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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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March 27, 2008

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### DIRECTORY

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16-36-BZ, Vol. II	1885 Westchester Avenue, Bronx
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58-95-A	474/475 Central Park West, Manhattan
59-95-A	476 Central Park West, Manhattan
119-01-BZ	8818 Fourth Avenue, Brooklyn
211-03-BZ	529-535 48 <sup>th</sup> Avenue, Queens
42-06-BZ, Vol. II	56-45 Main Street, Queens
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841-76-BZ	651 Fountain Avenue, Brooklyn
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617-80-BZIV	770/780 McDonald Avenue, Brooklyn
141-96-BZ	638-40 Utica Avenue, Brooklyn
261-07-A	135 North 9 <sup>th</sup> Street, Brooklyn
264-07-A	76 Romer Road, Staten Island
162-06-A	2852 Faber Terrace, Queens
165-06-A	2848 Faber Terrace, Queens
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**Affecting Calendar Numbers:**

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313-06-BZ	300/302/304 Columbia Street, Brooklyn
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143-07-BZ	6404 Strickland Avenue, Brooklyn
173-07-BZ	1061 East 21 <sup>st</sup> Street, Brooklyn
10-08-BZ	66-68 Bradhurst Avenue, Manhattan
100-07-BZ	642 Barclay Avenue, Staten Island
219-07-BZ	11 West 36 <sup>th</sup> Street, Manhattan
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250-07-BZ	837 Belmont Avenue, Brooklyn
258-07-BZ	105-55 Horace Harding Expressway, Queens

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# DOCKET

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New Case Filed Up to March 18, 2008  
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**54-08-BZ**

3199 Bedford Avenue, East side of Bedford Avenue between Avenue J and K., Block 7607, Lot(s) 15, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home.  
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**55-08-BZ**

350/58 East Houston Street, North west corner of Avenue C., Block 384, Lot(s) 33, Borough of **Manhattan, Community Board: 3**. Special Permit (11-411 & 73-01(d)) to reinstate variance.  
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**56-08-A**

322 Ramona Avenue, South side of Ramona Avenue 140.00' west of Huguenot Avenue., Block 6836, Lot(s) 63 (Tent. 57), Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 35 of the General City Law.  
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**57-08-A**

328 Ramona Avenue, South side of Ramona Avenue; 190.00' west of Huguenot Avenue., Block 6836, Lot(s) 63 (Tent. 54), Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 35 of the General City Law.  
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**58-08-BZ**

614-632 West 58th Street, Twelfth Avenue, West 57th Street, West 58th Street, Eleventh Avenue., Block 1105, Lot(s) 5,14,19,43, Borough of **Manhattan, Community Board: 4**. Special Permit (73-19) to allow a (UG3A) school.  
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**59-08-BZ**

591 Forest Avenue, Premises is situated on the north side of Forest Avenue between Pelton Avenue and Regan Avenue., Block 154, Lot(s) 140, Borough of **Staten Island, Community Board: 1**. Special Permit (73-36) to allow the operation of physical culture establishment.  
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**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.**

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# CALENDAR

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**APRIL 8, 2008, 10:00 A.M.**

**APPEALS CALENDAR**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 8, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**774-55-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for FGP West Street LLC c/o Citibank, N.A., owner.

SUBJECT – Application February 26, 2008 – Extension of Term/Waiver of the rules for a previously granted variance to permit the operation of a (UG8) parking lot, for more than five cars, for employees and customers of a bank (Citibank) on the adjoining lot which expired on January 31, 2003 in R-5 and C1-2 zoning district.

PREMISES AFFECTED – 2155-2159 Newbold Avenue, north side of Newbold Avenue between Olmstead and Castle Hill Avenues, Block 3814, Lot 59, Borough of Bronx.

**COMMUNITY BOARD #9BX**

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**127-05-BZII**

APPLICANT – Sheldon Lobel, P.C., for Church Avenue Realty, LLC, owner.

SUBJECT – Application January 30, 2008 – Extension of Term/Extension of Time to obtain C of O (§73-243) to reopen and extend the term for an accessory drive-thru facility at an existing eating and drinking establishment located in a C1-1/R5 zoning district.

PREMISES AFFECTED – 9216 Church Avenue, aka 9220 Church Avenue and 526 East 93<sup>rd</sup> Avenue, southeast side of Church Avenue between East 92<sup>nd</sup> Street and the intersection of East 93<sup>rd</sup> Street and Linden Boulevard, Block 4713, Lot 42, Borough of Brooklyn.

**COMMUNITY BOARD #17BK**

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**168-07-A**

APPLICANT – Law Office of Fredrick A. Becker, for 1479 Rosedale, LLC, owner.

SUBJECT – Application June 18, 2007 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R6 Zoning District.

PREMISES AFFECTED – 1479 Rosedale Avenue, Rosedale Avenue between Mansion Street and Cross Bronx Expressway, Block 3895, Lot 58, Borough of Bronx.

**COMMUNITY BOARD #9BX**

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**207-07-A**

APPLICANT – Augusta & Ross, for Davis & Warshow, Inc., owner.

SUBJECT – Application August 22, 2007 – Proposed construction of a four story commercial warehouse located within the bed of mapped street (48<sup>th</sup> St.) contrary to Section 35 of the General City Law Section 35. M3-1 Zoning District.

PREMISES AFFECTED – 48-20 57<sup>th</sup> Avenue, westerly side of 49<sup>th</sup> Street at 57<sup>th</sup> Avenue, Block 2564, Lot 1, Borough of Queens.

**COMMUNITY BOARD #5Q**

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**255-07-A**

APPLICANT – Eric Palatnik, P.C., for Yee Kon LLC, owner.

SUBJECT – Application April 8, 2008 – Proposed construction of a daycare center located within the bed of mapped street (Francis Lewis Boulevard contrary to General City Law Section 35. R3-2 Zoning district.

PREMISES AFFECTED – 40-54 Francis Lewis Boulevard (aka 196-23 42<sup>nd</sup> Ave.) corner of Francis Lewis Boulevard and 42<sup>nd</sup> Avenue, Block 5361, Lots 10 & 12, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**259-07-A**

APPLICANT – George N. Mihalios, Esq., for Hikmat Sultan, owner.

SUBJECT – Application November 8, 2007 – Proposed construction of an eight story mixed use building with a community facility and parking on the ground floor within the bed of mapped street (Ash Drive) contrary to General City Law Section 35. R6 Zoning District.

PREMISES AFFECTED – 41-97 Parsons Boulevard, Block 5374, Lot 11, Borough of Queens.

**COMMUNITY BOARD #7Q**

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# CALENDAR

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**APRIL 8, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, April 8, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**238-07-BZ**

APPLICANT – Law Offices of Howard Goldman, for OCA Long Island City, LLC, c/o O’Connor Capital Partners, owners; OCA Long Island City, LLC, lessees.

SUBJECT – Application October 23, 2007 – Variance (§ 72-21) to allow a 13-story residential building (UG 2) contrary to regulations for FAR (§ 117-21 & § 23-145), lot coverage (§ 117-21 & § 23-145), minimum distance between windows (§ 117-21 & § 23-711(b)) and height and setback (§ 117-21, § 23-633 & § 23-663). Student dormitory (UG 3) and faculty housing (UG 2) for CUNY Graduate Center is also proposed contrary to use regulations (§ 42-00). M1-4/R6A (LIC) and M1-4 districts.

PREMISES AFFECTED – 5-11 47<sup>th</sup> Avenue, easterly half of Block 28 on the east side of Fifth Street between 46<sup>th</sup> Road and 47<sup>th</sup> Avenue, 135-180’ west of Vernon Boulevard, Block 28, Lots 13, 15, 17, 18, 21 and 38, Borough of Queens.

**COMMUNITY BOARD # 2Q**

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**242-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for 1760 Gleason Properties, LLC, owner.

SUBJECT – Application October 26, 2007 – Variance (§72-21) to construct a two story, two family detached residence with an accessory one car garage and one accessory open parking space on a vacant corner lot which encroaches into a required front yard (23-45) in an R5 zoning district.

PREMISES AFFECTED – 1760 Gleason Avenue, Commonwealth Avenue and Saint Lawrence Avenue, Block 3752, Lot 41, Borough of Bronx.

**COMMUNITY BOARD # 9BX**

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**36-08-BZ**

APPLICANT – Lewis Garfinkel, R.A., for Antoninette Mizrahi, owner.

SUBJECT – Application February 21, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (23-141(a)); side yards (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1177 East 23<sup>rd</sup> Street, east side of

East 23<sup>rd</sup> Street, 130’ north of Avenue L, Block 7623, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**44-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Peggy Hoffman and Abraham Joseph Hoffman, owners.

SUBJECT – Application February 28, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (23-141(a)), and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1015 East 23<sup>rd</sup> Street, East 23<sup>rd</sup> Street between Avenues J and K, Block 7605, Lot 38, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MARCH 18, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**16-36-BZ, Vol. II**

APPLICANT – Vassalotti Associates, Architects, for  
Cumberland Farms Incorporated, owners.

SUBJECT – Application July 17, 2007 – Extension of Term  
of a previously granted variance for the operation of a  
gasoline service station (Exxon) which expired November 1,  
2007 in a C2-2/R-5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue,  
northwest corner of Westchester Avenue and White Plains  
Road, Block 3880, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Application granted on  
condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for an extension of  
the term for a previously granted variance for a gasoline  
service station, which expired on November 1, 2007; and

WHEREAS, a public hearing was held on this  
application on December 11, 2007, after due notice by  
publication in *The City Record*, with a continued hearing on  
January 15, 2008, and then to decision on March 18, 2008;  
and

WHEREAS, the premises and surrounding area had a site  
and neighborhood examination by Commissioner Ottley-  
Brown; and

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

WHEREAS, the subject premises is located on the  
northwest corner of Westchester Avenue and White Plains  
Road; and

WHEREAS, the site is located within a C2-2 (R5) zoning  
district and is occupied by a gasoline service station and an  
accessory convenience store; and

WHEREAS, the site has a total lot area of 13,500 sq. ft.;  
and

WHEREAS, on April 18, 1950, under the subject  
calendar number, the Board granted a variance to permit the

reconstruction of a gasoline station at the site for a term of 15  
years; and

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

WHEREAS, on May 11, 1999, the Board granted an  
amendment, to permit an extension of term for a period of ten  
years from the expiration of the prior grant, to expire on  
November 1, 2007; and

WHEREAS, most recently, on October 22, 2002, the  
Board granted an extension of time to complete construction  
and obtain a new certificate of occupancy; and

WHEREAS, this application seeks to extend the term of  
the variance for an additional ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may  
permit an extension of term for a previously granted variance;  
and

WHEREAS, during the hearing process, the Board noted  
that the southern curb cut on White Plains Road interferes with  
an existing bus stop and that the curb cut may potentially  
compromise pedestrian safety and circulation around the site;  
and

WHEREAS, in response, the applicant revised the site  
plan to reflect the elimination of the southern curb cut on White  
Plains Road, so that one curb cut remains on White Plains  
Road and three remain on Westchester Avenue; and

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

*Therefore it is Resolved* that the Board of Standards and  
Appeals *reopens* and *amends* the resolution, dated April 18,  
1950, so that as amended this portion of the resolution shall  
read: “to grant an extension of the variance for a term of ten  
years from the prior expiration, to expire on November 1, 2017  
and to permit the noted site modifications; *on condition* that  
any and all work shall substantially conform to drawings filed  
with this application marked “Received July 17, 2007”-(1)  
sheet and “February 12, 2008”-(2) sheets; and; and *on further  
condition*:

THAT this grant shall expire on November 1, 2017;

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 all work shall be performed and a new certificate  
of occupancy shall be obtained within one year of this grant, by  
March 18, 2009;

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

THAT the Department of Buildings must ensure  
compliance with all other applicable provisions of the Zoning  
Resolution, the Administrative Code, and any other relevant  
laws under its jurisdiction irrespective of  
plan(s)/configuration(s) not related to the relief granted.”  
(DOB App. No. 201108078)

Adopted by the Board of Standards and Appeals,

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# MINUTES

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March 18, 2008.

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**57-95-A**

APPLICANT – Mitchell S. Ross, Esq., for Upwest Company, LLC, owner.

SUBJECT – Application October 25, 2007 – Extension of Term of a previously granted Variance (§72-21) to permit the cellar occupancy in a multiple dwelling, located in an R7-2 zoning district, which expired on November 14, 2005; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 1996; an Amendment to the resolution to eliminate the condition of term limits and a waiver of the rules.

PREMISES AFFECTED – 473 Central Park West, Central Park West, 64'11" north of 107th Street, Block 1843, Lot 32, Borough of Manhattan.

**COMMUNITY BOARD #7M**

APPEARANCES –

For Applicant: Mitchell Ross.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening and an amendment to reflect the elimination of the term for a previous grant to permit cellar-level apartments, which expired on November 14, 2005; and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

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

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the subject site is on the west side of Central Park West, between West 107<sup>th</sup> Street and West 108<sup>th</sup> Street; and

WHEREAS, the site is occupied by a five-story residential building; and

WHEREAS, the site is located within an R7-2 zoning district; and

WHEREAS, on January 29, 1963, under BSA Cal. No. 1874-61-A, the Board granted an appeal, pursuant to Section 310 of the Multiple Dwelling Law, to permit Class A apartments to be located in the cellar of the subject building; and

WHEREAS, the Board concurrently granted appeals for the adjacent buildings at 474/475 and 476 Central Park West, for the same purpose, under BSA Cal. Nos. 1871-61-A and 1937-61-A; and

WHEREAS, currently, separate applications were filed for these sites under BSA Cal. Nos. 58-95-A and 59-95-A, but they were all heard together; and

WHEREAS, after several extensions of term, the subject grant lapsed and, on November 21, 1995, was reinstated under the subject calendar number, for a term of ten years; and

WHEREAS, the applicant now seeks to eliminate the term; and

WHEREAS, the applicant notes that there have not been any changes since the last approval; and

WHEREAS, at hearing, the Board asked the applicant to confirm that all conditions from the previous grant related to fire safety and egress have been maintained; and

WHEREAS, in response, the applicant provided photographs reflecting the maintenance of these conditions; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives*, the Rules of Practice and Procedure, *reopens*, and *amends* the resolution having been adopted on November 21, 1995, so that, as amended, this portion of the resolution shall read: “to permit the elimination of the term of the grant; *on condition* that the use and operation of the site shall conform to the previously approved plans associated with this grant; and *on further condition*:

THAT in the event this building is sold separately from the adjacent buildings at 474/475 and 476 Central Park West, an easement permitting the required access to the street must be provided;

THAT all fire safety measures shall be installed and maintained per the BSA-approved plans and prior approvals;

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

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

THAT a new certificate of occupancy be obtained within six months of the date of this grant, by September 18, 2008;

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

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

(DOB App. No. 100766672)

Adopted by the Board of Standards and Appeals, March 18, 2008.

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# MINUTES

## 58-95-A

APPLICANT – Mitchell S. Ross, Esq., for Upwest Company, LLC, owner.

SUBJECT – Application October 25, 2007 – Extension of Term of a previously granted Variance (§72-21) to permit the cellar occupancy in a multiple dwelling, located in an R7-2 zoning district, which expired on November 14, 2005; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 1996; an Amendment to the resolution to eliminate the condition of term limits and a waiver of the rules.

PREMISES AFFECTED – 474/475 Central Park West, Central Park West, 64'11" north of 107th Street, Block 1843, Lot 32, Borough of Manhattan.

### COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Mitchell Ross.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening and an amendment to reflect the elimination of the term for a previous grant to permit cellar-level apartments, which expired on November 14, 2005; and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

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

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the subject site is on the west side of Central Park West, between West 107<sup>th</sup> Street and West 108<sup>th</sup> Street; and

WHEREAS, the site is occupied by a five-story residential building; and

WHEREAS, the site is located within an R7-2 zoning district; and

WHEREAS, on January 29, 1963, under BSA Cal. No. 1937-61-A, the Board granted an appeal, pursuant to Section 310 of the Multiple Dwelling Law, to permit Class A apartments to be located in the cellar of the subject building; and

WHEREAS, the Board concurrently granted appeals for the adjacent buildings at 473 and 476 Central Park West, for the same purpose, under BSA Cal. Nos. 1871-61-A and 1874-61-A; and

WHEREAS, currently, separate applications were filed for these sites under BSA Cal. Nos. 57-95-A and 59-95-A, but they were all heard together; and

WHEREAS, after several extensions of term, the subject grant lapsed and, on November 21, 1995, was reinstated under the subject calendar number, for a term of ten years; and

WHEREAS, the applicant now seeks to eliminate the term; and

WHEREAS, the applicant notes that there have not been any changes since the last approval; and

WHEREAS, at hearing, the Board asked the applicant to confirm that all conditions from the previous grant related to fire safety and egress have been maintained; and

WHEREAS, in response, the applicant provided photographs reflecting the maintenance of these conditions; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives*, the Rules of Practice and Procedure, *reopens*, and *amends* the resolution having been adopted on November 21, 1995, so that, as amended, this portion of the resolution shall read: “to permit the elimination of the term of the grant; *on condition* that the use and operation of the site shall conform to the previously approved plans associated with this grant; and *on further condition*:

THAT in the event this building is sold separately from the adjacent buildings at 473 and 476 Central Park West, an easement permitting the required access to the street must be provided;

THAT all fire safety measures shall be installed and maintained per the BSA-approved plans and prior approvals;

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

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

THAT a new certificate of occupancy be obtained within six months of the date of this grant, by September 18, 2008;

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

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

(DOB App. No. 100766681)

Adopted by the Board of Standards and Appeals, March 18, 2008.

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# MINUTES

## 59-95-A

APPLICANT – Mitchell S. Ross, Esq., for Upwest Company, LLC, owner.

SUBJECT – Application October 25, 2007 – Extension of Term of a previously granted Variance (§72-21) to permit the cellar occupancy in a multiple dwelling, located in an R7-2 zoning district, which expired on November 14, 2005; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 1996; an Amendment to the resolution to eliminate the condition of term limits and a waiver of the rules.

PREMISES AFFECTED – 476 Central Park West, Central Park West, 64'11" north of 107th Street, Block 1843, Lot 32, Borough of Manhattan.

### COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Mitchell Ross.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening and an amendment to reflect the elimination of the term for a previous grant to permit cellar-level apartments, which expired on November 14, 2005; and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

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

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the subject site is on the west side of Central Park West, between West 107<sup>th</sup> Street and West 108<sup>th</sup> Street; and

WHEREAS, the site is occupied by a five-story residential building; and

WHEREAS, the site is located within an R7-2 zoning district; and

WHEREAS, on January 29, 1963, under BSA Cal. No. 1871-61-A, the Board granted an appeal, pursuant to Section 310 of the Multiple Dwelling Law, to permit Class A apartments to be located in the cellar of the subject building; and

WHEREAS, the Board concurrently granted appeals for the adjacent buildings at 473 and 474/475 Central Park West, for the same purpose, under BSA Cal. Nos. 1874-61-A and 1937-61-A; and

WHEREAS, currently, separate applications were filed for these sites under BSA Cal. Nos. 57-95-A and 58-95-A, but they were all heard together; and

WHEREAS, after several extensions of term, the subject grant lapsed and, on November 21, 1995, was reinstated under the subject calendar number, for a term of ten years; and

WHEREAS, the applicant now seeks to eliminate the term; and

WHEREAS, the applicant notes that there have not been any changes since the last approval; and

WHEREAS, at hearing, the Board asked the applicant to confirm that all conditions from the previous grant related to fire safety and egress have been maintained; and

WHEREAS, in response, the applicant provided photographs reflecting the maintenance of these conditions; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives*, the Rules of Practice and Procedure, *reopens*, and *amends* the resolution having been adopted on November 21, 1995, so that, as amended, this portion of the resolution shall read: “to permit the elimination of the term of the grant; *on condition* that the use and operation of the site shall conform to the previously approved plans associated with this grant; and *on further condition*:

THAT in the event this building is sold separately from the adjacent buildings at 473 and 474/475 Central Park West, an easement permitting the required access to the street must be provided;

THAT all fire safety measures shall be installed and maintained per the BSA-approved plans and prior approvals;

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

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

THAT a new certificate of occupancy be obtained within six months of the date of this grant, by September 18, 2008;

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

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

(DOB App. No. 100766690)

Adopted by the Board of Standards and Appeals, March 18, 2008.

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# MINUTES

## 119-01-BZ

APPLICANT – Edward H. Odesser, Esq., for Lawrence J. Mass, owner.

SUBJECT – Application January 11, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a previously granted variance to permit automotive repairs (light type) which expired on June 12, 2002 in a C4-2A (SBRD) zoning district.

PREMISES AFFECTED – 8818 Fourth Avenue, West side of Fourth Avenue, 120’ north of 89<sup>th</sup> Street, Block 6062, Lot 40, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and an extension of the time to obtain a certificate of occupancy for an automotive repair station, which expired on June 12, 2002; and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

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

WHEREAS, the subject premises is located on the west side of Fourth Avenue, between 88<sup>th</sup> Street and 89<sup>th</sup> Street, within a C4-2A zoning district within the Special Bay Ridge District; and

WHEREAS, on July 24, 1956, under BSA Cal. No. 86-56-BZ, the Board granted a variance to permit the operation of an automotive repair station at the site; and

WHEREAS, the grant was subsequently extended at various times, but expired in 1992; and

WHEREAS, accordingly, on June 12, 2001, under the subject calendar number, the Board granted the re-establishment of the variance for a term of ten years to expire on June 12, 2011; and

WHEREAS, one of the conditions of the grant was that a certificate of occupancy be obtained within one year of the date of the grant, by June 12, 2002; and

WHEREAS, the applicant represents that due to a change in ownership, a new certificate of occupancy was never obtained; and

WHEREAS, thus, the applicant now requests six months to obtain a new certificate of occupancy; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 12, 2001, so that as amended this portion of the resolution shall read: “to grant an extension time to obtain a certificate of occupancy for six months; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on condition*:

THAT a certificate of occupancy shall be obtained by September 18, 2008;

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

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

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

(DOB Application No. 302315028)

Adopted by the Board of Standards and Appeals, March 18, 2008.

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## 211-03-BZ

APPLICANT – Eric Palatnik P.C., for 5-33 48th Avenue Corporation, owner.

SUBJECT – Application December 27, 2007 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the proposed expansion and the conversion of an existing warehouse to residential use, which expires on June 8, 2008, in an M1-4/R7A (LIC) zoning district.

PREMISES AFFECTED – 529-535 48<sup>th</sup> Avenue, north side of 48<sup>th</sup> Avenue between Fifth Street and Vernon Boulevard, Block 30, Lot 9, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the

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# MINUTES

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right to complete a proposed mixed-use building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on February 12, 2008 after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

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

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

WHEREAS, the applicant proposes to develop the subject site with a four-story, six-unit mixed-use residential/community facility building, with a medical office on the first floor; and

WHEREAS, the subject premises is currently located within an R6B zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the proposed development complies with the former R6 zoning district parameters as to floor area, height, and front yard; and

WHEREAS, however, on May 11, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Greenpoint-Williamsburg Rezoning, which rezoned the site to R6B, as noted above; and

WHEREAS, because the site is now within an R6B district, the proposed development would not comply with the floor area, height, and front yard parameters, rendering it a non-complying building; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, on February 14, 2006, under BSA Cal. No. 145-05-BZY, the Board granted a renewal of NB Permit 301822981-01 (the "NB Permit") subsequent to making the finding that the permit was validly issued by DOB to the owner of the subject premises and was in effect until the Enactment Date; and

WHEREAS, under BSA Cal. No. 145-05-BZY and pursuant to ZR § 11-331, the Board reinstated the NB Permit for one term of six months, to expire on August 14, 2006; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, construction of the foundations was completed within six months of the Board's reinstatement of the permit, but the proposed building was not completed within two years of the Enactment Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the NB Permit pursuant to ZR § 11-332 before the deadline of June 11, 2007 and is therefore requesting to complete construction under the common law; and

WHEREAS, the Board notes that a common law vested right to continue construction generally exists where: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;" and

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right.' Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action;" and

WHEREAS, as to substantial construction, the Board found that prior to the Enactment Date the owner had completed site preparation, excavation and backfill work to an extent which met the required findings of ZR § 11-331; and

WHEREAS, the applicant states that since the reinstatement of the permit under the prior grant, the owner has completed the entire structure of the building and has nearly completed stucco installation, framing, exterior waterproofing façade and windows; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress has been made, and that said work was substantial enough to meet the guideposts established by case law; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are appropriately included in the applicant's analysis; and

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WHEREAS, the applicant states that the owner has expended \$917,399, including hard and soft costs and irrevocable commitments, out of \$2,790,975 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, cancelled checks, and accounting reports; and

WHEREAS, the Board notes that the budgeted expenditures included site acquisition costs of \$1,485,280 which, for the purposes of its analysis here, the Board has excluded; and

WHEREAS, thus, based upon the applicant's representation as to the total project cost, the Board concludes that the actual construction costs for the proposed construction, both soft and hard, approximate \$1.3 million; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$561,397 for excavation, foundations, construction of the building structure, framing, exterior waterproofing, façade and window installation; and

WHEREAS, the applicant states that the owner also irrevocably owed an additional \$356,000 in outstanding bills for structural and façade work that was completed; and

WHEREAS, the Board considers the amount of expenditures significant, both in and of itself for a project of this size, and when compared against the total development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning; and

WHEREAS, the applicant contends that the loss of the \$917,399 associated with project costs that would result if this appeal were denied is significant; and

WHEREAS, the applicant further contends that the inability to develop the proposed building would require the owner to re-design the development and incur significant costs associated with pouring a new foundation and cutting back the front of the building to provide a complying front yard; and

WHEREAS, further, as noted by the applicant, extensive demolition of the third and fourth floors, estimated at an additional \$1,561,280, would be necessary for a complying building, further compounding the economic harm to the owner; and

WHEREAS, additionally, the applicant explained the diminution in income that would occur if the floor area and height limits, and front yard requirements were imposed; and

WHEREAS, the applicant represents that a complying development would have no community facility space and fewer units, due to the R6B zoning district's required front yard, floor area and height restrictions; and

WHEREAS, the Board agrees that the need to redesign, the expense of demolition and reconstruction, the limitations of any complying development, and the \$917,399 of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of NB Permit 301822981-01, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, March 18, 2008.

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## 42-06-BZ, Vol. II

APPLICANT – Akerman Senterfitt/Stadtmauer Bailkin LLP, for New York Hospital Queens, owner.

SUBJECT – Application January 17, 2008 – Amendment to zoning variance (§72-21) to allow a two-story addition to previously approved five (5) story hospital building located on the campus of New York Hospital – Queens; contrary to regulations for height & setback (§24-522) and rear yard equivalent (§24-382). R6 district.

PREMISES AFFECTED – 56-45 Main Street, West side of Main Street between 56 and Booth Memorial Avenues, Block 5165, Lot 1, Borough of Queens.

## COMMUNITY BOARD #7Q

### APPEARANCES –

For Applicant: Calvin Wong.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, this is an application for a reopening and amendment of a previously granted variance to permit a two-story vertical enlargement of a five-story hospital building; and

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WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

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

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

WHEREAS, the subject premises is located on the west side of Main Street, between 56<sup>th</sup> Avenue and Booth Memorial Avenue within an R6 zoning district; and

WHEREAS, on November 14, 2006, under the subject calendar number, the Board granted a variance to permit the construction of a five-story hospital building containing 97,219 sq. ft. of floor area on the existing campus of New York Hospital; and

WHEREAS, the grant allows a building with a total height of 73'-0" which encroaches into the required setback of 15'-0" at a height of 60'-0" and encroaches 20'-0" into the required rear yard equivalent; and

WHEREAS, the subject site has also been granted an authorization pursuant to ZR § 79-31 by the City Planning Commission (CPC) for location of accessory off-street parking anywhere within a Large Scale Community Facility Plan (N 060304 ZAQ) as well as a Zoning Map amendment (C 060303 ZMQ) changing an R4 to an R6 zoning district (approved by the City Council on October 25, 2006). Additionally, the site across Booth Memorial Avenue to the south ("the garage site") was granted a CPC special permit pursuant to ZR § 74-53 to allow a group parking facility in excess of 150 spaces (372 spaces will be provided). The garage site was also the subject of a BSA variance (41-06-BZ) which granted relief from front and side yard requirements and allowed the construction of stair bulkheads along 141<sup>st</sup> Avenue which are not permitted obstructions. The subject application does not affect these prior approvals.

WHEREAS, the applicant currently seeks to construct a two-story vertical enlargement to the new hospital building containing 40,000 sq. ft. of floor area; the proposed building height is 99'-5 1/2"; and

WHEREAS, the proposed enlargement will increase the degree of non-compliance to height and setback requirements and maintain the encroachment into the rear yard; and

WHEREAS, the applicant states that the revised building will contain 134,805 sq. ft. of floor area, and the overall FAR on the hospital campus would increase from 2.40 to 2.54; and

WHEREAS, the applicant further states that the building footprint will be maintained and the resulting FAR will be significantly below the maximum FAR of 4.80 allowed for community facility use in an R6 district; and

WHEREAS, the applicant represents that the enlargement is necessary to accommodate its modernization

program which is intended to upgrade all portions of the medical facility to ensure continued modern hospital code compliance; and

WHEREAS, the applicant further represents that the additional two stories will be used as "swing space" to permit other portions of the hospital complex to be upgraded without losing patient capacity; and

WHEREAS, the applicant states that that upon completion of the modernization project, the additional space will allow the hospital to convert two-bed rooms to single-bed rooms in conformance with new standards being adopted by the New York State Department of Health; and

WHEREAS, further, the applicant states that no increase in the previously approved 519-bed capacity of the hospital is contemplated; and

WHEREAS, based upon its review of the record, the Board finds that a two-story vertical enlargement of the hospital building is appropriate with certain conditions as set forth below.

WHEREAS, CPC, as Lead Agency, at the time of the prior approval, conducted an environmental review (CEQR No. 05DCP066Q) of the subject actions before the BSA and of related actions approved by CPC, noted above, and issued a Conditional Negative Declaration on September 25, 2006 ("the CND"). On March 17, 2008, the Department of City Planning (DCP) on behalf of the CPC, upon review of the subject BSA amendment request, issued an approval of a Minor Modification of the CND. DCP found that the proposed modification of the BSA variance would not require any changes to the agreed mitigation measures and would not alter the conclusions of the CND.

*Therefore it is Resolved* that the Board of Standards and Appeals, *reopens*, and *amends* the resolution, dated November 14, 2006, so that as amended this portion of the resolution shall read: "to permit a two-story vertical enlargement of the five-story hospital building; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received March 4, 2008"- twelve (12) sheets; and *on further condition*:

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

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

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

(DOB Application No. 402270047)

Adopted by the Board of Standards and Appeals, March 18, 2008.

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# MINUTES

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## 67-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Rodriguez Clove, LLC, owner.

SUBJECT – Application November 9, 2007 – SOC Amendment to reduce the required 48 parking spaces from the prior variance granted on March 20, 2007 to 42 cars. This will allow the compliance with the recent DCP Text Amendment requiring landscaping for parking areas. C2-1/R2 zoning districts.

PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149 & 168, Borough of Staten Island.

### COMMUNITY BOARD #2SI

#### APPEARANCES –

For Applicant: Joseph P. Morsellino.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to reduce the number of required parking spaces on an accessory parking lot for retail use (Use Group 6); and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

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

WHEREAS, Community Board 2, Staten Island, and a local civic organization recommend disapproval of this application; and

WHEREAS, Council Member Oddo and several local residents recommend approval of the application; and

WHEREAS, the subject site is located on the corner of Clove Road and Woodlawn Avenue, partially within a C2-1 zoning district and partially within an R2 zoning district; and

WHEREAS, the site is occupied by a one-story commercial building occupied by one store (Use Group 6); and

WHEREAS, the site will be operated as a Walgreen's pharmacy; and

WHEREAS, on March 20, 2007, under the subject calendar number, the Board granted a variance to permit an accessory parking lot on the R2 portion of the site; and

WHEREAS, the variance required 48 parking spaces and certain landscaping to be provided; and

WHEREAS, on November 27, 2007, a Zoning Resolution text amendment was adopted per ZR §§ 25-60, Article III Chapter 6, and 37-90, requiring that landscaping,

including shrubbery and plantings, screen open parking areas of commercial parking lots; and

WHEREAS, the applicant represents that it cannot comply with the new landscaping requirements and also provide the 48 parking spaces required; and

WHEREAS, the applicant seeks to reduce the number of required spaces to 42; and

WHEREAS, the Board notes that a revised site plan submitted by the applicant indicates that compliance with landscaping requirements consequently reduces the number of parking spaces that can be accommodated within the accessory parking lot to 42; and

WHEREAS, the applicant further represents that a parking study performed in connection with the variance application indicated that 42 spaces would be more than sufficient to satisfy projected vehicle demand as well as future demand by either a comparably-sized commercial use; and

WHEREAS, the Board notes that the applicant had initially requested a parking waiver permitting 34 spaces, but revised the plans to eliminate the need for it; and

WHEREAS, the Board notes that no changes are proposed to the building envelope; and

WHEREAS, based upon its review of the record, the Board finds that the requested reopening and amendment to reduce the number of required parking spaces is appropriate with the conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted March 20, 2007, so that as amended this portion of the resolution shall read: "to reduce the number of required parking spaces to 42, *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received March 14, 2008" - (1) sheet; and *on further condition*:

THAT landscaping, including shrubbery and plantings screening the open parking area, shall comply with the commercial and community facility parking lot regulations per ZR §§ 25-60, Article III Chapter 6, and 37-90;

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

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

THAT the 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. 500824593)

Adopted by the Board of Standards and Appeals, March 18, 2008.

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# MINUTES

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## 710-55-BZ

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

SUBJECT – Application October 19, 2007 – Extension of Term for a gasoline service station (Emporium) which expired on January 10, 2008 in an R3-2 zoning district.

PREMISES AFFECTED – 246-02 South Conduit Avenue, intersection of South Conduit Avenue & 139<sup>th</sup> Street, Block 13622, Lot 5, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Steven Simich.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 10 A.M., for continued hearing.

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## 841-76-BZ

APPLICANT – Anthony M. Salvati, for HJC Holding Corporation, owner.

SUBJECT – Application December 5, 2006 – Extension of Term/Amendment for previously approved variance, under BSA calendar numbers 841-76-BZ and 78-79-BZ, granted pursuant to §72-21 which permitted on the premises auto wrecking and junk yard for auto parts (UG 18), sale of new and used cars and auto repair shop (UG 16), and sale of new and used parts (UG 6) not permitted as of right in a R4 zoning district. The amendment seeks to legalize the change in use from the previously mentioned to open commercial storage bus parking, repairs and sales (UG 16 & 6).

PREMISES AFFECTED – 651 Fountain Avenue, north east corner of Fountain Avenue and Wortman Avenue, Block 4527, Lots 61, 64, 77, 78, 80, 85, 11, Borough of Brooklyn.

### COMMUNITY BOARD #5BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 6y 13, 2008, at 10 A.M., for continued hearing.

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## 78-79-BZ

APPLICANT – Anthony M. Salvati, for HJC Holding Corporation, owner.

SUBJECT – Application December 5, 2006 – Extension of Term/Amendment for previously approved variance, under BSA calendar numbers 841-76-BZ and 78-79-BZ, granted pursuant to §72-21 which permitted on the premises auto wrecking and junk yard for auto parts (UG 18), sale of new and used cars and auto repair shop (UG 16), and sale of new and used parts (UG 6) not permitted as of right in a R4 zoning district. The amendment seeks to legalize the change in use from the previously mentioned to open commercial storage bus parking, repairs and sales (UG 16 & 6).

PREMISES AFFECTED – 671 Fountain Avenue, north east corner of Fountain Avenue and Stanley Avenue, Block 4527, Lots 94 and 110, Borough of Brooklyn.

### COMMUNITY BOARD #5BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 10 A.M., for continued hearing.

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## 617-80-BZIV

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

SUBJECT – Application February 12, 2008 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for an existing non-complying catering establishment (UG9) in an M1-1 zoning district which expired on March 14, 2008.

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

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for decision, hearing closed.

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## 141-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Lloyd Coy, owner.

SUBJECT – Application July 19, 2007 – Extension of term/Amendment/Waiver-permitting the operation of a motor vehicle repair shop (use group 16) in an R5/C2-2 zoning district and amend the previously approved variance allowing minor changes to the layout and legalization of existing non-complying signage. The Term of the variance expired May 20, 2007.

PREMISES AFFECTED – 638-40 Utica Avenue, located on the west side of Utica Avenue between Winthrop Street and Clarkson Avenue, Block 4617, Lot 15, Borough of Brooklyn.

### COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 10 A.M., for continued hearing.

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# MINUTES

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## APPEALS CALENDAR

### 261-07-A

APPLICANT – Krygztov Rostek for Belvedere III LLC, owner.

SUBJECT – Application November 9, 2007 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 (M1-2) zoning district. R6B Zoning District.

PREMISES AFFECTED – 135 North 9<sup>th</sup> Street, north side 125' from east corner of Berry Street, Block 2304, Lot 36, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a proposed mixed-use building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on February 12, 2008 after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

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

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

WHEREAS, the applicant proposes to develop the subject site with a four-story, six-unit mixed-use residential/community facility building, with a medical office on the first floor; and

WHEREAS, the subject premises is currently located within an R6B zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the proposed development complies with the former R6 zoning district parameters as to floor area, height, and front yard; and

WHEREAS, however, on May 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Greenpoint-Williamsburg Rezoning, which rezoned the site to R6B, as noted above; and

WHEREAS, because the site is now within an R6B district, the proposed development would not comply with the floor area, height, and front yard parameters, rendering it a non-complying building; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, on February 14, 2006, under BSA Cal. No. 145-05-BZY, the Board granted a renewal of NB Permit 301822981-01 (the “NB Permit”) subsequent to making the finding that the permit was validly issued by DOB to the owner of the subject premises and was in effect until the Enactment Date; and

WHEREAS, under BSA Cal. No. 145-05-BZY and pursuant to ZR § 11-331, the Board reinstated the NB Permit for one term of six months, to expire on August 14, 2006; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, construction of the foundations was completed within six months of the Board’s reinstatement of the permit, but the proposed building was not completed within two years of the Enactment Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the NB Permit pursuant to ZR § 11-332 before the deadline of June 11, 2007 and is therefore requesting to complete construction under the common law; and

WHEREAS, the Board notes that a common law vested right to continue construction generally exists where: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;” and

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right.’ Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action;” and



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WHEREAS, as to substantial construction, the Board found that prior to the Enactment Date the owner had completed site preparation, excavation and backfill work to an extent which met the required findings of ZR § 11-331; and

WHEREAS, the applicant states that since the reinstatement of the permit under the prior grant, the owner has completed the entire structure of the building and has nearly completed stucco installation, framing, exterior waterproofing façade and windows; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress has been made, and that said work was substantial enough to meet the guideposts established by case law; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that the owner has expended \$917,399, including hard and soft costs and irrevocable commitments, out of \$2,790,975 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, cancelled checks, and accounting reports; and

WHEREAS, the Board notes that the budgeted expenditures included site acquisition costs of \$1,485,280 which, for the purposes of its analysis here, the Board has excluded; and

WHEREAS, thus, based upon the applicant's representation as to the total project cost, the Board concludes that the actual construction costs for the proposed construction, both soft and hard, approximate \$1.3 million; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$561,397 for excavation, foundations, construction of the building structure, framing, exterior waterproofing, façade and window installation; and

WHEREAS, the applicant states that the owner also irrevocably owed an additional \$356,000 in outstanding bills for structural and façade work that was completed; and

WHEREAS, the Board considers the amount of expenditures significant, both in and of itself for a project of this size, and when compared against the total development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning; and

WHEREAS, the applicant contends that the loss of the \$917,399 associated with project costs that would result if this appeal were denied is significant; and

WHEREAS, the applicant further contends that the inability to develop the proposed building would require the owner to re-design the development and incur significant costs associated with pouring a new foundation and cutting back the front of the building to provide a complying front yard; and

WHEREAS, further, as noted by the applicant, extensive demolition of the third and fourth floors, estimated at an additional \$1,561,280, would be necessary for a complying building, further compounding the economic harm to the owner; and

WHEREAS, additionally, the applicant explained the diminution in income that would occur if the floor area and height limits, and front yard requirements were imposed; and

WHEREAS, the applicant represents that a complying development would have no community facility space and fewer units, due to the R6B zoning district's required front yard, floor area and height restrictions; and

WHEREAS, the Board agrees that the need to redesign, the expense of demolition and reconstruction, the limitations of any complying development, and the \$917,399 of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of NB Permit 301822981-01, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, March 18, 2008.

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# MINUTES

## 264-07-A

APPLICANT – Ramulla Associates Architects, for Benjamin Rusi, owner.

SUBJECT – Application November 15, 2007 – Proposed legalization of an existing single family home not fronting a mapped street contrary to General City Law §36. R1-1(SNAD) (SGMD) Zoning district.

PREMISES AFFECTED – 76 Romer Road, east side of Romer Road, 449.51’ north of Four Corners Road, Block 870, Lot 111, Borough of Staten Island.

### COMMUNITY BOARD #2SI

#### APPEARANCES –

For Applicant: Philip Rampulla.

**ACTION OF THE BOARD** – Appeal granted on condition.

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated December 21, 2007 acting on Department of Buildings Application No. 510024322, reads in pertinent part:

“The street giving access to the proposed construction of a single family detached building Use Group 1 in an R1-1 Residential District is not duly placed on the official map of the City of New York and therefore referred to the Board of Standards and Appeals for approval”; and

WHEREAS, a public hearing was held on this application on February 25, 2008 after due notice by publication in the *City Record*, then to decision on March 18, 2008; and

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

WHEREAS, the application is for the legalization of an existing single-family home constructed on a site that does not front on a final mapped street and therefore requires a waiver of Section 36 of the General City Law; and

WHEREAS, the subject site is flag-shaped, with the majority of the 37,585 sq. ft. rectangular lot situated at the end of a driveway that connects to Romer Road; the flagpole portion of the lot has a width of 12 feet and a length of approximately 190 feet and occupies the driveway; and

WHEREAS, the 12-ft. wide portion of the subject site is adjacent to an approximately 12-ft. wide portion of the 74 Romer Road lot and together they form a driveway, which serves both sites; a third site at 68 Romer Road has access directly onto Romer Road; and

WHEREAS, the subject lot configuration was created prior to 1958, and the subject site has been occupied by a single-family home since then; and

WHEREAS, in October 2004, the applicant secured a work permit to enlarge the existing home; and

WHEREAS, the enlargement plans were modified and the applicant ultimately demolished the existing home and commenced construction of a new one at the site, which the applicant represents complies with all relevant zoning district regulations; and

WHEREAS, accordingly, the alteration permit was replaced by a new building permit, which triggered the requirement for a waiver of the General City Law and the legalization of the new building; and

WHEREAS, the applicant states that if the building had been enlarged to the size of the current proposal, rather than demolished and re-built, no waiver would be required; and

WHEREAS, by letter dated October 15, 2007, the Fire Department stated that it had reviewed the application and inspected the subject site and does not support the application because the road leading to the subject site is less than 30 feet in width; and

WHEREAS, further, the Fire Department states that the presence of two homes with garages and driveways (at 68 and 74 Romer Road) on the left side of the road creates potential obstructions for fire equipment that could block the only entrance to the subject property; and

WHEREAS, the Fire Department states that the requirement for a road with a minimum width of 30 feet in this context is a standard that has been applied for 25 years; and

WHEREAS, in response to the issues raised by the Fire Department, the applicant revised the plans to reflect that (1) the home would be fully sprinklered, (2) a new fire hydrant and 8-in. water main would be installed, and (3) the road to the site would be widened to widths of 22 to 24 feet, including a 12-ft. easement on the adjacent site at 74 Romer Road; and

WHEREAS, the applicant provided a copy of an easement agreement with the adjacent property owner reflecting the 12-ft. right-of-way for the ingress and egress over the southwestern 12 feet of the adjacent premises which results in a 24-ft. wide driveway; and

WHEREAS, further, in support of its claim that sufficient access will be maintained along the road, the applicant submitted a revised site plan indicating that (1) No Parking/Fire Lane signs are to be posted along the length of the road, (2) the utility poles have been relocated to the southernmost edge of the driveway and (3) a frontage space measuring 30 feet by 57 feet will be maintained at the entrance of the subject site; and

WHEREAS, in response, the Fire Department reiterated its request for an access road with a minimum width of 30 feet and its opposition to the application in the absence of such a

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road; and

WHEREAS, the Board has reviewed the application and the site conditions and has determined that the measures that the applicant has taken to provide safety from fire (1) include increased safety measures such as full sprinklering and a designated fire hydrant and (2) are consistent with what the Fire Department has approved in recent cases; and

WHEREAS, specifically, the Board notes that (1) the building will be 100 percent sprinklered, (2) a new fire hydrant, less than 250 feet away from the building, and water main connection are proposed, (3) that the frontage space of 30 feet by 57 feet exceeds the minimum required 30 feet by 30 feet, (4) the relocated telephone poles allow for an unobstructed access of 22 to 24 feet, (5) No Parking/Fire Lane signs will be posted, (6) as recently as 2005, the Fire Department accepted a 17-ft. wide access road to a new home that would be fully sprinklered and have a 30 by 30 open frontage area, and (7) the Fire Department stated on record that if the proposal had remained an alteration, rather than a new building, it would not have required the provision of a 30-ft. access road; and

WHEREAS, accordingly, as to the classification of the construction, the Board is not persuaded by the Fire Department's position that if construction at the site were classified as an alteration, a different standard for Fire Department access would be in place than if the construction were classified as a new building; and

WHEREAS, the Board does not agree that the Department of Building's classification of the construction should affect the determination as to what level of fire safety would be required at a residence; and

WHEREAS, further, the Board notes that the Fire Department's requirements in prior Board cases has not been consistent with the purported 25-year policy to not accept anything less than a 30-ft. minimum width; and

WHEREAS, based upon the above, notwithstanding the Fire Department's disapproval, the Board deems that the applicant has submitted adequate evidence to warrant this approval.

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated December 21, 2007, acting on Department of Buildings Application No. 510024322, is modified by the power vested in the Board by Section 36 of the General City Law, and 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 February 26, 2008"-(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;

THAT the subject home be fully sprinklered;

THAT a new fire hydrant will be installed as reflected on the Board-approved plans;

THAT the telephone poles remain in a location, like that on the Board-approved plans, which does not obstruct the access road;

THAT there be No Parking/Fire Lane signs posted along the driveway;

THAT an easement shall be maintained with the adjacent properties at 74 Romer Road to provide for a 12-ft. unobstructed space along the southwestern lot line of that site;

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

THAT the Department of Buildings and, if required, the City Planning Commission shall review and approve the application, including any relevant Special Natural Area District provisions, prior to the issuance of permits; and

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

Adopted by the Board of Standards and Appeals, March 18, 2008.

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## **162-06-A**

APPLICANT – Adam Rothkrug, Esq., for Edgewater Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed construction of a single family home located partially within the bed of a mapped street (Edgewater Road ) contrary to General City Law Section 35. R2 Zoning district.

PREMISES AFFECTED – 2852 Faber Terrace, intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 161, Borough of Queens.

## **COMMUNITY BOARD #14Q**

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for continued hearing.

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# MINUTES

## 165-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed construction of a single family home located partially within the bed of a mapped street (Edgewater Road ) contrary to General City Law Section 35. R2 Zoning district.

PREMISES AFFECTED – 2848 Faber Terrace, intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 61, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for continued hearing.

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## 208-07-BZY

APPLICANT – Law Office of Fredrick Becker, for JN520, LLC/A Fishoff, owner.

SUBJECT – Application August 23, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on July 25, 2007.

PREMISES AFFECTED – 74 Grand Avenue (a/k/a 72-96 Grand Avenue) Grand Avenue between Myrtle Avenue and Park Avenue, Block 1892, Lot 48, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Lyra Altman and Matthew Barnett.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 10 A.M., for continued hearing.

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## 231-07-BZY & 232-07-BZY

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

SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on September 10, 2007. R6 zoning district.

PREMISES AFFECTED – 87-85 & 87-87 144<sup>th</sup> Street, eastside between Hillside Avenue and 88<sup>th</sup> Avenue, Block 9689, Lots 6 & 7, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 1 2008, at 10 A.M., for decision, hearing closed.

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## 287-07-A

APPLICANT – Greenberg Traurig by Jay A. Segal, Esq., for Jack Bendheim, owner.

SUBJECT – Application December 21, 2007 – Proposed construction of an accessory tennis court located partially within the bed of a mapped street (West 248<sup>th</sup> Street) contrary to General City Law Section 35. R1-1 SNAD.

PREMISES AFFECTED – 697 West 247<sup>th</sup> Street, north side of West 247<sup>th</sup> Street between Palisade Avenue and Independence Avenue, Block 5937, Lot 300, Borough of Bronx.

### COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Margo Flug.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 10 A.M., for decision, hearing closed.

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## 163-07-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Sea Cliff Towers Owners Corp., owner.

SUBJECT – Application June 14, 2007 – Proposed construction of an accessory parking lot located within a portion of the bed of a mapped street (Cliff Street ) contrary to General City Law Section 35 . R3-2 Zoning District.

PREMISES AFFECTED – 11 Cliff Street, northeast corner of Cliff Street and Cliff Court, Block 2833, tent. Lot 65, Borough of Staten Island

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for continued hearing.

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## 192-07-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Metropolitan Home Center, Inc.,

SUBJECT – Application August 7, 2007 – Proposed construction of a four story multiple dwelling located within the bed of mapped street (East 211th street) contrary to Section 35 of the General City Law. R7-1 Zoning District.

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PREMISES AFFECTED – 3546 Decatur Avenue, intersection of East side of Decatur Avenue and the bed of East 21<sup>st</sup> Street, Block 3356, Lot 190, Borough of Bronx.

**COMMUNITY BOARD #7BX**

APPEARANCES –

For Applicant: Adam Rothkrug.

For Administration: Anthony Scaduto, FDNY

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 10 A.M., for continued hearing.

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**246-07-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Stacey Farrelly, owner; Dominick Desimone, lessee.

SUBJECT – Application October 30, 2007 – Proposed construction of a mixed use building located within the bed of a mapped street contrary to General City Law Section 35. C2-1 Zoning district.

PREMISES AFFECTED – 97 Victory Boulevard (aka no number Corson Avenue), west side of Victory Boulevard, 180' south of Corson Avenue, Block 23, Lot 55, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 10:30A.M.

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, MARCH 18, 2008  
1:30 P.M.**

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

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**ZONING CALENDAR**

**31-06-BZ**

APPLICANT – Sheldon Lobel, P.C., for Frank Falanga,  
owner.

SUBJECT – Application February 24, 2006 – Zoning  
variance (§72-21) to allow the legalization of an automotive  
collision repair shop (Use Group 16) in an R3-1/C1-2  
district; proposed use is contrary to ZR §§22-00 and 32-00.  
PREMISES AFFECTED – 102-10 159<sup>th</sup> Road, south side of  
159<sup>th</sup> Road near the intersection of 192<sup>nd</sup> Street and 159<sup>th</sup>  
Road, Block 14182, Lot 88, Borough of Queens.

**COMMUNITY BOARD #10Q**

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Application granted on  
condition.

**THE VOTE TO GRANT** –

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

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough  
Commissioner, dated March 18, 2008, acting on Department of  
Buildings Application No. 401554778, reads in pertinent part:

“Proposed UG 9 and UG 16 are contrary to ZR  
Section 32-00”; and

WHEREAS, this is an application under ZR § 72-21, to  
permit, within a C1-2 (R3-1) zoning district, the legalization of  
an auto-body repair shop (Use Group 16) and a dance studio  
(Use Group 9) within portions of a two-story commercial  
building, which is contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application  
on January 30, 2007, after due notice by publication in the *City  
Record*, with continued hearings on April 10, 2007, July 10,  
2007, August 14, 2007, October 16, 2007, December 11, 2007,  
February 5, 2008 and March 4, 2008, and then to decision on  
March 18, 2008; and

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

WHEREAS, Community Board 10, Queens,  
recommends approval of this application on the condition  
that the term be limited to ten years; and

WHEREAS, the site is located on a through lot, with  
frontage on 159<sup>th</sup> Road and 159<sup>th</sup> Drive (aka Remsen Place),  
between 102<sup>nd</sup> Street and a railroad cut adjacent to John F.  
Kennedy International Airport, within a C1-2 (R3-1) zoning  
district; and

WHEREAS, the site has a depth of 180 feet, a width of  
60 feet, and a lot area of 10,800 sq. ft.; and

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

WHEREAS, the first floor is occupied by an auto-body  
repair shop (Use Group 16) and a deli (Use Group 6); the  
second floor is occupied by a dance studio (Use Group 9); and

WHEREAS, the site complies with all zoning regulations  
except for use on the portions of the site occupied by the auto-  
body repair and dance studio uses; and

WHEREAS, the Board notes that the site does not  
provide the required parking (36 spaces are required and ten are  
provided) but that since the application reflects a conversion of  
a legal pre-existing building, no waiver for parking is required;  
and

WHEREAS, the applicant proposes to maintain the  
existing uses at the site, which have existed for more than 35  
years, and does not propose any changes to the building or its  
operation; and

WHEREAS, the applicant states that the following are  
unique physical conditions which create an unnecessary  
hardship in developing the site in conformance with applicable  
regulations: the existing historic building is obsolete for a  
conforming use due to (1) its unique configuration designed for  
a movie theater, which includes an extraordinary depth without  
windows along the side or rear walls, and (2) minimal street  
frontage in relationship to building depth, including 60 feet of  
frontage on an un-mapped street; and

WHEREAS, as to the building’s configuration, the  
applicant notes that the site was originally designed for a drive-  
in movie theater in approximately 1920, and was later  
converted to an indoor movie house; and

WHEREAS, accordingly, the majority of the building has  
a floor to ceiling height of 20’-7” to accommodate the movie  
house, and is now occupied by the auto-body repair; and

WHEREAS, additionally, the applicant notes that the  
building extends for a depth of approximately 129 feet without  
windows; also, there are not any windows along the rear wall at  
the 159<sup>th</sup> Drive frontage; and

WHEREAS, the applicant asserts that the windowless  
double-height space is not marketable for a conforming use;  
and

WHEREAS, the applicant asserts that the limited street  
frontage also limits the potential for dividing the building into  
smaller spaces for conforming uses because it would result in  
very long narrow spaces without windows; and

WHEREAS, the applicant notes that the commercial use  
in the area is limited to smaller local retailers and large space  
for such use would not be marketable, with or without  
windows; and

WHEREAS, as to the dance studio, the applicant notes

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that it occupies the second floor, which is not marketable for conforming commercial use since it does not have a presence at street level and is therefore not attractive to pedestrian traffic; and

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

WHEREAS, the applicant submitted a feasibility study analyzing (1) a conforming residential/commercial scenario in the existing building, (2) a conforming residential scenario of four single-family homes, and (3) a non-complying three-story residential/commercial building; and

WHEREAS, as to the first conforming scenario, the applicant represents that in order to make the building more marketable, partial demolition would be required to create an interior court to accommodate such use given the absence of windows; and

WHEREAS, the applicant notes that the wall separating the two-story space fronting on 159<sup>th</sup> Road and the double-height one-story space at the rear is so structurally substantial that it could only be demolished at considerable expense; and

WHEREAS, as to the residential scenario, the applicant represents that the existing building would have to be demolished at considerable cost and that because 159<sup>th</sup> Drive is not a mapped street, the applicant would need to seek a waiver of General City Law § 36 in order to have two of the homes front on it; and

WHEREAS, further, the applicant represents that there are not any public sewers in 159<sup>th</sup> Drive, so additional expenditure would be required to extend the sewer down 102<sup>nd</sup> Street or a sewer easement arrangement would be required with nearby property owners; and

WHEREAS, the applicant represents that third scenario of demolishing the existing building and constructing a three-story commercial/residential building with an FAR of 1.25, which would require a bulk waiver (0.5 residential FAR is the maximum permitted in the subject zoning district) would also be infeasible due to the demolition costs and constraints of the apartments due to the unique site conditions; and

WHEREAS, the applicant concluded that none of the three scenarios would result in a reasonable return, due to the unique conditions of the site; and

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

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

WHEREAS, the applicant represents that the

surrounding area is characterized by two- and three-story mixed-use buildings with ground floor commercial use; and

WHEREAS, specifically, the nearby commercial uses on 159<sup>th</sup> Road include a laundromat, two hardware/home improvement stores, a liquor store, and a restaurant; and

WHEREAS, additionally, the applicant notes that the site is approximately a block away from John F. Kennedy International Airport, which is within a large M1-1 zoning district and a major AirTrain station is located down the block to the east on 159<sup>th</sup> Road; and

WHEREAS, the applicant notes that the rear entrance to the site on 159<sup>th</sup> Drive does not have any commercial signs and is compatible with nearby uses; and

WHEREAS, further, the applicant notes that the auto-body use, which is limited to body repair and does not include automotive service uses, has operated at the site for more than 30 years and no changes are proposed; and

WHEREAS, the applicant represents that the paint spray room at the site is licensed and operates pursuant to a New York City Department of Environmental Protection (DEP) Triennial Certificate of Operation; and

WHEREAS, the Board notes that the majority of the auto-body use is contained within the large windowless building; and

WHEREAS, further, the Board notes that the primary use of an auto-body repair shop does not generate any significant traffic because patrons drop off their cars, which are generally stored in the building as work is completed on them; and

WHEREAS, the applicant represents that the ground floor is an 8-inch thick concrete and that since there is no demolition proposed, and the site operates pursuant to a spray paint license, the soil will not be disturbed; and

WHEREAS, additionally, the applicant states that the drain is only used in rare instances of flooding; and

WHEREAS, as noted below, the applicant has executed and signed a Restrictive Declaration, which addresses any potential environmental impacts; and

WHEREAS, as to the dance school use, the Board notes that it is compatible with both the commercial and residential uses on 159<sup>th</sup> Road; and

WHEREAS, accordingly, 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 observes that the applicant does not propose (1) any changes to the existing building or (2) any expansion of the non-conforming uses; and

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

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

WHEREAS, the project is classified as a Unlisted action

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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. 06BSA057Q, dated February 20, 2008; 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 Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: the October 2006 Environmental Assessment Statement (EAS), the February 2008 EAS, the January 2007 Phase I Environmental Site Assessment (ESA) Report, the June 2007 Phase II Subsurface Workplan and HASP (Health and Safety Plan) and the December 2007 Limited Phase II Subsurface Investigation Report; and

WHEREAS, these submissions specifically examined the proposed action for potential impacts for hazardous materials, air quality and noise; and

WHEREAS, a Restrictive Declaration was executed on February 21, 2008 and recorded on March 12, 2008 for the subject property to address hazardous materials concerns; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within a C1-2 (R3-1) zoning district, the legalization of an auto-body repair shop (Use Group 16) and a dance studio (Use Group 9) within portions of a two-story commercial building, which is contrary to ZR § 32-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 23, 2006" – three (3) sheets and "Received February 20, 2008" – one (1) sheet; and *on further condition*:

THAT the non-conforming uses at the site shall be limited to Use Group 9 dance studio on the second floor at the

159<sup>th</sup> Road frontage and Use Group 16 auto-body repair on a portion of the first floor at the 159<sup>th</sup> Road frontage and in the one-story portion of the building at the rear, as reflected on the Board-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, March 18, 2008.

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## 160-06-BZ

APPLICANT – Rothkrug Rothkrug and Spector, for Barbara Berman, owner.

SUBJECT – Application July 24, 2006 – Variance under §72-21 to permit the proposed one-story and cellar Walgreens drug store with accessory parking for 24 cars. The proposal is contrary to §22-00. R3-1 district.

PREMISES AFFECTED – 2199 (a/k/a 2175) Richmond Avenue, corner of Richmond Avenue and Travis Avenue, Block 2361, Lots 1, 7, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Superintendent, dated July 7, 2006, acting on Department of Buildings Application No. 500824566, reads in pertinent part:

"Proposed new commercial building Use Group 6 is not permitted as-of-right in a Residential R3-1 Zoning District;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-2 zoning district, the construction of a one-story commercial building (Use Group 6) to be used as a pharmacy with accessory parking which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on January 8, 2008, after due notice by publication in *The City Record*, with continued hearings on February 5, 2008 and March 4, 2008, and then to decision on March 18, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan,



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Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommended approval of this application subject to a condition limiting truck deliveries and garbage collection between the hours of 9:00 a.m. and 5:00 p.m.; and

WHEREAS, the proposed building will have one story and a partial cellar with a total floor area of 7,264 sq. ft., an FAR of 0.36, a rear yard of 8'-0", a height of 18'-0" in the front, with a small portion of the entrance at a height of 27'-11 1/2", and a height of 15'-0" in the rear, and 24 parking spaces; and

WHEREAS, the subject premises is located within an R3-1 zoning district on the southeast corner of Richmond Avenue and Travis Avenue, and

WHEREAS, the site has a slightly irregular trapezoidal shape, with approximately 205 feet of frontage on Richmond Avenue extending approximately 96'-5" in depth at its shortest point and 105'-5" in depth at its longest point; and

WHEREAS, the site is currently vacant and has a lot area of 19,955 sq. ft.; and

WHEREAS, the applicant states that the proposed first floor will be occupied by retail use; the partial cellar will be occupied by accessory storage and mechanical equipment; and

WHEREAS, the site will be operated as a Walgreen's pharmacy; and

WHEREAS, as noted above, the proposed building requires a use waiver; thus, the instant variance application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the site's subsurface rock condition; (2) the site's slope; and (3) the site's location on a heavily-traveled arterial road; and

WHEREAS, as to the subsurface rock condition, the applicant states that a large rock outcropping consisting of shallow apparent bedrock and/or large boulders occupies 25 percent of the land within the proposed building footprint; and

WHEREAS, the applicant represents that construction of any building on the site would require excavation and removal of the rock; and

WHEREAS, the applicant further represents that such excavation would typically require pneumatic or hydraulic hammers at considerable additional cost; and

WHEREAS, as to the site's slope, the applicant states that the site has a change in grade in excess of six feet; and

WHEREAS, the applicant represents that this condition would necessitate the installation of a retaining wall along the rear lot line so that the grade for the remainder of the site can be lowered to a height that would allow access from Richmond Avenue; and

WHEREAS, the applicant further represents that a lowering of the site grade would create additional excavation difficulties due to the site's subsurface rock conditions; and

WHEREAS, the applicant states that the site's

topographical conditions impede the development of the site for a conforming residential or community facility use; and

WHEREAS, as to its location, the applicant states that the site is located on an especially wide portion of Richmond Avenue, an eight-lane north/south arterial roadway more than 150'-0" in width; and

WHEREAS, the applicant further states that the site is directly north, south and east of commercial uses; and

WHEREAS, the applicant represents that the heavy incidence of traffic and the preponderance of commercial uses stifle demand for a complying residential development which would front on Richmond Avenue; and

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

WHEREAS, the applicant initially submitted a feasibility study which analyzed two as-of-right alternatives: (i) two one-story community facility buildings with 3,000 square feet of floor area and (ii) a development consisting of eight semi-detached single-family homes totaling 12,472 square feet of floor area; and

WHEREAS, the study concluded that neither conforming scenario would realize a reasonable return; and

WHEREAS, the applicant notes that the feasibility study was submitted before the results of the applicant's topographical investigation were completed, and that if it had reflected the costs associated with installation of a retaining wall and excavating the subsurface rock it would have shown an even lower return for the conforming scenarios; 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 zoning district regulations will provide a reasonable return; and

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

WHEREAS, the applicant represents that the surrounding area is occupied by an abundance of commercial uses; and

WHEREAS, the applicant has submitted a land use map of the area indicating that within a 400-ft. radius of the site, indicating that approximately half of the frontage along the east and west sides of Richmond Avenue has been developed for commercial uses; and

WHEREAS, further, photographs submitted by the applicant depict commercial buildings similar in scale to the proposed building located across Richmond Avenue; and

WHEREAS, at hearing, the Board noted that the site plan did not comply with the new landscaping regulations requiring buffering landscaping surrounding the parking area and adjoining lot lines, as would be required if the proposed building were in a commercial district; and

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WHEREAS, the applicant responded by submitting a revised site plan which indicates that landscaping, including shrubbery and plantings will screen the open parking area from the adjoining frontage and from Richmond Avenue, in conformance with the new landscaping standards set forth in ZR §§ 25-60, Article III Chapter 6, and 37-90; and

WHEREAS, in response to the concern of the Community Board, at hearing the Board requested that the applicant restrict the hours of pickups and deliveries to and from the site; and

WHEREAS, in response, the applicant stated that it would limit truck deliveries and garbage removal to the hours between 9:00 a.m. and 5:00 p.m.; and

WHEREAS, additionally, the Board directed the applicant to relocate the trash collection site and exterior lighting away from residences and to reduce the height of the building; and

WHEREAS, in response, the applicant submitted revised plans relocating the trash collection site, redirecting exterior lighting, and reducing the building height by three feet in the pharmacy portion at the rear of the building; and

WHEREAS, the Board asked whether the overall height of the building could similarly be reduced; and

WHEREAS, the applicant represented that an 18'-0" foot ceiling was necessary within the general sales area to accommodate truss work supporting the ceiling thereby allowing column-free space within the sales area; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's pre-existing subsoil condition, slope and heavily trafficked location; and

WHEREAS, the Board notes that the applicant will provide an 8'-0" rear yard and reduced the height of the building at the rear by three feet from what was originally proposed; and

WHEREAS, the Board notes that as a community facility use, a complying building could obstruct the rear yard up to 23'-0" to the rear lot line; and

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

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

WHEREAS, the Department of City Planning (DCP) through a rezoning application (C 030293 ZMR) reviewed the EAS (CEQR No. 03DCP033R) and determined that there would not be any adverse environmental impacts due to the proposed project. DCP issued a Negative Declaration on November 17, 2003; and

WHEREAS, no other significant effects upon the

environment that would require an Environmental Impact Statement are foreseeable.

*Therefore it is Resolved*, that the Board of Standards and Appeals adopts DCP's Negative Declaration under Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-1 zoning district, the proposed construction of a one-story commercial building, which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 19, 2008" - two (2) sheets and "Received March 3, 2008" - one (1) sheet; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 7,264 sq. ft., an FAR of 0.36, a rear yard of 8'-0", a height of 18'-0" in the front and 15'-0" in the rear, and 24 parking spaces, as indicated on the BSA-approved plans;

THAT landscaping, including shrubbery and plantings screening the open parking area, shall comply with the commercial and community facility parking lot regulations set forth in ZR §§ 25-60, Article III Chapter 6, and 37-90;

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

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

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

Adopted by the Board of Standards and Appeals, March 18, 2008.

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## **299-06-BZ**

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Three Partners, LLC.

SUBJECT – Application November 3, 2006 – To consider dismissal for lack of prosecution – Proposed legalization of a public parking facility (garage and lot); contrary to use regulations (§ 22-10). R7-1 district.

PREMISES AFFECTED – 1976 Crotona Parkway, east side of Crotona Parkway, 100' north of Tremont Avenue, Block 3121, Lots 10 and 25, Borough of Bronx

## **COMMUNITY BOARD #6BX**

APPEARANCE –

In Favor: Daniel Braff.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 1:30 P.M., for an adjourned hearing.

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## 311-06-BZ thru 313-06-BZ

APPLICANT – Rothkrug, Rothkrug, & Spector, LLP, for White Star Lines LLC.

SUBJECT – Application December 4, 2006 – Zoning variance under §72-21 to allow three, four (4) story residential buildings containing a total of six (6) dwelling units, contrary to use regulations (§42-10); M1-1 district.

PREMISES AFFECTED – 300/302/304 Columbia Street, Northwest corner of Columbia Street and Woodhull Street, Block 357, Lots 38, 39, 40. Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 1:30 P.M., for deferred decision.

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## 119-07-BZ

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.

SUBJECT – Application May 11, 2007 – Variance under (§ 72-21) to allow a four-story community facility building (UG4A) to violate regulations for use (§ 42-10), rear yard (§ 43-26) and parking (§ 44-21). M1-2 district.

PREMISES AFFECTED – 443 39<sup>th</sup> Street, northern side of 39<sup>th</sup> Street, midblock between 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue, Block 705, Lot 59, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for continued hearing.

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## 143-07-BZ

APPLICANT – Moshe M. Friedman, for Chabad House of Canarsie, Inc., owner.

SUBJECT – Application June 4, 2007 – Variance (§72-21) to permit the construction of a three-story and cellar synagogue, religious pre-school, and Mikva. The proposal is contrary to §24-111 (a) and §23-141 (a) (Floor Area and FAR), §24-11 (Open Space and Lot Coverage), §24-521 (Front Wall and Sky Exposure Plane), §24-34 (Front Yard), §24-35 (Side Yard), §25-31 (Parking). R2 district.

PREMISES AFFECTED – 6404 Strickland Avenue, south east corner of Strickland Avenue and East 64<sup>th</sup> Street, Block 8633, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Moshe Friedman.

For Opposition: Saul Needle of Community Board 18 and Melvin Levy.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P.M., for continued hearing.

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## 173-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gitty Gubitz-Rosenberg, owner.

SUBJECT – Application June 21, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space ratio (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1061 East 21<sup>st</sup> Street, located on the east side of East 21<sup>st</sup> Street between Avenue I and Avenue J, Block 7585, Lot 33, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for continued hearing.

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## 10-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for NYC Partnership Housing Development Fund Company, Inc., owner; TSI West 145<sup>th</sup> LLC, dba New York Sports Club, lessee.

SUBJECT – Application January 4, 2008 – Special Permit (§73-36) to allow the legalization of the existing Physical Culture Establishment on a portion of the cellar level and first floor in a nine-story mixed-use building. The proposal is contrary to section 32-10. C4-4D.

PREMISES AFFECTED – 66-68 Bradhurst Avenue, easterly side of Bradhurst Avenue, easterly of West 145<sup>th</sup> Street, Block 2045, Lot 21, Borough of Manhattan.

### COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Fredrick Becker.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to April 8 2008, at 10 A.M., for decision, hearing closed.

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## 100-07-BZ

APPLICANT – David L. Businelli, for Ekram Tadros, owner.

SUBJECT – Application April 26, 2007 – Variance (§ 72-21) to allow a one-story and cellar community facility building (medical offices - UG4) to violate front yard (§ 24-34) and side yard (§ 107-464) requirements. R3X district (SRD).

PREMISES AFFECTED – 642 Barclay Avenue, west side Barclay Avenue, south of Hylan Boulevard, Block 6398, Lot

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9, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Cesaro Giaquinto.

For Opposition: Anthony Sagaria.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for continued hearing.

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**219-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Eternal Sino Int. Dev. Condo., LLC, owner; Shunai (Kathy) Jin, lessee.

SUBJECT – Application September 24, 2001 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the second floor of an existing building. Proposal contrary to section 42-13. M1-6 zoning district.

PREMISES AFFECTED – 11 West 36<sup>th</sup> Street, located on the north side of West 36<sup>th</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup> Avenues, Block 838, Lot 35, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for continued hearing.

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**248-07-BZ**

APPLICANT – Akeeb Shekoni, for Bhola Trilok, owner.

SUBJECT – Application October 31, 2007 – Variance (§72-21) for legalization of three story, two family home, in an R5 zoning district, which was built on an undersized lot contrary to section (23-33) for minimum lot width.

PREMISES AFFECTED – 32-15 60<sup>th</sup> Street, between Northern Boulevard and 32<sup>nd</sup> Avenue, Block 1161, Lot 29, Borough of Queens.

**COMMUNITY BOARD #1Q**

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for postponed hearing.

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**250-07-BZ**

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

SUBJECT – Application November 2, 2007 – Variance (§ 72-21) to allow a two-story, two-family dwelling; contrary to front yard (§ 23-45) and side yard (§ 23-461(a)) requirements. R5 district.

PREMISES AFFECTED – 837 Belmont Avenue, northeast corner of the intersection of Atkins Avenue and Belmont Avenue, Block 4023, Lot 45, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

APPEARANCES –

For Applicant: Adam Rothkrug

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 1:30 P.M., for continued hearing.

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**258-07-BZ**

APPLICANT – Carl A. Sulfaro, Esq., for Exxon Mobil Oil Corp., owner.

SUBJECT – Application October 24, 2007 – Special Permit (§73-211) to permit in a C2-2/R6 zoning district, the reconstruction of an existing automotive service station with accessory uses including an accessory convenience store.

PREMISES AFFECTED – 105-55 Horace Harding Expressway, northwest corner of 108<sup>th</sup> Street, Block 1964, Lot 23, Borough of Queens.

**COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Carl A. Sulfaro.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:30 P.M.*