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# BULLETIN

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

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

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Volume 96, Nos. 1-3

January 19, 2011

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### DIRECTORY

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1095-64-BZ	605 Park Avenue, Manhattan
433-65-BZ	15 West 72 <sup>nd</sup> Street, Manhattan
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**Affecting Calendar Numbers:**

104-10-BZ	5002 19 <sup>th</sup> Avenue, aka 1880-1890 50 <sup>th</sup> Street, Brooklyn
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# DOCKET

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New Case Filed Up to January 11, 2011  
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**228-10-BZY**

180 Ludlow Street, East side of Ludlow Street, approximately 125 south of Houston Street., Block 412, Lot(s) 48-50, Borough of **Manhattan, Community Board: 3**. Extension of time (§11-332) to complete construction under the prior C6-1 zoning district regulations . C4-4A zoning district . C4-4A district.  
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**229-10-BZY**

163 Orchard Street, Through lot between Orchard and Houston Street between Syntanton and Rivington Street., Block 416, Lot(s) 58, Borough of **Manhattan, Community Board: 3**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district . C4-4A Zoning District C4-4A district.  
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**230-10-BZ**

177 Kensington Street, Oriental Boulevard and Kensington Street., Block 8754, Lot(s) 78, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an single family home contrary to open space, lot coverage and floor area §ZR 23-141(b) and perimeter wall height §23-631(b). R3-1 zoning district. R3-1 district.  
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**231-10-BZ**

430-440 Park Avenue, Between Kent Avenue and Franklin Avenue., Block 1898, Lot(s) (ten) 29, Borough of **Brooklyn, Community Board: 3**. Special Permit (§73-19) to allow a school, contrary to use regulations. M1-1 district.  
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**232-10-A**

59 Fourth Avenue, 9th Street & Fourth Avenue., Block 555, Lot(s) 11, Borough of **Manhattan, Community Board: 3**. An appeal challenging Department of Buildings determination to deny the issuance of a sign permit on the basis that a lawful adversting sign has not been established and not discontinued as per ZR Section 52-83. C1-6 Zoning District . R8-B district.  
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**233-10-A**

90-22 176th Street, Between Jamaica and 90th Avenues., Block 9811, Lot(s) 61 (tent), Borough of **Queens, Community Board: 12**. Appeal seeking a common law vested right to continued development commenced under the prior R6 Zoning District. R4-1 Zoning District. R4-1 district.  
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**234-10-BZ**

2115 Avenue K, North side 100' east of intersection of Avenue K & East 21st Street., Block 7603, Lot(s) 3, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR §23-141(a)) and less than the required rear yard (ZR §23-47). R-2 zoning district. R-2 district.  
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# DOCKET

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**235-10-BZ**

2363 Ralph Avenue, Northeast corner of Ralph Avenue and Avenue K., Block 8339, Lot(s) 1, Borough of **Brooklyn, Community Board: 18**. Variance (§72-21) to allow a commercial use in a residential zone, contrary to ZR 22-00. R3-2 zoning district. R3-2 district.

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**1-11-BZ**

189-191 Atlantic Avenue, North side of Atlantic Avenue, 240 feet east of Clinton Street., Block 276, Lot(s) 7, Borough of **Brooklyn, Community Board: 2**. Variance (§72-21) to enlarge a pre-existing non complying commercial building, contrary to ZR 53-31. C2-3/R6 zoning district. C2-3/R6/LH-1 district.

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**2-11-BZ**

117 Seventh Avenue South, Southeast corner of Seventh Avenue South and West 10th Street., Block 610, Lot(s) 16, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to front setback (ZR 33-432) and open space regulations (ZR 23-14). C4-5 zoning district. C4-5 district.

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**3-11-BZ**

1221 East 22nd Street, East 22nd Street between Avenue K and Avenue L., Block 7622, Lot(s) 21, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of a single family home contrary to floor area and open space (ZR §23-141) and less than the required rear yard (ZR §23-47). R-2 zoning district. R2 district.

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**4-11-BZ**

1747-1751 East 2nd Street, Northeast corner of East 2nd Street and Quentin Road., Block 6634, Lot(s) 49, Borough of **Brooklyn, Community Board: 15**. Variance to allow the construction of a synagogue, contrary to bulk regulations. R5 (Opsubdis) district.

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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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**FEBRUARY 1, 2011, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 1, 2011, 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**

**964-87-BZ**

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum Incorporated, owner.

SUBJECT – Application October 18, 2010 – Extension of Term for the continued operation of (UG16) Gasoline Service Station (*Getty*) which expired on February 6, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on January 15, 2003; Amendment to the hours of operation and Waiver of the Rules.

C1-3/R6 zoning district.

PREMISES AFFECTED – 780-798 Burke Avenue, southwest corner of Burke and Barnes Avenue, Block 4571, Lot 28, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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**217-96-BZ**

APPLICANT – Eric Palatnik, P.C., for Silverbell Investment Company, Incorporated, owner; Enterprise Rent-A-Car, lessee.

SUBJECT – Application December 17, 2010 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) of a car rental facility (Enterprise) with accessory outdoor storage of cars which expired on July 12, 2010; waiver of the rules. C1-2/R-2 zoning district.

PREMISES AFFECTED – 165-01 Northern Boulevard, northeast corner of 165<sup>th</sup> Street and Northern Boulevard, Block 53340, Lot 8, Borough of Queens.

**COMMUNITY BOARD #**

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**10-99-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for D & M Richmond Realty LLC, owner; TSI Staten Island LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 25, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (New York Sports Club) which expired on October 26, 2009; Waiver of the Rules. M2-1 zoning district.

PREMISES AFFECTED – 300 West Service Road, northwesterly corner of West Service Road and Wild Avenue, Block 270, Lot 135, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**328-04-BZ**

APPLICANT – Goldman Harris LLC, for Rockaway Improvements, LLC, owner.

SUBJECT – Application December 21, 2010 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) of aUG2 six story residential building with twelve dwelling units which expired on November 21, 2010. M1-1 zoning district.

PREMISES AFFECTED – 108 Franklin Avenue aka 108-110 Franklin Avenue between Park and Myrtle Avenues, Block 1898, Lot (tent) 49, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

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**APPEALS CALENDAR**

**70-08-A thru 72-08-A**

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

SUBJECT – Application December 17, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted vesting application under the Common Law which expired on January 11, 2011. R3A zoning district.

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

**COMMUNITY BOARD #1SI**

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**73-08-A thru 75-08-A**

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

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

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

**COMMUNITY BOARD #1SI**

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**215-10-A**

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

SUBJECT – Application November 20, 2010 – An appeal challenging the issuance of permits and approvals for the expansion of a hospital that allows violations of the Zoning Resolution sections related to use (ZR 22-14), floor area (ZR 24-111) and setbacks (ZR 24-34) . R2A Zoning District.

PREMISES AFFECTED – 29-01 216<sup>th</sup> Street, west of Cross Island Expressway, east of intersection of 29<sup>th</sup> Avenue and

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# CALENDAR

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216<sup>th</sup> Street, Block 6059, Lot 1, Borough of Queens.  
**COMMUNITY BOARD #11Q**

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**COMMUNITY BOARD #6SI**

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*Jeff Mulligan, Executive Director*

**FEBRUARY 1, 2011, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, February 1, 2011, 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**

### **240-09-BZ**

APPLICANT – T-Mobile Northeast LLC f/k/a Omnipoint Communications Inc., for 452 & 454 City Island Avenue Realty Corp., owner; T-Mobile Northeast LLC, lessee.

SUBJECT – Application August 10, 2009– Variance (§72-21) to construct a telecommunications facility on the rooftop of an existing building. The proposal is contrary to the height requirements of the Special City Island District (CD) (§112-103) and the C2-2 commercial overlay zone (§33-431) and the rear and side yard setback requirements (§§23-47 and 23-464, respectively). R3A/C2-2/CD districts.

PREMISES AFFECTED – 454 City Island Avenue, east side of City Island Avenue bound by Browne Street, south and Beach Street to the north, Block 5646, Lot 3, Borough of Bronx.

**COMMUNITY BOARD #10BX**

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### **197-10-BZ thru 199-10-BZ**

APPLICANT – Antonio S. Valenziano, AIA, for John Merolo, owner.

SUBJECT – Application October 26, 2010 – Variance (§72-21) to allow three residential buildings in a manufacturing district, contrary to use regulations ZR 42-10. M1-1 zoning district.

PREMISES AFFECTED – 59, 63 & 67 Fillmore Street, 491.88' west of York Avenue, Block 61, Lot 27, 29, 31, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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### **213-10-BZ**

APPLICANT – EPDSCO, Inc., for 2071 Clove LLC, owner; Grasmere Bodybuilding Inc. (d/b/a Dolphin Fitness), lessee.

SUBJECT – Application November 9, 2010 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (*Dolphin Fitness Center*). C8-1 zoning district.

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

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JANUARY 11, 2011  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**200-24-BZ**

APPLICANT – Stephen Ely, for Ebed Realty c/o Shelia Greco, owner.

SUBJECT – Application October 22, 2010 – Extension of Term (§11-411) for the continued operation of a UG6 bookstore and distribution center which expired on September 23, 2010. R8/C8-2 zoning district.

PREMISES AFFECTED – 3030 Jerome Avenue, 161.81’ south of East 204<sup>th</sup> Street, Block 3321, Lot 25, Borough of Bronx.

**COMMUNITY BOARD #7BX**

APPEARANCES –

For Applicant: Stephen Ely.

**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 term of a previously granted variance, which expired on September 23, 2010; and

WHEREAS, a public hearing was held on this application on December 7, 2010, after due notice by publication in the *City Record*, and then to decision on January 11, 2011; and

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

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

WHEREAS, the site is located on an irregular-shaped through lot with frontage on Jerome Avenue and Villa Avenue, partially within an R8 zoning district and partially within a C8-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 25, 1924 when, under the subject calendar number, the Board permitted the construction of a storage garage at the subject premises; and

WHEREAS, on March 29, 1960, the Board reopened and amended the resolution to permit a change in use from storage garage to auto repair, for a term of ten years; and

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

WHEREAS, on April 17, 2001, the Board legalized the change of use from automotive repair (Use Group 16) to a retail food store (Use Group 6) and extended the term of the variance; and

WHEREAS, on November 26, 2002, the Board reopened and amended the resolution to permit a change of use from retail food store to a bookstore and to extend the time to complete construction and obtain a new certificate of occupancy; and

WHEREAS, most recently, on July 25, 2006, the Board amended the grant to permit an extension of time to obtain a certificate of occupancy for the book store and distribution use, to expire on April 12, 2006; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 25, 1924, so that as amended this portion of the resolution shall read: “to extend the term for ten years from September 23, 2010, to expire on September 23, 2020; *on condition* that any and all work shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of the grant shall expire on September 23, 2020;

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

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

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

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

(DOB Application No. 200608896)

Adopted by the Board of Standards and Appeals, January 11, 2011.

**575-37-BZ**

APPLICANT – Carl A. Sulfaro, Esq., for Duffton Realty, Inc., owner; C & D Service Center, Inc., lessee.

SUBJECT – Application July 16, 2010 – Extension of Term (§11-411) for the continued operation of a gasoline service station (*Gulf*) which expired on February 14, 2008; waiver of the Rules. C1-3/R5B zoning district.

PREMISES AFFECTED – 60-93 Flushing Avenue, northwest corner of 61<sup>st</sup> Street, Block 2697, Lot 51, Borough of Queens.

**COMMUNITY BOARD #5Q**

APPEARANCES –

# MINUTES

For Applicant: Steven Sulfaro.

**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 extension of term for the continued operation of a gasoline service station, which expired on February 14, 2008; and

WHEREAS, a public hearing was held on this application on November 9, 2010, after due notice by publication in *The City Record*, with a continued hearing on December 7, 2010, and then to decision on January 11, 2011; and

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

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

WHEREAS, the site is located on the northwest corner of Flushing Avenue and 61<sup>st</sup> Street, within a C1-3 (R5B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 14, 1953 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station with the parking of cars waiting to be serviced, for a term of 15 years; and

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

WHEREAS, most recently, on August 10, 1999, the Board granted a ten year extension of term, which expired on February 14, 2008; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, at hearing, the Board requested that the applicant confirm that the signage on the site is compliant with the previously approved plans; and

WHEREAS, in response, the applicant submitted a signage analysis which reflects that the signage at the site is in compliance with the previously-approved plans; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, dated April 14, 1953, so that as amended this portion of the resolution shall read: “to extend the term for ten years from February 14, 2008, to expire on February 14, 2018; 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 July 16, 2010’ – (5) sheets; and *on further condition:*

THAT the term of the grant shall expire on February 18, 2018;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 420018796)

Adopted by the Board of Standards and Appeals January 11, 2011.

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## 74-49-BZ

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

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

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

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Nora Martins

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner 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 extension of time to obtain a certificate of occupancy for an existing parking garage; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in *The City Record*, with continued hearings on March 9, 2010, April 13, 2010, May 18, 2010, June 22, 2010, August 17, 2010, October 19, 2010 and November 23, 2010, and then to decision on January 11, 2011; and

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

WHEREAS, the site is located on the southeast corner of the intersection at Seventh Avenue and West 38<sup>th</sup> Street, in an M1-6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 29, 1949 when, under the



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subject calendar number, the Board granted a variance to permit the construction of a garage building for a term of 20 years; and

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

WHEREAS, most recently, on March 17, 2009, the Board granted an extension of term, to expire on June 28, 2019, an extension of time to obtain a certificate of occupancy, which expired on September 17, 2009, and an amendment to permit an increase in the number of parking spaces at the site through the use of mechanical lifts (“stackers”) on the roof; and

WHEREAS, a condition of the Board’s grant was that DOB review and confirm the structural capacity of the building to support the proposed roof-top parking with stackers and to review and confirm compliance of the proposed parking stackers with the Materials and Equipment Acceptance Division (“MEA”) requirements; and

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

WHEREAS, at hearing, the Board questioned whether the site was in compliance with the conditions of the previous grant, particularly with regard to DOB’s review of the structural compliance of the roof and of the parking stackers’ compliance with MEA requirements; and

WHEREAS, in response, the applicant states that in order for DOB to inspect the site for compliance with the Board’s conditions regarding structural capacity and MEA approvals for the parking stackers, DOB instructed the applicant to file an Alteration Type II application reflecting the relocation of the stackers on the roof further from the parapet wall than what was previously approved by the Board; and

WHEREAS, the Board notes that the applicant submitted a copy of the Alteration Type II application that has been filed with DOB; and

WHEREAS, the applicant states that there are also a number of open DOB permit applications and violations which the applicant is working to close out in order to obtain a certificate of occupancy for the site; and

WHEREAS, the applicant represents that a certificate of occupancy will be obtained after DOB reviews and approves the Alteration Type II application in regards to structural capacity and MEA approvals, and after the applicant closes out the open DOB permit applications and violations; and

WHEREAS, based upon the above, 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 waives the Rules of Practice and Procedure, reopens, and amends the resolution, dated March 29, 1949, so that as amended this portion of the resolution shall read: “to grant a one year extension of time to obtain a certificate of occupancy, to expire on January 11, 2012; on condition that the use and operation of the site shall substantially conform to the previously approved plans; and on further condition:

THAT a certificate of occupancy shall be obtained by January 11, 2012;

THAT parking garage shall be limited to 360 parking spaces with 18 reservoir spaces;

THAT DOB shall review and confirm the structural capacity of the building to support roof-top parking with stackers;

THAT DOB shall review and confirm compliance of parking stackers with the Materials and Equipment Acceptance Division (“MEA”) requirements;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 1024600089)

Adopted by the Board of Standards and Appeals January 11, 2011.

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## 15-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker for Columbus Properties, Incorporated, owner; TSI 217 Broadway LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 18, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on June 15, 2009; waiver of the rules. C5-3 (LM) zoning district.

PREMISES AFFECTED – 217 Broadway, Northwest corner of Broadway and Vesey Streets. Block 88, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #1M

### APPEARANCES –

For Applicant: Fredrick A. Becker.

**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 extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on June 15, 2009; and

WHEREAS, a public hearing was held on this application on November 9, 2010, after due notice by publication in *The City Record*, with a continued hearing on December 7, 2010, and then to decision on January 11, 2010; and

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

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Commissioner Ottley-Brown; and

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

WHEREAS, the PCE is located on the northwest corner of Broadway and Vesey Street, in a C5-3 zoning district within the Special Lower Manhattan District; and

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

WHEREAS, the PCE use occupies a total floor area of 12,490 sq. ft. on the first floor and second floor, with an additional 5,550 sq. ft. of floor space located at the cellar level; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 15, 1999 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on June 15, 2009; and

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

WHEREAS, at hearing, the Board requested that the applicant confirm that the signage on the site is compliant with the previously approved plans; and

WHEREAS, in response, the applicant submitted a signage analysis and revised plans which reflect that the signage at the site has changed but is in compliance with the underlying C5-3 zoning district; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on June 15, 1999, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from June 15, 2009, to expire on June 15, 2019; *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 November 23, 2010' – (8) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 15, 2019;

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

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

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

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

(DOB Application No. 101854209)

Adopted by the Board of Standards and Appeals, January 11, 2011.

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## 43-99-BZ

APPLICANT – Carl A. Sulfaro, Esq., for White Castle System Inc., owner.

SUBJECT – Application February 25, 2010 – Extension of Term of a Special Permit (§73-243) for the continued operation of a drive-thru accessory to an eating and drinking establishment (*White Castle*) which expired on December 7, 2009; Waiver of the Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 88-02 Northern Boulevard, southwest corner of 88<sup>th</sup> Street, Block 1436, Lot 001, Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Steven Sulfaro.

**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 extension of the term of a special permit for a drive-through facility at an existing eating and drinking establishment, which expired on December 7, 2009; and

WHEREAS, a public hearing was held on this application on November 9, 2010, after due notice by publication in *The City Record*, with a continued hearing on December 7, 2010, and then to decision on January 11, 2011; and

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

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

WHEREAS, the site is located on the southwest corner of Northern Boulevard and 88<sup>th</sup> Street, within a C1-2(R4) zoning district; and

WHEREAS, the subject site has a lot area of 10,000 sq. ft. and is occupied by an existing eating and drinking establishment (a White Castle fast food restaurant), with a drive-through facility with a ten vehicle capacity reservoir, and seven accessory parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 7, 1999 when, under the subject calendar number, the Board granted a special permit authorizing the drive through facility for the restaurant for a period of five years; and

WHEREAS, most recently, on May 16, 2006, the Board granted a five year extension of term, which expired on December 7, 2009, and an amendment to permit the installation of an amplified menu board and the reconfiguration of accessory parking; and

WHEREAS, the applicant now seeks an additional five year extension of term; and

WHEREAS, at hearing, the Board questioned whether

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the site is in compliance with the conditions from the previous grant; and

WHEREAS, in response, the applicant confirmed that the site complies with all conditions from the previous grant; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated December 7, 1999, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the special permit for an additional five years from December 7, 2009, to expire on December 7, 2014; *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 25, 2010'-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 7, 2014;

THAT there shall be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board;

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

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT there shall be a minimum of seven accessory parking spaces located at the site;

THAT the amplified board shall only be used from 7 AM to 9 PM on weekdays, and from 8AM to 9 PM on Saturday and Sunday;

THAT the above conditions 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. 420125509)

Adopted by the Board of Standards and Appeals, January 11, 2011.

## 132-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms Inc., owner.

SUBJECT – Application July 9, 2010 – Extension of Term (§11-411) of a previously approved automotive service station (UG 16B) (*Gulf*) with accessory uses which expired on June 18, 2010. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 17-45 Francis Lewis Boulevard, aka 17-55 Francis Lewis Boulevard, east side of Francis Lewis Boulevard, between 17<sup>th</sup> Road and 18<sup>th</sup> Avenue, Block 4747, Lot 31, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to February 8, 2011, at 10 A.M., for continued hearing.

## 1095-64-BZ

APPLICANT – Garo Gumusvan, R.A., for 605 Apartment Corporation, owner; Park & 65 Garage Corporation, lessee. SUBJECT – Application August 31, 2010 – Extension of Term of an approval pursuant to the Multiple Dwelling Law for transient parking spaces, which expired on March 9, 1980. R8B/R-10 zoning district.

PREMISES AFFECTED – 605 Park Avenue, south east corner of Park Avenue and East 65<sup>th</sup> Street, Block 1399, Lot 74, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Garo Gumusvan.

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 February 1, 2011, at 10 A.M., for decision, hearing closed.

## 433-65-BZ

APPLICANT – Andrea Claire/Peter Hirshman, for 15 West 72 Owner Corporation, owner; Mafair Garage Corporation, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term of an approval pursuant to the Multiple Dwelling Law for transient parking, which expired on June 22, 2010. R8B/R10A zoning district.

PREMISES AFFECTED – 15 West 72<sup>nd</sup> Street, 200'-2½ west of Central Park West 72<sup>nd</sup> Street, Block 1125, Lot 24, Borough of Manhattan.

## COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Peter Hirshman.

**ACTION OF THE BOARD** – Laid over to February 8, 2011, at 10 A.M., for continued hearing.

## 749-65-BZ

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

SUBJECT – Application October 14, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG16 Gasoline Service Station (*Getty*) with accessory uses which expired on November 3, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on December 19, 2002; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 1820 Richmond Road, southeast

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corner of Richmond Road and Stobe Avenue, Block 3552, Lot 39, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to February 8, 2011, at 10 A.M., for continued hearing.

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## 230-98-BZ

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

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

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

## COMMUNITY BOARD #12BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to February 1, 2011, at 10 A.M., for adjourned hearing.

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## 276-02-BZ

APPLICANT – Eric Palatnik, P.C., for Elad Ryba, owner.

SUBJECT – Application September 13, 2010 – Extension of Time to Complete Construction and an Amendment to a previously approved Special Permit (§73-622) to an existing one family dwelling, contrary to lot coverage and floor area (§23-141) and side yard (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 160 Norfolk Street, west side, 300' north of Oriental Boulevard and south of Shore Boulevard, Block 8756, Lot 22, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to February 15, 2011, at 10 A.M., for continued hearing.

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## 119-07-BZ

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

SUBJECT – Application November 15, 2010 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) permitting a four-story community facility building (UG4A) which expires on January 27, 2011. M1-2 zoning district.

PREMISES AFFECTED – 443 39<sup>th</sup> Street, rectangular mid-block lot with 35' of frontage on the north side of 39<sup>th</sup> Street, 275' west of 5<sup>th</sup> Avenue, Bloc 705, Lot 59, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Nora Martins.

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 February 1, 2011, at 10 A.M., for decision, hearing closed.

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## 238-07-BZ

APPLICANT – Goldman Harris LLC, for OCA Long Island City LLC; OCAII & III c/o O'Connor Capital, owner.

SUBJECT – Application July 1, 2010 – Amendment of a previously approved Variance (§72-21) to permit a residential/commercial building and community facility/dormitory building. The amendment will divide the project into two separate buildings and allow the construction and occupancy of one building prior to the construction and occupancy of the other. M-4/R6A (LIC) and M1-4 zoning districts.

PREMISES AFFECTED – 5-11 47<sup>th</sup> Avenue, 46<sup>th</sup> Road at north, 47<sup>th</sup> Avenue at south, 5<sup>th</sup> Avenue at west, Vernon Boulevard at east. Block 28, Lot 12, 15, 17, 18, 21, 38. Borough of Queens

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Howard Goldman.

For Opposition: Kenneth Greenberg, William Garrett, Janet Belden and 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 February 15, 2011, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 114-10-BZY and 115-10-BZY

APPLICANT – Nikolaos Sellas, for HX Holdings LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a major development commenced under the prior R6 zoning district. R6B zoning district

PREMISES AFFECTED – 26-58 & 26-60 30<sup>th</sup> Street, north side of 30<sup>th</sup> Street, 540.78' and 565.80' west of corner formed by Astoria Boulevard and 30<sup>th</sup> Street, Block 597, Lots 223 and 124, Borough of Queens.

## COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Nikolaos Sellas.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-331, to  
renew a building permit and extend the time for the completion  
of the foundations of a major development under construction;  
and

WHEREAS, a public hearing was held on this  
application on November 23, 2010, after due notice by  
publication in *The City Record*, with a continued hearing on  
December 14, 2010, and then to decision on January 11, 2011;  
and

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

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

WHEREAS, the subject site is located on a single zoning  
lot consisting of two contiguous tax lots, located on the north  
side of 30<sup>th</sup> Street between Astoria Boulevard and Newtown  
Avenue, and has a combined lot area of 5,010 sq. ft.; and

WHEREAS, Lot 124 corresponds to 26-60 30<sup>th</sup> Street  
and Lot 223 corresponds to 26-58 30<sup>th</sup> Street; and

WHEREAS, the two tax lots are the result of a  
subdivision of a larger preexisting tax lot; and

WHEREAS, each tax lot is approximately 25 feet wide  
by 100 feet deep; and

WHEREAS, each tax lot is proposed to be developed  
with a four-story eight-family semi-detached residential  
building, for a total of 16 dwelling units (the “Proposed  
Development”); and

WHEREAS, on April 28, 2010, the Department of  
Buildings (“DOB”) issued NB Permit No. 420116840-01-NB  
for the building on Lot 124, and on April 30, 2010 DOB issued  
NB Permit No. 420116831-01-NB for the building on Lot 223  
(collectively, the “NB Permits”);

WHEREAS, when the NB Permits were issued and when  
construction commenced, the site was within an R6 zoning  
district; and

WHEREAS, the Proposed Development complies with  
the former R6 zoning district parameters; specifically the floor  
area ratio (“FAR”) of 2.13 (2.2 FAR was the maximum  
permitted for residential buildings), and the street wall height of  
44’-2” (45 feet was the maximum street wall base height) for  
each of the two respective buildings; and

WHEREAS, however, on May 25, 2010 (the “Enactment  
Date”), the City Council voted to adopt the Astoria Rezoning,  
which rezoned the site to R6B; and

WHEREAS, because the site is now within an R6B  
zoning district, the Proposed Development would not comply  
with the new zoning provisions regarding FAR (2.0 FAR is the  
maximum permitted for residential buildings) and street wall  
height (40 feet is the maximum permitted street wall base  
height) for each of the two respective buildings; and

WHEREAS, the applicant now applies to the Board to  
reinstate the NB Permits pursuant to ZR § 11-331; and

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

WHEREAS, a threshold requirement in this  
application is that the Permit is valid; and

WHEREAS, ZR § 11-31(a) provides that “[a] lawfully  
issued building permit shall be a building permit which is  
based on an approved application showing complete plans  
and specifications, authorizes the entire construction and not  
merely a part thereof, and is issued prior to any applicable  
amendment to this Resolution;” and

WHEREAS, the record indicates that on April 28, 2010  
and April 30, 2010, the NB Permits were issued by DOB  
authorizing construction of the Proposed Development; and

WHEREAS, by letter dated September 20, 2010, DOB  
states that the NB Permits were lawfully issued; and

WHEREAS, thus, the Board finds that the NB Permits  
were lawfully issued by DOB on April 28, 2010 and April 30,  
2010, respectively; and

WHEREAS, accordingly, the Board finds that the record  
contains sufficient evidence to satisfy the findings set forth in  
ZR § 11-31(a) and that a decision may be rendered provided  
the other findings are met; and

WHEREAS, because the proposed development  
contemplates construction of two buildings on a single zoning  
lot, it meets the definition of a major development; and

WHEREAS, since the proposed development is a  
major development, the Board must find that excavation was  
completed and substantial progress was made as to one of  
the required foundations; and

WHEREAS, the applicant states that excavation began  
on May 10, 2010 and was completed on May 17, 2010, and  
that substantial progress was made on the foundations of  
both buildings as of the Enactment Date; and

WHEREAS, further, an affidavit of the contractor  
states that the entire site was excavated as of the Enactment  
Date; and

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WHEREAS, the Board finds that the excavation performed at the site for the foundation of the Building is complete for vesting purposes under ZR § 11-331; and

WHEREAS, as to substantial progress on the foundation, the applicant represents that the foundations for both buildings were 69 percent complete as of the Enactment Date; and

WHEREAS, specifically, the applicant states that as of the Enactment Date, 100 percent of shoring, wood lagging, drywell installation, steel reinforcement bar installation, and formwork was complete, and the only work that remains to be performed on the foundations is the pouring and waterproofing of concrete; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction contracts; dated photographs of the site; a construction timeline; affidavits from the contractor describing the completed work; dated invoices; and copies of cancelled checks; and

WHEREAS, the applicant notes that the foundation work completed at the time of the rezoning, including the steel reinforcement bar installation and formwork, accounted for \$73,000 out of the total foundation cost of \$106,000, or 69 percent, as evidenced by the construction contract; and

WHEREAS, the Board notes that while all the concrete was poured after the rezoning, the completion of the steel reinforcement bar installation and formwork nonetheless represents substantial progress on the foundations based on the significant cost and complexity of the work; and

WHEREAS, at hearing, the Board questioned whether the applicant had completed all formwork for the foundations; and

WHEREAS, in response, the applicant submitted a letter from the contractor stating that all formwork was completed as of the Enactment Date and dated photographs reflecting that all formwork had been completed prior to the rezoning; and

WHEREAS, the Board notes that only the work that was performed after the NB Permits were issued and before the Enactment Date has been considered in its analysis under ZR § 11-331; and

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

WHEREAS, the Board has reviewed all of the applicant's representations and the submitted evidence and agrees that it establishes that substantial progress was made on the required foundation as of the Enactment Date; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under ZR § 11-331 and is entitled to the requested reinstatement of the NB Permits, and all other related permits necessary to complete construction.

Therefore it is Resolved that this application to renew New Building Permit Nos. 420116840-01-NB and 420116831-01-NB pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations

for one term of six months from the date of this resolution, to expire on July 11, 2011.

Adopted by the Board of Standards and Appeals, January 11, 2011.

## 274-09-A

APPLICANT – Fire Department of New York, for Di Lorenzo Realty, Co, owner; 3920 Merritt Avenue, lessee.

SUBJECT – Application September 25, 2009 – Application to modify Certificate of Occupancy to require automatic wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 3920 Merritt Avenue, aka 3927 Mulvey Avenue, 153' north of Merritt and East 233<sup>rd</sup> Street, Block 4972, Lot 12, Borough of Bronx.

### COMMUNITY BOARD #12BX

#### APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

**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 from the Fire Commissioner, requesting to modify the certificates of occupancy of the subject premises to reflect additional requirements related to fire safety, in conjunction with certain modifications to be undertaken at the three-building complex to improve fire safety conditions; and

WHEREAS, the Fire Commissioner proposes to issue the following order to the property owner:

“BSA Appeals Application #123-10-A – 3931 Mulvey Avenue

C of O # 200444849 to be modified – Remove current description of ‘manufacture of plastic products’ and replace with ‘woodworking.’

BSA Appeals Application #124-10-A – 3927 Mulvey Avenue

C of O # 52543 to be modified – The following restriction to be added, ‘No use of stationary or bench mounted woodworking machinery or equipment permitted.’

BSA Appeals Application # 274-09-A – 3920 Merritt Avenue

C of O # 71956 to be modified – The following restriction to be added, ‘No use of stationary or bench mounted woodworking machinery or equipment permitted;’” and

WHEREAS, the Board notes that the first iteration of the Fire Department's proposed order, under BSA Cal. No. 274-09-A, which only concerned the building located at 3920 Merritt Avenue, required that automatic wet sprinklers be installed throughout the building, pursuant to Administrative Code § 27-4265; and

WHEREAS, as discussed below, during the course of the

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hearings the Fire Department amended its application to the current proposal; and

WHEREAS, a public hearing was held on this application on April 13, 2010, after due notice by publication in the *City Record*, with continued hearings on May 25, 2010, June 22, 2010, August 17, 2010, September 21, 2010, October 21, 2010, and December 7, 2010, and then to decision on January 11, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; the site inspection was conducted by a committee of the Board with a representative of the Fire Department and the building owner in attendance; and

WHEREAS, representatives of the building owner (hereinafter, the "Owner"), provided testimony in opposition to the application; and

WHEREAS, the subject premises is located on the east side of Merritt Avenue and the west side of Mulvey Avenue, north of East 233<sup>rd</sup> Street, within an M1-1 zoning district; and

WHEREAS, the subject site is occupied by three interconnected buildings operated primarily as an advertising display manufacturing establishment (the "Building Complex"); and

WHEREAS, the building located at 3920 Merritt Avenue (BSA Cal. No. 274-09-A) is occupied as the assembly and packaging area for the Building Complex, where finished components of the displays, made of various materials such as wood, plastic, metal and paper are stored, assembled and packaged; in addition, the building is also occupied by accessory offices and a paint storage room, and limited spot welding operations are performed in connection with assembly operations; and

WHEREAS, the building located at 3927 Mulvey Avenue (BSA Cal. No. 124-10-A) is occupied as a woodworking area for the Building Complex; and

WHEREAS, the building located at 3931 Mulvey Avenue (BSA Cal. No. 123-10-A) is also occupied as a woodworking area for the Building Complex, with a mezzanine used as a metal product fabrication area where limited spot welding operations take place; and

WHEREAS, as noted above, the Fire Department's initial application, under BSA Cal. No. 274-09-A, only concerned the building located at 3920 Merritt Avenue and requested that the certificate of occupancy for that building be modified to reflect a requirement for automatic wet sprinklers throughout the building, pursuant to Administrative Code § 27-4265; and

WHEREAS, the Fire Department subsequently modified its application to include, under BSA Cal. Nos. 123-10-A and 124-10-A, the buildings located at 3927 Mulvey Avenue and 3931 Mulvey Avenue, and to request that the certificates of occupancy for all three of the subject buildings be modified to reflect a requirement for automatic wet sprinklers throughout the entire Building Complex; and

WHEREAS, the Fire Department asserted that the proposed modifications to the certificates of occupancy were

necessary in the interest of public safety because fire protection within the subject buildings was deemed inadequate; and

WHEREAS, in support of its request for a modification of the certificates of occupancy to require sprinklers throughout the Building Complex, the Fire Department states that: (1) while the Building Complex technically consists of three separate buildings, the buildings are interconnected and operate as a single facility without proper compartmentalization; (2) the Building Complex includes non-fireproof construction; (3) the steel truss roof construction makes ventilation difficult; (4) there exist large amounts of stored combustible manufactured material such as wood, plastic acrylics, and inks; (5) a large amount of highly combustible wood dust is created during the woodworking process; and (6) spray painting is conducted in conjunction with the manufacturing process; and

WHEREAS, in response, the Owner argued that the installation of sprinklers should not be required at the site because the Building Complex consists of three independent buildings that are interconnected by fire-protected openings between them that were approved by the Department of Buildings ("DOB"), and because the buildings were lawfully constructed and are lawfully occupied in accordance with their respective certificates of occupancy; and

WHEREAS, additionally, the Owner represents that the installation of automatic wet sprinklers throughout the Building Complex would be cost prohibitive; and

WHEREAS, during the course of the hearing process, the Board directed the Fire Department to work with the Owner to explore whether there is an alternative to the installation of sprinklers throughout the Building Complex that would be acceptable to both parties; and

WHEREAS, in response, the Owner proposed to make the following modifications to the buildings in lieu of the requirement to install sprinklers: (1) the consolidation of woodworking operations, such that woodworking will only take place in the building located at 3931 Mulvey Avenue, and all woodworking machinery located in 3927 Mulvey Avenue will be removed from the Building Complex or relocated to 3931 Mulvey Avenue, thereby reducing the floor area available for woodworking to approximately 5,000 sq. ft.; (2) the installation of fireproof, self-closing swing doors at the openings between the three buildings to reduce the potential spread of smoke and fire; (3) the relocation of the metalworking operations presently in 3931 Mulvey Avenue to another portion of the Building Complex, in order to eliminate the chance that a spark caused by metalworking could act as a source of ignition of the combustible materials being stored and worked on in 3931 Mulvey Avenue; (4) the installation of additional roof ventilation and a means to control the mechanical ventilation through the roof above 3931 Mulvey Avenue from somewhere within the Building Complex other than 3931 Mulvey Avenue, in order to aid the Fire Department in ventilating the Building Complex in the event of a fire; (5) the installation of a voluntary central station alarm with smoke and fire detection capability in 3931 Mulvey Avenue, in order to provide direct notification to emergency responders and reduce response time in the event of a fire; and

WHEREAS, the Fire Department states that it is willing

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to accept the modifications proposed by the Owner in lieu of the installation of a full sprinkler system, with the following conditions: (1) all woodworking equipment currently located in 3920 Merritt Avenue also be removed or relocated to 3931 Mulvey Avenue; (2) Certificate of Occupancy No. 200444849 (3931 Mulvey Avenue) be modified to remove the current description of "manufacture of plastic products" and to replace it with "woodworking;" (3) Certificate of Occupancy No. 52543 (3927 Mulvey Avenue) be modified to add the restriction that "No use of stationary or bench mounted woodworking machinery or equipment permitted;" and (4) Certificate of Occupancy No. 71956 (3920 Merritt Avenue) also be modified to add the restriction that "No use of stationary or bench mounted woodworking machinery or equipment permitted;" and

WHEREAS, in response, the Owner argues that the modifications to the certificates of occupancy requested by the Fire Department are cost prohibitive, and request that the fire safety modifications proposed by the Owner be accepted without the requirement to modify the certificates of occupancy; and

WHEREAS, the Fire Department states that the requested modifications to the certificates of occupancy are necessary to insure that in the future the woodworking activities remain limited to 3931 Mulvey Avenue and that there exists a legal restriction on the buildings that would be enforceable by the City; and

WHEREAS, the Board agrees with the Fire Department that, given the use and construction of the buildings, the requested modifications to the certificates of occupancy are required, in addition to the fire safety improvements proposed to be installed by the Owner; and

WHEREAS, however, the Board notes that the property owner and the Fire Department may agree to modify the specifications for the fire safety improvements and the modifications to the certificates of occupancy, and the Board would not object to such mutual agreement; and

WHEREAS, the Owner requests that the Board acknowledge that any requirements it imposes on the subject buildings are specific to the current use of the buildings, and in the event that the Owner leaves the site and the buildings are occupied for a different use, the requirements imposed herein would not have to be implemented; and

WHEREAS, the Board notes that the proposed conditions are specific to the existing use of the buildings, and agrees that it may be appropriate to remove conditions on the certificates of occupancy if the use of the buildings changes; and

WHEREAS, thus, based on the evidence in the record, the Board finds that the modifications to the certificates of occupancy, as requested by the Fire Department, in conjunction with the fire safety improvements proposed by the Owner and approved by the Fire Department, are necessary to protect life and property at the premises in the event of fire.

*Therefore it is Resolved* that the applications of the Fire Commissioner, dated September 25, 2009 and July 6, 2010, seeking the modification of Certificate of Occupancy Nos. 200444849, 52543 and 71956 are hereby granted, on condition:

THAT all woodworking operations shall only take place in the building located at 3931 Mulvey Avenue, and all woodworking machinery located in 3927 Mulvey Avenue and 3920 Merritt Avenue shall be removed or relocated to 3931 Mulvey Avenue;

THAT fireproof, self-closing swing doors shall be installed at the openings between the three buildings;

THAT the metalworking operations located in 3931 Mulvey Avenue shall be relocated to another portion of the Building Complex;

THAT the Owner shall install additional roof ventilation and a means to control the mechanical ventilation through the roof above 3931 Mulvey Avenue from somewhere within the Building Complex other than 3931 Mulvey Avenue;

THAT a voluntary central station alarm with smoke and fire detection capability shall be installed in 3931 Mulvey Avenue;

THAT the Owner shall obtain the necessary approvals and permits to perform the required work by July 11, 2011;

THAT substantial construction shall be completed by January 11, 2012; and

THAT the change in use of any of the subject buildings shall render the above-mentioned fire safety requirements and the requirement to modify the certificate of occupancy inapplicable as to that building, provided the three subject buildings are operated separately and that the change of use is reviewed and approved by the Fire Department and the Department of Buildings.

Adopted by the Board of Standards and Appeals, January 11, 2011.

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## 123-10-A & 124-10-A

APPLICANT – Fire Department of the city of New York

OWNER – DiLorenzo Realty Corporation

LESSESS – Flair Display Incorporated

SUBJECT – Application July 6, 2010 – Application to modify Certificate of Occupancy to require automatic wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 3931, 3927 Mulvey Avenue, 301.75' north of East 233rd Street. Block 4972, Lots 60, 162(12). Borough of the Bronx.

## COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

**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 from the Fire Commissioner, requesting to modify the certificates of occupancy of the subject premises to reflect additional requirements related to fire safety, in conjunction with certain modifications to be undertaken at the three-building



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complex to improve fire safety conditions; and

WHEREAS, the Fire Commissioner proposes to issue the following order to the property owner:

“BSA Appeals Application #123-10-A – 3931 Mulvey Avenue

C of O # 200444849 to be modified – Remove current description of ‘manufacture of plastic products’ and replace with ‘woodworking.’

BSA Appeals Application #124-10-A – 3927 Mulvey Avenue

C of O # 52543 to be modified – The following restriction to be added, ‘No use of stationary or bench mounted woodworking machinery or equipment permitted.’

BSA Appeals Application # 274-09-A – 3920 Merritt Avenue

C of O # 71956 to be modified – The following restriction to be added, ‘No use of stationary or bench mounted woodworking machinery or equipment permitted;’” and

WHEREAS, the Board notes that the first iteration of the Fire Department’s proposed order, under BSA Cal. No. 274-09-A, which only concerned the building located at 3920 Merritt Avenue, required that automatic wet sprinklers be installed throughout the building, pursuant to Administrative Code § 27-4265; and

WHEREAS, as discussed below, during the course of the hearings the Fire Department amended its application to the current proposal; and

WHEREAS, a public hearing was held on this application on April 13, 2010, after due notice by publication in the *City Record*, with continued hearings on May 25, 2010, June 22, 2010, August 17, 2010, September 21, 2010, October 21, 2010, and December 7, 2010, and then to decision on January 11, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; the site inspection was conducted by a committee of the Board with a representative of the Fire Department and the building owner in attendance; and

WHEREAS, representatives of the building owner (hereinafter, the “Owner”), provided testimony in opposition to the application; and

WHEREAS, the subject premises is located on the east side of Merritt Avenue and the west side of Mulvey Avenue, north of East 233<sup>rd</sup> Street, within an M1-1 zoning district; and

WHEREAS, the subject site is occupied by three interconnected buildings operated primarily as an advertising display manufacturing establishment (the “Building Complex”); and

WHEREAS, the building located at 3920 Merritt Avenue (BSA Cal. No. 274-09-A) is occupied as the assembly and packaging area for the Building Complex, where finished components of the displays, made of various materials such as wood, plastic, metal and paper are stored, assembled and packaged; in addition, the building is also occupied by

accessory offices and a paint storage room, and limited spot welding operations are performed in connection with assembly operations; and

WHEREAS, the building located at 3927 Mulvey Avenue (BSA Cal. No. 124-10-A) is occupied as a woodworking area for the Building Complex; and

WHEREAS, the building located at 3931 Mulvey Avenue (BSA Cal. No. 123-10-A) is also occupied as a woodworking area for the Building Complex, with a mezzanine used as a metal product fabrication area where limited spot welding operations take place; and

WHEREAS, as noted above, the Fire Department’s initial application, under BSA Cal. No. 274-09-A, only concerned the building located at 3920 Merritt Avenue and requested that the certificate of occupancy for that building be modified to reflect a requirement for automatic wet sprinklers throughout the building, pursuant to Administrative Code § 27-4265; and

WHEREAS, the Fire Department subsequently modified its application to include, under BSA Cal. Nos. 123-10-A and 124-10-A, the buildings located at 3927 Mulvey Avenue and 3931 Mulvey Avenue, and to request that the certificates of occupancy for all three of the subject buildings be modified to reflect a requirement for automatic wet sprinklers throughout the entire Building Complex; and

WHEREAS, the Fire Department asserted that the proposed modifications to the certificates of occupancy were necessary in the interest of public safety because fire protection within the subject buildings was deemed inadequate; and

WHEREAS, in support of its request for a modification of the certificates of occupancy to require sprinklers throughout the Building Complex, the Fire Department states that: (1) while the Building Complex technically consists of three separate buildings, the buildings are interconnected and operate as a single facility without proper compartmentalization; (2) the Building Complex includes non-fireproof construction; (3) the steel truss roof construction makes ventilation difficult; (4) there exist large amounts of stored combustible manufactured material such as wood, plastic acrylics, and inks; (5) a large amount of highly combustible wood dust is created during the woodworking process; and (6) spray painting is conducted in conjunction with the manufacturing process; and

WHEREAS, in response, the Owner argued that the installation of sprinklers should not be required at the site because the Building Complex consists of three independent buildings that are interconnected by fire-protected openings between them that were approved by the Department of Buildings (“DOB”), and because the buildings were lawfully constructed and are lawfully occupied in accordance with their respective certificates of occupancy; and

WHEREAS, additionally, the Owner represents that the installation of automatic wet sprinklers throughout the Building Complex would be cost prohibitive; and

WHEREAS, during the course of the hearing process, the Board directed the Fire Department to work with the Owner to explore whether there is an alternative to the installation of sprinklers throughout the Building Complex that would be acceptable to both parties; and

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WHEREAS, in response, the Owner proposed to make the following modifications to the buildings in lieu of the requirement to install sprinklers: (1) the consolidation of woodworking operations, such that woodworking will only take place in the building located at 3931 Mulvey Avenue, and all woodworking machinery located in 3927 Mulvey Avenue will be removed from the Building Complex or relocated to 3931 Mulvey Avenue, thereby reducing the floor area available for woodworking to approximately 5,000 sq. ft.; (2) the installation of fireproof, self-closing swing doors at the openings between the three buildings to reduce the potential spread of smoke and fire; (3) the relocation of the metalworking operations presently in 3931 Mulvey Avenue to another portion of the Building Complex, in order to eliminate the chance that a spark caused by metalworking could act as a source of ignition of the combustible materials being stored and worked on in 3931 Mulvey Avenue; (4) the installation of additional roof ventilation and a means to control the mechanical ventilation through the roof above 3931 Mulvey Avenue from somewhere within the Building Complex other than 3931 Mulvey Avenue, in order to aid the Fire Department in ventilating the Building Complex in the event of a fire; (5) the installation of a voluntary central station alarm with smoke and fire detection capability in 3931 Mulvey Avenue, in order to provide direct notification to emergency responders and reduce response time in the event of a fire; and

WHEREAS, the Fire Department states that it is willing to accept the modifications proposed by the Owner in lieu of the installation of a full sprinkler system, with the following conditions: (1) all woodworking equipment currently located in 3920 Merritt Avenue also be removed or relocated to 3931 Mulvey Avenue; (2) Certificate of Occupancy No. 200444849 (3931 Mulvey Avenue) be modified to remove the current description of "manufacture of plastic products" and to replace it with "woodworking;" (3) Certificate of Occupancy No. 52543 (3927 Mulvey Avenue) be modified to add the restriction that "No use of stationary or bench mounted woodworking machinery or equipment permitted;" and (4) Certificate of Occupancy No. 71956 (3920 Merritt Avenue) also be modified to add the restriction that "No use of stationary or bench mounted woodworking machinery or equipment permitted;" and

WHEREAS, in response, the Owner argues that the modifications to the certificates of occupancy requested by the Fire Department are cost prohibitive, and request that the fire safety modifications proposed by the Owner be accepted without the requirement to modify the certificates of occupancy; and

WHEREAS, the Fire Department states that the requested modifications to the certificates of occupancy are necessary to insure that in the future the woodworking activities remain limited to 3931 Mulvey Avenue and that there exists a legal restriction on the buildings that would be enforceable by the City; and

WHEREAS, the Board agrees with the Fire Department that, given the use and construction of the buildings, the requested modifications to the certificates of occupancy are required, in addition to the fire safety improvements proposed

to be installed by the Owner; and

WHEREAS, however, the Board notes that the property owner and the Fire Department may agree to modify the specifications for the fire safety improvements and the modifications to the certificates of occupancy, and the Board would not object to such mutual agreement; and

WHEREAS, the Owner requests that the Board acknowledge that any requirements it imposes on the subject buildings are specific to the current use of the buildings, and in the event that the Owner leaves the site and the buildings are occupied for a different use, the requirements imposed herein would not have to be implemented; and

WHEREAS, the Board notes that the proposed conditions are specific to the existing use of the buildings, and agrees that it may be appropriate to remove conditions on the certificates of occupancy if the use of the buildings changes; and

WHEREAS, thus, based on the evidence in the record, the Board finds that the modifications to the certificates of occupancy, as requested by the Fire Department, in conjunction with the fire safety improvements proposed by the Owner and approved by the Fire Department, are necessary to protect life and property at the premises in the event of fire.

*Therefore it is Resolved* that the applications of the Fire Commissioner, dated September 25, 2009 and July 6, 2010, seeking the modification of Certificate of Occupancy Nos. 200444849, 52543 and 71956 are hereby granted, on condition:

THAT all woodworking operations shall only take place in the building located at 3931 Mulvey Avenue, and all woodworking machinery located in 3927 Mulvey Avenue and 3920 Merritt Avenue shall be removed or relocated to 3931 Mulvey Avenue;

THAT fireproof, self-closing swing doors shall be installed at the openings between the three buildings;

THAT the metalworking operations located in 3931 Mulvey Avenue shall be relocated to another portion of the Building Complex;

THAT the Owner shall install additional roof ventilation and a means to control the mechanical ventilation through the roof above 3931 Mulvey Avenue from somewhere within the Building Complex other than 3931 Mulvey Avenue;

THAT a voluntary central station alarm with smoke and fire detection capability shall be installed in 3931 Mulvey Avenue;

THAT the Owner shall obtain the necessary approvals and permits to perform the required work by July 11, 2011;

THAT substantial construction shall be completed by January 11, 2012; and

THAT the change in use of any of the subject buildings shall render the above-mentioned fire safety requirements and the requirement to modify the certificate of occupancy inapplicable as to that building, provided the three subject buildings are operated separately and that the change of use is reviewed and approved by the Fire Department and the Department of Buildings.

Adopted by the Board of Standards and Appeals, January 11, 2011.

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## 121-10-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 25-50 FLB LLC, owner.

SUBJECT – Application July 1, 2010 – An appeal challenging the Department of Buildings determination that a demolition permit signoff was required before issuance of an alteration permit, as per BC 28-105.3 of the NYC Building Code. R2A zoning district.

PREMISES AFFECTED – 25-50 Francis Lewis Boulevard aka 166-43 168<sup>th</sup> Street, southwest corner of Francis Lewis Boulevard and 168<sup>th</sup> Street, Block 4910, Lot 16, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application Denied.

THE VOTE TO GRANT –

Affirmative: .....0

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

THE RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a Notice of Objections originally issued April 23, 2009 and denied for reconsideration on June 23, 2010 by the Queens Borough Commissioner of the NYC Department of Buildings (“DOB”) (the “Final Determination”) with respect to DOB Application No. 402082919; and

WHEREAS, the Final Determination states, in pertinent part:

1. BC 28-110.1 Secure approval to protect existing occupancy of one family dwelling as per BC 28-118.1
2. BC 27-161...170 The approved plans do not show the nature and extent of existing conditions. The building does not comply with the approved plans
3. BC 28-105.3 Comply with requirements for applications for building alteration permits. Secure demolition sign off prior to permit as per BC 28-105.3; and

WHEREAS, a public hearing was held on this appeal on September 14, 2000, after due notice by publication in *The City Record*, with a continued hearing on November 9, 2010, and then to decision on January 11, 2011; and

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

WHEREAS, State Senator Frank Padavan provided testimony in opposition to the appeal; and

WHEREAS, the Northeast Flushing Civic Association provided written and oral testimony in opposition to the appeal (the “Opposition”); and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the site is located at the southwest corner of Francis Lewis Boulevard and 168<sup>th</sup> Street, partially within a

C1-2(R2A) zoning district and partially within an R2A (Lot 21) zoning district; prior to the April 22, 2009 adoption of the North Flushing Rezoning, the entire site was located within a C1-2(R4) zoning district; and

WHEREAS, the site comprises two lots: (1) Lot 16 at the northern portion of the site at the corner of Francis Lewis Boulevard and 168<sup>th</sup> Street, which was occupied by a two-story commercial building (the “Commercial Building”) and (2) Lot 21 at the southern portion of the site at the corner of 168<sup>th</sup> Street and 26<sup>th</sup> Avenue, which was occupied by a two-story single-family home (the “Home”); and

WHEREAS, the Appellant’s proposal reflects the enlargement of the Commercial Building into a single three-story eight-unit mixed-use commercial/community facility/residential building (the “Proposed Building”) on the site, without any trace of the Home, which is required to be demolished to complete the Proposed Building; and

WHEREAS, pursuant to DOB Application No. 402082919 (the “Alteration Permit”), the Appellant has performed construction at the site including the following: construction of a foundation and first floor walls for the Proposed Building around the perimeter of the Home, which remains and was occupied during the construction of portions of the Proposed Building around it; and

WHEREAS, the appeal concerns DOB’s determination that the Alteration Permit was not validly issued and remains revoked because: (1) the nature and extent of the scope of work was not provided in the drawings, as required by the Building Code and (2) a permit for the demolition of the Home was required prior to the issuance of the Alteration Permit; and

## PROCEDURAL HISTORY

WHEREAS, on February 3, 2005, the Appellant filed an application to enlarge the Commercial Building on the portion of the site, which was then and remains occupied by the Home; and

WHEREAS, on November 27, 2006, DOB issued the Alteration Permit, under DOB Application No. 402082919 to allow for the proposed construction; the Appellant subsequently renewed the permit several times; and

WHEREAS, the Appellant asserts that the approved plans comply with the C1-2(R4) zoning district regulations in effect at the time of the issuance of the permit; and

WHEREAS, on March 27, 2009, DOB issued a Post Approval Amendment; and

WHEREAS, subsequent to the issuance of the Post Approval Amendment, construction commenced on the site; and

WHEREAS, on April 1, 2009, DOB issued a Notice of Violation and on April 6, 2009, DOB issued an Intent to Revoke Letter; and

WHEREAS, the objections which formed the basis for DOB’s actions include: (1) ZR § 32-421 related to upper stories with both residential and commercial uses; (2) parking requirements associated with community facility uses; (3) the base plane measurement; (4) the requirement for section

1 DOB and the Appellant disagree as to whether or not a zoning lot merger has been effectuated.

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drawings; (5) the requirement for a drawing of the existing building in elevation; (6) open space requirements; and (7) failure to identify the sprinkler work type; and

WHEREAS, on April 9, 2009, the Appellant pre-filed (filed portions of) DOB Application No. 420004603 for the demolition of the Home; DOB contends that the application remains incomplete in that the Appellant never submitted and it never reviewed plans for the demolition, a pre-demolition report was never filed with DOB, and the PW1: Plan/Work Application did not indicate whether the job would be reviewed by a DOB plan examiner; further, the Appellant has not requested a pre-demolition inspection and DOB has not issued a permit for demolition; and

WHEREAS, on April 14, 2009, the Appellant provided a response to DOB's Notice and Letter, which DOB accepted to resolve the related objections; and

WHEREAS, on April 22, 2009, City Council adopted the North Flushing Rezoning; and

WHEREAS, on April 23, 2009, DOB issued a Notice of Violation and a Stop Work Order; and

WHEREAS, on April 27, 2009, DOB issued an Intent to Revoke Letter and a Stop Work Order with a Notice of Objections; the objections which formed the basis for the letter include (1) a requirement for a demolition permit prior to the issuance of an Alteration Permit pursuant to Administrative Code ("AC") § 28-105.3; and (2) a requirement to show the nature and extent of the existing conditions on the approved plans associated with the application pursuant to AC § 27-161; and

WHEREAS, on May 12, 2009, the Appellant filed a response to address the April 27 actions; and

WHEREAS, on June 15, 2009, DOB denied the Appellant's request for a reconsideration; the comments on the reconsideration included the requirements that the Appellant: (1) show how the tenant of the house was protected from entering the yards that have been dug up for foundation walls; (2) show the location of construction equipment on site; and (3) correct the condition of new masonry walls with a height greater than eight feet while the building is occupied;

WHEREAS, DOB's denial of the reconsideration request also noted that alteration cannot proceed until the building is demolished; and

WHEREAS, the Appellant responded that a demolition permit has been filed and paid for, but the objections were never cured or responded to in full; and

WHEREAS, on June 17, 2009, DOB revoked the approval and Alteration Permit; and

WHEREAS, in September 2009, the tenant vacated the Home; and

## THE PROVISIONS OF THE BUILDING CODE RELEVANT TO THE APPEAL

WHEREAS, the Board notes that, although the Final Determination cites to provisions of the Building Code adopted on July 1, 2008, the Alteration Permit was approved pursuant to the Building Code (1968) in effect at the time of the application; DOB and the Appellant discuss both codes throughout the course of the appeal; and

WHEREAS, accordingly, DOB and the Appellant

address both versions of the Building Code throughout the course of the appeal; and

WHEREAS, the relevant provisions of the 1968 Building Code are as follows:

### AC § 27-149

Separate permits required. Separate permits shall be required, as provided above, except that separate permits for foundations and earthwork, or for the installation or alteration of service equipment, other than fire suppression piping systems, shall not be required whenever plans for such work are included in and form a part of the plans for the construction of new buildings or the alteration of existing buildings.

\* \* \*

### AC § 27-161

General requirements. All applications for permits to alter existing buildings shall be subject to the requirements of articles nine and ten of this subchapter and section 27-156 of article eleven of this subchapter.

### AC § 27-162

Plans required. All such applications shall be accompanied by such architectural, structural, and mechanical plans as may be necessary to indicate the nature and extent of the proposed alteration work and its compliance with the provision of this code and other applicable laws and regulations. To the extent necessary, all such applications and plans shall be subject to and shall comply with the requirements of sections 27-157, 27-158, and 27-159 of article eleven of this subchapter.

### AC § 27-157

Plans required. All such applications shall be accompanied by architectural, structural, and mechanical plans, which shall be complete and of sufficient clarity to indicate the entire nature and extent of the proposed construction work and its compliance with the provisions of this code and other applicable laws and regulations . . . (a) Architectural plans shall contain at least the following data and information:

- (1) Lot diagram showing compliance with the zoning resolution and indicating the size, height and location of the proposed construction and all existing structures on the site and their distances from lot and street lines . . . The lot diagram shall be drawn in accordance with an accurate boundary survey, made by a licensed surveyor, which shall be attached to and form part of the lot diagram. . .

WHEREAS, the relevant provisions of the 2008 Building Code are as follows:

### AC § 28-105.1

General It shall be unlawful to construct, enlarge, alter, repair, move, demolish, remove or change the use or occupancy of any building or structure in the city, or to erect, install, alter, repair or use or operate

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any sign or service equipment . . . or to cause any such work to be done unless and until a written permit therefore shall have been issued by the commissioner in accordance with the requirements of this code, subject to such exceptions and exemptions as may be provided in section 28-105.4.

\* \* \*

## AC § 28-105.3

Separate permits required. Separate work permits shall be required, as provided above, except that separate permits for foundations and earthwork, or for the installation or alteration of air conditioning systems, ventilation systems, and heating systems shall not be required whenever such work is included in and forms a part of the construction documents filed for the construction of a new building or the alteration of a building or structure.

## AC § 28-105.4

Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code, the zoning resolution or any other law or rules enforced by the department. Such exemptions shall not relieve any owner of the obligation to comply with the requirements of or file with other city agencies . . . ; and

## DISCUSSION

WHEREAS, the Appellant asserts that DOB improperly and erroneously revoked the Alteration Permit, that the permits were valid when issued, and that pursuant to the permits, the owner completed excavation and construction on foundations to the extent that vested rights to complete construction and obtain an amended Certificate of Occupancy were secured; and

WHEREAS, in initial submissions, the Appellant only addressed the Final Determination's Objection No. 3, regarding the requirement for a demolition permit because he found that only that objection was relevant to the question of the validity of the permit, but later modified his papers to include responses to Objections Nos. 1 and 2; and

### A. Objection 3: The Permit Sequence

WHEREAS, as to DOB's contention that the permit is not valid because the Appellant failed to obtain a demolition permit prior to the issuance of the Alteration Permit, the Appellant states that neither AC § 28-105.3 nor its predecessor AC § 27-149 mandates the order in which permits for a job must be issued and that nowhere in the AC or Technical Policy and Procedure Notice (TPPN) or Operations Policy and Procedure Notice (OPPN) catalog or other statement of DOB policy is there a condition that a demolition permit be obtained prior to the issuance of an alteration permit; and

WHEREAS, as to Objection No. 3, the Appellant's architect states that the demolition of the existing Home does not affect the proposed foundation and therefore demolition is not required prior to issuance of the Alteration Permit; and

WHEREAS, as to AC § 28-105.3, the Appellant states that it does not set forth the order in which permits must be obtained or signed off; AC § 28-105.3 only requires that

separate permits be obtained for alteration and demolition and the Appellant asserts that it has not proceeded with the required demolition yet without a permit; and

WHEREAS, the Appellant asserts that alterations often are performed prior to or concurrent with demolition; and

WHEREAS, the Appellant states that the foundations for the proposed enlargement are located around the perimeter of the Home and that the Home's presence did not prevent completion of excavation, foundations, and construction of portions of the first floor walls; the Appellant states that the tenant vacated the Home in September 2009; and

WHEREAS, the Appellant notes that DOB did not issue violations pertaining to the safety of the Home or foundations and did not issue violations for not completing demolition prior to the construction of the alteration; and

WHEREAS, the Appellant contends that a demolition permit is only required prior to demolition and sign-off prior to issuance of the Certificate of Occupancy; and

WHEREAS, DOB asserts that the Alteration Permit could not be considered to be validly issued prior to the rezoning given the fact that the proposed enlargement of the Commercial Building could not have been constructed without the issuance of a demolition permit; and

WHEREAS, further, DOB states that where an existing building will not be incorporated in a proposed enlargement but will rather be fully demolished and where construction of the building enlargement is physically impossible without demolition of an existing building, demolition plans must be approved and DOB must issue a demolition permit prior to the issuance of a permit for an enlargement; and

WHEREAS, DOB notes that the job application was approved pursuant to the 1968 Building Code and, thus it should have cited AC § 27-149 (of the 1968 Code) on its objections, regarding the requirement for separate work permits for several types of work cited in AC § 27-148, including alteration and full demolition of buildings; and

WHEREAS, DOB states that it finds that AC § 28-105.3 of the Building Code, effective July 1, 2008 and AC § 27-149 are substantively the same for purposes of separate permits required under the facts of this case; and

WHEREAS, DOB agrees with the Appellant that the AC is silent as to the sequencing of the issuance of separate permits, but it asserts that the issuance of a demolition permit prior to the issuance of an alteration permit is required in instances of physical impossibility (where it would be physically impossible to complete construction without demolition of the existing building); and

WHEREAS, DOB asserts that absent a demolition permit in the subject case, the Alteration Permit could not be valid because a permit cannot authorize a building that is impossible to build; and

WHEREAS, DOB states that it is necessary for the demolition permit to be issued prior to the issuance of the Alteration Permit because in the absence of such demolition approval and permit, the job applicant has no assurance or guarantee that the demolition of the building is legally permissible and could be approved by DOB; and

WHEREAS, DOB provides as an example that it will not

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issue a demolition permit in the event that the building to be demolished is occupied or until all gas, electric, water, steam, and other utility supply lines are disconnected and approved by the respective utility companies or agencies, or that other specific conditions and safety measures are accounted for; and

WHEREAS, DOB states that the purpose of demolition approval in this case is because a pre-demolition survey, utility cutoff, and proof that the building has been vacated is necessary prior to DOB granting assurance that the demolition is legally permissible or approvable by DOB; and

WHEREAS, DOB distinguishes the Appellant's example of a case where DOB issued an alteration permit prior to a demolition permit for the enlargement of an existing single family home at 157-42 22<sup>nd</sup> Avenue because it would not be an impossibility to alter the home without demolishing the garage as opposed to the subject case where the alteration of the existing commercial building could not be completed without the demolition of the Home; and

WHEREAS, in contrast, DOB notes that the Home must be demolished in order for the enlargement to be in compliance with all relevant regulations; and

WHEREAS, additionally, DOB notes that the plans for 157-42 22<sup>nd</sup> Avenue reflect the existing conditions which include the garage, as required by code; and

WHEREAS, DOB notes that the Appellant claims that it filed demolition Application No. 420004603 on April 9, 2009 for the demolition of the occupied single-family home and indicating the existing site conditions; and

WHEREAS, however, DOB asserts that the pre-filed demolition application was incomplete and did not include plans and that the plans that were filed did not reflect the existence of the Home nor did the plans filed with the job application; rather, the plans filed with the job application seemingly indicate a vacant zoning lot where the Home exists; and

WHEREAS, the Appellant provides supplemental assertions to support the argument that the objections can be resolved in a manner that would render the permit valid and allow for vesting under the prior zoning; and

WHEREAS, the Appellant cites to GRA v. Board of Standards and Appeals, (no. 2009-0085, March 11, 2009) in which DOB approved plans, which were later found to reflect a street wall that was non-compliant to a depth of 1'-9" based on a Sanborn Map's dimensions, rather than the required survey's; and

WHEREAS, specifically, the Appellant notes that in GRA, the City acknowledged that DOB allows property owners to resolve objections after a rezoning and restore the validity of the permit<sup>2</sup>; and

WHEREAS, DOB states that where additional approvals are required prior to the issuance of a permit, such as the requirement for a demolition permit, DOB considers the failure to obtain such approvals an incurable error after the permit lapses due to a rezoning; and

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<sup>2</sup> The Board notes that the property at issue in the GRA litigation is still under DOB review and DOB has not reissued or reinstated the permits.

WHEREAS, DOB deems the failure to obtain the demolition permit to be egregious in the subject case involving the construction of the Proposed Building around the perimeter of the occupied Home; and

WHEREAS, accordingly, DOB finds that the absence of a demolition approval and permit for the demolition of the Home prior to the issuance of an Alteration Permit is an incurable error which led to the revocation of the Alteration Permit; and

WHEREAS, DOB distinguishes the facts in the subject case from GRA, stating that it allows minor amendments to plans after a zoning change, which are the subject of vested rights applications, but DOB is not mandated by any provision of law to allow an applicant to amend plans in order to demonstrate compliance with zoning or construction code requirements after a change in zoning; and

WHEREAS, DOB asserts that if it were required to allow applicants to cure any zoning and code objections after a zoning change, its authority to revoke permits under AC § 28-105.1 would be meaningless; and

WHEREAS, DOB concludes that the permit in the subject case was issued in error and therefore should be revoked; although DOB agrees that the text does not identify any required sequence for permitting, it asserts that the sequence is established because (1) the concept of impossibility precludes the Proposed Building from being built without the demolition of the Home; (2) the error and non-compliance is incurable in the context of a rezoning; and (3) the condition is so egregious that it cannot be corrected; and

## B. Objection 2: The Existing Conditions

WHEREAS, as to Objection No. 2 that the plans do not show the nature and extent of existing conditions at the site, the Appellant asserts that (1) the Administrative Code does not require the submission of existing condition plans and (2) although the plans do not reflect the Home, DOB was aware of the Home's existence through site visits, filing of the demolition application, and an approval of a subdivision plan; and

WHEREAS, the Appellant asserts that AC § 27-162 is unambiguous and does not set forth a requirement for showing existing conditions, only the proposed alteration work; and

WHEREAS, as to the existing conditions on the zoning lot, the Appellant states that DOB must have been aware of the existing conditions as DOB inspectors made multiple site visits in April 2009 and could have observed the conditions; and

WHEREAS, further, the Appellant states that the plans filed with Application No. 402477869 for the proposed subdivision of the zoning lot included a plot plan that reflects the existing Home; and

WHEREAS, in response to the Appellant's assertion that DOB would have known that two buildings existed on the zoning lot, because the condition was reflected in DOB's Building Information System (BIS), DOB responds that even if such information were in the system, it is the Appellant's responsibility, not DOB's, to establish the existing conditions on the plans and the nature and extent of the proposed work associated with the application, pursuant to AC § 27-162; and

WHEREAS, DOB cites to multiple sources which reflect

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the requirement to submit plans that reflect the extent of work proposed, including the following: AC § 27-162 (1968 Code) requires the plans to “indicate the nature and extent of the proposed alteration work”; AC § 28-104.7.1 (2008 Code) “Construction documents shall be complete and of sufficient clarity to indicate the location and entire nature and extent of the work proposed”; BC § 106.2 (2008 Code) states that the “applicant shall submit any and all of the documents . . . as appropriate to [show] the nature and extent of the work proposed”; and BC § 106.3 (2008 Code) states that a lot diagram must show “all existing structures on the zoning lot”; and

WHEREAS, DOB notes that conditions of concern associated with construction directly around the perimeter of an existing occupied home include disconnection of utilities which could have been disturbed during construction, creating a dangerous condition; and

WHEREAS, DOB asserts that if the plans filed with the alteration application had shown the Home, DOB would have required approval of the demolition application and a demolition permit prior to approving the proposed enlargement; and

WHEREAS, DOB adds that the job application folder does not contain a copy of the May 1, 2006 survey, which reflects the existence of the Home, which was only submitted to DOB in mid-April 2009; and

WHEREAS, DOB concludes that the failure to reflect the existing site conditions, specifically the existence of the occupied Home, was contrary to the Building Code and a significant omission that rendered the plans incomplete and created an incurable error after the rezoning; and

## C. Objection 1: Site Safety

WHEREAS, as to Objection No. 1, to secure approval to protect the existing occupancy of single-family dwelling, the Appellant states that the architect referred DOB to plans that had been filed in connection with the fence application (March 26) and finds that DOB’s response to the architect reflects matters that could be resolved through the DOB administrative process; and

WHEREAS, further, the Appellant represents that the architect was advised that DOB would not conduct further review or provide further comment on the objection until a demolition permit had been secured and a vesting proceeding completed; and

WHEREAS, the Appellant contends that if there had been safety concerns, DOB inspectors would have identified them during site inspections; and

WHEREAS, DOB states that it did not revoke the Alteration Permit based on Objection No. 1, but asserts that the site conditions – including that construction occurred around the perimeter of an occupied home – were egregious from construction and public safety perspectives; and

## THE OPPOSITION

WHEREAS, the Opposition supports DOB’s position that the permit should be revoked since the original building plans did not reflect the existing conditions and the demolition permit was not obtained prior to the issuance of the Alteration Permit; and

WHEREAS, the Opposition asserts additional claims including that (1) TPPN 1/02 requires that where significant demolition is required, a pre-demolition inspection and demolition plans must accompany the alteration application and OPPN 24/87 requires that whenever demolition interferes with the construction of a new building, demolition permits must be obtained prior to the issuance of a new building permit; (2) DOB may revoke permits based on misrepresentation, fraud, or if the permits were issued erroneously and should never have been issued as the Opposition contends is supported by the facts of the subject case; and (3) the construction should be characterized as a new building, rather than an alteration since the conditions that qualified it to be an enlargement – the change in use in order to address the commercial and residential use on the same floor – were not addressed until April 2009, well after the initial filing; and

## CONCLUSION

WHEREAS, the Board finds that (1) the Administrative Code requires that job application plans include the existing conditions, and (2) DOB has the jurisdiction to fill in the gaps, such as the sequencing of permits, when a particular practice is not described in the Administrative Code; and

WHEREAS, the Board recognizes the practical utility of requiring job applications to include existing conditions from the point of view of technical review as well as real safety-related concerns, which necessitate a transparent process; and

WHEREAS, the Board notes that AC § 27-162 references AC § 27-157 which provides more detail about the requirement that the full nature of the work be described and shown on plan, including the presence and dimensions of existing buildings; and

WHEREAS, accordingly, the Board disagrees with the Appellant’s assertion that AC § 27-162 does not set forth the requirement for plans of existing conditions and finds instead that AC § 27-162, as informed by AC § 27-157, is relevant and applicable to the subject case and that the permit, as issued, was thus not code compliant absent the plans; and

WHEREAS, in response to the Appellant’s assertion that DOB had actual or implied knowledge of the existing conditions at the site, the Board agrees with DOB that a DOB examiner is not required to piece together an array of documents from different portions of an application in order to understand the full picture of what exists and is proposed at a site; rather, it is an applicant’s responsibility to provide a clear and complete application, from the outset; and

WHEREAS, the Board upholds the position that a DOB job application file contains the record for an application and it is what property owners, DOB examiners, and the public rely on to understand the construction at a site; an individual DOB inspector, who is called to the site, may not perform a full review of the construction site or plans and his observations are not substitutes for the written record; and

WHEREAS, the Board notes that the Appellant asserts that the failure to provide the plans, as required by the code, is curable, but does not otherwise provide any rational basis for the omission; and

WHEREAS, as to the sequencing of permits, the Board

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finds that DOB maintains a role with authority to fill in gaps of the Administrative Code with policy and that the sequencing of permits, although not set forth in the Administrative Code, may be relevant in certain circumstances; and

WHEREAS, specifically, the Board notes that (1) DOB routinely issues TPPN's and OPPN's to clarify its practices, and (2) DOB has issued TPPN's and OPPN's on the topic of permit sequencing; and

WHEREAS, the Board notes that the cited TPPN and OPPN on the topic of sequencing do not address the proposed construction scenario, but their existence demonstrates DOB's authority to consider specific conditions not addressed by the Administrative Code; and

WHEREAS, the Board notes that the subject site conditions in which construction of a new building's foundation and portions of its first floor walls occurred around the perimeter of an existing occupied home are so unique that DOB policy did not anticipate it and, thus, no provision of the Administrative Code or policy notice is directly on point; and

WHEREAS, accordingly, the Board asserts that it is critical that DOB have full knowledge of the actual circumstances of proposed construction, as set forth in a complete set of application documents, because sequencing, as contemplated in the related TPPN and OPPN, may be warranted; and

WHEREAS, the Board supports DOB's determination that permit sequencing was required and was a significant element of the construction process and a key public safety concern, which arises from the code requirement for existing conditions; and

WHEREAS, the Board notes that there is a correlation between the requirement for a demolition permit prior to the issuance of a New Building Permit and the requirement for a demolition permit prior to the issuance of an Alteration Permit in the subject case; in both scenarios, completion of construction would be impossible without the completion of demolition; and

WHEREAS, the Board recognizes the distinction between these scenarios and a scenario where an alteration could be completed without demolition of an existing building on the site or construction and then relocation before demolition; and

WHEREAS, the Board notes that DOB has enumerated its safety-related concerns, including construction practices, utility disturbance, and the well-being of tenants within an occupied building intended for demolition, yet surrounded by a new foundation system and new exterior walls and that these concerns clearly fit within DOB's mandate and discretion to enforce; and

WHEREAS, the Board agrees with DOB that there are policy concerns for requiring that existing conditions be reflected on the plans and that the demolition permit be obtained prior to the alteration permit; and

WHEREAS, therefore, the Board accepts DOB's jurisdiction and reasoning for requiring application drawings to reflect the existing conditions and to require the demolition permit prior to the issuance of the Alteration Permit in a case where it would be an impossibility to construct the enlargement

without demolition; and

*Therefore it is Resolved* that the instant appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated June 23, 2010, determining that *inter alia* a demolition permit must have been obtained prior to the Alteration Permit and that a plan, which reflects the existing conditions must be included with the job application, is hereby denied.

Adopted by the Board of Standards and Appeals, January 11, 2011.

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## 153-10-A

APPLICANT – Eric Palatnik, P.C., for 101 01 One Group LLC, owner.

SUBJECT – Application August 19, 2010 – Proposed construction of a three story, five family residential building located within the bed of a mapped street (101<sup>st</sup> Street), contrary to General City Law Section 35. R5 Zoning District.

PREMISES AFFECTED – 101-01 39<sup>th</sup> Avenue, between 101<sup>st</sup> Street and 102<sup>nd</sup> Street, Block 1767, Lot 59, Borough of Queens.

## COMMUNITY BOARD #3Q

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, the decision of the Queens Borough Commissioner, dated July 20, 2010, acting on Department of Buildings Application No. 410021248, reads in pertinent part:

“The proposed 3 story w/penthouse building with (5) family is in the bed of mapped street of 101<sup>st</sup> Street, and is contrary to GCL 35;” and

WHEREAS, this is a proposal for the construction of a three-story with penthouse five-family home located within the bed of a mapped street, 101<sup>st</sup> Street, within an R5 zoning district; and

WHEREAS, a public hearing was held on this application on December 7, 2010, after due notice by publication in the *City Record*, and then to decision on January 11, 2011; and

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

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

WHEREAS, by letter dated December 28, 2010 the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated September 27, 2010, the Department of Environmental Protection (“DEP”) states that:



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(1) there are no existing City sewers or existing water mains within the referenced location; (2) there is an existing 12-inch diameter private combined sewer in 101<sup>st</sup> Street starting north of the proposed development; (3) there is an existing eight-inch City water main in the bed of 101<sup>st</sup> Street, starting to the north of the referenced property; and (4) City Drainage Plan No. 24, Sheet No. 2 calls for a future 12-inch diameter combined sewer to be installed in 101<sup>st</sup> street between 37<sup>th</sup> Avenue and 39<sup>th</sup> Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (1) the width of the mapped street, 101<sup>st</sup> Street, between 37<sup>th</sup> Avenue and 39<sup>th</sup> Avenue; and (2) the distance from the northerly lot line to the terminal manhole of the 12-inch diameter private combined sewer, and the distance from the end of the property line to the end cap of the eight-inch diameter City water main; and

WHEREAS, in response to DEP's request, the applicant submitted a revised survey to DEP which shows: (1) 60 feet of the total width of 101<sup>st</sup> Street and 4.49 feet of the widening portion of the street; and (2) that the existing 12-inch private combined sewer starts 18'-5" northerly from the northerly lot line and the existing eight-inch diameter City water main starts 27 feet northerly from the northerly lot line; and

WHEREAS, by letter dated November 30, 2010, DEP states that it reviewed the revised survey and that it has no further objections; and

WHEREAS, by letter dated December 2, 2010, the Department of Transportation ("DOT") states that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated July 20, 2010, acting on Department of Buildings Application Nos. 410021248 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received December 14, 2010" – (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 fire safety measures shall be installed and maintained in accordance with the BSA-approved plans;

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

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution; and

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, January 11, 2011.

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**212-10-A**

APPLICANT – NYC Board of Standards and Appeals

OWNER – Augustus H. Lawrence and Company

SUBJECT – Application November 5, 2010 – Dismissal for lack of Jurisdiction - Appeal of a determination by the Department of Buildings that an engineer's report violated Building Code Section 28.211.1. (False Statements). C6-9M Zoning District.

PREMISES AFFECTED – 96 Greenwich Street, west side of Greenwich Street between Rector Street and Carlisle Street, Block 53, Lot 39, Borough of Manhattan.

**COMMUNITY BOARD #1M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Application dismissed.

THE VOTE TO DISMISS –

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

THE RESOLUTION –

WHEREAS, the instant appeal comes before the Board in response to Notice of Violation #100510C101KE issued by the Commissioner of the Department of Buildings ("DOB"), dated October 5, 2010, stating that DOB determined that the project engineer had made a false statement as to the structural soundness of the building on the subject premises, which conflicts with Administrative Code Sections 28-201.1, 28-211.1, and 28-203.1 (the "Final Determination"); and

WHEREAS, on October 21, 2010, DOB issued an Order of the Commissioner (the "Order of the Commissioner") requesting the supporting documentation for the engineer's structural analysis and setting a meeting date with DOB's Special Enforcement Unit;<sup>1</sup> and

WHEREAS, on November 5, 2010, the property owner filed the subject appeal of the Final Determination, challenging DOB's classification of the project engineer's report as a "false statement;" and

WHEREAS, on November 12, 2010, DOB issued a letter to the Board stating that it dismissed the October 5, 2010 violation and that, as such, the subject appeal is moot and should be removed from the Board's calendar; and

WHEREAS, specifically, DOB indicated that the subject violation had been dismissed on the basis that it was superseded by the Order of the Commissioner; and

WHEREAS, the Board notes that DOB's Buildings Information System also indicates that the subject violation has been dismissed; and

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<sup>1</sup> The meeting referenced in the Order of the Commissioner was originally scheduled for November 16, 2010, but was subsequently postponed to December 17, 2010.

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WHEREAS, accordingly, on November 24, 2010, Board staff issued a Notice of Hearing to the appellant stating that, based on DOB's November 12, 2010 letter, the Board had placed the case on the December 14, 2010 dismissal calendar; the notice included a December 10, 2010 submission date for the appellant's response; and

WHEREAS, on December 9, 2010, the appellant submitted a response to the Board in which it argued that the Order of the Commissioner did not supersede the subject violation and that the case was not moot and should therefore proceed before the Board; and

WHEREAS, at the December 13, 2010 executive session, the Board indicated that, due to the pending meeting between the representative of the property owner and the DOB Special Enforcement Unit scheduled to take place on December 17, 2010, it would not dismiss the case at the December 14, 2010 hearing but would instead put the case on the January 11, 2011 dismissal calendar; and

WHEREAS, at the December 14, 2010 hearing of the Board, the case was laid over to the January 11, 2011 dismissal calendar; and

WHEREAS, following the December 14, 2010 hearing the Board did not receive any subsequent response from the appellant; and

WHEREAS, the appellant did not appear at the hearing on January 11, 2011; and

WHEREAS, accordingly, because Notice of Violation #100510C101KE has been dismissed by DOB, the Board finds that the subject appeal is therefore moot.

*Therefore it is resolved* that the instant appeal is dismissed on the basis of mootness.

Adopted by the Board of Standards and Appeals, January 11, 2011.

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## 116-10-BZY

APPLICANT – Steven Sinacori, Esq., for Akerman Senterfitt, LLP, for 3516 Development LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 35-16 Astoria Boulevard, south side of Astoria Boulevard between 35<sup>th</sup> and 36<sup>th</sup> Streets, Block 633, Lots 39 and 140, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Calvin Wong.

**ACTION OF THE BOARD** – Laid over to March 1, 2011, at 10 A.M., for adjourned hearing.

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## 216-10-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 1466 Broadway LP c/o Highgate Holdings, Incorporated, owner.

SUBJECT – Application November 12, 2010 – Appeal pursuant to Section 310(2) of the Multiple Dwelling Law

seeking to vary the court requirements under Section 26 of the Multiple Dwelling Law to permit the hotel conversion of an existing commercial building. C6-7 Zoning District.

PREMISES AFFECTED – 1466 Broadway, southeast corner of Broadway and West 42<sup>nd</sup> Street, Block 994, Lot 54, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Gary R. Tarnoff.

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 February 1, 2011, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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## REGULAR MEETING TUESDAY AFTERNOON, JANUARY 11, 2011 1:30 P.M.

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

### ZONING CALENDAR

#### 98-08-BZ

#### CEQR #08-BSA-085K

APPLICANT – Gerald J. Caliendo, RA, for Property Holdings LLC/Moshik Regev, owner.

SUBJECT – Application April 18, 2008 – Variance (§72-21) to allow a four-story residential building containing four (4) dwelling units, contrary to use regulations (§42-00). M1-1 district.

PREMISES AFFECTED – 583 Franklin Avenue, 160' of the corner of Atlantic Avenue and Franklin Avenue, Block 1199, Lot 3, Borough of Brooklyn.

#### COMMUNITY BOARD #8BK

#### APPEARANCES –

For Applicant: Sandy Anagnostou.

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated April 2, 2008, acting on Department of Buildings Application No. 302366927, reads in pertinent part:

“Proposed residential use (Use Group 2) is not permitted in an M1-1 manufacturing zoning district and is contrary to Section 42-00 of the NYC Zoning Resolution”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-1 zoning district, the proposed construction of a four-story residential building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 27, 2010, after due notice by publication in the *City Record*, with continued hearings on August 24, 2010, November 15, 2010 and December 14, 2010, and then to decision on January 11, 2011; and

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

WHEREAS, Community Board 8, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Franklin Avenue, between Atlantic Avenue and Pacific Street,

within an M1-1 zoning district; and

WHEREAS, the subject premises has 20 feet of frontage along Franklin Avenue, a depth ranging from 83 feet to 92 feet, and a lot area of 1,750 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-story residential building with four dwelling units, a floor area of 4,000 sq. ft. (2.28 FAR), a total building height of 40'-0", and a rear yard with a depth of approximately 37'-6"; and

WHEREAS, because residential use is not permitted in the subject M1-1 zoning district, the applicant seeks a use variance to permit construction of the proposed building; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: (1) the site is a small, vacant lot surrounded by residential uses; and (2) the site's history of development; and

WHEREAS, the applicant states that the subject lot is 20 feet in width and has a depth ranging from 83 feet to 92 feet, and that the small size of the lot does not allow for floor plates of sufficient size to support a conforming manufacturing use; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that there are no active commercial or manufacturing uses on similarly sized sites in the surrounding area; and

WHEREAS, the radius diagram submitted by the applicant also reflects that the site is the only vacant lot on the subject block and one of only two vacant lots in the surrounding M1-1 zoning district; further, the other vacant lot has a lot area of approximately 7,500 sq. ft., and is therefore more compatible for a conforming manufacturing or commercial use than the subject site; and

WHEREAS, the radius diagram further reflects that the subject site is situated between two lots which are occupied by existing non-conforming residential uses, and that the entire block front of Franklin Avenue is developed with multiple dwellings or mixed use buildings with ground floor retail and residential units above; and

WHEREAS, as to the history of development of the lot, the applicant represents that the site was developed with residential uses from 1888 until 1988, when the previously-existing residential building was destroyed by fire and had to be demolished; the lot has remained vacant since that time; and

WHEREAS, in support of this representation, the applicant submitted Sanborn Maps dating back to 1908, as well as Department of Buildings records; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) an as-of-right one-story retail commercial building; (2) an as-of-right one-story warehouse building; and (3) the proposed four-story residential building; and

WHEREAS, the study concluded that the as-of-right

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scenarios would not result in a reasonable return, but that the proposal would realize a reasonable return; and

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

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

WHEREAS, the applicant represents that the character of the surrounding area is a mix of residential, manufacturing, and community facility uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the subject block consists predominantly of residential uses; and

WHEREAS, specifically, the applicant states that the entire blockfront along Franklin Avenue between Atlantic Avenue and Pacific Street consists of four-story residential or mixed-use buildings, on both the east and west side of the street; and

WHEREAS, the applicant further states that the adjacent lots to the north and south of the subject site are both occupied by four-story residential buildings; and

WHEREAS, the applicant submitted a streetscape reflecting that the street wall height of the proposed building will match the two adjacent buildings, thereby filling in a gap in the current street front along Franklin Avenue; and

WHEREAS, the applicant notes that the site's history supports the residential use of the site, as it was developed residentially between 1888 and 1988 and has remained vacant since; and

WHEREAS, the applicant represents that the proposed building will comply with the bulk regulations for an R6 zoning district pursuant to the Quality Housing Program, except for a slight overage in the floor area ratio ("FAR") to allow for a building with a floor area of 4,000 sq. ft. (2.28 FAR); the maximum permitted floor area for an R6 (Quality Housing) building would be 3,850 sq. ft. (2.20 FAR); and

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant

information about the project in the Final Environmental Assessment Statement ("EAS") 08BSA085K dated November 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 New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials; and

WHEREAS, DEP requested a Phase II Workplan and Health and Safety Plan and the applicant requested to do a Restrictive Declaration which BSA and DEP agreed to; and

WHEREAS, the Restrictive Declaration was executed on January 4, 2011 and submitted for recording on January 5, 2011; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-1 zoning district, the proposed construction of a four-story residential building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 11, 2011"-five (5) sheets; and *on further condition*:

THAT the bulk parameters of the proposed buildings shall be as follows: maximum floor area of 4,000 sq. ft. (2.28 FAR); and a total height of 40'-0", as illustrated on the BSA-approved plans;

THAT a Phase II Workplan and Health and Safety Plan and any other necessary documents (Phase II Site Investigation report, Remedial Action Plan, Construction Health and Safety Plan, etc.) be submitted to DEP for review and approval;

THAT, prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed; and

THAT prior to the issuance by DOB of a temporary or

# MINUTES

permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT all interior layouts and exits shall be as approved by the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, January 11, 2011.

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## 107-10-BZ

APPLICANT – Akerman Senterfitt, for Associazione Sacchese D’America, owner.

SUBJECT – Application September 10, 2010 – Variance (§72-21) to allow for a community facility use (*Associazione Sacchese D’America*), contrary to side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 12-24 149<sup>th</sup> Street, between 12<sup>th</sup> Avenue and Cross Island Parkway, Block 4466, Lot 21, 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, the decision of the Queens Borough Superintendent, dated May 15, 2010, acting on Department of Buildings Application No. 420092081, reads in pertinent part:

“As per ZR 24-35(a) minimum required side yards:

(a) two side yards shall be provided, each with a minimum required width of eight feet;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2 zoning district the legalization of a community facility use on the first floor of an existing mixed-use community facility/residential building which does not comply with side yard regulations for community facility use, contrary to ZR § 24-35; and

WHEREAS, a public hearing was held on this application on November 16, 2010, after due notice by publication in the *City Record*, with a continued hearing on December 14, 2010 and then to decision on January 11, 2011; and

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

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

WHEREAS, the Queens Borough President recommends approval of this application; and

WHEREAS, State Senator Frank Padavan and State Assemblywoman Ann-Margaret Carrozza provided written testimony in support of the application; and

WHEREAS, two adjacent neighbors provided letters in support of the application; and

WHEREAS, Saint Luke’s Church provided written testimony in support of the application, noting that the applicant works in conjunction with the church for religious events and community-based social service events; and

WHEREAS, the application is brought on behalf of the Associazione Sacchese D’America (the “Association”), a nonprofit religious organization; and

WHEREAS, the site is located on the west side of 149<sup>th</sup> Street, between Cross Island Parkway and 12<sup>th</sup> Avenue; and

WHEREAS, the site has a lot area of approximately 4,037 sq. ft. (.56 FAR) and is located within an R2 zoning district; and

WHEREAS, the site is occupied by a two-story building, built in 1915 for residential occupancy; the first floor of the building is occupied by the Association (Use Group 4) and the second floor is occupied by residential use (Use Group 2), both of which are proposed to remain; and

WHEREAS, the applicant now proposes to legalize the existing community facility use within the existing building without any physical changes to the building; and

WHEREAS, the existing building is non-complying as to side yards; specifically, the existing side yards have widths of 4’-0” and 1’-0” (a community facility use requires two side yards with minimum widths of 8’-0” each); and

WHEREAS, the side yards are pre-existing legal non-compliances for residential use, but a variance is required due to the change in use and the increased degree of non-compliance as to the side yards associated with the community facility use; and

WHEREAS, the applicant represents that the proposed legalization of the community facility use will not create any other non-compliances and that the building will remain at .56 FAR (a maximum FAR of 1.0 is permitted for the mixed-use building); and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the programmatic needs of the Association; and (2) the narrowness of the zoning lot; and

WHEREAS, specifically, the applicant states that the following are the programmatic needs of the Association which require the requested waivers: to provide a sufficiently-sized gathering place for its members to worship the Roman Catholic Patron Saints of Sacco, Italy, within walking distance of many of its members; and

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WHEREAS, the applicant states that the Association conducts religious, cultural and civic functions related to the worship of its patron saint Maria Santissimo D'Angeli, usually conducting worship services in the evening; the Association also works closely with nearby St. Luke's Church to provide services which the church cannot accommodate; and

WHEREAS, the Board acknowledges that the Association, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board finds that the Association's programmatic needs are legitimate, and agrees that the existing first floor space is required to accommodate the Association's programmatic needs at the subject site; and

WHEREAS, the applicant represents that the building was built as a residential building nearly 100 years ago and that it cannot be occupied by a community facility in strict compliance with zoning district regulations; and

WHEREAS, as to the site's narrow width, the applicant notes that the site has a width of 25 feet and that if a new building were constructed at the site to accommodate the community facility use with two complying side yards with widths of 8'-0", the exterior width of the building would be 9'-0", an insufficient width to accommodate the Association's programmatic needs; and

WHEREAS, as to the uniqueness of the site condition, the Board notes that the 400-ft. radius diagram reflects that there are only approximately two lots with similar or narrower widths that are occupied by detached buildings with two side yards; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the site, when considered in conjunction with the programmatic needs of the Association, creates unnecessary hardship and practical difficulty in occupying the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Association is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, 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 notes that community facility use is permitted within the zoning district; and

WHEREAS, the applicant states that the existing 1915

building with non-complying side yards will not be changed and is compatible with the context of the immediate area; and

WHEREAS, the applicant notes that the building is compatible in size with the other buildings in the area, including many similar two-story residential buildings; 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 applicant states that the hardship was not self-created and that no construction that would meet the programmatic needs of the Association could occur on the existing lot; and

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

WHEREAS, the applicant represents that the requested side yard waivers are the minimum necessary to accommodate the Association's programmatic needs; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Association to fulfill its programmatic needs on the narrow site; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R2 zoning district, the legalization of a community facility use on the first floor of an existing mixed-use community facility/residential building which does not comply with side yard regulations for community facility use, contrary to ZR § 24-35, *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 June 10, 2010" – two (2) sheets and "Received November 9, 2010" – one (1) sheet and *on further condition*:

THAT any change in control or ownership of the building shall require the prior approval of the Board;

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

THAT the use of the building shall be as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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.

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Adopted by the Board of Standards and Appeals, January 11, 2011.

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**179-10-BZ**

**CEQR #11-BSA-025K**

APPLICANT – Sheldon Lobel, P.C., for E & R Duffield Holding Associates, owner; Duffield Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 16, 2010 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (*Planet Fitness*). C6-4 zoning district.

PREMISES AFFECTED – 249 Duffield Street, east side of Duffield Street, approx. 69’ north of the corner of Duffield Street and Fulton Street, Block 146, Lot 2, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

APPEARANCES –

For Applicant: Elizabeth Safien.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 26, 2010, acting on Department of Buildings Application No. 300196151, reads in pertinent part:

“Proposed change of use to a physical culture establishment is contrary to ZR Section 32-10 and must be referred to BSA for approval pursuant to ZR Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-4.5 zoning district within the Special Downtown Brooklyn District, the legalization of a physical culture establishment (PCE) at the cellar, first floor, and second floor of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 16, 2010, after due notice by publication in *The City Record*, with a continued hearing on December 14, 2010, and then to decision on January 11, 2011; and

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

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

WHEREAS, the subject site is located on the east side of Duffield Street, between Fulton Street and Willoughby Street, in a C6-4.5 zoning district within the Special Downtown Brooklyn District; and

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

WHEREAS, the PCE will occupy the entire building, with a total floor area of 13,434 sq. ft. on the first floor and second floor, and an additional 7,809 sq. ft. of floor space at the cellar level; and

WHEREAS, the PCE is operated as Planet Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 24 hours per day; Friday, from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

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

WHEREAS, at hearing, the Board questioned whether the signage at the site complies with the underlying zoning district regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that the rooftop banner has been removed from the site, and submitted revised plans and a signage analysis reflecting that the signage on the site complies with the underlying zoning district regulations; and

WHEREAS, by letter dated September 30, 2010, the Fire Department states that a sprinkler system is required for the subject site pursuant to Building Code Section 903.2.1.3, and requests that the plans be amended to reflect the installation of a sprinkler system in the building; and

WHEREAS, in response, the applicant submitted revised plans which reflect that an automatic wet sprinkler will be installed throughout the PCE; and

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

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

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

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# MINUTES

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Assessment Statement, CEQR No.11BSA025K, dated September 15, 2010; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in a C6-4.5 zoning district within the Special Downtown Brooklyn District, the legalization of a physical culture establishment at the cellar, first floor, and second floor of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 4, 2010"-(4) sheets and "Received November 30, 2010"-(1) sheet; and *on further condition*:

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, January 11, 2011.

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**24-09-BZ**

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district.

PREMISES AFFECTED – 78-10 164<sup>th</sup> Street, Located on the western side of 164th Street between 78<sup>th</sup> Avenue and 78th Road, Block 6851, Lot 9, 11, 12, 23, 24, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Elizabeth Safien.

**ACTION OF THE BOARD** – Laid over to February 8, 2011, at 1:30 P.M., for adjourned hearing.  
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**304-09-BZ**

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

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

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

**COMMUNITY BOARD #16BK**

APPEARANCES –

For Applicant: Jay Goldstein and Hiram Rothkrug.

For Opposition: William Wilkins, Devon Prioleau and John Curcio.

**ACTION OF THE BOARD** – Laid over to March 1, 2011, at 1:30 P.M., for continued hearing.  
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**309-09-BZ**

APPLICANT – Harold Weinberg, P.E., for Ralph Stroffolino, owner.

SUBJECT – Application November 20, 2009 – Variance (§72-21) to allow a mixed use building, contrary to lot coverage (§23-145), side yard (§35-541) and height (§35-542) regulations. R6A/C2-3 zoning district.

PREMISES AFFECTED – 2173 65<sup>th</sup> Street, between Bay Parkway and 21<sup>st</sup> Avenue, Block 5550, Lot 40, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto and David Lane.

**ACTION OF THE BOARD** – Laid over to February



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15, 2011, at 1:30 P.M., for continued hearing.  
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## **31-10-BZ**

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

### **COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Eric Palatnik and Raymond Chen.

For Opposition: Helen Lesnik.

**ACTION OF THE BOARD** – Laid over to March 15, 2011, at 1:30 P.M., for continued hearing.  
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## **35-10-BZ**

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

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

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

### **COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Elizabeth Safien.

**ACTION OF THE BOARD** – Laid over to February 1, 2010, at 1:30 P.M., for adjourned hearing.  
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## **47-10-BZ**

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Coprporation, owner; Airgas-East, Incorporated, lessee.

SUBJECT – Application April 8, 2010 – Variance (§72-21) to allow a manufacturing use in a residential district, contrary to ZR 22-00. M1-1/R3-2 zoning district.

PREMISES AFFECTED – 895 Zerega Avenue, aka 2352 Story Avenue, Block 3698, Lot 36, Borough of The Bronx.

### **COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Eric Palatnik and Eric Meyn.

**ACTION OF THE BOARD** – Laid over to February 15, 2011, at 1:30 P.M., for continued hearing.  
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## **95-10-BZ**

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

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

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

### **COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to April 5, 2011, at 1:30 P.M., for adjourned hearing.  
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## **127-10-BZ**

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

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

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

### **COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to February 8, 2011, at 1:30 P.M., for continued hearing.  
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## **130-10-BZ**

APPLICANT – Sheldon Lobel, P.C., for John Ingravallo, owner.

SUBJECT – Application July 16, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) regulations. R3X zoning district.

PREMISES AFFECTED – 1153 85<sup>th</sup> Street, north side of 85<sup>th</sup> Street, between 11<sup>th</sup> and 12<sup>th</sup> Avenue, Block 6320, Lot 56, Borough of Brooklyn.

### **COMMUNITY BOARD #10BK**

APPEARANCES –

For Applicant: Elizabeth Safien.

**ACTION OF THE BOARD** – Laid over to February 1, 2011, at 1:30 P.M., for adjourned hearing.  
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## 134-10-BZ

APPLICANT – Stuart Beckerman, for Passiv House Xpermental LLC, owner.

SUBJECT – Application July 30, 2010 – Variance (§72-21) to allow a residential building, contrary to floor area (§43-12), height (§43-43), and use (§42-10) regulations. M1-1 zoning district.

PREMISES AFFECTED – 107 Union Street, north side of Union Street, between Van Brunt and Columbia Streets, Block 335, Lot 42, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Neil Weisbard.

**ACTION OF THE BOARD** – Laid over to February 8, 2011, at 1:30 P.M., for continued hearing.

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## 149-10-BZ

APPLICANT – Eric Palatnik, P.C., for Chaya Singer, owner.

SUBJECT – Application August 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and less than the minimum rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1415 East 29<sup>th</sup> Street, between Avenue N and Kings Highway, Block 7683, Lot 39, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to February 15, 2011, at 1:30 P.M., for continued hearing.

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## 150-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Lyle Broochian, owner.

SUBJECT – Application August 16, 2010 – Special Permit (§73-622) for the legalization of the enlargement of an existing single family home, contrary to floor area (23-141); side yard (§23-461) and rear yard regulations (§23-47). R2 zoning district.

PREMISES AFFECTED – 1124 East 26<sup>th</sup> Street, west side of East 26<sup>th</sup> Street, between Avenue K and Avenue L, Block 7625, Lot 55, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Elizabeth Safien.

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

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## 173-10-BZ

APPLICANT – Nasir J. Khanzada, for Olympia Properties, LLC., owner.

SUBJECT – Application August 26, 2010 – Special Permit (§73-30) to legalize the operation of a physical culture establishment (*Olympia Spa*). C2-4/R6B zoning district.

PREMISES AFFECTED – 65-06 Fresh Pond Road, west side of Fresh Pond Road, 45.89’ south of corner of Linden Street and Fresh Pond Road, Block 3526, Lot 67, Borough of Queens.

### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Nasir J. Khanzada.

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 February 8, 2011, at 1:30 P.M., for decision, hearing closed.

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## 175-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application September 1, 2010 – Special Permit (§11-411) for an Extension of Term of a previously approved Automotive Service Station (UG 16B) which expired on December 18, 2001; Extension of Time to obtain a certificate of occupancy which expired on September 21, 1994; Waiver of the Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 3400 Baychester Avenue, Northeast corner of Baychester and Tillotson Avenue, Block 5257, Lot 47, Borough of Bronx.

### COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Elizabeth Safien.

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

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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## \*CORRECTION

This resolution adopted on December 14, 2010, under Calendar No. 104-10-BZ and printed in Volume 95, Bulletin No. 51, is hereby corrected to read as follows:

### 104-10-BZ

#### CEQR #10-BSA-077K

APPLICANT – Moshe M. Friedman, P.E., for Congregation Ohr Yisroel Inc., owner.

SUBJECT – Application June 8, 2010 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a synagogue and rectory, contrary to lot coverage and floor area (§24-11) front yard (§24-34), side yard (§24-35) and wall height and sky exposure plane (§24-521). R5 zoning district.

PREMISES AFFECTED – 5002 19<sup>th</sup> Avenue, aka 1880-1890 50<sup>th</sup> Street, south side of 50<sup>th</sup> Street, west of 19<sup>th</sup> Avenue, Block 5461, Lot 39, Borough of Brooklyn.

#### COMMUNITY BOARD #12BK

#### APPEARANCES –

For Applicant:

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 13, 2010, acting on Department of Buildings Application No. 320152213 reads, in pertinent part:

“Proposed house of worship (UG 4) in an R5 district is contrary to:

- ZR 24-11 Floor Area & Lot Coverage
- ZR 24-521 Height
- ZR 23-34 Front Yard
- ZR 24-35 Side Yard
- ZR 23-521 Sky Exposure Plane

And requires a variance from the Board of Standards and Appeals as per Section 72-21;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R5 zoning district, the conversion and enlargement of an existing residential building to a synagogue (Use Group 4), which does not comply with floor area, lot coverage, front yard, side yard, height and sky exposure plane requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35 and 24-521; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with a continued hearing on November 16, 2010, and then to decision on December 14, 2010; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application; and

WHEREAS, certain neighborhood residents provided written testimony in support of this application; and

WHEREAS, this application is being brought on behalf of Congregation Ohr Yisroel, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject site is located on the southwest corner of 19<sup>th</sup> Avenue and 50<sup>th</sup> Street, within an R5 zoning district; and

WHEREAS, the subject lot has a width of 20’-2”, a depth of 100’-0”, and a lot area of 2,081 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story residential building with a floor area of 3,464 sq. ft. (1.72 FAR); and

WHEREAS, the proposed building provides for a three-story synagogue with the following parameters: a floor area of 5,696 sq. ft. (the maximum permitted floor area is 4,162 sq. ft.), an FAR of 2.82 (the maximum permitted FAR is 2.0); lot coverage of 94 percent (the maximum permitted lot coverage is 60 percent); a front yard with a depth of 5’-0” along the eastern lot line and no front yard along the northern lot line (a front yard with a minimum depth of 10’-0” is required); no side yards (two side yards with minimum depths of 8’-0” and 9’-6”, respectively, are required); a front wall height of 40’-0” (the maximum permitted front wall height is 35’-0”); and encroachment into the sky exposure plane; and

WHEREAS, the proposal provides for the following uses: (1) a synagogue at the cellar level and first floor; (2) a women’s balcony on the second floor; and (3) a library and rabbinical study room on the third floor; and

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

WHEREAS, the applicant states that the congregation currently has a membership of 60 families and there are approximately 60 congregants who worship at the current rented facility on the Sabbath, between 30 and 40 congregants who attend daily services, and approximately 115 congregants who attend holiday services; and

WHEREAS, the applicant further states that the congregation currently worships in rented space and has to rent out additional space for holiday services, which attract a larger number of worshippers; and

WHEREAS, the applicant represents that the size, layout and design of the subject building is inadequate to serve the current congregation; and

WHEREAS, the applicant represents that the congregation is made up of many young families and has been growing steadily since its inception, and that the proposed synagogue is necessary to accommodate the future growth of the congregation; and

WHEREAS, the applicant states that the proposed building can accommodate its growing congregation as well as provide a separate worship space for men and women, as

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required by religious doctrine; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to provide adequate space for worship services in the cellar synagogue, first floor synagogue, and the women's balcony; and

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

WHEREAS, the applicant further represents that the third floor study space is necessary to accommodate the religious traditions of the congregation, which require that the congregation set aside a study period during prayer times for the study of the Torah, Talmud, and other Jewish religious texts; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, however, the applicant also represents that the narrow width of the site creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the subject lot has a width of 20'-2"; and

WHEREAS, the applicant states that the site is too narrow to accommodate a complying synagogue building, as providing complying side yards would reduce the width of the building to 4'-9"; and

WHEREAS, the applicant represents that, therefore, the required floor area cannot be accommodated within the as-of-right lot coverage, floor area, and yard parameters and allow for efficient floor plates that accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical condition, when considered in conjunction with the programmatic needs of the Synagogue, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; 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 states that that the proposed use is permitted in the subject zoning district; and

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram reflecting that the residential character of the surrounding neighborhood includes one-, two- and three-family homes and three- and four-story apartment buildings; and

WHEREAS, the applicant states that the proposed three-story building is consistent with the surrounding area, as three-story residential buildings are permitted in the subject zoning district; and

WHEREAS, at hearing, the Board questioned whether the applicant needed the requested front yard waiver, and the effect it would have on the surrounding residences; and

WHEREAS, in response, the applicant submitted plans for a lesser variance alternative that eliminated the front yard waiver; and

WHEREAS, the plans submitted by the applicant reflect that the lesser variance scenario would limit the occupancy of both the proposed synagogue and balcony to 63 people, and would limit the occupancy of the cellar synagogue to 38 people; and

WHEREAS, the applicant states that while the lesser variance scenario would provide a temporary reprieve to the Synagogue's space requirements for weekday and Sabbath services, it would not meet the programmatic needs of the Synagogue because it would not provide adequate space to accommodate the current congregation during holiday services, and would not provide space to accommodate the anticipated growth of the congregation; and

WHEREAS, the applicant also submitted letters from the adjacent neighbors on 19<sup>th</sup> Avenue in support of the proposal, including the extension of the building into the front yard; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

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

WHEREAS, as noted above, the applicant submitted plans for a lesser variance scenario which was unable to meet the programmatic needs of the Synagogue; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed to meet its programmatic needs; 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 an Unlisted

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action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA077K, dated September 15, 2010; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R5 zoning district, the conversion and enlargement of an existing residential building to a synagogue (Use Group 4), which does not comply with floor area, lot coverage, front yard, side yard, height and sky exposure plane requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35 and 24-521, *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 June 8, 2010” – (9) sheets and “Received September 15, 2010” – (1) sheet; and *on further condition*:

THAT the building parameters shall be: a floor area of 5,696 sq. ft. (2.82 FAR); lot coverage of 94 percent; a front yard with a depth of 5’-0” along the eastern lot line; and a front wall height of 40’-0”, as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

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

THAT 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 construction shall proceed in accordance with ZR

§ 72-23;

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, December 14, 2010.

**\*The resolution has been revised to correct the Plans Date which read: “Received June 8, 2010” – (3) sheets, “Received September 15, 2010” – (2) sheets and “Received November 3, 2010” – (5) sheets now reads: “Received June 8, 2010” – (9) sheets and “Received September 15, 2010” – (1) sheet. Corrected in Bulletin Nos. 1-3, Vol. 96, dated January 19, 2011.**