the interplay that infrequently occurs between the ZR's bulk and use regulations; and

WHEREAS, if a developer proposes a CF use in a permit application, it often entitles the developer to a FAR that is greater than the FAR to which a non-CF use is entitled; and

WHEREAS, thus, an appropriate showing of conformance, through plans and related application materials, with the use regulations that trigger the applicable FAR regulations is an indisputable part of DOB's Building Code-mandated review of permit applications where a CF use is proposed; and

WHEREAS, however, the Board observes that the application review in DiMilia did not require DOB to ascertain whether the proposed use had any bearing on the bulk of the building; the review led to the denial of the permit merely because of DOB's fear of improper future use; and

WHEREAS, here, DOB's concern that the appellant show compliance with the pre-permit requirements is not based upon a fear regarding the future use of the Proposed Dormitory – specifically, that it will be used for UG residences for students but not an actual UG 3 Dormitory – but whether it, as the City agency charged with review and approval of permit applications, may lawfully approve an application that does not contain all the requisite information needed to establish conformance with applicable laws; and

WHEREAS, this concern, that DOB would be exceeding its lawful authority in permitting the Proposed Dormitory, is distinguishable from the concern of DOB as reflected in DiMilia; and

WHEREAS, a further distinction between the instant case and DiMilia is evident when comparing the plans for the proposed developments in each matter: in DiMilia, DOB reviewed plans that showed a conforming, complying home; thus, zoning compliance was not an issue; and

WHEREAS, here, DOB reviewed plans that show a residential layout that could be for either UG 2 residences or a UG 3 Dormitory; thus, zoning compliance is an issue; and

WHEREAS, without appropriate materials establishing an institutional nexus between a qualifying educational institution or not-for-profit in the permit application, DOB is unable to determine if it is approving plans that comply with the ZR, given the disparity between UG 2 uses and UG 3 uses in terms of as of right FAR; and

WHEREAS, the Board observes that DOB is bound by 27-191 and may not issue a permit where the plans and papers submitted in support of the permit application do not show conformance with applicable laws; and

WHEREAS, the appellant also argues that certain other uses that enjoy bulk bonuses are not subject to pre-permit documentary evidence requirements comparable to those imposed upon the Application; and

WHEREAS, specifically, the appellant cites to the following examples: (1) FAR bonuses for a mixed-use residential/community facility building where the proposed community facility is a medical office (now referred to in the ZR as ambulatory diagnostic r treatment health care facility); and (2) FAR bonuses for hotel use; and

WHEREAS, the Board agrees that DOB currently may not be imposing the same documentary requirements for plan and permit approvals related to the above-mentioned types of applications; and

WHEREAS, however, this does not mean that DOB lacks the authority to address now applications for UG 3 Dormitories in the manner that it has; and

WHEREAS, in fact, at hearing, DOB identified a viable reason for why it was important to address the UG 3 Dormitory issue as soon as possible: unlike the development scenarios cited by the appellant, if DOB is compelled to revoke a CO based upon issuance of an invalid permit for development presented as UG 3 Dormitory but actually used for UG 2 residences, individuals' homes could be affected; and

WHEREAS, DOB notes that such a concern is not present with health care facilities: if occupancy of such a space is contrary to the ZR, a new occupant who meets the requirements in terms of licensing can be procured and no individual or family loses a home; and

WHEREAS, the Board further observes that unlike plans for a UG 3 Dormitory and UG 2 residences, plans for a hotel are distinguishable from those for UG 2 residences, given the typical floor plates, room sizes, and amenities present in a hotel; and

WHEREAS, thus, a review of plans, without secondary information supplied by the applicant showing that a hotelier will actually control the hotel, is typically sufficient for DOB to ensure that it is lawfully approving plans for a hotel; and

WHEREAS, in sum, the Board agrees that the need to address the pressing issue of applications for UG 3 Dormitories is an appropriate reason for DOB to impose pre-permit requirements upon the Application, like other applications for UG 3 CF uses that have a residential component, and that there are legitimate reasons why DOB has not addressed the other uses cited by the appellant in a comparable fashion; and

WHEREAS, finally, the appellant suggests two more

alternative arguments as to why DOB lacks authority to ensure, through the submission of documentary evidence, that the plans for the proposed building reflect a UG 3 Dormitory before issuance of a building permit: (1) DOB enforcement capacity in this regard is limited to its ability to enforce against an issued CO; and (2) the Deed Restriction eliminates the need to impose the pre-permit requirements, since the appellant would risk the investment in the property should this restriction be violated; and

WHEREAS, the Board acknowledges that DOB has the authority to enforce against any CO listing the legal use of the proposed building as a UG 3 Dormitory should there be an occupancy contrary to such a CO; and

WHEREAS, however, contrary to the appellant's assertion, the Board finds that DOB's enforcement capability in this regard does not eliminate or modify the requirement that DOB perform a full plan review and act thereafter in compliance with Building Code § 27-191; and

WHEREAS, likewise, the Board also finds that the existence of the Deed Restriction does not eliminate or modify this requirement; and

WHEREAS, in sum, the Board concludes that the pre-permit requirements imposed by DOB as set forth in its Final Determination and subsequent letters constitute a reasonable exercise of DOB's authority, based upon a reasonable interpretation of a ZR provision; and

WHEREAS, as to the third argument (DOB is imposing a documentation requirement on the Owner greater than that generally applied by DOB to applicants for permits to construct dormitories), the appellant contends that it complies with the language of the Proposed Rule as to submission of documentary evidence; and

WHEREAS, however, as noted by DOB, UHC does not meet the imposed pre-permit requirements; and

WHEREAS, specifically, the certificate of incorporation for UHC does not identify all of its members as representatives of participating educational institutions, nor does it specify that UHC was formed to provide housing for students of participating educational institutions; and

WHEREAS, these requirements have been in place since DOB issued the Final Determination, and, despite the appellant's representations that they would be met, no documentary evidence showing compliance with them has been presented to DOB; and

WHEREAS, in its September 16, 2005 submission, the appellant argues that DOB should be estopped from requiring evidence of institutional control based upon statements made by the City in a prior Article 78 proceeding regarding the premises; and

WHEREAS, the appellant asserts that accepting DOB's position as presented herein would be the equivalent of the City deceiving the appellant into the purchase of the property without any intention of letting the appellant actually develop it, and that if the City had the concerns it is currently expressing about development of a UG 3 Dormitory at the subject premises then these concerns should have been expressed at the time of purchase; and

WHEREAS, the Board observes that the Final Determination does not address this issue; therefore, the issue in not properly before the Board for its review in the instant appeal; and

WHEREAS, moreover, the Board does not possess the authority to apply principles of equitable estoppel against DOB in the context of the appeal; and

WHEREAS, accordingly, the Board declines to address this argument further; and

WHEREAS, additionally, the appellant argues that DOB's adoption of Rule 51-01 was an improper usurpation of legislative authority, and that the application of this Rule to the permit application for the Proposed Dormitory was a violation of the Owner's due process rights; and

WHEREAS, as noted above, the Board observes that the Objection, the Final Determination, and all the DOB-imposed requirements predate the effectiveness of Rule 51-01; and

WHEREAS, because Rule 51-01 was not effective when the Objection was issued or when this appeal was taken, the argument that the Rule was applied to the Application is erroneous; and

WHEREAS, accordingly, the Board need not pass on DOB's adoption of the Rule nor on the alleged applicability of it to the Application; and

WHEREAS, in its September 16, 2005 submission, the appellant also argues that the Building Code provides that DOB should only review permit applications to ensure "that the plans conform to sound construction engineering requirements, and that the proposal conforms to all existing rules and laws."; and

WHEREAS, the appellant implies that only architectural, structural and mechanical elements of the proposed building require review; and

WHEREAS, however, as noted above, DOB must ensure compliance with all applicable laws pursuant to Building Code §27-191; since ZR provisions as to use and bulk are applicable, they must be evaluated by DOB along with applicable Building Code provisions; and

WHEREAS, thus, the Board finds this argument unpersuasive; and

WHEREAS, in conclusion, the Board finds that: (1) DOB's interpretation of the subject ZR provision is correct; and (2) its refusal to lift the Objection for failure to submit documentary evidence of institutional control over the Proposed Dormitory, as set forth in the Final Determination, is an appropriate exercise of its authority.

Therefore it is Resolved that the instant appeal, seeking a reversal of the determination of the Manhattan Borough Commissioner, dated March 21, 2005, to refuse to remove an objection to DOB Permit Application 103948338, is hereby denied.

Adopted by the Board of Standards and Appeals, October 18, 2005.

166-05-BZY

APPLICANT – Greenberg & Traurig, LLP for Quetin Condos II, LLC, owner.

SUBJECT – Application July 25, 2005 - Proposed extension

of time to complete construction pursuant to Z.R. §11-331 for a 5 story building with commercial, community facility and 12 residential units uses under the prior Zoning R6/C1-3. New Zoning District is R5B/C2-3 as June 23, 2005. PREMISES AFFECTED – 1669-1671 West 10th Street, Brooklyn, east side of West 10th Street, 100' north of intersection of West 10th Street & Quentin Road, Block 6622, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD # 11BK

APPEARANCES –

For Applicant: Deidre A. Carson.

For Opposition: Assemblyman William Colton.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE RESOLUTION -

WHEREAS**,** this is an application under Z.R. §11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; and

WHEREAS**,** a public hearing was held on this application on September 20, 2005 after due notice by publication in *The City Record*, and then to closure and decision on October 18, 2005; and

WHEREAS**,** the site was inspected by a committee of the Board; and

WHEREAS, Community Board 11, Brooklyn, opposed the granting of any relief to the applicant; and

WHEREAS**,** State Assemblyman Colton also opposed the granting of any relief to the applicant; and

WHEREAS**,** at hearing, the Assemblyman contended that the subject application, received by the Board on July 25, 2005, was not timely filed, as applications for relief under Z.R. § 11-331 must be filed within 30 days from the date of the rezoning (here, June 23, 2005); and

WHEREAS**,** however, the Board notes that since the 30th day (July 23, 2005) fell upon Saturday, a non-business day, and under New York state law an application filed on the next business day is considered timely, the application was timely filed; and

WHEREAS, the subject premises is located 100 ft. north of the intersection of West 10th Street and Quentin Road; and

WHEREAS, the subject premises is currently located within an R5B(C2-3) zoning district, but was formerly located within a R6(C1-3) zoning district; and

WHEREAS**,** the subject premises is proposed to be developed with a five-story mixed-use building with twelve residential units, and commercial and community facility uses; and

WHEREAS, however, on June 23, 2005 (hereinafter, the "Enactment Date"), the City Council voted to enact text changes to the Zoning Resolution rendering the proposed development non-complying; and

WHEREAS**,** Z.R. §11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations."; and

WHEREAS, Z.R. § 11-31(a) reads: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, because the proposed development contemplates a single building on one zoning lot, it meets the definition of Minor Development; and

WHEREAS, the applicant represents that all of the relevant Department of Buildings permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that on February 1, 2005 a new building permit (Permit No. 301653057-01-NB; hereinafter, the "NB Permit") for the new building was lawfully issued to the applicant by the Department of Buildings ("DOB"); and

WHEREAS**,** the Board has reviewed the record and agrees that the afore-mentioned permit was lawfully issued to the owner of the subject premises; and

WHEREAS**,** the applicant represents that, as of the Enactment Date, substantial progress had been made on foundations; and

WHEREAS**,** the applicant represents that excavation of the site was completed by the end of May, 2005; and

WHEREAS, the Board notes that in order to complete the foundations, the applicant would need to construct all footings, grade beams and perimeter walls, including all necessary concrete pours; and

WHEREAS, the applicant further represents that the footings and grade beams were approximately 100% complete as of the Enactment Date; and

WHEREAS**,** in support of the contention that concrete for the footings and grade beams were poured, the applicant has submitted several pour receipts from a concrete batching company that reflect that, on various dates prior to the Enactment Date, a total of 240 cubic yards were poured; and

WHEREAS, the applicant represents that approximately 390 cubic yards were necessary to complete the foundations; accordingly, as of the Enactment Date, 240 cubic yards (or 62%) of the concrete necessary for the foundation had been poured; and

WHEREAS, the applicant also represents that waterproofing, rebar and sheeting for two out of the four perimeter walls were completed prior to the Enactment Date, and waterproofing and sheeting for an additional perimeter wall were also completed prior to the Enactment Date; and

WHEREAS**,** in further support of the claim that substantial progress had been made on foundations as of the Enactment Date, the applicant has submitted, among other items, photographs taken on June 14, 2005, and a foundation plan indicating the amount of foundation work that was complete as of the Enactment Date; and

WHEREAS, the applicant has also submitted affidavits from the project manager and the president of one of the contractors documenting the work completed on the proposed development as of the Enactment Date; and

WHEREAS, the Board has reviewed the photos and the affidavits, and agree that they support the conclusion that excavation, waterproofing, installation of grade beams and the pouring of the footings were substantially complete as of Enactment Date; and

WHEREAS**,** the applicant has submitted a cost breakdown of money expended, which states that $93,625 of the approximately $161,000 (or 58%) of the foundation costs, including the costs for the supplies and labor associated with installing the footings and the walls, and excluding excavation costs and other soft costs associated with development on the site had been incurred as of the Rezoning Date; and

WHEREAS, in support of these costs, the applicant has submitted receipts documenting the cost of the concrete and other construction-related costs; and

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

WHEREAS**,** additionally, the Board observed on its site visit that excavation was complete and substantial progress had been made on foundations; and

WHEREAS**,** based upon the above, the Board finds that excavation was complete and that substantial progress had been made on foundations, and additionally, that the applicant has adequately satisfied all the requirements of Z.R. § 11-331.

Therefore it is Resolved that this application to renew New Building permit No. 301653057-01-NB pursuant to Z.R. §11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of sixth months from the date of this resolution, to expire on April 18, 2006.

Adopted by the Board of Standards and Appeals, October 18, 2005.

167-05-BZY

APPLICANT – Greenberg & Traurig, LLP for Quetin Condos II, LLC, owner.

SUBJECT – Application July 25, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a 7 story building containing commercial community facility & 20 residential units use with 10 parking spaces at cellar level under the prior Zoning R6/C1-3. New Zoning District is R7A/C2-3 as of June 23, 2005.

PREMISES AFFECTED – 103 Quentin Road, Brooklyn, north side of Quentin Road, 20' east of intersection of Quentin road & West 10th Street, Block 6622, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD # 11BK

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: Assemblyman William Colton.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE RESOLUTION -

WHEREAS**,** this is an application under Z.R. § 11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; and

WHEREAS**,** a public hearing was held on this application on September 20, 2005 after due notice by publication in *The City Record*, and then to closure and decision on October 18, 2005; and

WHEREAS**,** the site was inspected by a committee of the Board; and

WHEREAS, Community Board 11, Brooklyn, opposed the granting of any relief to the applicant; and

WHEREAS**,** State Assemblyman Colton also opposed the granting of any relief to the applicant; and

WHEREAS**,** at hearing, the Assemblyman contended that the subject application, received by the Board on July 25, 2005, was not timely filed, as applications for relief under Z.R. § 11-

331 must be filed within 30 days from the date of the rezoning (here, June 23, 2005); and

WHEREAS**,** however, the Board notes that since the 30th day (July 23, 2005) fell upon Saturday, a non-business day, and under New York state law an application filed on the next business day is considered timely, the application was timely filed; and

WHEREAS, the subject premises is located 20 ft. east of the intersection of the intersection of West 10th Street and Quentin Road; and

WHEREAS, the subject premises is currently located within an R7A(C2-3) zoning district, but was formerly located within a R6(C1-3) zoning district; and

WHEREAS**,** the subject premises is proposed to be developed with a seven-story mixed-use building with 20 residential units, and commercial and community facility uses; and

WHEREAS, however, on June 23, 2005 (hereinafter, the "Enactment Date"), the City Council voted to enact text changes to the Zoning Resolution rendering the proposed development non-complying; and

WHEREAS**,** Z.R. §11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations."; and

WHEREAS, Z.R. § 11-31(a) reads: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, because the proposed development contemplates a single building on one zoning lot, it meets the definition of Minor Development; and

WHEREAS, the applicant represents that all of the relevant Department of Buildings permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that on February 16, 2005 a new building permit (Permit No. 301658187-01-NB; hereinafter, the "NB Permit") for the new building was lawfully issued to the applicant by the Department of Buildings ("DOB"); and

WHEREAS**,** the Board has reviewed the record and agrees that the afore-mentioned permit was lawfully issued to the owner of the subject premises; and

WHEREAS**,** the applicant represents that, as of the Enactment Date, substantial progress had been made on foundations; and

WHEREAS**,** the applicant represents that excavation of the site was completed by the end of August, 2004; and

WHEREAS, the Board notes that in order to complete the foundations, the applicant would need to construct all footings, grade beams and perimeter walls, including all necessary concrete pours; and

WHEREAS, the applicant states that the 30 of 32 required footings and 12 of 14 required grade beams were installed as of the Enactment Date; and

WHEREAS, the applicant represents that approximately 450 cubic yards of concrete were necessary to complete the foundations, and that 270 cubic yards were poured prior to the Enactment Date; accordingly, as of the Enactment Date, 60% of the concrete necessary for the foundation had been poured; and

WHEREAS**,** in support of the contention that the concrete for the footings and grade beams was poured, the applicant has submitted several pour receipts from a concrete batching company that reflect that, on various dates prior to the Enactment Date, a total of 270 cubic yards were poured; and

WHEREAS, the applicant also represents that construction of two out of the four perimeter walls was completed prior to the Enactment Date; and

WHEREAS**,** in further support of the claim that substantial progress had been made on foundations as of the Enactment Date, the applicant has submitted, among other items, photographs taken on June 21, 2005, and a foundation plan indicating the amount of foundation work that was complete as of the Enactment Date; and

WHEREAS, the applicant has also submitted an affidavit from the president of one of the contractors documenting the work completed on the proposed development as of the Enactment Date; and

WHEREAS, the Board has reviewed the photos and the affidavits, and agree that they support the conclusion that excavation, waterproofing, installation of grade beams and the pouring of the footings were substantially complete as of Enactment Date; and

WHEREAS**,** the applicant has submitted a cost breakdown of money expended, which states that $143,500 of

the approximately $222,833 (or 64%) of the foundation costs, including the costs for the supplies and labor associated with installing the footings and the walls, and excluding excavation costs and other soft costs associated with development on the site had been incurred as of the Rezoning Date; and

WHEREAS, in support of these costs, the applicant has submitted receipts documenting the cost of the concrete and other construction-related costs; and

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

WHEREAS**,** additionally, the Board observed on its site visit that excavation was complete and substantial progress had been made on foundations; and

WHEREAS**,** based upon the above, the Board finds that excavation was complete and that substantial progress had been made on foundations, and additionally, that the applicant has adequately satisfied all the requirements of Z.R. § 11-331.

Therefore it is Resolved that this application to renew New Building permit No. 301658187-01-NB pursuant to Z.R. § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of sixth months from the date of this resolution, to expire on April 18, 2006.

Adopted by the Board of Standards and Appeals, October 18, 2005.

168-05-BZY

APPLICANT – Sheldon Lobel, Esq., for 6422 Holding Corp., owner.

SUBJECT – Application July 26, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a 6 story+mezzanine building with commercial, community facility and 8 residential units uses under the prior Zoning R6/C1-1. New Zoning District is R6A/C2-3 as of June 23, 2005.

PREMISES AFFECTED – 6422 Bay Parkway, Brooklyn, northwest side of Bay Parkway between 65th and 64th Streets, Block 5550, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD # 11BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE RESOLUTION **–**

WHEREAS**,** this is an application under Z.R. §11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; and

WHEREAS**,** a public hearing was held on this application on September 20, 2005 after due notice by publication in *The City Record*, and then to decision on October 18, 2005; and

WHEREAS**,** the site was inspected by a committee of the Board; and

WHEREAS, Community Board 11, Brooklyn, opposed the granting of any relief to the applicant; and

WHEREAS**,** State Assemblyman Colton also opposed the granting of any relief to the applicant; and

WHEREAS, the subject premises is located on Bay Parkway between 64th and 65th Streets; and

WHEREAS, the subject premises is currently located within an R6A/C2-3 zoning district; prior to the rezoning, it was in an R6/C1-1 zoning district; and

WHEREAS**,** the subject premises is proposed to be developed with a six-story. mixed-use building with eight residential units, and commercial and community facility uses; and

WHEREAS, however, on June 23, 2005 (hereinafter, the "Enactment Date"), the City Council voted to enact text changes to the Zoning Resolution rendering the proposed development non-complying; and

WHEREAS**,** Z.R. §11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations."; and

WHEREAS, Z.R. § 11-31(a) reads: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall

determine whether such requirement has been met."; and

WHEREAS, because the proposed development contemplates a single building on one zoning lot, it meets the definition of Minor Development; and

WHEREAS, the applicant represents that all of the relevant Department of Buildings permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that on February 11, 2005 a new building permit (Permit No. 301827398-01-NB; hereinafter, the "NB Permit") for the new building was lawfully issued to the applicant by the Department of Buildings ("DOB"); the NB permit was renewed by DOB on June 3, 2005; and

WHEREAS**,** the Board has reviewed the record and agrees that the afore-mentioned permit was lawfully issued to the owner of the subject premises; and

WHEREAS**,** the applicant represents that, as of the Enactment Date, substantial progress had been made on foundations; and

WHEREAS**,** the applicant represents that excavation of the site was completed on April 1, 2005; and

WHEREAS, the applicant represents that 100% of the underpinning for the foundations was completed as of the Enactment Date; and

WHEREAS, the Board notes that in order to complete the foundations, the applicant would need to construct all footings, grade beams and perimeter walls, including all necessary concrete pours; and

WHEREAS, the applicant further represents that the footings and grade scale or strap beams were approximately 88% complete as of the Enactment Date; and

WHEREAS**,** in support of the contention that concrete for the footings and strap beams were poured, the applicant has submitted several receipts from a concrete batching company that reflect that 63 cubic yards were poured in April, 56 cubic yards were poured on May 20, 2005, and 59 cubic yards were poured in June; and

WHEREAS, the applicant represents that a total of 178 cubic yards of concrete were poured as of the Enactment Date and approximately 117 cubic yards are required to be poured to complete the foundations; accordingly, as of the Enactment Date, 60% of the concrete necessary to complete the foundation had been poured; and

WHEREAS**,** in support of the claim that substantial progress had been made on foundations as of the Enactment Date, the applicant has submitted, among other items, photographs taken on December 31, 2004, March 22, 2005, June 16, 2005 and June 21, 2005, and a foundation plan indicating the amount of foundation work that was complete as of the Enactment Date; and

WHEREAS, the applicant has also submitted an affidavit from the general contractor documenting the work completed on the proposed development as of the Enactment Date; and

WHEREAS, the Board has reviewed the photos and the affidavit, and agree that they support the conclusion that excavation and the pouring of the footings were substantially complete as of June 23, 2005; and

WHEREAS**,** the applicant has submitted a cost breakdown of money expended, which states that $25,550 of the approximately $38,000 (or 67%) of the foundation costs, including the costs for the supplies and labor associated with installing the footings and forms, and excluding excavation costs and other soft costs associated with development on the site had been incurred as of the Enactment Date; and

WHEREAS, in addition, the applicant represents that $114,000 out of a total of $130,000 (or 87%) of foundation costs (including soft costs) has been paid by the applicant as of the Enactment Date; and

WHEREAS, in support of these costs, the applicant has submitted receipts documenting the cost of the concrete and other construction-related costs; and

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

WHEREAS**,** additionally, the Board observed on its site visit that excavation was complete and substantial progress had been made on foundations; and

WHEREAS**,** based upon the above, the Board finds that excavation was complete and that substantial progress had been made on foundations, and additionally, that the applicant has adequately satisfied all the requirements of Z.R. § 11-331.

Therefore it is resolved that this application to renew New Building permit No. 301827398-01-NB pursuant to Z.R. § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of sixth months from the date of this resolution, to expire on April 18, 2006.

Adopted by the Board of Standards and Appeals, October 18, 2005.

169-05-BZY

APPLICANT – Sheldon Lobel , Esq., for PGLL, LLC., owner.

SUBJECT – Application July 26, 2005 - Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a 5 Story building with 20 units and 23 cellar parking under the prior Zoning R6. New Zoning District is R4-1 as of June 23, 2005.

PREMISES AFFECTED – 6210-6218 24th Avenue, Brooklyn, north side of 24th Avenue between 62th and 63rd Streets, Block 6557, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD # 11BK

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Assemblyman William Colton.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE RESOLUTION -

WHEREAS**,** this is an application under Z.R. § 11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; and

WHEREAS**,** a public hearing was held on this application on September 20, 2005 after due notice by publication in *The City Record*, and then to closure and decision on October 18, 2005; and

WHEREAS**,** the site was inspected by a committee of the Board; and

WHEREAS, Community Board 11, Brooklyn, opposed the granting of any relief to the applicant; and

WHEREAS**,** State Assemblyman Colton also opposed the granting of any relief to the applicant; and

WHEREAS, the subject premises is located on the north side of 24th Avenue between 62nd and 63rd Street; and

WHEREAS, the subject premises is currently located within an R4-1 zoning district; prior to the re-zoning, it was located in an R6 zoning district; and

WHEREAS**,** the subject premises is proposed to be developed with a five-story residential building with 20 units, and 23 cellar level parking spaces; and

WHEREAS, however, on June 23, 2005 (hereinafter, the "Enactment Date"), the City Council voted to enact text changes to the Zoning Resolution re-zoning the property from an R6 zoning district to an R4-1 zoning district, rendering the proposed development non-complying; and

WHEREAS**,** Z.R. §11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations."; and

WHEREAS, Z.R. § 11-31(a) reads: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, because the proposed development contemplates a single building on one zoning lot, it meets the definition of Minor Development; and

WHEREAS, the applicant represents that all of the relevant Department of Buildings permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that on March 25, 2005 a new building permit (Permit No. 301917442-01-NB; hereinafter, the "NB Permit") for the new building was lawfully issued to the applicant by the Department of Buildings ("DOB"); the NB permit was renewed by DOB on May 27, 2005; and

WHEREAS**,** the Board has reviewed the record and agrees that the afore-mentioned permit was lawfully issued to the owner of the subject premises; and

WHEREAS, the record reflects that a Stop Work Order was issued by the Department of Buildings on June 7, 2005 pertaining to underpinning that was performed on the western wall that did not conform to the approved plans; the Stop Work Order, pertaining solely to work performed on the western wall, was lifted on June 21, 2005; and

WHEREAS, the Department of Buildings has confirmed, at the Board's request, that the Stop Work Order was limited to work performed at the western wall related to underpinning, and not to all work on the site; and

WHEREAS, accordingly, for the purpose of its analysis, the Board will disregard the amount of work performed on the western wall during the stop work order period; and

WHEREAS**,** the applicant represents that, as of the Enactment Date, substantial progress had been made on foundations; and

WHEREAS**,** the applicant represents that excavation of the site was completed on May 20, 2005; and

WHEREAS, the Board notes that in order to complete the foundations, the applicant would need to construct all footings and perimeter walls, including all necessary concrete pours; and

WHEREAS, the applicant represents that shoring for all foundation walls was complete as of the Enactment Date; and

WHEREAS, the applicant further represents that 83% of the foundation walls were complete as of the Enactment Date; and

WHEREAS**,** in support of the contention that the foundations are substantially completed, the applicant has submitted several receipts from a concrete batching company that reflect that 218 cubic yards were poured between April 20, 2005 and June 10, 2005; this total does not include concrete poured in connection with the western wall underpinning during the duration of the Stop Work Order; and

WHEREAS, the applicant represents that a total of 218

cubic yards of concrete were poured as of the Enactment Date and approximately 110.5 cubic yards were necessary to complete the foundations (including amounts poured during the Stop Work Order and amounts poured after the Enactment Date); accordingly, as of the Enactment Date, 66% of the concrete necessary for the foundation walls had been poured; and

WHEREAS**,** in support of the claim that substantial progress had been made on foundations as of the Enactment Date, the applicant has submitted, among other items, photographs taken on July 9, 2005; and

WHEREAS, the Board notes that these photographs are not conclusive since they were taken after the Enactment Date; and

WHEREAS, the applicant has also submitted a foundation plan indicating the amount of foundation work that was complete as of the Enactment Date, and an affidavit from the general contractor documenting the work completed on the proposed development as of the Enactment Date; and

WHEREAS, the Board has reviewed the affidavit, and agree that they support the conclusion that excavation and the pouring of the footings were substantially complete as of June 23, 2005; and

WHEREAS**,** the applicant has submitted a cost breakdown of money expended, which states that $52,000 of the approximately $81,000 (or 64%) of the foundation costs, including the costs for the supplies and labor associated with installing the foundation walls, and excluding excavation costs and other soft costs associated with development on the site had been incurred as of the Enactment Date; and

WHEREAS, in support of these costs, the applicant has submitted receipts documenting the cost of the concrete and other construction-related costs; and

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

WHEREAS**,** additionally, the Board observed on its site visit that excavation was complete and substantial progress had been made on foundations; and

WHEREAS**,** based upon the above, the Board finds that excavation was complete and that substantial progress had been made on foundations, and additionally, that the applicant has adequately satisfied all the requirements of Z.R. § 11-331.

Therefore it is resolved that this application to renew New Building permit No. 301917442-01-NB pursuant to Z.R. § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of sixth months from the date of this resolution, to expire on April 18, 2006.

Adopted by the Board of Standards and Appeals, October 18, 2005.

186-05-A

APPLICANT – Zygmunt Staszewski, P.E., for The Breezy Point Cooperative, Inc., owner; Irene Whalen, lessee.

SUBJECT – Application filed on August 8, 2005 - Application for an Appeal to Department of Buildings to reconstruct and enlarge an existing single family frame dwelling not fronting on a mapped street contrary to General City Law Article 3, Section 36 and upgrading an existing private disposal system which is contrary to Department of Buildings policy. Premises is located within an R4 zoning district.

PREMISES AFFECTED – 13 Beach 221st Street, east of Beach 221 Street, Breezy Point, 247,46ft South of Rockaway Point Boulevard. Block 16350, part of Lot 400, Borough of Queens.

COMMUNITY BOARD # 14Q

APPEARANCES –

For Applicant: Magdalyss Gonzalez.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

WHEREAS**,** the decision of the Queens Borough Commissioner dated July 14, 2005 acting on Department of Buildings Application No. 402088058, reads:

"A-1 The Street giving access to the existing building to be altered is not duly placed on the official map of the City of New York, Therefore:

A) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.

B) Existing dwelling to be altered does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291 of the Administrative Code of the City of New York.

A-2 The proposed upgraded private disposal system is contrary to Department of Buildings Policy;" and

WHEREAS, a public hearing was held on this application on October 18, 2005 after due notice by publication in the *City Record*, on which date the matter was closed and granted; and

WHEREAS**,** by letter dated August 29, 2005 the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS**,** the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 14, 2005, acting on Department of Buildings Application No.402088058, is modified under the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall

substantially conform to the drawing filed with the application marked "Received August 8, 2005"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

THAT the Department of Buildings 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, October 18, 2005.

1-05-A

APPLICANT – Kathleen R. Bradshaw,Esq. for Anthony Ciaramella , owner

SUBJECT – Application filed January 4, 2005 - to construct two one family homes in the bed of a mapped street (Shore Drive) which is contrary Section 35, Article 3 of the General City Law . Premises is located in a C3 within a R4 Zoning District .

PREMISES AFFECTED – 1426 & 1428 Shore Drive, Bronx, located at 643. 08 ft south of the intersection of Layton Avenue and Shore Drive, Block 5467 , Lots 37 & 38 (tentative Lot #138 & 139)

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Kathleen Bradshaw and Mike DePasquale.

ACTION OF THE BOARD - Laid over to December 6, 2005, at 10 A.M., for continued hearing.

103-05-A

APPLICANT – Rothkrug, Rothkrug ,Weinberg & Spector, LLP. for Main Street Makeover 2, Inc.,owner.

SUBJECT – Application filed on May 4, 2005 – for an appeal of the Department of Buildings decision dated April 22, 2005 refusing to lift the "Hold" on Application #500584799, and renew a building permit on approved plans for alteration to an existing one -family dwelling, based on a determination by the Department of City Planning dated February 2, 2005 that CPC approval of a restoration plan is required pursuant to Section 105-45 of the Zoning Resolution.

PREMISES AFFECTED – 366 Nugent Street, Staten Island, located at the S/W/C of intersection of Nugent Street and Spruce Street (not final mapped), Block 2284, Lot 44.

COMMUNITY BOARD # 2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug and Marcus Marino.

For Administration: Lisa M. Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2005, at 10 A.M., for decision, hearing closed.

116-05-BZY

APPLICANT – Frederick A. Becker for John Shik Im, owner.

SUBJECT – Application May 12, 2005 – Proposed extension of time to complete construction for a two family home for a period of six months pursuant to Z.R. 11-331 of the Zoning Resolution under prior R3-2 Zoning District. As of April 12, 2005, the new Zoning District is R3-X.

PREMISES AFFECTED – 22-08 43rd Avenue, corner of 222nd Street and 43rd Avenue, Block 6328, Lot 17, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Fred Becker.

ACTION OF THE BOARD - Laid over to November 15, 2005, at 10 A.M., for continued hearing.

117-05-BZY

APPLICANT – Fredrick Becker, Esq., for Yohn Shik Im, owner.

SUBJECT – Application May 12, 2005 – Proposed extension of time to complete construction for a period of six months pursuant to Z.R. §11-331 on a two family home under prior R3-2 Zoning District. As of April 12, 2005 the new zoning district is R3-X.

PREMISES AFFECTED – 43-05 222ND Street, south of 43rd Avenue and East 222nd Street, 6328, Lot 16 Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Fred Becker.

ACTION OF THE BOARD - Laid over to November 15, 2005, at 10 A.M., for continued hearing.

Pasquale Pacifico, Executive Director.

Adjourned: 11:45 A.M.

MINUTES

REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 18, 2005
1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.

ZONING CALENDAR

41-04-BZ
CEQR #04-BSA-134M
APPLICANT – Sheldon Lobel, P.C., for 2113 First Avenue, LLC, owner.
SUBJECT – Application February 23, 2004 – Pursuant to Z.R. §72-21 – to permit the proposed legalization of the existing auto laundry, lubritorium, and accessory retail building. The site is located in a C2-5 overlay within R7-2 Zoning District. The proposal is contrary to Z.R. §§33-00 and 22-00 and to vary Section 33-00 and 22-00.
PREMISES AFFECTED – 338 East 109th Street, a/k/a 2113 First Avenue, First Avenue between East 108th and East 109th Streets, Block 1680, Lots 27 and 32, Borough of Manhattan.
COMMUNITY BOARD #11M
APPEARANCES – None.
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW -
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3
Negative:.....0
Adopted by the Board of Standards and Appeals, October 18, 2005.

299-04-BZ
CEQR #05-BSA-039Q
APPLICANT - Patrick W. Jones, Petraro & Jones, LLP, for Sutphin Boulevard, owner.
SUBJECT - Application September 7, 2004 - under Z.R. §72-21 – to permit the proposed construction of a one-story retail building, Use Group 6, located in an R3-2 zoning district.
PREMISES AFFECTED - 111-02 Sutphin Boulevard, (a/k/a 111-04/12 Sutphin Boulevard), southeast corner of 111th Avenue, Block 11965, Lots 26, 188 and 189 (tentative 26), Borough of Queens.
COMMUNITY BOARD #12Q
APPEARANCES – None.
ACTION OF THE BOARD – Application denied.
THE VOTE TO GRANT -
Affirmative: 0
Negative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3
THE RESOLUTION -

WHEREAS, the decision of the Queens Borough Commissioner dated August 12, 2004, acting on Department of Buildings Application No. 401955595, reads:

"Proposed use is a non-conforming use in a residential district as per ZR 22-11"; and

WHEREAS, a public hearing was held on this application on April 19, 2005 after due publication in *The City Record*, with continued hearings on May 24, 2005, August 23, 2005 and then to decision on October 18, 2005; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, on a lot within an R3-2 zoning district, the construction of a one-story retail building, contrary to Z.R. § 22-11; and

WHEREAS, Community Board No. 12, Queens and the Queens Borough President recommend conditional approval of this application; and

WHEREAS, the subject premises consists of three adjoining tax lots (Lots 26, 188 and 189), with a total lot area of 24,649 sq. ft.; the site is situated on the southeast corner of the intersection of 111th Avenue and Sutphin Boulevard; and

WHEREAS**,** Lot 26 is currently developed with four separate buildings, with a total floor area of 4,133 sq. ft., and is occupied by automotive service and automotive storage uses (the "Existing Buildings"; and

WHEREAS**,** the other two lots (Lots 188 and 189) are unimproved; and

WHEREAS**,** these three lots are proposed to be merged into one zoning lot (Tentative Lot 26); and

WHEREAS**,** Lot 26, but not the other two lots, has been subject to Board jurisdiction since 1931 under BSA Cal. No. 619-31-BZ; and

WHEREAS**,** under this calendar number, the Board granted an application for a use variance within a residence district, allowing a gasoline service station on Lot 26 for a two year term; and

WHEREAS**,** this grant was extended by the Board at various times since 1931, the most recent extension of term was granted in May of 1980, for a term of ten years; and

WHEREAS**,** this grant has been expired for over 14 years, and is no longer valid; and

WHEREAS**,** in spite of the expired grant, as noted above, the Existing Buildings are currently being used for automotive service and automotive storage; and

WHEREAS**,** in light of the fact that the past grant has expired and the owner of the premises now proposes a new retail development on a zoning lot that was only partially covered by the past grant, the applicant submitted a new application pursuant to Z.R. § 72-21; and

WHEREAS, the applicant proposes to demolish the Existing Buildings and replace them with the proposed building; and

WHEREAS**,** the proposed building is a one-story, 18 ft. high, Use Group 6 retail building, with a total FAR of 0.5 (12,005 sq. ft. of floor area); and

WHEREAS**,** 22 off-street accessory parking spaces are also proposed; and

WHEREAS, the applicant initially alleged that the following were unique physical conditions that lead to practical difficulties and unnecessary hardship in developing the subject lot in strict conformance with underlying district use regulations: (1) the Existing Buildings are obsolete and must be demolished; and (2) the existence of an underground storage tank system has led to environmental contamination that must be remediated; and

WHEREAS**,** as to the Existing Buildings and the tanks, the applicant contends that they were "established in a different era" that has long since passed, and therefore may now properly be considered unique physical conditions that warrant a variance; and

WHEREAS**,** the Board notes that the alleged obsolescence of the Existing Buildings has not been proven by the applicant; and

WHEREAS**,** by the applicant's own admission, the buildings may have been constructed around 1950, and currently are occupied by automotive service/storage uses; and

WHEREAS**,** accordingly, the Board is unable to conclude that they are obsolete for their intended purpose; and

WHEREAS**,** even if the Existing Buildings were assumed to be obsolete, the applicant proposes their demolition; and

WHEREAS**,** once they are demolished, the site will be a normally-sized and shaped developable lot, with no visible burden preventing conforming development; and

WHEREAS, thus, in alignment with many of its previous decisions, the Board finds that the structures may not properly be considered a hardship given that they are proposed to be demolished; and

WHEREAS**,** also, while the buildings are occupied by non-conforming uses, the Board can not conclude that this fact alone renders the site uniquely afflicted; and

WHEREAS**,** the Board is unaware of any precedent that holds that a site with a non-conforming use is presumptively uniquely burdened such that the use may form the basis of a variance; and

WHEREAS**,** nor are the demolition costs of the Existing Buildings so extraordinary as to impose a true hardship upon the owner; here, the stated demolition cost is $32,000; and

WHEREAS**,** the Board finds that such minimal demolition costs represent the normal price of site-clearance in order to make a zoning lot developable; and

WHEREAS**,** in sum, the Board rejects the applicant's claim that the Existing Buildings constitute a unique physical hardship that leads to practical difficulties and unnecessary hardship; and

WHEREAS**,** the Board acknowledges that the underground storage tank system and related contamination may be a unique physical condition on the lot that results in additional development costs; and

WHEREAS**,** the applicant represents that the costs associated with the tanks and their remediation will total $340,000, approximately half of which relates to remediation on Lot 26 and half of which relates to remediation on the other two lots; and

WHEREAS, however, Z.R. § 72-21(a) provides that the alleged unique physical conditions must result in practical difficulties or unnecessary hardship in strictly complying with applicable zoning provisions; and

WHEREAS**,** the Board observes that total development costs for a conforming development of eight two-family homes are, by the applicant's own admission, over 3.7 million dollars; and

WHEREAS**,** the Board does not agree that an additional one-time cost of $340,000 in light of this total development cost is so significant that unnecessary hardship or practically difficulties arise, especially when considering that such cost will amortized over the useful life of the conforming residential buildings, which would have a life expectancy of 30 to 40 years; and

WHEREAS**,** thus, even assuming that the tank system and related contamination is a unique physical condition, the Board finds that the claimed hardship cost does not rise to the level of unnecessary hardship or practical difficulties such that the requested use waiver is necessary; and

WHEREAS, for the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at Z.R. § 72-21(a); and

WHEREAS, because the finding set forth at Z.R. § 72-21(a) has not been met, it follows that the finding at Z.R. § 72-21 (b) can not be met; and

WHEREAS, even assuming *arguendo* that the Existing Buildings and the tank system should be considered unique

and unnecessary hardships such that the finding set forth at Z.R. §72-21(a) is met, the applicant has failed to submit credible financial data – specifically, the proffered site valuation – in support of its claim that conforming residential development on the site will not realize a reasonable return; and

WHEREAS**,** the Board notes that an accurate site valuation that may be properly relied upon is essential in order for the finding set forth at Z.R. § 72-21(b) to be met; and

WHEREAS, the Board observes that the applicant has valued the site at $1,110,000, which reflects a market valuation based upon comparable sales; and

WHEREAS**,** the Board questions this valuation, and observes that the comparables provided to support the valuation are almost all significantly smaller than the subject site, and don't conclusively support the claimed value of $1,110,000; and

WHEREAS**,** specifically, in March of 2005, the site valuation was based on four comparables, three of which ranged from 4,220 sq. ft. to 6,462 sq. ft.; in September of 2005, the site valuation was based on eight comparables, ranging from 2,075 sq. ft. to 6,462 sq. ft.; the subject site is 24,649 sq. ft.; and

WHEREAS, additionally, six of the eight comparables from September are improved sites, which detracts from their utility as a means of determining the value of the subject site, since the site will be vacant subsequent to the demolition of the Existing Buildings, which, based upon the representations of the applicant, have no value due to their functional obsolescence; and

WHEREAS**,** moreover, the September comparables are significantly varied in per sq. ft. values, ranging from $51.02 per sq. ft. to $242.89 per sq. ft., and therefore using them to ascribe value to the much larger subject site is problematic because no appropriate methodology exists to ascertain the appropriate value when such a wide range of per sq. ft. values is presented; and

WHEREAS**,** given its reservations with the applicant's claim of alleged hardship at the site, the Board asked the applicant to analyze a conforming residential scenario as if no unique physical hardships and resulting costs existed in order to assess the viability of conforming development on the site; and

WHEREAS**,** such an analysis would allow the Board to ascertain how much of the applicant's claimed poor return for conforming development is due to generally applicable poor market conditions; and

WHEREAS**,** the applicant responded that, assuming there is no hardship, the return on investment for a conforming residential proposal at the subject site is 1.09 percent over two years; and

WHEREAS**,** based upon this analysis, the Board concludes that the site valuation proposed by the applicant is overstated, as applicant's valuation presumes that a rational developer would pay $1,110,000 for a site where only 1.09 percent is achievable through as-of-right development; this is a presumption that the Board finds illogical and unsupportable; and

WHEREAS**,** the Board finds that a more accurate site valuation would be based upon a comparable that is similarly sized to the subject premises; and

WHEREAS**,** the Board observes that only one submitted comparable, with a lot area of 23,280 sq. ft., is similar in size to the subject premises (24,649 sq. ft.) and is within the same zoning district (R3-2); and

WHEREAS**,** the record indicates that this comparable was sold at $410,000, or $35.22 per buildable sq. ft., as opposed to the $90.00 per sq. ft. ascribed to the subject site by the applicant in its September 2005 submission; and

WHEREAS**,** the Board notes that it is not uncommon for larger sites to be valued lower on a per sq. ft. basis than smaller sites in the same zoning district, as the above comparable illustrates; and

WHEREAS**,** while the Board could legitimately use a $35.00 per sq. ft. amount as the most appropriate site value, based upon the above comparable, in order to be conservative, a per sq. ft. site valuation reflecting this amount plus an additional $15.00 per sq. ft. may be reasonably used for purposes of analyzing return, even though the true value of the subject site is likely to be lower; and

WHEREAS**,** using this lower per sq. ft. site valuation of $50.00, but maintaining all of the other financial assumptions made by the applicant, including the alleged hardship costs, the Board finds that an as of right development would result in an overall rate of return of approximately 3.47 percent; and

WHEREAS**,** the Board concludes that this is a reasonable rate of return for an area where as of right residential development can not be expected to result in higher percentage returns; and

WHEREAS**,** the Board notes that the applicant's proposal of a commercial development will realize a return of 3.31 percent, which applicant contends is the minimum variance necessary to alleviate the purported hardship; and

WHEREAS**,** it follows that a 3.47 percent return from a conforming development should also overcome any purported hardship; thus, logically, this return is reasonable and the finding set forth at Z.R. § 72-21(b) can not be met; and

WHEREAS**,** in sum, the Board finds that the applicant has not shown that any costs associated with the alleged unique features of the site would prevent feasible conforming residential development; and

WHEREAS**,** for the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at Z.R. § 72-21(b); and

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

WHEREAS, because the Board finds that the application fails to meet the findings set forth at Z.R. §§ 72-21(a), and (b), which are the threshold findings that must be met for a grant of a variance, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, August 12, 2004, acting on

Department of Buildings Application No. 401955595, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, October 18, 2005.

326-04-BZ
CEQR #05-BSA-046K
APPLICANT - The Law Office of Fredrick A. Becker, for Sephardic Center of Mill Basin, owner.
SUBJECT – Application - under Z.R. §72-21 – to request a bulk variance to allow the construction of a new synagogue in place of an existing synagogue. The application seeks waivers regarding Floor Area Ratio (§§24-111 and 24-141), perimeter wall height (§24-521), sky exposure plane (§24-521) and parking (§§25-18 and 25-31), located in a R2 zoning district.
PREMISES AFFECTED - 6208/16 Strickland Avenue, northeast corner of Mill Avenue, Block 8656, Lot 19, Borough of Brooklyn.
COMMUNITY BOARD #18BK
APPEARANCES – None.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT -
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3
Negative:.....0
THE RESOLUTION -

WHEREAS**,** the decision of the Brooklyn Borough Commissioner, dated September 14, 2004, acting on Department of Buildings Application No. 301780874, reads:

"1. Proposed plans are contrary to ZR 24-111 and ZR 23-141 in that the proposed floor area ratio is greater than the maximum permitted floor area ratio of 0.5.
2. Proposed plans are contrary to ZR 24-521 in that the proposed perimeter wall height is greater than the maximum permitted perimeter wall height of 25 feet.
3. Proposed plans are contrary to ZR 24-521 in that the proposed building penetrates the sky exposure plane.
4. Proposed plans are contrary to ZR 25-18 and ZR 25-31 in that the proposed number of parking spaces is less than the minimum required number of parking spaces."; and

WHEREAS, a public hearing was held on this application on July 26, 2005, after due notice by publication in *The City Record*, with a continued hearing on September 13, 2005, and then to decision on October 18, 2005; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Chin; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R2 zoning district, the proposed construction of a new two-story plus cellar synagogue, which requires various bulk waivers related to floor area ratio, perimeter wall height, sky exposure plan**e**, and required parking, contrary to Z.R. §§ 24-111, 23-141, 24-521, 25-18, and 25-31; and

WHEREAS, this application is brought on behalf of the Sephardic Center of Mill Basin, a not-for-profit entity (hereinafter, the "Synagogue"); and

WHEREAS, Community Board 18, Brooklyn, opposes approval of this application for reasons stated in their recommendation report, as discussed below; and

WHEREAS, certain members of Mill Island Civic Association and the community spoke at the hearing with respect to this proposal and voiced concerns as noted below; and

WHEREAS**,** the site is located on the northeast corner of the intersection of Strickland Avenue and Mill Avenue; and

WHEREAS, the subject site is currently improved upon with a two-story synagogue, occupied by the congregation since 1986; and

WHEREAS, the lot has a total lot area of approximately 10,883 sq. ft.; the existing synagogue building has a floor area of approximately 6,800 sq .ft.; and

WHEREAS, the applicant proposes to construct a new 10,800 sq. ft. synagogue building in order to accommodate the current size and resulting programmatic needs of the congregation; and

WHEREAS, the applicant states that the following are the programmatic needs of the Synagogue, which are driven by an increase in congregation size since 1986 to its present size of 300 families: (1) more worship space than is currently provided, to reduce overcrowded conditions and include separate praying areas for men and women; (2) a private office for the rabbi; (3) men's and women's mikvahs; (4) a dairy kitchen and a meat kitchen; (5) adequate bathrooms; (6) handicapped accessibility; (7) a multi-purpose room for gatherings on the Sabbath and bar and bat mitzvahs; (8) space for educational programs; and (9) roof access so that the congregation can celebrate the holiday of Sukkot outside; and

WHEREAS, construction of the new synagogue building as currently proposed will result in the following non-compliances: a floor area ratio ("FAR") of 1.0 (FAR of 0.5 is the maximum permitted); perimeter wall height of 32'-6" (a perimeter wall height of 25'-0" is the maximum permitted); encroachment into the sky exposure plane (a sky exposure plane of 1:1 is required); and no parking spaces (27 spaces are required); and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the shape of the lot; (2) the existing building has insufficient space to accommodate the current size and programmatic needs of the Synagogue; and (3) poor soil and water conditions; and

WHEREAS**,** the applicant notes that the shape of the lot would result in an as of right structure that would only be one-story in height, and thus incapable of accommodating the Synagogue's programmatic needs; and

WHEREAS**,** specifically, the applicant states that the noncomplying wall height and the encroachment into the sky exposure plane along the front yards, which allow for a second

story, are necessary due to the need for a large double height space in the front of the women's gallery, which will permit the women to view the rabbi from their seats and not deprive them of a proper space in which to pray; and

WHEREAS, the applicant further states that these variances, along with the variance for FAR, are necessary in order to have enough floor area and height to accommodate the afore-mentioned programmatic needs; and

WHEREAS, in support of the above, the applicant has submitted a chart that reflects the additional square footage requested and to what use such square footage is allocated; and

WHEREAS**,** additionally, the Board observes that the provision of required parking would diminish the amount of site area available for accommodation of the Synagogue's programmatic needs; and

WHEREAS, the Board asked the applicant to consider whether it could lower the cellar of the building to reduce the overall height of the building; and

WHEREAS**,** the applicant submitted borings that show that the water table is at 17'-0" below grade with perched water at 10'-0"; accordingly, the applicant represents that the building cannot be lowered due to the prohibitive cost of constructing a deeper foundation in moist soil caused by the water table; and

WHEREAS, in sum, the Board agrees that, based upon the submitted evidence, the new building is necessary in order to meet the programmatic needs of the Synagogue, since the existing building does not possess the square footage necessary to accommodate these needs; and

WHEREAS, therefore, the Board finds that the cited unique physical conditions, when considered in conjunction with the programmatic needs of the Synagogue, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, in concluding that the site is burdened and that hardship exists when considering the programmatic needs of the Synagogue, the Board is cognizant of the fact that under New York state case law, religious institutions are presumed to contribute to the public welfare, and the accommodation of such uses is established State policy; and

WHEREAS**,** the applicant need not address Z.R. § 72-21(b) since it is a not-for-profit organization and the enlargement will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the Board expressed concern related to the maximum occupancy of the Synagogue at any given time; and

WHEREAS, the applicant represents that although the proposed occupancy of the men's sanctuary is 459 people and the women's sanctuary is 247 people, and the proposed occupancy of the multi-purpose room is 438 people, the sanctuaries and the multi-purpose room will not be used simultaneously; and

WHEREAS, the Board also asked for an explanation of uses on the site and when the maximum number of congregants would attend the Synagogue; and

WHEREAS, in response, the applicant provided a description of all of the uses on the site, and explained that the Synagogue would be most heavily attended from Friday night through Saturday night; and

WHEREAS, the Board asked the applicant to discuss whether there would be adequate parking available for the congregants; and

WHEREAS, in response, the applicant represents that more than 61% of the members of the congregation live within three-quarters of a mile of the Synagogue and that 78% of the congregants live within one mile, and that during peak Synagogue hours (i.e., on the Sabbath), members walk to the Synagogue; and

WHEREAS, the applicant submitted a parking study that purported to show that there was adequate on-street parking to meet the needs of the congregation; and

WHEREAS, the Board expressed concern that the parking study was limited to one weekday; and

WHEREAS, in response to the Board's concern, the applicant submitted a parking study that surveyed an area within a 400 ft. radius of the site during another weekday and on the Sabbath; such survey indicates that the proposed new building will not have any adverse parking impacts on weekdays or on the Sabbath; and

WHEREAS, in response to community concerns about parking at events such as weddings, the applicant states that it is likely that the maximum occupancy for the multi-purpose room for events with tables and chairs will be 290 people; given that an average vehicle trip for such events is three to four people, a maximum number of 83 parking spaces would be required; and

WHEREAS, the applicant further represents that the parking study reflects that at all times there were at least 91 parking spaces available, and most times there were more than 100 spaces available; and

WHEREAS, the Community Board and other opposition has certain concerns with the proposed building, including that: dewatering during construction may cause problems for the surrounding area; the weight of the building may endanger structures surrounding the building; weddings and other special events may have traffic impacts on the neighborhood; catering uses on the site could create noise and garbage impacts; and the size and height of the building are out of context with the surrounding neighborhood; and

WHEREAS, in response, the applicant has stated that: it is not proposing to construct a basement below the water table; it has submitted parking studies that reflect that adequate parking is available in the neighborhood for Synagogue uses; that there will be no commercial catering on the site; and the proposed height and size of the building directly relate to the programmatic needs of the Synagogue; and

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

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

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

WHEREAS, thus, the Board has determined that the

evidence in the record supports the findings required to be made under Z.R. § 72-21; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05-BSA-046K dated September 30, 2004; 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**,** a Parking Survey was conducted by the Applicant's consultant on July 1**,** 2005**,** August 11, 2005 and August 13, 2005 to document available on-street parking spaces within a 400 foot radius of the subject site; the conclusion of this survey was that no adverse parking impacts are anticipated due to the subject proposal; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes the required findings under Z.R. § 72-21, to permit, within an R2 zoning district, the proposed construction of a new synagogue, contrary to Z.R. §§ 24-111, 23-141, 24-521, 25-18, and 25-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 4, 2004"– (4) sheets and "October 3, 2005"–(4) sheets; and *on further condition*:

THAT the sanctuary spaces and the multi-purpose room shall not be used simultaneously, as indicated on the BSA-approved plans;

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

THAT the bulk parameters of the proposed building shall be as reflected on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, October 18, 2005.

374-04-BZ
CEQR #05-BSA-064M

APPLICANT – Deirdre A. Carson, Esq., Greenberg Traurig, LLP for Micro Realty Management, LLC c/o Werber Management, owner.

SUBJECT – Application November 26, 2004 – under Z.R. §72-21 – to permit the proposed development of a seven-story residential building with ground floor commercial space in a C6-2A Special Lower Manhattan District and the South Street Seaport Historic District, to vary Sections 23-145, 23-32, 23-533, 23-692, 23-711, and 24-32 of the Resolution.

PREMISES AFFECTED – 246 Front Street, a/k/a 267½ Water Street, through lot fronting on Front and Water Streets, 126 feet north of the intersection of Peck Slip and Front Street, and 130 feet north of the intersection of Peck Slip and Water Street, Block 107, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Meloney McMurry.

For Opposition: Doris Diether.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO REOPEN HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE RESOLUTION -

WHEREAS**,** the decision of the Manhattan Borough Commissioner, dated November 17, 2004, acting on Department of Buildings Application No. 103582785, reads, in pertinent part:

"1. Proposed 12 foot lot width is contrary to Sec. 23-32 ZR.
2. Failure to provide required rear yard equivalent of 60 feet for through lot is contrary to Sec 23-553 ZR.
3. Failure to provide adequate rear yard for interior lot is contrary to Sec 23-52 ZR
4. Required rooftop recreation space is not accessible as required per Sec. 28-32 ZR.
5. Proposed building height in excess of lowest abutting building street wall is contrary to Sec. 23-692 ZR.

6. Minimum distance of 20 feet between legally required windows or between windows and wall is contrary to Secs. 23-711 and 23-861 ZR.
7. Proposed lot coverage exceeds 70% maximum permitted under Sec. 23-145 ZR."; and

WHEREAS**,** a public hearing was held on this application on May 24, 2005 after due notice by publication in the *City Record*, with continued hearings on July 12, 2005 and August 23, 2005, and then to decision on October 18, 2005; and

WHEREAS**,** the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan, Vice Chair Babbar, former Commissioner Miele and Commissioner Chin; and

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

WHEREAS, residents of 265-267 Water Street appeared in opposition to this application and stated that they were not given proper notice of the first hearing on this application; and

WHEREAS, the applicant responded that after checking their records, a notice was sent to 265 Water Street prior to the May 24th hearing, but no notice was posted in the lobby as the applicant did not believe that 265 Water Street was a condominium or a cooperative; the applicant agreed to post notice for any subsequent hearings; and

WHEREAS**,** this is an application under Z.R. § 72-21, to permit, within a C6-2A zoning district within the South Street Seaport Historic District, the proposed development of a mixed-use building with residential use and ground floor retail, rising to seven stories on Front Street and five stories on Water Street, which does not comply with certain bulk regulations set forth at Z.R. §§ 23-32, 23-145, 23-533, 23-692, 23-711 and 28-32; and

WHEREAS, the initial application proposed a mixed-use building with a total of 11,733 s.f. of floor area including 10,149 s.f. of residential floor area and 1,584 s.f. of commercial floor area, a floor area ratio ("FAR") of 5.25 including 4.54 of residential FAR and 0.71 of commercial FAR, a total height of 72'-10" on the Front Street side and 55'-1" on the Water Street side, a 20'-0" rear yard equivalent, lot coverage ratio of 88%; and

WHEREAS, the current application proposes a mixed-use building with a total of 11,158 s.f. of floor area including 9,571 s.f. of residential floor area and 1,587 s.f. of commercial floor area, an FAR of 4.99 including a 4.28 residential FAR and 0.71 commercial FAR, a total height of 71'-10" on the Front Street side and 55'-1" on the Water Street side, a 30'-0" rear yard equivalent, and a lot coverage ratio of 83%; and

WHEREAS, the premises is a partial through lot running from Water Street to Front Street, between Peck Slip and Dover Street; and

WHEREAS, the portion of the lot bordering Front Street has a width of approximately 20 feet, and the portion of the lot bordering Water Street has a width of approximately 12 feet; and

WHEREAS, the portion of the lot that is 12 feet wide is a through lot and extends 145 feet from Water Street to Front Street; the portion facing Front Street is 63 feet deep and qualifies as a shallow interior lot; and

WHEREAS, the site has a lot area of 2,235 s.f. and is currently vacant; and

WHEREAS, because the site is located within the South Street Seaport Historic District and Extension District, the applicant applied for and received a Certificate of Appropriateness for the proposed development from the Landmarks Preservation Commission ("LPC"), dated November 19, 2003; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in compliance with underlying district regulations: (1) the lot is long and narrow; (2) a portion of the lot is shallow; (3) the site is burdened with a high water table; (4) the site is located in a historic district; and (5) the landfill underlying the site is unique to the area; and

WHEREAS**,** the applicant states that because of the unusual configuration of the lot, including differing widths from one side of the lot to the other, and the combination of a through lot and an interior lot, development on the site is constrained; and

WHEREAS**,** specifically, the applicant states that if it complied with the 60 foot rear yard equivalent requirement and the additional 23 foot rear yard requirement (measured from the lot line on the shallow interior portion of the lot), the applicant would be unable to construct units on the Water Street portion of the lot because such units would be less than 40 feet deep and unable to accommodate required circulation elements; and

WHEREAS, in addition, the applicant explains that because of the narrowness of the lot, the building's circulation components, including the mechanical core, stairs and elevators, must be placed along one wall of the building; the applicant represents that, as a result, the living room and bedrooms can only be placed at the front and back of the building, thus limiting the amount of units that can be constructed on the site; and

WHEREAS, the applicant represents that because of the high water table underlying the site, the applicant will need to de-water during construction, seal the cellar of the new building, and add an inverted bathtub structure to the foundation to keep the groundwater out of the basement of the building; and

WHEREAS, the applicant further represents that the unique landfill at the site creates structural and archeological issues not faced by other sites; and

WHEREAS, the applicant represents that the location of the site in the South Street Seaport Historic District requires additional monitoring and protective construction measures because many of the surrounding buildings are from the early nineteenth century; such measures require smaller, lighter equipment that will increase construction costs; and

WHEREAS, the Board notes that although there are few vacant sites in the area, the constraints related to the site's presence in a historic district, the high water table and the quality of landfill on the site are not unique to the site and are conditions generally faced by sites in the surrounding area; and

WHEREAS**,** however, the Board finds that certain of the unique conditions mentioned above, namely the narrowness of the lot and the shallowness of certain portions of the lot, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict compliance with applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following scenarios: a complying retail and residential building, a lesser non-complying retail and residential building with a 30 foot rear yard equivalent, and the initial proposal (non-complying retail and residential building with 20 foot rear yard equivalent); and

WHEREAS, the applicant concluded that only the initial proposal resulted in a reasonable rate of return; and

WHEREAS, the Board questioned the applicant about the disparity in construction costs per square foot between the complying scheme and the proposed scheme; and

WHEREAS, the applicant, in response, explained that when constructing a low rise building such as the proposed building, certain costs are constant regardless of the square footage of the building; accordingly, when these costs are spread out over a larger building, the cost per square foot is less; and

WHEREAS, the Board requested that the applicant analyze an alternative developing the proposed building on the Front Street portion of the lot, but not the building on the Water Street portion of the lot; and

WHEREAS, the applicant analyzed this scenario and concluded that the return would not be feasible; and

WHEREAS, the Board also asked the applicant to consider a scheme with the proposed building on the Front Street portion of the lot and a one-story building on the Water Street portion of the lot; and

WHEREAS, the applicant submitted a revised feasibility analysis showing that such a project would not generate a reasonable return; and

WHEREAS, at the request of the Board, the applicant was asked to re-examine whether a 30 foot rear yard equivalent could be provided; and

WHEREAS, initially, the applicant concluded that a 30 foot rear yard would not be feasible, even if the applicant increased the height of the building on Water Street, because an increase in building height would require a second means of egress on Water Street, which could not be accommodated due to the narrow size of the lot; and

WHEREAS, after additional examination, the applicant submitted a revised feasibility analysis, with a proposal that includes a 30 foot rear yard equivalent and a decrease in the overall FAR, which reflected a reasonable rate of return for the proposed building; the applicant explained that contrary to the previously submitted 30 foot rear yard equivalent proposal, the revised proposal reconfigured the interior layout of the apartments and achieved a greater return despite the loss of floor area; and

WHEREAS**,** based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with the bulk provisions applicable in the subject zoning district will provide a reasonable return; and

WHEREAS, the applicant represents that a new mixed-use building will be compatible with the immediately surrounding residential uses; and

WHEREAS, the Board notes that the applicant's proposed residential FAR of 4.28 is within the allowable residential FAR of 6.02; and

WHEREAS, the applicant notes that the building will comply with all applicable Quality Housing requirements with the exception of the standards for recreation space; and

WHEREAS**,** the Board asked whether the applicant could provide recreational open space on the roof of the ground floor accessible by all tenants; and

WHEREAS, the applicant responded that due to the narrowness and shape of the lot, the applicant would be unable to provide an additional access stair to make the space accessible to all tenants in the building, but would make it accessible to tenants on the second floor; the applicant further states that it will provide rooftop space on each of the roofs of the Front Street and Water Street buildings; and

WHEREAS, the applicant states that the building has been approved by LPC and will be compatible with surrounding buildings in terms of height, form, and massing; and

WHEREAS, the applicant notes that the building's streetwall matches that of the neighboring property to the south, and mirrors the height of the new hotel addition starting one lot to the south of the site; and

WHEREAS, opposition to the application raised additional concerns at hearing and through submissions to the Board, specifically related to the alleged failure of the applicant to address the five findings required by Z.R. § 72-21; and

WHEREAS, the applicant responds that with respect to uniqueness, contrary to the opposition's contention that the cited factors for uniqueness are endemic to all properties in the surrounding area, the combination of factors on this site, including the narrowness of the lot, make this site unique; and

WHEREAS, the Board notes that the narrowness and shallowness of portions of the lot constitute uniqueness on the site; and

WHEREAS, the applicant also states that in response to claims that the applicant did not consider additional uses of the property or evidence that lesser variance uses would not yield a reasonable return, it did consider alternatives as suggested by the Board and provided financial analyses documenting the infeasibility of such alternatives; and

WHEREAS, with respect to the opposition's claims that the proposal does not meet the neighborhood character finding, the applicant points out that the opposition agreed

that the proposal would not alter the essential character of the neighborhood; and

WHEREAS, in response to claims by the opposition that the applicant joined together two lots and such merger created the hardship on the site, the applicant has submitted a title insurance report that indicates that both lots were under common ownership prior to 1961 and continue to be under common ownership through today;

WHEREAS, the Board notes that it finds this evidence compelling and agrees with the applicant's representations; and

WHEREAS, with respect to the minimum variance finding, the applicant again states that their financial analyses submitted to the Board address the lesser variance schemes proposed by the Board; and

WHEREAS, in addition, the opposition raised claims about the protection of surrounding buildings during construction; and

WHEREAS**,** the Board notes that all construction must comply with applicable Building Code requirements and DOB rules and policies related to the protection of adjacent structures during construction; and

WHEREAS, the Board questioned the viability of providing a second means of egress from the subject building through the adjacent building to the north; and

WHEREAS, the applicant has submitted a pre-consideration from the Department of Buildings that states that the second means of egress granted by easement through the adjacent property satisfies the requirements under the Building Code; and

WHEREAS, the Board notes that, in any event, the Department of Buildings will approve all means of egress for compliance prior to plan approval; and

WHEREAS, at the request of certain neighbors, the applicant has lowered the roofline on Front Street from approximately 77'-0" to approximately 76'-0" and reduced the bulkhead height by approximately 2'-0", and provided a sloped roof over the bulkhead stair to reduce the overall bulk of the structure; and; and

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

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

WHEREAS, the Board notes that the applicant reviewed various lesser-variance schemes at the Board's request, and concluded that they were not financially feasible; and

WHEREAS, as discussed above, the Board asked the applicant to consider a scenario in which the rear yard would be increased to 30'-0"; and

WHEREAS, the applicant included this modification in its current proposal; and

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

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

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

WHEREAS**,** the subject site is located within the South Street Seaport Historic District and as previously noted in this resolution, a COA has been issued for this proposal by the LPC on November 19, 2003; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA064M, dated April 2, 2004; 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 Landmarks Preservation Commission ("LPC") has reviewed the following submissions from the applicant: (1) an Environmental Assessment Statement Form, dated April 2, 2004; and (2) a Stage IA Archaeological Assessment Report, dated August 8, 2005, in response to comments of LPC that indicated the potential presence of archaeological resources on the site, including the potential for the recovery of remains from 18th and 19th Century occupation of the Site; and

WHEREAS, these submissions specifically examined the proposed action for potential archaeological impacts; and

WHEREAS, a Restrictive Declaration was executed on October 18, 2005 and recorded for the subject property to address archaeological concerns; and

WHEREAS, LPC has determined that there will not be any impacts from the subject proposal, based on the implementation of the measures cited in the Restrictive Declaration and the applicant's compliance with the conditions noted below; 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 Type I 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 the required findings under Z.R. §72-21, to permit, within a C6-2A zoning district within the

South Street Seaport Historic District, the proposed development of a mixed-use building with residential use and ground floor retail, rising to seven stories on Front Street and five stories on Water Street, which does not comply with certain bulk regulations set forth at Z.R. §§ 23-32, 23-145, 23-533, 23-692, 23-711 and 28-32; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 31, 2005"–(2)sheets; and *on further condition*:

THAT the applicant or any successor in title will adhere to all requirements for archaeological identification, investigation, and mitigation as set forth in the CEQR Technical Manual and LPC's Guidelines for Archaeological Work in NYC, including without limitation, the completion of an archaeological documentary study, archaeological field testing, excavation, mitigation, curation of archaeological resources, and a final archeological report, as required by the LPC, and as memorialized in the Restrictive Declaration executed on October18, 2005(collectively, the "Archaeological Work");

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the Archaeological Work to the satisfaction of LPC and submit a written report that must be approved by LPC; the only exception to this condition shall be those soil disturbing activities necessitated by the applicant's performance of the Archaeological Work required for LPC's approval (such as archaeological "pits") that may require a DOB permit;

THAT any DOB permit issued for soil disturbing activities pursuant to this exception shall clearly state on its face that such soil disturbance is limited to that necessary to perform the mandated archaeological work;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the Chairperson of LPC shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Archaeological Work has been completed to the satisfaction of LPC;

THAT the bulk parameters of the proposed building shall be as follows: a maximum total FAR of 4.99; maximum total floor area of 11,158 sq. ft.; maximum residential FAR of 4.28; maximum residential floor area of 9,571 sq. ft.; maximum commercial FAR of 0.71; maximum commercial floor area of 1,584 sq. ft.; maximum building height on Front Street of 72'-10"; maximum building height on Water Street of 55'-1"; and maximum lot coverage ratio of 83%;

THAT there shall be a maximum of nine residential units, and each unit shall have a minimum size of 585 sq. ft., and all other bulk parameters shall be as indicated on the BSA-approved plans;

THAT the interior layout and all exiting requirements shall be as reviewed and approved by the Department of Buildings;

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

THAT the 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, October 18, 2005.

19-05-BZ
CEQR #05-BSA-089M
APPLICANT – Slater & Beckerman, LLP, for Groff Studios Corporation, owner.
SUBJECT – Application January 31, 2005 – under Z.R. §72-211, to permit the proposed change of use of portions of a nine-story, mixed-use building to Use Group 2 residential use (16 residential units). No parking is proposed. The proposal is contrary to Z.R. §42-00.
PREMISES AFFECTED – 151 West 28th Street, north side, 101' east of Seventh Avenue, Block 804, Lot 8, Borough of Manhattan.
COMMUNITY BOARD #5M
APPEARANCES –
For Applicant: Stuart Beckerman.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 4, 2005, acting on Department of Buildings Application No. 103993270, reads:

"1. Proposed change of use at 2nd, 3rd, 5th and 7th floors from factory to UG2 apartments is not permitted as of right in M1-6 District."; and

WHEREAS, a public hearing was held on this application on September 13, 2005, after due notice by publication in the *City Record*, and then to decision on October 18, 2005; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, former Commissioner Miele and Commissioner Chin; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an M1-6 zoning district, the change in use of portions of an existing nine-story, mixed-use building to residential use (Use Group 2), contrary to Z.R. § 42-00; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on 28th Street, east of 7th Avenue; and

WHEREAS, the existing building contains 39,950 s.f. of floor area, 26,250 s.f. of which is residential floor area and

13,700 s.f. of which is commercial floor area; and

WHEREAS, the applicant proposes to convert an additional 8,750 s.f. of commercial floor area to residential floor area, including Units 2W, 3W, 5W and 7W; and

WHEREAS, on November 24, 1981, the board granted an application, pursuant to Z.R. § 15-021, to permit the conversion of 24,776 s.f. of commercial floor area on the second through ninth floors of the subject building to residential floor area; and

WHEREAS, the applicant initially represented that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: (1) the history of development of the premises; (2) one "keyed passenger elevator" that opens onto all units, both residential and commercial occupied; (3) the lack of a separate freight entrance; and (4) an inadequate freight elevator; and

WHEREAS, the applicant notes that the earlier conversion of several of the units in 1980 created a juxtaposition of commercial and residential uses in the building; specifically, four half-floor commercial units were located adjacent to residential units on the 2nd, 3rd, 5th and 7th floors; and

WHEREAS, the applicant represents that the sharing of one elevator between the residential and commercial tenants creates security risks for the residential tenants of the building; and

WHEREAS, the applicant further represents that the existing building is not conducive to commercial uses because there is only a single street entrance that serves both residential and commercial occupants, and the freight elevator is only accessible through the cellar thereby making deliveries to the commercial units difficult; and

WHEREAS, the applicant states that the commercial tenants suffer other negative consequences from the earlier conversion that make it difficult for them to conduct business, including noise complaints from other tenants, limits on the hours of operation for commercial uses, a building policy against subletting units, and high maintenance fees that mainly benefit the residential tenants (i.e., fees pay for 24-hour heat and a roof deck); and

WHEREAS, the Board finds that the aforementioned unique conditions, in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformity with current applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility analysis that showed that the existing mixed-use conforming building does not result in a reasonable return, but that the proposal, a nine-story residential building with ground floor retail, would; and

WHEREAS, the Board found the feasibility study to be sufficient and credible; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with the provisions applicable in the subject zoning district will provide a reasonable return; and

WHEREAS, the applicant represents that the change in use will have no perceptible impact on the essential character of the neighborhood since twelve out of the sixteen units of the existing building are already being used for residential tenants; and

WHEREAS, the applicant further represents that the site is less than 200 ft. from a C6-2 zoning district, where residential uses are permitted as-of-right; and

WHEREAS, the applicant states that directly across from the site is a 21-story residential building; and

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA089M dated December 2, 2004; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under Z.R. § 72-21, to permit, within an M1-6 zoning district, the change in use of portions of an existing nine-story, mixed-use building to residential use (Use Group 2), contrary to Z.R. § 42-00; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this

application marked "Received January 31, 2005 – six (6) sheets and "Received October 3, 2005" – one (1) sheet; 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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 18, 2005.

29-05-BZ
CEQR #05-BSA-093M
APPLICANT – Stephen Rizzo (CR&A), for 350 West Broadway, L.P., owner; Lighthouse Rizzo 350, LLC, lessee.
SUBJECT – Application February 17, 2005 - under Z.R. §72-21 – to permit the construction of a thirteen story residential building with retail uses located on the cellar and ground floor levels, located in an M1-5A zoning district, is contrary to Z.R. §42-14, §42-00 and §42-10.
PREMISES AFFECTED – 350 West Broadway, 60' north of Grand Street, Block 476, Lot 75, 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 Babbar and Commissioner Chin.....3
Negative:.....0
THE RESOLUTION -

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 14, 2005, acting on Department of Buildings Application No. 103976592, reads, in pertinent part:

"1.Proposed residential use (Use Group 2) is not permitted as of right in an M1-5A district and is contrary to Z.R. Section 42-10. M1-5A zoning district does not provide bulk regulations for residential use.

2. Proposed retail use (Use Group 6) is not permitted as of right below the level of the 2nd story in an M1-5A zoning district as per 42-14(D)(2)(A) Z.R. Building coverage is >3600 sq. ft."; and

WHEREAS, a public hearing was held on this application on July 12, 2005 after due notice by publication in the *City Record*; with continued hearings on August 23, 2005 and September 20, 2005, and then to decision on October 18, 2005; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan, Vice Chair Babbar, and Commissioner Chin; and

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

WHEREAS, this is an application under Z.R. §72-21, to permit, within an M1-5A zoning district, the proposed development of an eleven-story mixed-use building with residential uses on the upper ten floors and Use Group 6 retail uses on the first floor and cellar level, which is contrary to Z.R. §§ 42-10 and 42-14; and

WHEREAS, the initial application proposed a mixed-use building with a total of 41,320 s.f. of floor area including 36,585 s.f. of residential floor area and 4,734 s.f. of commercial floor area, a floor area ratio ("FAR") of 5.0 including 4.4 of residential FAR and 0.6 of commercial FAR, a total height of 155'-0" and 13 stories; and

WHEREAS, the current application proposes a mixed-use commercial/residential building with a total of 41,320 s.f. of floor area including 34,767 s.f. of residential floor area and 6,553 s.f. of commercial floor area, an FAR of 5.0 including 4.3 of residential FAR and 0.7 of commercial FAR, a total height of 125'-5" and 11 stories; and

WHEREAS, the premises is located on West Broadway between Grand Street and Broome Street; and

WHEREAS, the site has a lot area of 8,264 s.f., with 120'-8 ½" of frontage on West Broadway and a depth of 68'-4"; and

WHEREAS, the site is currently occupied by a 22,687 s.f. two-story building; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: (1) the lot is shallow; and (2) the site has unique soil and bedrock conditions; and

WHEREAS, the applicant states that because of the shallowness of the lot, a typical floor built over the existing building that complied with the zoning district requirements for a commercial building would result in an inefficient and impractical floor plate that could not accommodate commercial uses; and

WHEREAS, the applicant represents that although the typical bedrock levels for the area are between 60 ft. and 80 ft., the bedrock underlying the site extends to a depth of 114 ft.; and

WHEREAS, the applicant has submitted a letter from a geotechnical engineer documenting borings conducted on this site and comparing such borings with historic maps of Manhattan that contain rock data; the engineer determined that the bedrock below this site was substantially deeper than surrounding sites; and

WHEREAS, the applicant states that the existing building has been marketed continuously throughout that period unsuccessfully, and thus has been vacant for a long period of time; and

WHEREAS, the applicant has submitted a letter from a broker substantiating the marketing attempts; and

WHEREAS, the Board finds that certain of the unique conditions mentioned above, namely the shallowness of the lot and the unique soil and bedrock conditions, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformance with applicable zoning regulations; and

WHEREAS, the applicant asserts that there are premium costs associated with building on the site because of special piles that are required due to the deep bedrock; and

WHEREAS, the Board asked the applicant whether the applicant could demolish the building and re-build rather than reinforcing the existing structure; and

WHEREAS, the applicant's engineer explained at hearing that because of the poor soil conditions, the cost of piles in connection with new construction on the site (not including demolition costs) would be more expensive than reinforcing the existing structure; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following scenarios: a conforming commercial building with additional office space constructed over the existing two-story building; a conforming mixed-use building with retail uses, community facility uses, and a hotel; a lesser variance scheme of a seven-story, mixed-use development; and the initial proposal; and

WHEREAS, the feasibility study showed that only the initial proposal would generate a reasonable return; and

WHEREAS, the Board requested that the applicant consider a hotel scenario without the community facility and retail uses; and

WHEREAS, the applicant responded that a hotel would not be feasible on this site because there are certain fixed costs associated with providing the amenities necessary for operation of a hotel, and such costs would outweigh any return given the amount of rooms that this site can accommodate; and

WHEREAS, the Board requested that the applicant analyze an alternative scenario which enlarged the floor plates and reduced the amount of stories to eleven floors plus a penthouse, and another scheme with further enlarged floor plates and reduced the building to ten floors; and

WHEREAS, the applicant analyzed these scenarios and concluded that the revenue gained from the increase in the size of the floor plates in the first alternative would not outweigh the premium costs associated with the poor soil conditions present on the site; as to the second alternative, the applicant represents that the enlarged floor plates would require additional piles, and would add additional construction costs that further negatively affect the return; and

WHEREAS, the Board further requested that the applicant analyze a scheme with enlarged floor plates and a reduction in height to 11 floors without a penthouse, and a scheme with a ten-story building at 4.64 FAR; and

WHEREAS, the applicant submitted a financial analysis that concluded that neither scheme results in a financially feasible return; and

WHEREAS, at the direction of the Board, the applicant submitted a revised feasibility analysis with adjustments to the residential sales figures, and concluded that an 11-story alternative without a penthouse generates a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with the use provisions applicable in the subject zoning district will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will be compatible with the immediately surrounding residential uses; and

WHEREAS, the applicant represents that the proposed FAR is consistent with surrounding buildings, and contains significantly less bulk than some of the neighboring buildings, including 27 Thompson Street (10+ FAR) and 306 West Broadway (6.25 FAR); and

WHEREAS, the Board initially expressed concern with the height of the building, finding it out of scale with the surrounding buildings; and

WHEREAS, the Board suggested that the applicant lower the building and consider constructing a larger base; and

WHEREAS, the applicant represents that it could not construct a larger base because if the building extended any further it would not be within 100 ft. of the corner, and it would thus be required to provide a 30 ft. rear yard which would further compromise the floor plate and decrease the feasibility of the proposal; and

WHEREAS, the applicant presented several interim schemes, including a reduced height of 129'-11" plus penthouse, and a further reduced height of 125'-0" plus penthouse; and

WHEREAS, the applicant then proposed the current scheme; the Board finds that the current proposal is more in context with the surrounding neighborhood; and

WHEREAS, the applicant also represents that the residential structure will be placed on the south portion of the site, and the northerly portion will remain a two-story structure; in addition, the building will be set back after five stories on West Broadway; and

WHEREAS, the Community Board requested that the first floor not be occupied by a bar or a restaurant, a condition to which the applicant agreed; and

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

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

WHEREAS, the Board notes that the applicant reviewed various lesser-variance schemes at the Board's request, and concluded that they were not financially feasible; and

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

WHEREAS, the Board has determined that the

evidence in the record supports the findings required to be made under Z.R. § 72-21; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA093M, dated July 1, 2005; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under Z.R. §72-21, to permit, within an M1-5A zoning district, the proposed development of an eleven-story mixed-use building with residential uses on the upper ten floors and Use Group 6 retail uses on the first and cellar levels, which is contrary to Z.R. §§ 42-00 and 42-14; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 4, 2005"–(12) sheets; and *on further condition*:

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

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

THAT the bulk parameters of the proposed building shall be as follows: a maximum total FAR of 5.00; maximum total floor area of 41,320 s.f.; maximum residential FAR of 4.3; maximum residential floor area of 34,767 s.f.; maximum commercial FAR of 0.7; maximum commercial floor area of 6,553 s.f.; maximum building height of 125'-5"; and a maximum of 11 stories;

THAT the interior layout and all exiting requirements shall be as reviewed and approved by the Department of Buildings;

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

THAT the 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, October 18, 2005.

44-05-BZ
CEQR #05-BSA-099Q
APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for David Murray & Adrienne Berman, owners.
SUBJECT – Application February 25, 2005 – under Z.R. §73-243 – to permit an Accessory Drive Through Facility, contrary to §32-15, accessory to a proposed as-of-right Eating and Drinking Establishment (Use Group 6) located in a C1-2/R5 zoning district.
PREMISES AFFECTED – 49-01 Beach Channel Drive, between Beach 49th and Beach 50th Streets, Block 15841, Lot 19 (Tentative 50), Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Adam Rothkrug.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 26, 2005, acting on Department of Buildings Application No. 401873683 reads:

> "Respectfully requested a reconsideration of objection 6 'Drive thru in a C1-2 District requires Board of Standards and Appeals approval'– Reconsideration denied;" and

WHEREAS, a public hearing was held on this application on July 26, 2005, with a continued hearing on September 13, 2005, and then to decision on October 18, 2005; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, this application is for the issuance of a special permit for an accessory drive-through facility at a proposed eating and drinking establishment (Use Group 6) which, in a C1-2 zoning district, requires a special permit pursuant to Z.R. §§ 73-243 and 73-03; and

WHEREAS, the subject site is located on the southwest corner of Beach 49th Street and Beach Channel Drive, on a proposed lot containing 10,000 square feet, with approximately 100 feet of frontage on both Beach 49th Street and Beach Channel Drive; and

WHEREAS, the applicant represents that the subject lot (Lot 50) is currently being subdivided from Lot 19, an oversized lot that contains approximately 96,000 s.f.; and

WHEREAS, the subject lot is improved upon with an existing building that contains 2,358 s.f. of floor area; and

WHEREAS, the applicant represents that the site and drive-thru facility: (1) provides reservoir space for a ten-car queue; (2) will cause minimal interference with traffic flow in the immediate vicinity because the drive-thru related activities will take place at the rear of the site, away from pedestrian and unrelated vehicular traffic, and because curb cuts on both Beach Channel Drive and Beach 49th Street shall continue to be utilized; (3) is in compliance with off-street parking requirements, (4) conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward the motor vehicle, as evidenced by a street map, photographs of the area, and the width of the surrounding streets; (5) will not have an undue adverse impact on residences within the immediate vicinity of the subject premises because it is sited away from residential uses; and (6) provides adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, after reviewing the submitted site plan, which shows circulation, parking and reservoir spaces, the Board questioned whether the site plans could be improved; and

WHEREAS, specifically, the Board expressed concern that the parking layout for the site did not appear feasible and that the reservoir spaces were located such that they could conflict with certain of the parking spaces; and

WHEREAS, in response, the applicant modified its plans so that all of the required parking spaces except for two handicapped spaces will be provided on the adjacent tax lot (Lot 19) through an easement, thereby improving the on-site parking; the applicant has submitted a draft of an agreement granting such an easement; and

WHEREAS, the applicant also revised its site plan to correctly illustrate the reservoir spaces; and

WHEREAS, the Board finds that the applicant submitted sufficient evidence to support a conclusion that the grant of a special permit under Z.R. § 72-243 is warranted; and

WHEREAS, the Board finds that under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of such special permit use at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit; and

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at Z.R. § 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05-BSA-099Q dated February 20, 2005; 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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and grants a special permit under Z.R. §§ 73-03 and 73-242, to permit an accessory drive-through facility at a proposed eating and drinking establishment (Use Group 6) in a C1-2 zoning district; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 4, 2005"-(1) sheet; and *on further condition*:

THAT this permit shall be issued for a term of five years, to expire on October 18, 2009;

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

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT all signage shall conform with the underlying C1-2 district regulations;

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

THAT the easement agreement shall be as reviewed and approved by DOB;

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."

Adopted by the Board of Standards and Appeals, October 18, 2005.

97-05-BZ

APPLICANT – Dennis D. Dell'Angelo, R.A., for Abraham Y. Gelb, owner.

SUBJECT – Application April 22, 2005 – under Z.R. §73-622 – the enlargement of a single family residence to vary zoning section Z.R. §23-141 for open space and floor area, Z.R. §23-46 for less than the minimum required side yard and Z.R. §23-47 for less than the required rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1107 East 21st Street, east side 153' north of Avenue J, Block 78585, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis Dell'Angello.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 24, 2005, acting on Department of Buildings Application No. 301892717, reads:

"1. Proposed F.A.R. and O.S.R. constitutes an increase in the degree of existing non compliance contrary to sec. 23-14 of the N.Y.C. Zoning Resolution.
2. Proposed horizontal enlargement provides less than the required side yards contrary to sec. 23-46 Z.R. and less than the required rear yard contrary to sec. 23-47 Z.R."; and

WHEREAS, a public hearing was held on this application on September 13, 2005 after due notice by publication in *The City Record*, and then to closure and decision on October 18, 2005; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

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

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for floor area ratio, open space, side yard, and rear yard, contrary to Z.R. §§ 23-141(a), 23-46 and 23-47; and

WHEREAS, the subject lot is located on East 21st Street, north of Avenue J; and

WHEREAS, the subject lot has a total lot area of 4,700 sq. ft.; and

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

WHEREAS, the applicant seeks an increase in the floor area from 2216.15 sq. ft. (0.47 Floor Area Ratio or "FAR") to 4643.77 sq. ft. (0.98 FAR); the maximum floor area permitted is 1,880 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space ratio from 1.56 to .58; the minimum required open space ratio is 1.50; and

WHEREAS, the proposed enlargement will reduce the rear yard from 29'-9" to 20'-3"; the minimum rear yard required is 30'-0"; and

WHEREAS, the proposed enlargement at the rear of the existing building will extend the non-complying side yard; however, the width of the side yard will be maintained; and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

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

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of an existing single-family dwelling, which does not comply with the zoning requirements for floor area ratio, open space, side yard, and rear yard, contrary to Z.R. §§ 23-141(a) and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 22, 2005"-(2) sheets, "August 25, 2005"-(8) sheets and "October 3, 2005"-(3) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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

THAT the total FAR on the premises, including the attic, shall not exceed 0.98;

THAT the total attic floor area shall not exceed 910.53 sq. ft., as confirmed by the Department of Buildings;

THAT the use and layout of the cellar shall be as approved by the Department of Buildings;

THAT no portion of the existing building highlighted on BSA-approved plan sheets numbered 4, 5,1 6, 16a, 17, and 17a shall be demolished;

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

been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, October 18, 2005.

397-03-BZ thru 405-03-BZ

APPLICANT – Sheldon Lobel, P.C., for G & G Associates, owner.

SUBJECT – Application December 29, 2003 – under Z.R. §72-21 – to permit the proposed three story (3) plus attic building, to contain three residential units, located in an M1-1 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED –

1255 60th Street, between 12th and 13th Avenues, Block 5711, Lot 155, Borough of Brooklyn.
1257 60th Street, between 12th and 13th Avenues, Block 5711, Lot 154, Borough of Brooklyn.
1259 60th Street, between 12th and 13th Avenues, Block 5711, Lot 153, Borough of Brooklyn.
1261 60th Street, between 12th and 13th Avenues, Block 5711, Lot 152, Borough of Brooklyn.
1263 60th Street, between 12th and 13th Avenues, Block 5711, Lot 151, Borough of Brooklyn.
1265 60th Street, between 12th and 13th Avenues, Block 5711, Lot 150, Borough of Brooklyn.
1267 60th Street, between 12th and 13th Avenues, Block 5711, Lot 149, Borough of Brooklyn.
1269 60th Street, between 12th and 13th Avenues, Block 5711, Lot 148, Borough of Brooklyn.
1271 60th Street, between 12th and 13th Avenues, Block 5711, Lot 147, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES -

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to December 6, 2005, at 1:30 P.M., for continued hearing.

36-04-BZ

APPLICANT - Petraro & Jones, LLP, for Jack Randazzo, owner.

SUBJECT - Application February 12, 1004 - under Z.R. §72-21 – to permit the proposed construction of an eight family dwelling, on a vacant lot, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED - 30 Carlton Avenue, west side, 240' south of Flushing Avenue, Block 2030, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Patrick Jones.

ACTION OF THE BOARD – Laid over to November 1, 2005, at 1:30 P.M., for continued hearing.

37-04-BZ

APPLICANT – Petraro & Jones, LLP, for Jack Randazzo, owner.

SUBJECT – Application February 12, 2004 – under Z.R. §72-21 – to permit the proposed construction of an eight family dwelling, on a vacant lot, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 32 Carlton Avenue, west side, 264' south of Flushing Avenue, Block 2030, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Patrick Jones.

ACTION OF THE BOARD – Laid over to November 1, 2005, at 1:30 P.M., for continued hearing.

154-04-BZ

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for Wavebrook Associates, owner.

SUBJECT - Application April 9, 2004- under Z.R.§72-21 to permit the proposed construction of a four family dwelling, Use Group 2, located in M1-1 zoning district, is contrary to Z.R.§42-10.

PREMISES AFFECTED - 63 Rapeleye Street, north side, 116' east of Hamilton Avenue, Block 363, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to November 22, 2005, at 1:30 P.M., for decision, hearing closed.

260-04-BZ

APPLICANT - The Law Office of Fredrick A. Becker, for Leewall Realty by Nathan Indig, owner.

SUBJECT – Application July 20, 2004 – under Z.R. §72-21 to permit the proposed construction of a four story, penthouse and cellar three-family dwelling, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 222 Wallabout Street, 64' west of Lee Avenue, Block 2263, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 15, 2005, at 1:30 P.M., for continued hearing.

262-04-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Tishrey-38 LLC by Malka Silberstein, owner.
SUBJECT – Application July 22, 2004 – under Z.R.§72-21, to permit the proposed construction of a four story, penthouse and cellar four-family dwelling, located in an M1-2 zoning district, is contrary to Z.R. §42-00.
PREMISES AFFECTED - 218 Wallabout Street, 94' west of Lee Avenue, Block 2263, Lot 43, Borough of Brooklyn.
COMMUNITY BOARD #1BK
APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 15, 2005, at 1:30 P.M., for continued hearing.

269-04-BZ
APPLICANT – Law Office of Howard Goldman, LLC, for 37 Bridge Street Realty, Corp., owner.
SUBJECT – Application August 2, 2004 – under Z.R.§72-21 to permit the conversion of a partially vacant, seven-story industrial building located in a M1-2 and M3-1 zoning district into a 60 unit loft style residential dwelling in the Vinegar Hill/DUMBO section of Brooklyn.
PREMISES AFFECTED - 37 Bridge Street, between Water and Plymouth Streets, Block 32, Lot 4, Borough of Brooklyn.
COMMUNITY BOARD #1BK.
APPEARANCES –
For Applicant: Chris Wright and Robert Pauls.

ACTION OF THE BOARD – Laid over to November 22, 2005, at 1:30 P.M., for continued hearing.

315-04-BZ and 318-04-BZ
APPLICANT – Steven Sinacori/Stadmauer Bailkin, for Frank Mignone, owner.
SUBJECT – Application September 20, 2004 - under Z.R. §72-21 to permit the proposed development which will contain four three-family homes (Use Group 2), within an M1-1 Zoning District which is contrary to Section 42-00 of the Resolution.
PREMISES AFFECTED –

1732 81st Street, east side of New Utrecht Avenue, Block 6314, Lots 26 and 29, (Tentative Lot 127), Borough of Brooklyn.
1734 81st Street, east side of New Utrecht Avenue, Block 6314, Lots 26 and 29, (Tentative Lot 128), Borough of Brooklyn.
1736 81st Street, east side of New Utrecht Avenue, Block 6314, Lots 26 and 29, (Tentative Lot 129), Borough of Brooklyn.
1738 81st Street, east side of New Utrecht Avenue, Block 6314, Lots 26 and 29, (Tentative Lot 130), Borough of Brooklyn.

COMMUNITY BOARD #11BK
APPEARANCES –
For Applicant: Neil Weisbard.

ACTION OF THE BOARD – Laid over to December 6, 2005, at 1:30 P.M., for deferred decision.

360-04-BZ
APPLICANT – Marcus Marino Architects, for Walter Stojanowski, owner.
SUBJECT – Application November 16, 2004 - under Z.R.§72-21 to permit the proposed enlargement of an existing one family dwelling, located in an R3X zoning district, which does not comply with the zoning requirements for side yards and lot width, is contrary to Z.R. §§107-42 and 107-462.
PREMISES AFFECTED - 38 Zephyr Avenue, south side, 75.18" north of Bertram Avenue, Block 6452, Lot 4, Borough of Staten Island.
COMMUNITY BOARD #3SI
APPEARANCES –
For Applicant: Marcus Marino.

ACTION OF THE BOARD – Laid over to November 15, 2005, at 1:30 P.M., for continued hearing.

361-04-BZ
APPLICANT – Eric Palatnik, P.C. for Parsons Estates, LLC, owners.
SUBJECT – Application November 17, 2004 – under Z.R. §72-21 – to permit a proposed three-story residential building in an R4 district which does not comply with the zoning requirements for floor area, wall height, sky exposure plane, open space, lot coverage and the number of dwelling units; contrary to Z.R. §23-141c, 23-631 and 23-22.
PREMISES AFFECTED – 75-48 Parsons Boulevard, 168.40' north of 75th road, at the intersection of 76th Avenue; Block 6810, Lot 44, Borough of Queens.
COMMUNITY BOARD #8Q
APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 15, 2005, at 1:30 P.M., for continued hearing.

396-04-BZ
APPLICANT – Stroock & Stroock & Lavan, LLP, by Ross Moskowitz, Esq., for S. Squared, LLC, owner.
SUBJECT – Application December 21, 2004 - under Z.R.§72-21 to permit the Proposed construction of a thirteen story, mixed use building, located in a C6-2A, TMU zoning district, which does not comply with the zoning requirements for floor area, lot coverage, street walls, building height and tree planting, is contrary to Z.R. §111-104, §23-145,§35-24(c)(d) and §28-12.
PREMISES AFFECTED -180 West Broadway, northwest corner, between Leonard and Worth Streets, Block 179, Lots 28 and 32, Borough of Manhattan.
COMMUNITY BOARD #1M
APPEARANCES –
For Applicant: Ross Moskowitz, Richard Metsky and Gregg Reschler.
For Opposition: Michael Cappi.

ACTION OF THE BOARD – Laid over to November 22, 2005, at 1:30 P.M., for continued hearing.

399-04-BZ
APPLICANT – Greenberg Traurg LLP, by Jay A. Segal, for Hip-Hin Realty Corp., owner.
SUBJECT – Application December 23, 2004 – under Z.R. §§72-21 and 73-36 – Proposed use of the subcellar for accessory parking, first floor and cellar for retail, and the construction of partial sixth and seventh stories for residential use, also a special permit to allow a physical culture establishment on the cellar level, of the subject premises, located in an M1-5B zoning district, is contrary to Z.R. §42-14(D), §13-12(a) and §73-36.
PREMISES AFFECTED – 425/27 Broome Street, southeast corner of Crosby Street, Block 473, Lot 33, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES –
For Applicant: Jay Segal, Jack Friedman and Carol Blum.

ACTION OF THE BOARD – Laid over to November 22, 2005, at 1:30 P.M., for continued hearing.

26-05-BZ
APPLICANT – Cozen O'Connor, for Tikvah Realty, LLC, owner.
SUBJECT – Application February 11, 2005 - under Z.R.§72-21 to permit the proposed bulk variance, to facilitate the new construction of an 89 room hotel on floors 4-6, catering facility on floors 1-3, ground floor retail and three levels of underground parking, which creates non-compliance with regards to floor area, rear yard, interior lot, permitted obstructions in the rear yard, setback, sky exposure plane, loading berths and accessory off-street parking spaces, is contrary to Z.R.§33-122, §33-26, §33-432, §36-21, §33-23 and §36-62.
PREMISES AFFECTED -1702/28 East 9th Street, aka 815 Kings Highway, west side, between Kings Highway and Quentin Road, Block 6665, Lots 7, 12 and 15, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Howard Hornstein, Karl Fischer and Jack Freeman.

ACTION OF THE BOARD – Laid over to December 6, 2005, at 1:30 P.M., for continued hearing.

47-05-BZ
APPLICANT – Fischbein Badillo Wagner Harding, LLP, for AMF Machine, owner.
SUBJECT – Application March 1, 2005 - under Z.R.§72-21 to permit the proposed eight story and penthouse mixed-use building, located in an R6B zoning district, with a C2-3 overlay, which exceeds the permitted floor area, wall and building height requirements, is contrary to Z.R. §23-145 and §23-633.
PREMISES AFFECTED - 90-15 Corona Avenue, northeast corner of 90th Street, Block 1586, Lot 10, Borough of Queens.
COMMUNITY BOARD #4Q
APPEARANCES –
For Applicant: Peter Geis and Howard Hornstein.
For Opposition: Jacques Catafaso.

ACTION OF THE BOARD – Laid over to December 13, 2005, at 1:30 P.M., for continued hearing.

80-05-BZ
APPLICANT – The Law Office Frederick A. Becker, Esq. for H & M Holdings, LLC, owner; Nikko Spa & Health Corp. lessee.
SUBJECT – Application April 4, 2005 - under Z.R.§73-36 - approval sought for a proposed physical cultural establishment to be located on a portion of the cellar, first floor, and second floor of a 4 story commercial building. The proposed PCE use will contain 12, 955 gross square feet. The site is located in a C6-6 Special Midtown District.
PREMISES AFFECTED - 49 West 33rd Street, northerly side of West 33rd Street 148'6" west of Broadway, Block 835, Lot # 9, Manhattan
COMMUNITY BOARD #5M
APPEARANCES –
For Applicant: Frederick A. Becker, Esq.
For Opposition: Rachael Dubin and Roger Rigolli.
THE VOTE TO CLOSE HEARING -
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Chin….....3
Negative:.....0

ACTION OF THE BOARD – Laid over to November 15, 2005, at 1:30 P.M., for decision, hearing closed.

99-05-BZ
APPLICANT – Sheldon Lobel, P.C., for 500 Turtles, LLC, owner.
SUBJECT – Application April 22, 2005 - under Z.R.§72-21 to permit the proposed enlargement of an existing restaurant, which is a legal non-conforming use, located on the first floor of a six-story mixed-use building, situated in an R6 zoning district, is contrary to Z.R. §22-10.
PREMISES AFFECTED - 39 Downing Street, a/k/a 31 Bedford Street, northwest corner, Block 528, Lot 77, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES –
For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to November 22, 2005, at 1:30 P.M., for continued hearing.

126-05-BZ
APPLICANT – Eric Palatnik, P.C., for Moshe Hirsch, owner.
SUBJECT – Application May 20, 2005 - under Z.R.§73-622 Special Permit - The enlargement of a single family residence to vary ZR sections 23-141 (open space and floor area), 23-46 (side yard) and 23-47 (rear yard). The premise is located in an R-2 zoning district.
PREMISES AFFECTED – 1282 East 27th Street, West side of East 27th Street, north of the intersection of E. 27th Street and Avenue M, Block 7644, Lot 79, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES – None.

ACTION OF THE BOARD - Laid over to November 1, 2005, at 1:30 P.M., for continued hearing.

Pasquale Pacifico, Executive Director.

Adjourned: 5:45 P.M.