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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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October 27, 2011

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## DIRECTORY

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**Affecting Calendar Number:**

585-91-BZ	222-44 Braddock Avenue, Queens
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# DOCKET

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New Case Filed Up to October 18, 2011

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**154-11-A**

23-10 Queens Plaza South, between 23rd Street and 24th Street, Block 425, Lot(s) 5, Borough of **Queens, Community Board: 02**. This appeal seeks reversal of a Department of Buildings determination that the non-illuminated sign located on top the building of the site is not a legal non-conforming advertising sign that may be maintained and altered. M1-9 M1-9/R9 district.

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**155-11-A**

480 Stratford Road, west side of Stratford Road, through to Coney Island Avenue between Dorchester Road and Ditmas Avenue., Block 5174, Lot(s) 16, Borough of **Brooklyn, Community Board: 14**. Appeal seeking a common law vested right to continue construction commenced under the prior R6 zoning . R3X Zoning district R6B district.

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**156-11-BZ**

1020 Carroll Place, triangular corner lot bounded by East 165th Street, Carroll Place and Sheridan Avenue., Block 2455, Lot(s) 48, Borough of **Bronx, Community Board: 04**. This application is filed pursuant to Zoning Resolution section 72-21 of the City of New York, as amended, to request a variance to permit the construction of a new 12-story community facility (Ug4 house of worship) and residential (g2 supportive housing) building, located within an R8 zoning district, which is contrary to setback, floor area, lot coverage and density requirements. R8 district.

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**157-11-BZ**

1968 Second Avenue, northeast corner of the intersection of Second Avenue and 101st Street., Block 1673, Lot(s) 1, Borough of **Manhattan, Community Board: 11**. Variance (§72-21) to allow for the legalization of an existing supermarket, contrary to rear yard ZR 33-261 and loading berth ZR 36-683 requirements. C1-5/R8A and R7A zoning districts. R8A/C1-5 district.

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**158-11-BZ**

2166 Nostrand Avenue, east side of Nostrand Avenue, 180.76' south of intersection of Nostrand Avenue and Flatbush Avenue., Block 7557, Lot(s) 124, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-36) to permit physical culture establishment within portions of a proposed building located in an C4-4A zoning district. C4-4A district.

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**159-11-BZ**

212-01 26th Avenue, 26th Avenue between Bell Boulevard and Corporal Kennedy Street., Block 5900, Lot(s) 2, Borough of **Queens, Community Board: 07**. Special Permit (§73-36) to permit the legalization of an existing Physical Culture Establishment. C4-1 zoning district. C4-1 district.

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**160-11-BZ**

42 East 69th Street, south side of East 69th Street, between Park Avenue and Madison Avenue., Block 1383, Lot(s) 43, Borough of **Manhattan, Community Board: 08**. Variance (§72-21) to allow for the enlargement of a community facility (Jewish National Fund), contrary to rear yard ZR 24-33, rear yard setback ZR 24-552, lot coverage ZR 24-11, and height and setback ZR 23-633,24-591 regulations. R8B zoning district. R8B/LH1-A district.

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# DOCKET

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**161-11-A**

82-20 Britton Avenue, eastside of Britton Avenue between Broadway and Layton Street, Block 1517, Lot(s) 3, Borough of **Queens, Community Board: 4**. Appeal seeking to vacate a Stop Work Order and rescind revocation of a building permit based on lack of adjacent property owner authorization . R7B Zoning District . R7B district.

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**162-11-A**

179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot(s) 26, Borough of **Manhattan, Community Board: 3M**. Appeal seeking a determination that the owner has acquired a common law vested right to continue construction commenced under prior C6- 1 zoning district regulations . C4-4A Zoning district . C4-4A district.

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**163-11-A**

469 West 57th Street, building located between 9th and 10th Avenue., Block 1067, Lot(s) 4, Borough of **Manhattan, Community Board: 4**. Application filed by the Fire Department seeking a modification of the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building . R-8 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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**NOVEMBER 1, 2011, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, November 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**

**88-81-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for JFAM Realty, owner.

SUBJECT – Application August 1, 2011 – Extension of Term of a previously granted variance (§72-21) which permitted the conversion of an existing two-story building from a dwelling and day care center to an office building which expired on July 21, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on June 18, 2003.

R3-1 zoning district.

PREMISES AFFECTED – 3309 Richmond Avenue, 365' south of the intersection of Richmond Avenue and Gurley Avenue, Block 5533, Lot 20, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**250-00-BZ**

APPLICANT – Bryan Cave LLP, for New York University, owner.

SUBJECT – Application August 10, 2011 – Application pursuant to (§11-411) for an extension of term and minor amendment of a previously granted variance, initially granted in 1961 under the 1916 Zoning Resolution and reestablishment in 2001 for a ten year term, allowing transient parking for up to 149 cars in an existing multiple dwelling accessory garage.

PREMISES AFFECTED – 521-541&553-563 LaGuardia Place, block bounded by LaGuardia Place, West 3rd Street, Mercer Street and Bleecker Street. Block 533, Lot 1. Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**187-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Congregation & Yeshiva Machzikei Hadas Inc., owner.

SUBJECT – Application July 18, 2011 – The application seeks Board approval of certain amendments to the Board's March 16, 2010 variance grant, to (1) permit the addition of sub-cellar level, (2) add additional floor area, (3) increase the lot coverage and building heights, and (4) make additional interior changes to the previously approved five-story religious school.

PREMISES AFFECTED – 1247 38<sup>th</sup> Street, north side of 38<sup>th</sup> Street, 240' west of 13<sup>th</sup> Avenue, lock 5295, Lots 52 & 56, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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**112-10-BZ**

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

SUBJECT – Application July 6, 2011 – Amendment to a previously granted Special Permit (§73-44) to permit the reduction in required parking with change of use from UG16 to UG6. M1-1 zoning district.

PREMISES AFFECTED – 915 Dean Street, north side of Dean Street between Classon and Grand Avenues, Block 1133, Lot 64, Borough of Brooklyn.

**COMMUNITY BOARD #8BK**

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**APPEALS CALENDAR**

**98-11-A**

APPLICANT – Goldman Harris, LLC, for Bay People Inc., for Alloway Ahmed, owner.

SUBJECT – Application July 7, 2011 – Appeal of the Borough Commissioner's final determination regarding a denied zoning challenge to a zoning approval of a house of worship due to no off-street parking being provided by the developer. R4 zoning district.

PREMISES AFFECTED – 2812-2814 Voorhies Avenue, south side of Voorhies Avenue between East 28<sup>th</sup> and East 29<sup>th</sup> Streets, Block 8791, Lots 5, 6 (tent 106), Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, November 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**

**73-11-BZ**

APPLICANT – Rampulla Associates Architects, for Tora Development, LLC, owners.

SUBJECT – Application May 26, 2011 – Variance (§72-21) to allow a four story, 100 unit residential building contrary to bulk regulations. C3A/SRD zoning district.

PREMISES AFFECTED – 70 Tennyson Drive, north side Tennyson Drive, between Nelson Avenue and Cleveland Avenue, Block 5212, Lot 70, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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# CALENDAR

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**89-11-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Annie and Kfir Ribak, owners.

SUBJECT – Application June 23, 2011 – 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 yards (23-461) and perimeter wall height (23-631). R3-2 zoning district.

PREMISES AFFECTED – 2224 Avenue S, south west corner of Avenue S and East 23<sup>rd</sup> Street, Block 7301, Lot 9, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**115-11-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Thomas Schick, owner.

SUBJECT – Application August 15, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (23-141); side yard (23-461) and less than the required rear yard (23-47). R-2 zoning district.

PREMISES AFFECTED – 1110 East 22<sup>nd</sup> Street, between Avenue J and Avenue K, Block 7603, Lot 62, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, OCTOBER 18, 2011  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**677-53-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.

SUBJECT – Application April 22, 2010 – Extension of Term (§11-411) of a Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building; Waiver of the Rules. R4/C2-2 zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289’ northerly of the intersection with 65<sup>th</sup> Avenue, Block 6901, Lot 48. Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Todd Dale.

**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 .....

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for a Use Group 16 automobile repair shop, an extension of time to obtain a certificate of occupancy, and an amendment to permit the enlargement of the building on the site; and

WHEREAS, a public hearing was held on this application on March 8, 2011, after due notice by publication in *The City Record*, with continued hearings on April 12, 2011, May 10, 2011, June 13, 2011, July 12, 2011, August 16, 2011 and September 20, 2011, and then to decision on October 18, 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, Community Board 8, Queens, recommends disapproval of this application; and

WHEREAS, the site is located on the west side of Fresh Meadow Lane, 289 feet north of 65<sup>th</sup> Avenue, within a C2-2 (R4) zoning district; and

WHEREAS, the site has a total lot area of 5,126 sq. ft., and is currently occupied by an automotive repair station with the parking and storage of motor vehicles awaiting service; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 2, 1954 when, under the subject calendar number, the Board granted a variance to permit the site to be occupied for body and fender work, minor auto repairs, welding and incidental painting and spraying, with parking and storage of motor vehicles awaiting service, for a term of five years; and

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

WHEREAS, most recently, on January 13, 1998, the Board granted a ten-year extension of term, which expired on March 24, 2007; a condition of the grant was that a certificate of occupancy be obtained by January 13, 1999; and

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

WHEREAS, the applicant represents that the automotive-related (Use Group 16) use has been continuous from 1954 to the present; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, the applicant also requests an amendment to permit a 1,076 sq. ft. enlargement to the existing 2,180 sq. ft. building on the site; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for an enlargement of the site; and

WHEREAS, at hearing, the Board raised concerns about the use of adjacent Lot 52 for automobile intake and customer processing in conjunction with the automobile repair facility on the subject site, given that the applicant had not submitted evidence that such use was permitted on Lot 52; and

WHEREAS, in response, the applicant submitted a certificate of occupancy dated March 5, 1963 permitting automotive body repair use on Lot 52, which was not listed on the Department of Buildings’ (“DOB”) online Building Information System (“BIS”) database; and

WHEREAS, the applicant states that it will submit the 1963 certificate of occupancy to DOB, and ensure that it is reflected on the BIS database; and

WHEREAS, during the course of the hearing process, the Board also raised concerns about the congestion and lack of space on the site, and the impact that the proposed enlargement would have on the already constrained site; and

WHEREAS, in response, the applicant represents that the proposed enlargement would result in the loss of no more than four parking spaces and would enable the operator to service vehicles more efficiently; and

WHEREAS, the Board notes that it has remaining concerns about the site’s ability to accommodate the requested enlargement, given the size limitations of the site, the space constraints that result from the existing business operations, and the additional space constraints that will arise from the elimination of parking spaces and the expansion of the business operations under the proposed enlargement; and

WHEREAS, the Board further notes that the applicant

# MINUTES

did not provide a credible site plan showing the maneuverability of cars between the subject site and Lot 52, and did not provide sufficient information regarding the two businesses and their current operation plan; and

WHEREAS, accordingly, the Board is not persuaded that the proposed enlargement of the building on the site would result in efficient operations, and therefore finds it appropriate to limit the site to its existing floor area; and

WHEREAS, based upon its review of the record, the Board finds that the evidence in the record supports the findings required to be made under ZR § 11-411 and an extension of term and extension of time to obtain a certificate of occupancy are 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 March 2, 1954, so that as amended this portion of the resolution shall read: “to extend the term for five years from the date of this grant, to expire on October 18, 2016, and to grant an extension of time to obtain a certificate of occupancy to expire on October 18, 2012; *on condition:*

THAT the term of the grant shall expire on October 18, 2016;

THAT all spray painting on the site shall be limited to water-based paint;

THAT the hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., daily;

THAT there shall be no parking of vehicles on the sidewalk;

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

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

THAT a certificate of occupancy shall be obtained by October 18, 2012;

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

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

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

Adopted by the Board of Standards and Appeals, October 18, 2011.

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## 329-59-BZ

APPLICANT – Mango & Iacoviello, LLP, for Coliseum Tenants Corporation c/o Punia & Marx, Incorporate, owner; Central Parking Systems of New York, Incorporated, lessee. SUBJECT – Application June 1, 2011 – Extension of Term for the continued operation of transient parking in a multiple dwelling which expired on November 4, 2008; an Extension of Time to obtain a Certificate of Occupancy which expired on November 4, 2008 and waiver of rules. R8/C6-6(MID) zoning district.

PREMISES AFFECTED – 910-924 Ninth Avenue aka 22-44 West 60<sup>th</sup> Street, Block 1049, Lot 1. Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Anthony Mango.

**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 for a previously granted variance for a transient parking garage, which expired on November 4, 2008; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in *The City Record*, and then to decision on October 18, 2011; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; 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, the subject site is bounded by West 58<sup>th</sup> Street to the south, Ninth Avenue to the west, and West 60<sup>th</sup> Street to the north; and

WHEREAS, the site is located partially in an R8 zoning district and partially in a C6-6 zoning district within the Special Midtown District, and is occupied by a 14-story residential building; and

WHEREAS, the cellar is occupied by a 318-space accessory garage; and

WHEREAS, on September 15, 1959, under the subject calendar number, the Board granted a variance to permit a maximum of 149 surplus parking spaces to be used for transient parking for a term of 21 years; and

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

WHEREAS, on November 17, 1998, the Board granted a ten-year extension of term, which expired on November 4, 2008; a condition of the grant was that a certificate of occupancy be obtained by November 17, 1999; and

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WHEREAS, most recently, on January 15, 2002, the Board granted an extension of time to obtain a certificate of occupancy; and

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

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution having been adopted on September 15, 1959, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from November 4, 2008, to expire on November 4, 2018; *on condition*:

THAT this term shall expire on November 4, 2018;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

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

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

(Alt. 590/1959)

Adopted by the Board of Standards and Appeals, October 18, 2011.

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## 1045-64-BZ

APPLICANT – Hal Dorfman, R.A., for Kips Bay Tower Associates, owner.

SUBJECT – Application June 10, 2011 – Extension of Term for the continued operation of transient parking which expired on June 21, 2011. R8 zoning district.

PREMISES AFFECTED – 300-330 East 33<sup>rd</sup> Street, Northwest corner of East 33<sup>rd</sup> Street and First Avenue. Block 936, Lot 7501. Borough of Manhattan.

## COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Robert A. Jacobs and Peter Hirshman.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a transient parking garage, which expired on June 21, 2011; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in *The City Record*, and then to decision on October 18, 2011; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

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

WHEREAS, the subject premises is an irregularly shaped lot which occupies the majority of Block 936 and is bounded by East 30<sup>th</sup> Street to the south, First Avenue to the east, East 33<sup>rd</sup> Street to the north, and Second Avenue to the west, within an R8 zoning district; and

WHEREAS, the site is occupied by two 20-story residential towers; and

WHEREAS, the first floor and cellar of the northern portion of the site are occupied by a 300-space accessory garage, with 150 spaces at the first floor and 150 spaces at the cellar; and

WHEREAS, on June 21, 1966, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law ("MDL") to permit a maximum of 120 surplus parking spaces to be used for transient parking, for a term of 15 years; and

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

WHEREAS, most recently, on July 23, 2002, the Board granted a ten-year extension of term, which expired on June 21, 2011; and

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

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on June 21, 1966, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from June 21, 2011, to expire on June 21, 2021; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received June 10, 2011'-(2) sheets; and *on further condition*:

THAT this term shall expire on June 21, 2021;

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THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

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

THAT the layout of the parking lot 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 Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (Alt. No. 915/80)

Adopted by the Board of Standards and Appeals, October 18, 2011.

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## 86-92-BZ

APPLICANT – Randy M. Gulkis, DDS, owner.

SUBJECT – Application April 29, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of a UG6B dental office which expired on June 11, 2011. R3X zoning district.

PREMISES AFFECTED – 15 First Street, a triangle formed by First Street to the east, Richmond to west and Rose Street to the south. Block 4190, Lot 1. Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES – None.

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

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted variance for the construction of a two-story office building (Use Group 6B), which expired on June 11, 2011; and

WHEREAS, a public hearing was held on this application on August 23, 2011, after due notice by publication in *The City Record*, with a continued hearing on September 20, 2011, and then to decision on October 18, 2011; 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 2, Staten Island, recommends approval of this application; and

WHEREAS, the site is located on a triangular-shaped lot

bounded by Richmond Road to the north and First Street to the south, within an R3X zoning district; and

WHEREAS, the subject site is occupied by a two-story commercial building consisting of Use Group 6B office use; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 5, 1994 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21 to permit the construction of a two-story community facility and residential building (Use Groups 2 and 4) which did not comply with front yard, floor area ratio, minimum lot area, and height and setback regulations; and

WHEREAS, on June 11, 1996, the Board amended the grant to permit a change in use from community facility and residential to offices (limited to Use Group 6B), for a term of 15 years, which expired on June 11, 2011; and

WHEREAS, most recently, on July 15, 1996, the Board issued a letter of substantial compliance to permit modifications to the interior layout of the site, and to permit the installation of a non-illuminated sign for a dentist’s office; and

WHEREAS, the applicant now seeks to extend the term of the variance for an additional 15 years; and

WHEREAS, at hearing, the Board raised concerns about signage located on the Richmond Road side of the building, contrary the Board’s prior grant; and

WHEREAS, in response, the applicant submitted photographs reflecting that the sign located on Richmond Road has been removed; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on April 5, 1994, so that as amended this portion of the resolution shall read: “to extend the term for a period of 15 years from June 11, 2011, to expire on June 11, 2026; *on condition* that the use and operation of the site shall substantially conform to drawings filed with this application and marked ‘Received July 15, 2011’-(4) sheets and ‘September 2, 2011’-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 11, 2026;

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. 500038728)

Adopted by the Board of Standards and Appeals, October 18, 2011.

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## 51-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 70-50 Kissena Boulevard LLC, owner.

SUBJECT – Application May 26, 2011 – Amendment to a Variance (§72-21) to legalize the change of use from a (UG6) one-story retail building to a (UG3) community facility with changes to the exterior façade and interior layout. R4 zoning district.

PREMISES AFFECTED – 70-44/52 Kissena Boulevard, southeast corner of 70<sup>th</sup> Road and Kissena Boulevard, Block 6656, Lot 52. Borough of Queens.

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, this is an application for an amendment to a previously approved variance for the construction of a one-story and cellar commercial building within an R4 zoning district; and

WHEREAS, a public hearing was held on this application on July 26, 2011, after due notice by publication in *The City Record*, with a continued hearing on September 13, 2011, and then to decision on October 18, 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, Community Board 8, Queens, recommends disapproval of this application; and

WHEREAS, the subject site is located on the northwest corner of Kissena Boulevard and 70<sup>th</sup> Road, within an R4 zoning district; and

WHEREAS, the site has approximately 99 feet of frontage on Kissena Boulevard, approximately 105 feet of frontage on 70<sup>th</sup> Road, and a lot area of 9,921 sq. ft.; and

WHEREAS, on November 18, 2008, under the subject calendar number, the Board granted a variance to permit the construction of a one-story and cellar building on the site which does not conform to applicable use regulations, contrary to ZR § 22-10; and

WHEREAS, the applicant now requests an amendment to legalize certain modifications to the façade and interior layout of the building which do not conform with the BSA-approved plans, and to permit the building to be temporarily occupied by a Use Group 3 day care center; and

WHEREAS, the applicant represents that, despite efforts to secure a commercial tenant for over 18 months, the proposed Use Group 3 day care center is the only viable tenant that has expressed interest in occupying the building; and

WHEREAS, in support of this statement, the applicant submitted a letter from a real estate broker describing the

marketing efforts that were undertaken to secure a commercial tenant at the site since August 2009, and stating that the proposed day care center is the only viable tenant that has expressed interest in the site; and

WHEREAS, however, the applicant submitted a feasibility analysis which reflects that the proposed day care center use will not provide a reasonable return, but that it will enable the owner to secure minimal income to help defray the carrying costs until retail occupancy is viable; therefore, the applicant seeks to retain the provisions of the original commercial use variance, while allowing the proposed day care center to occupy the space until a commercial use is viable at the site; and

WHEREAS, the applicant further states that the change of use requires minor modifications to the interior partitions on the previously approved plans to accommodate nine classrooms, offices, storage space, bathrooms, and a kitchenette; and

WHEREAS, in addition to the proposed interior layout modifications, the applicant also seeks to legalize the exterior façade of the building which was not constructed in compliance with the BSA-approved plans; and

WHEREAS, at hearing, the Board raised concerns about the proposed façade of the building, and directed the applicant to provide more fenestration along the Kissena Boulevard and 70<sup>th</sup> Road frontages, in order to bring the façade more in line with the previously-approved plans; and

WHEREAS, the Board also directed the applicant to plant street trees along the Kissena Boulevard and 70<sup>th</sup> Road frontages; and

WHEREAS, in response, the applicant submitted revised plans reflecting that portions of the existing façade along Kissena Boulevard and 70<sup>th</sup> Road will be replaced with transparent glass panels, and that street trees will be planted along these frontages; and

WHEREAS, based upon the above, the Board finds that the requested amendments to the variance are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, as adopted on November 18, 2008, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the approved plans and the temporary use of the building as a day care center (Use Group 3); *on condition* that the use shall substantially conform to drawings as filed with this application, marked “Received October 4, 2011”–(5) sheets; and *on further condition*:

THAT all construction related to the noted façade modifications shall be completed by October 18, 2013;

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

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plan(s)/configuration(s) not related to the relief granted.”  
(DOB Application No. 402507060)

Adopted by the Board of Standards and Appeals, October 18, 2011.

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## 529-52-BZ

APPLICANT - Alfonso Duarte, P.E., for Alacorn-Mordini Enterprises Inc., owner.

SUBJECT – Application June 7, 2011 – Extension of Term (§11-411) of a variance permitting automotive repair (UG 16B) with accessory uses which expired on May 9, 2011. C2-3/R6 zoning district.

PREMISES AFFECTED – 77-11 Roosevelt Avenue, north west corner Roosevelt Avenue & 78<sup>th</sup> Street. Block 1288, Lot 39. Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Alfonso Duarte.

**ACTION OF THE BOARD** – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

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## 335-59-BZ

APPLICANT – Alfonso Duarte P.E., for 3485 Atlantic Avenue Realty Corp., owner; Royal Motor Mart Inc., lessee.

SUBJECT – Application July 11, 2011 – Extension of Term (§11-411) of a variance permitting the storage and sales of used cars with accessory office (UG 16B) which expired on December 7, 2009; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 3485/95 Atlantic Avenue, North-East corner Nichols Avenue. Block 4151, Lot 1. Borough of Brooklyn.

### COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Alfonso Duarte.

**ACTION OF THE BOARD** – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

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## 727-59-BZ

APPLICANT – Sheldon Lobel, P.C., for Square-Arch Realty Corp., owner.

SUBJECT – Application August 11, 2011 – Extension of Term (§11-411) for transient parking in a multiple dwelling building which expired on July 12, 2011. R10/R6 zoning district.

PREMISES AFFECTED – 2 Fifth Avenue, corner through lot fronting on Fifth Avenue, Washington Square North and West 8<sup>th</sup> Street. Block 551, Lot 1. Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to November 15, 2011, at 10 A.M., for decision, hearing closed.

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## 502-60-BZ

APPLICANT – Patrick O' Connell P.E. for Raymond Edwards, owner; Angel R. Hernandez, lessee.

SUBJECT – Application February 23, 2011 – Extension of Term (§11-411) of a variance permitting the use of a parking lot (UG 8) for parking and storage of more than five (5) motor vehicles which expired on January 20, 2011. C2-4/R7-2 zoning district.

PREMISES AFFECTED – 4452 Broadway, Broadway & Fairview Avenue. Block 2170, Lot 62 & 400. Borough of Manhattan.

### COMMUNITY BOARD #12M

APPEARANCES – None.

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

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## 742-70-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 830 Bay Street, LLC, owner.

SUBJECT – Application May 27, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an automotive service station which expired on May 18, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on February 26, 2009 and waiver of the rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 830 Bay Street, southwest corner of Bay Street and Vanderbilt Avenue. Block 2836, Lot 15, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

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## 252-71-BZ

APPLICANT – Alfonso Duarte, for Alan Pearlstein, owner.

SUBJECT – Application June 23, 2011 – Extension of Term of a variance (§72-21) for the continued sale and installation of automobile seat covers and convertible tops (UG 7), furniture sales (UG 6C), and automotive repairs (UG 16B) which expired on July 13, 2011. R3-2 zoning district.

PREMISES AFFECTED – 190-18 Northern Boulevard, Southside Northern Boulevard between 189<sup>th</sup> and 192<sup>nd</sup> Streets. Block 5513, Lot 22. Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Alfonso Duarte and Henry Euler.

**ACTION OF THE BOARD** – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 176-10-A

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

SUBJECT – Application September 8, 2010 – Proposed construction of a residential building not fronting a mapped street, contrary to General City Law Section 36. R6 zoning District.

PREMISES AFFECTED – 62 Brighton 2<sup>nd</sup> Place, east side, Block 8662, Lot 155. Borough of Brooklyn.

### COMMUNITY BOARD #13BK

#### APPEARANCES –

For Applicant: Jordan Most.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner dated August 10, 2010 acting on Department of Buildings Application No. 301979296, reads in pertinent part:

“Proposed building fronting a 35 feet wide lane. It is not a street (min. 50 feet) as per General City Law 36. Obtain BSA approval;” and

WHEREAS, this is an application under General City Law § 36, to permit the construction of a six-story residential building that does not front an officially mapped street; and

WHEREAS, a public hearing was held on this application on June 7, 2011, after due notice by publication in the *City Record*, with continued hearings on July 26, 2011, August 23, 2011 and September 27, 2011, and then to decision on October 18, 2011; and

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

WHEREAS, the subject site is located on the east side of Brighton 2<sup>nd</sup> Place, approximately 65 feet north of Brighton 2<sup>nd</sup> Lane, within an R6 zoning district; and

WHEREAS, the site has 45’-9” of frontage on Brighton 2<sup>nd</sup> Place and a total lot area of 3,793 sq. ft.; and

WHEREAS, by letter dated January 19, 2011, the Fire Department stated that it reviewed the subject proposal and objected to the construction of a building at 62 Brighton 2<sup>nd</sup> Place due to the following conditions: (1) the narrow 22’-10” width of the roadway makes Fire Department response more challenging and dangerous; (2) the angle of the intersection of Brighton 2<sup>nd</sup> Place and Brighton 2<sup>nd</sup> Lane makes fire apparatus access difficult; (3) “No Standing” signs have only been installed on the west side of Brighton 2<sup>nd</sup> Place, as opposed to both sides, further impeding fire apparatus access; and (4) a six-story multiple dwelling would require the use of an aerial or tower ladder to respond to a fire and the narrow width of the roadway makes the use of this equipment infeasible; and

WHEREAS, during the course of the hearing process, the Fire Department met with the applicant to discuss alternatives to the original proposal; and

WHEREAS, by letter dated June 7, 2011, the Fire Department stated that it would have no objection to the proposal provided that: (1) the building be limited to four stories and a street wall height of 38 feet; (2) the building be set back above a height of 38 feet with two penthouse apartments each with a height of ten feet; (3) each of the penthouse apartments be accessible directly from the terrace; (4) the building be equipped with a standpipe system; (5) the building be protected throughout by a sprinkler system complying with the requirements of the New York City Building Code; and (6) the building be equipped with interconnected smoke alarms throughout the entire building in compliance with the requirements of the New York City Building Code; and

WHEREAS, in response, the applicant submitted revised plans which incorporate all of the conditions requested by the Fire Department; and

WHEREAS, by letter dated May 23, 2011, the Department of Transportation stated that five “No Standing Anytime” signs have been installed on both sides of Brighton 2<sup>nd</sup> Place between Brighton 2<sup>nd</sup> Lane and Brighton 3<sup>rd</sup> Court; three existing signs are located on the west side of the street and two new signs have been installed on the east side of the street; 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 Brooklyn Borough Commissioner, dated August 10, 2010, acting on Department of Buildings Application No. 301979296, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawings filed with the application marked ‘Received August 22, 2011’ - one (1) sheet and ‘October 5, 2011’ - one (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 the parameters of the proposed building shall be as follows: a maximum street wall height of 37’-4” or four stories, whichever is less; a set back above a height of 37’-4”; and a maximum penthouse height of 18’-8” from terrace level, as per 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 a sprinkler system, smoke alarms and a standpipe system shall be installed in the building in accordance with the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, October 18, 2011.

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## 14-11-A

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application February 2, 2011 – Appeal challenging a determination by the Department of Buildings that a proposed cellar to a single family home is contrary to accessory use as defined in §12-10 in the zoning resolution. R2 zoning district.

PREMISES AFFECTED – 1221 East 22<sup>th</sup> Street, between Avenues K and L, Block 7622, Lot 21, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Hai Blorfmen.

**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 is an appeal of a Department of Buildings (“DOB”) final determination dated January 7, 2011, issued by the Acting First Deputy Commissioner (the “Final Determination”); and

WHEREAS, the Final Determination reads in pertinent part:

- [A] cellar that exceeds 49% of the total floor space of the residence to which it is appurtenant (the principal use) is not considered an “accessory use” as that term is defined by Section 12-10 of the ZR. An accessory use is a use which is “clearly incidental to, and customarily found in connection with” the principal use conducted on the same zoning lot. Here, the proposed principal use is a two-story, single-family dwelling. The proposed accessory use is a storage cellar that extends well beyond the footprint of the dwelling and well below ground. More importantly, the cellar has nearly as much floor space as the dwelling has floor area. In such an arrangement there is nothing “incidental” about the cellar; it is essentially a principal use. As indicated in the August determination, the cellar cannot exceed 49% of the floor space of the residential dwelling.<sup>1</sup>

<sup>1</sup> As used in this determination, “floor space” includes any space in the dwelling, whether or not the space is included in the “floor area” per ZR section 12-10. (original footnote)

Beyond 49% the cellar use ceases to be “incidental” to the principal use and therefore does not comply with the Section 12-10 definition of accessory use. Accordingly, the cellar as proposed is not permitted; and

WHEREAS, the appeal was brought on behalf of the owners of 1221 East 22<sup>nd</sup> Street (hereinafter the “Appellant”); and

WHEREAS, a public hearing was held on this application on May 17, 2011 after due notice by publication in *The City Record*, with continued hearings on June 21, 2011 and August 18, 2011, and then to decision on October 18, 2011; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

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

**THE PROPOSED PLANS**

WHEREAS, the subject site is located on East 22<sup>nd</sup> Street between Avenue K and Avenue L, within an R2 zoning district and is currently occupied by a two-story single-family home (the “Home”); and

WHEREAS, on August 13, 2009, the Appellant submitted Alteration Application No. 320062793 to DOB for the proposed enlargement of the Home pursuant to ZR § 73-622; and

WHEREAS, the proposal includes a total of 6,214.19 sq. ft. of floor area (1.04 FAR) and a cellar with a floor space of 5,100 sq. ft. (the equivalent of approximately 0.85 FAR, if cellar space were included in zoning floor area, and 82 percent of the Home’s above-grade floor space); and

WHEREAS, the proposed cellar extends beyond the footprint of the first floor; includes two levels; and is proposed to contain storage area, a home theater, and a multi-level gymnasium/viewing area, among other uses; and

WHEREAS, on September 3, 2009, DOB issued 23 objections to the plans, the majority of which were later resolved; however, on January 7, 2011, DOB determined that the proposed cellar failed to satisfy the ZR § 12-10 definition of “accessory use” in that it was not “clearly incidental to” and “customarily found in connection with” the principal use of the lot and, thus, the cellar objection remains; and

WHEREAS, DOB states that because the cellar extends beyond the Home’s footprint, its maximum permitted size is 49 percent of the proposed Home’s floor area square footage, which equals 3,043.25 sq. ft.; and

WHEREAS, the Appellant concurrently filed the subject appeal and an application for a special permit (BSA Cal. No. 3-11-BZ) pursuant to ZR § 73-622; at the Appellant’s request, the Board has adjourned the special permit application pending the outcome of the subject appeal; and

**RELEVANT ZONING RESOLUTION PROVISIONS**

WHEREAS, the following provisions are relevant definitions set forth at ZR § 12-10, which read in pertinent part:

Accessory Use, or accessory

An “accessory use”:

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- (a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an #accessory building or other structure#, or as an #accessory use# of land) . . .; and
- (b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and
- (c) is either in the same ownership as such principal #use#, or is operated and maintained on the same #zoning lot# substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal #use# . . .

\* \* \*

## Dwelling unit

A "dwelling unit" contains at least one #room# in a #residential building#, #residential# portion of a #building#, or #non-profit hospital staff dwelling#, and is arranged, designed, used or intended for use by one or more persons living together and maintaining a common household, and which #dwelling unit# includes lawful cooking space and lawful sanitary facilities reserved for the occupants thereof.

\* \* \*

## Residence, or residential

A "residence" is one or more #dwelling units# or #rooming units#, including common spaces such as hallways, lobbies, stairways, laundry facilities, recreation areas or storage areas. A #residence# may, for example, consist of one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels# . . .

"Residential" means pertaining to a #residence#.

\* \* \*

## Residential use

A "residential use" is any #use# listed in Use Group 1 or 2; and

\* \* \*

## Rooms

"Rooms" shall consist of "living rooms," as defined in the Multiple Dwelling Law; and

## THE APPELLANT'S POSITION

WHEREAS, the Appellant makes the following primary arguments: (1) the proposed cellar meets the ZR § 12-10 definition of accessory use; (2) DOB has approved cellars which extend beyond the building footprint, like the proposed, and must approve the proposal to be consistent with its practice; (3) prior Board cases and case law support the contention that the cellar use is accessory; and (4) DOB cannot impose bulk limitations on a use definition; and

WHEREAS, as to the definition of accessory use, the Appellant asserts that the proposed cellar meets the criteria as it is: (a) located on the same zoning lot as the principal use (the single-family home), (b) the cellar uses are incidental to and customarily found in connection with a single-family home, and (c) the cellar is in the same ownership as the principal use and is proposed for the benefit of the owners of the Home who

occupy the upper floors as a single-family home; and

WHEREAS, the Appellant asserts that DOB's interpretation of "accessory use" is erroneous because it is not consistent with the ZR § 12-10 definition and because DOB may not limit a residence's principal use to "habitable rooms" or sleeping rooms as set forth in the Building Code or Housing Maintenance Code ("HMC"); and

WHEREAS, specifically, the Appellant cites to DOB's argument that "all portions of a residence that are not used for sleeping, cooking, or sanitary functions are accessory to the residence and are permitted only to the extent they are customarily found in connection with and clearly incidental to the residence;" and

WHEREAS, the Appellant asserts that the proposed cellar is "incidental" to the primary use as it is "less important than the thing something is connected with or part of;" and

WHEREAS, further, the Appellant asserts that the ZR § 12-10 definition of residence is broad and includes rooms other than those for sleeping and that as per the Multiple Dwelling Law ("MDL"), every room used for sleeping purposes shall be deemed a living room, but rooms other than those used for sleeping shall also be considered living rooms; and

WHEREAS, as to DOB's approvals, the Appellant initially submitted cellar plans for seven homes approved by DOB with cellars that extend beyond the footprint of the building to support the claim that such cellars are customary and that DOB has a history of approving them; and

WHEREAS, the Appellant contends that the examples reflect cellars that extend beyond the footprint of the home and exceed 49 percent of the home's floor area, thus, DOB is arbitrary to now deny this request; and

WHEREAS, as to Board precedent, the Appellant cites to BSA Cal. No. 60-06-A (1824 53<sup>rd</sup> Street, Brooklyn/Viznitz), a case that involved the analysis of whether a catering facility associated with a synagogue and yeshiva was accessory to the primary synagogue and yeshiva use or whether it was a primary use not permitted by zoning district regulations; and

WHEREAS, the Appellant cites the Board's decision for the point that certain accessory uses noted in ZR § 12-10's definition of accessory use could also be primary uses, but the majority of them are ancillary uses that support the site's primary use; accordingly, the Appellant likens the proposed cellar uses – exercise areas and a home theater - to those on the list of accessory uses in that they are not primary uses; and

WHEREAS, the Appellant also cites to the Board's decision at BSA Cal. No. 202-05-BZ (11-11 131<sup>st</sup> Street, Queens/InSpa) in which the Board, when evaluating whether a small percentage of a physical culture establishment's floor area dedicated to massage in comparison to the large size of the facility made it appropriate for the massage area to establish the primary use; the Appellant notes that the Board stated in its decision that there was not any mention of size limitations in the ZR § 12-10 accessory use definition; and

WHEREAS, the Appellant cites to Mamaroneck Beach & Yacht Club v. Zoning Board of Appeals, 53 A.D.3d 494 (2008), for the determination that proposed seasonal residential use at a yacht club was deemed to be accessory to the primary yacht club use even though it would occupy more than 50

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percent of the total building floor area on the site; and

WHEREAS, the Appellant also cites to New York Botanical Garden v. Board of Standards and Appeals, 91 N.Y.2d 413 (1998), in which the court rejected the Botanical Garden's assertion that a radio tower was too large to be considered clearly incidental to or customarily found in connection with the principal use and upheld the Board's determination that the radio tower was accessory to the university use; and

WHEREAS, finally, the Appellant asserts that DOB does not have the authority to impose bulk limitations on a use and to impose a quantitative measurement where the ZR is silent; and

WHEREAS, the Appellant asserts that the ZR does not limit the size of the subject accessory use as it does certain other accessory uses such as home occupation and that the absence of a size limit in the ZR is evidence that there is no such limit; and

WHEREAS, the Appellant asserts that since zoning regulations are in derogation of the common law, they should be construed against the property owner and, thus, DOB should not be permitted to add a limitation not written in the text that imposes a burden on property owners; and

WHEREAS, further, the Appellant asserts that DOB's restriction that residential cellars not exceed 49 percent of the floor area of the home is not fair, consistent, or proportional and cites as an example of inequity the fact that a 1,000 sq. ft. home with one-story could have a cellar with 1,000 sq. ft. if built within the building's footprint, but if that 1,000 sq. ft. home were two stories and had a footprint of 500 sq. ft., the cellar could only be 500 sq. ft.; and

## DOB'S POSITION

WHEREAS, DOB states that its cellar size limitation is: (1) based on a rational construction of the definition of accessory use, particularly the phrase "clearly incidental," which furthers the intent of the ZR; (2) a reasonable restriction developed pursuant to the principles of fairness, consistency, and proportionality; (3) applicable only to residences, and based on an assessment of the needs presented by residences; (4) not new but rather, a consistent approach that is challenged for the first time; (5) in accordance with the Board's cases concerning accessory uses; and (6) consistent with the Board's cases regarding DOB's authority to establish measurements that are not clearly stated within the text in order to clarify terms; and

WHEREAS, as to whether or not the proposed use is accessory, DOB asserts that the size of the proposed cellar is neither customary, nor clearly incidental to the home and that its multi-level configuration is not customary; and

WHEREAS, DOB states that the proposed storage, theater, and gymnasium rooms in the cellar are not part of the principal use of the residence and must meet the definition of "accessory use;" and

WHEREAS, DOB's analysis includes that several ZR § 12-10 definitions together define (1) a "residence" as those rooms used for sleeping, cooking and sanitary purposes, (2) a "residence" is a building or part of a building containing dwelling units, (3) a "dwelling unit" consists of one or more

"rooms" plus lawful cooking space and lawful sanitary facilities, and (4) a "room" is a room used for sleeping purposes in accordance with the definition of a "living room" as defined by MDL § 4.18; and

WHEREAS, DOB states that sleeping rooms are the essential component of a dwelling unit and the principal use and the rooms in the Home's cellar, none of which are sleeping rooms, must be accessory to the residence; and

WHEREAS, DOB asserts that all portions of a residence that are not for used for sleeping, cooking, or sanitary functions are accessory to the residence and are permitted only to the extent that they are customarily found in connection with and clearly incidental to the residence and, further, cellar floor space that exceeds 49 percent of a residence's floor area is not accessory where the cellar walls extend below or beyond the footprint of the superstructure; and

WHEREAS, DOB states that its restriction on residential cellar size is appropriate since limiting the size beyond the perimeter of the cellar walls, results in cellars of a size that are customarily found, because historically, the cellar walls were directly below the above-grade walls—and may be considered clearly incidental because its size is no greater than is required for the utilitarian purpose of carrying the loads imposed by the superstructure; and

WHEREAS, DOB notes that the proposed cellar extends beyond the Home's footprint and extends so far below grade that another staircase must be installed to access the lower portion of it, thus the proposed cellar is undeniably different than cellars traditionally found in connection with detached, single-family homes and, further that the proposed cellar is not clearly incidental to the home above it; and

WHEREAS, DOB finds that the proposed cellar is simply too large and too significant in comparison to the home to be clearly incidental to it; and

WHEREAS, as to the 49 percent measure, DOB states that it is appropriate because it is its reasoned determination that something cannot be clearly incidental to something else and be fully half as large as it and that (1) the size limitation furthers the intent of the ZR to allow such spaces that normally accompany residential rooms to remain secondary in nature, (2) the percentage is an appropriate measure since it allows for proportionality based on different home sizes, (3) the limitation is only for these residential uses and not for other types of uses, and (4) its restriction on cellar size is not new and that it has required it in the past; and

WHEREAS, DOB articulates the following two-step process for measuring the permissible cellar size: (1) if the cellar matches the footprint of the superstructure, it is permitted regardless of how much floor space it has in comparison to the floor area of the building, and (2) if the cellar extends beyond the footprint of the superstructure, the cellar may not exceed 49 percent of the floor area of the building; and

WHEREAS, DOB states that the 49 percent parameter ensures that, for a typical two-story, single-family home, the cellar floor space does not eclipse an entire story of floor

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area and that in a three-story home, somewhat more than one story's worth of floor area would be permitted for the cellar; and

WHEREAS, DOB asserts that the size of the permitted accessory use directly corresponds to the size of the principal use at a constant rate and follows the plain text of the ZR, gives meaning to the undefined terms, and is consistent with the policy of allowing certain accessory uses to exist, to an appropriate degree, in connection with certain principal uses; and

WHEREAS, as to the Appellant's assertion that DOB's prior approvals require it to approve the proposal, DOB disagrees and states that the plans submitted as precedent are incomplete and cannot be verified and that most of the buildings depicted (Drawings 1, 3, 4, 5 and 7) appear to be three stories in height, which might allow for an extension beyond the footprint; and

WHEREAS, however, DOB states that to the extent that any of the plans show applications that were approved with accessory cellars extending beyond the footprint of the building and having more than 49 percent of the total floor area of the homes, such approvals were issued in error; and

WHEREAS, DOB asserts that the Board has recognized that size limitation is appropriate in two prior cases BSA Cal. No. 45-96-A (27-01 Jackson Avenue, Queens) and BSA Cal. No. 748-85-A (35-04 Bell Boulevard, Queens); and that the Board has recognized DOB's authority to impose size limits which are not stated in the ZR see BSA Cal. No. 320-06-A (4368 Furman Avenue, Bronx), 189-10-A (127-131 West 25th Street, Manhattan), and 247-07-A (246 Spring Street, Manhattan); and

WHEREAS, as to the case law, DOB asserts that neither Mamaroneck nor Botanical Garden can be read to include a limit on the cellar size in a single-family home; DOB asserts that Mamaroneck is distinguishable and Botanical Garden supports its position, rather than Appellant's; and

WHEREAS, specifically, DOB notes that the seasonality of the residences, which were specifically permitted by Mamaroneck's zoning, was the limitation imposed by the plain text of the Mamaroneck Zoning Code, and the zoning board went beyond the plain text to impose a size limitation; and

WHEREAS, by contrast, DOB asserts that cellars are only permitted if they are accessory and size is relevant to the analysis of whether or not they are accessory; and

WHEREAS, DOB finds support for its position in Botanical Garden in that it finds that the court's holding is limited to stating that a size analysis is not appropriate for a radio tower, but does not extend to whether a size analysis may be appropriate in other situations with accessory uses; specifically it cites to the court decision: "the fact that the definition of accessory radio towers (in Section 12-10) contains no [size restrictions such as a "home occupation" or "living or sleeping accommodations for caretakers"] supports the conclusion that the size and scope of these structures must be based upon an individualized assessment of the need;" and

WHEREAS, DOB asserts that Botanical Garden supports the position that where the ZR does not provide a size

limitation, the appropriate limitation is based on an "individualized assessment of the need" for the accessory use and its two-part test follows the Botanical Garden "assessment of the need" analysis, in that it was developed by balancing the historical and practical purpose of accessory cellars (the "need") with the policy considerations within the definition of accessory use; and

## THE DRAFT BULLETIN

WHEREAS, during the course of the hearing and at the Board's request, DOB drafted a proposed bulletin (the "Bulletin"), which sets forth the restrictions on cellar space and a version of which DOB proposes to issue after the Board's decision in the subject appeal; and

WHEREAS, the Bulletin has the defined purpose of "clarifying size of non-habitable accessory cellar space in residences," and includes the following:

. . . Within a residence, all rooms are either habitable or non-habitable. Habitable rooms, in contrast to non-habitable rooms, are rooms in which sleeping is permitted. The ZR classifies uses on a zoning lot as either principal or accessory. Where habitable rooms are the principal use on a zoning lot, non-habitable rooms are not part of the principal use; they are accessory to the principal use, and are permitted pursuant to subsection (b) of the ZR definition of "accessory use" only to the extent that they are clearly incidental to and customarily found in connection with such habitable rooms. Thus, the definition of "accessory use" contains a limitation on the size of residential cellars containing non-habitable rooms . . . ; and

WHEREAS, the Appellant made the following supplemental arguments in response to the Bulletin; and

WHEREAS, the Appellant asserts that the Bulletin is not a logical interpretation of the relevant regulations; and

WHEREAS, specifically, the Appellant asserts DOB's comparison of habitable space to the HMC definition is flawed because the HMC definition of "dwelling" does not address "living rooms," but defines a dwelling as "any building or other structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings;" and

WHEREAS, the Appellant asserts that the HMC definition does not limit a dwelling to the specific rooms used for sleeping and thus is not comparable to DOB's definition of habitable space; and

WHEREAS, the Appellant adds that the HMC definition of "living room" is broader than DOB suggests and that DOB fails to provide support for equating a space's habitability to its status as a principal or accessory use; and

WHEREAS, the Appellant asserts that the cellar size limit of 49 percent of a home's floor area when it extends beyond the building footprint is arbitrary and that DOB cannot enact additional limitations not written in the text and cannot make a rule limiting cellar size that applies to certain (residential) and not all uses; and

## CONCLUSION

WHEREAS, the Board has determined that DOB is

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reasonable to restrict the size of residential cellars and that (1) its position is supported by the Zoning Resolution, (2) it has the authority to set forth and apply parameters for limiting the size of residential cellars and its parameters are reasonable, and (3) all of the authorities the Appellant cites can be distinguished from the subject application and do not support its position; and

WHEREAS, as to the Zoning Resolution, the Board refers to the ZR § 12-10 definitions of dwelling unit, residence or residential, residential use, and rooms cited above; and

WHEREAS, the Board first notes that a residence is one or more “dwelling units” including common spaces (which also addresses multiple dwellings) such as (but not limited to) hallways, lobbies, stairways, laundry facilities, recreation areas, or storage areas; and

WHEREAS, the Board notes that residences include single-family or two-family homes, thus the proposed single-family home is a “dwelling unit;” and

WHEREAS, the Board notes that the proposed enlargement is for a single-family home which is (1) a “residence” and therefore a “dwelling unit,” and (2) as a dwelling unit, it must contain at least one “room,” and includes lawful cooking space and lawful sanitary facilities; and

WHEREAS, further, the Board notes that a dwelling unit comprises “rooms” (defined in the ZR as the same as “living rooms” in the MDL) and cooking and sanitary facilities; therefore, a residential use (such as the proposed single-family home) is a “dwelling unit” which contains “rooms” (ZR or MDL “living rooms”) and cooking and sanitary facilities; and

WHEREAS, the Board finds that the primary use of a residence is limited to living rooms (which DOB refers to as “habitable” in this context), and cooking and sanitary facilities; all other uses become accessory; and

WHEREAS, the Board notes that its proffered zoning interpretation establishes that (1) spaces above grade that are habitable including recreation spaces, libraries, studies, attic space, are all considered “rooms” and part of the primary use and also counted as floor area and (2) below grade space that is habitable and may be used as a sleeping room is also part of the primary use and would be considered as floor area and should be not included in the accessory calculation; the Board notes that below grade space that is not habitable is not included in zoning floor area calculations; and

WHEREAS, the Board notes that DOB does not need to rely on the Building Code definition of habitable space, as the Appellant suggests, but rather chooses “habitable” as a shorthand way to encompass the living rooms which constitute a dwelling unit; and

WHEREAS, the Board notes that the ZR directly references the MDL and therefore reflects an expected link between ZR “rooms” and MDL “living rooms” acknowledged by the ZR; the Board also finds that the Appellant’s concern about there potentially being above-grade space that would be deemed accessory rather than primary is unavailing because the above grade space (1) counts towards floor area, is within the anticipated volume of the building, and is covered by the relevant restrictions on floor area and (2) could potentially be converted to primary use as it can become habitable space; and

WHEREAS, the second part of the Board’s analysis

considers whether DOB may appropriately put a quantitative measure on cellar size; and

WHEREAS, the Board finds that DOB may place a quantitative measure to ensure that the accessory use remains incidental to the primary use; and

WHEREAS, the Board acknowledges that size may not always be a relevant factor when establishing accessory use but when cellars go beyond the customary boundary of the building’s footprint, it is appropriate to restrict the size in order to maintain its incidental relationship to the primary use; and

WHEREAS, the Board does not find DOB’s application of the restriction only to residential uses to be arbitrary since it stems from the ZR definition of residential uses and the distinction between habitable and non-habitable space which does not arise for nonresidential uses; and

WHEREAS, the Board distinguishes its two prior cases that the Appellant cites; and

WHEREAS, first the Board notes that in Viznitz, the Board clearly stated that “a determination of whether a particular use is accessory to another use requires a review of the specific facts of each situation” and quoted the Court of Appeals in Botanical Garden for the theory that “[w]hether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use . . . taking into consideration the over-all character of the particular area in question” when determining whether a catering use was primary or accessory to the synagogue or yeshiva; and

WHEREAS, the Board also distinguishes InSpa in that it involved a PCE special permit application, not an interpretive appeal and, thus the decision in that case is limited to the unique circumstances of a PCE special permit; if the Board had agreed that the small amount of massage space in comparison to the large size of the overall facility would make such use accessory, it would follow that the remaining uses could have existed as-of-right (for example as a Use Group 13 commercial pool with accessory massage); and

WHEREAS, the Board notes that the InSpa case was before the Board because DOB has taken a conservative approach that any amount of space dedicated to a defined PCE, no matter how small in proportion to the whole use, triggers the requirement for a PCE special permit rather than allowing small PCE uses to be subsumed by a larger as of right use and sidestep the special permit; this furthers the intent of the ZR to have City oversight, including conditional approval and term limits, of certain specific physical improvement uses; and

WHEREAS, the Board finds that the intent and the purpose of the analysis in the InSpa case cannot be applied to the subject case; and

WHEREAS, as to the case law, the Board does not find that either Mamaroneck or Botanical Garden supports the Appellant’s position; and

WHEREAS, as to Mamaroneck, the Board distinguishes the facts since Mamaroneck is within a different jurisdiction subject to a different zoning code and seasonal residences were explicitly permitted under zoning without a restriction on size; and

WHEREAS, as to Botanical Garden, the Board finds that

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the court did not prohibit size as a consideration across the board but rather said to employ an individualized assessment of need and a consideration of the facts, as cited above; and

WHEREAS, the Board finds it inappropriate to compare the assessment of need for a radio tower, which has technical requirements, and a home's cellar, which is based on a homeowner's preferences; and

WHEREAS, the Board upheld DOB's authority to interpret and impose quantitative guidelines not found in the ZR in BSA Cal. No. 320-06-A (4368 Furman Avenue, Bronx) and also upheld DOB's authority to fill in gaps not set forth in relevant statutes in BSA Cal. No. 121-10-A (25-50 Francis Lewis Boulevard, Queens); the Board notes that the court recently upheld its decision in Francis Lewis Boulevard at 25-50 FLB v. Board of Standards and Appeals, 2011 NY Slip Op 51615(U) (S. Ct. 2011); and

WHEREAS, in 25-50 FLB, the Supreme Court recognized DOB's authority to fill in gaps in instances where specific procedures are not codified and upheld the Board's decision based on its recognition of that authority; and

WHEREAS, the Board finds that size can be a rational and consistent form of establishing the accessory nature of certain uses such as home occupations, caretaker's apartments, and convenience stores on sites with automotive use, but may not be relevant for other uses like radio towers or massage rooms; and

WHEREAS, the Board does not find that any of the prior cases the Appellant relies on include any recognition of the distinction between above grade and below grade space and the associated questions of habitability; and

WHEREAS, as to the Appellant's assertion that DOB has been inconsistent and has a history of approving cellars like the proposed, the Board notes that the drawings the applicant submitted lack sufficient detail to make such a conclusion; the Appellant submitted only one case which has a certificate of occupancy and zoning calculations, which shows that DOB has allowed cellars greater than 49 percent of the building's floor area; and

WHEREAS, the Board notes that the other six examples which show larger cellars do not provide any analysis regarding the 49 percent standard; and

WHEREAS, the Board notes that (1) even if the examples do support the Appellant's claim that DOB approved cellars with area in excess or 49 percent of the homes' floor area, seven examples do not establish a compelling established practice, (2) it is possible that DOB did not have sufficient information to perform the analysis, and (3) DOB has the authority to correct erroneous approvals; and

WHEREAS, the Board has determined that DOB has the authority to issue the Bulletin and that it is appropriate to do so immediately following the Board's decision since this zoning issue has emerged and its regulation requires memorialization; and

WHEREAS, the Board does not find DOB's discrete application of the rule to be arbitrary as the distinction between habitable and non-habitable use is not relevant or applicable to the non-targeted uses; and

WHEREAS, the Board also notes the following

considerations, which support limiting the size of residential cellars: (1) there is a distinction between above grade habitable space, which provides access to light and air, and below grade space, which does not, and yet homes function as a whole so there is a public interest in distinguishing between the primary habitable space and the accessory non-habitable space and limiting the amount of non-habitable space; (2) the ZR intends to limit, and there is a public interest in limiting, the volume of homes; and (3) the ZR sets limits on above grade floor area, which counts towards zoning floor area and so it is reasonable to limit the below grade floor space, which is not addressed within bulk regulations as it does not count towards bulk, but does contribute to the home's overall occupation of space; and

WHEREAS, as to the Appellant's concern that the cellar limitation is inequitable and disproportionate, the Board considered the effect the Bulletin (with the variation that a cellar built beyond the footprint may not exceed 50 percent of the home's floor area) would have on homes within an R3-2 zoning district; for example a 6,000 sq. ft. lot built out could choose from the following parameters: (1) a home with a maximum floor area of 3,600 sq. ft. (0.6 FAR) and a maximum footprint of 2,585 sq. ft., which would permit a cellar of either 2,585 sq. ft. or 1,800 sq. ft., if built to a smaller footprint and multiple stories, or (2) if a property owner obtains a special permit pursuant to ZR § 73-622, it may potentially build to a floor area of 6,000 sq. ft. (1.0 FAR), a maximum footprint of 3,055 sq. ft., and provide a cellar of either 3,055 sq. ft. or 3,000 sq. ft., if the built to a smaller footprint; and

WHEREAS, the Board finds that the results are not inequitable or disproportionate in that a property owner, like the subject property owner seeking a special permit, would be permitted virtually the same size cellar 3,055 sq. ft. vs. 3,000 sq. ft. whether it builds to the maximum footprint size or not; and

WHEREAS, based on the applicant's actual special permit proposal for 1.04 FAR, a 50 percent limit on the size of the cellar would result in 3,107 sq. ft., which the Board deems to be a reasonable outcome; and

WHEREAS, as to the Bulletin, the Board finds 50 percent to be a more appropriate guideline and, thus, the Board respectfully requests that DOB modify the Bulletin to replace "should not be greater than 49%" with "should be less than 50% of the total FAR," with regard to the size of the cellar, and to include a provision that exceptions must be reviewed and approved by its technical affairs division or by another DOB authority with inter borough oversight to ensure a consistent application in all five boroughs; and

WHEREAS, based on the above, the Board has determined, the Final Determination must be upheld and this appeal must be denied; and

*Therefore it is Resolved* that this appeal, which challenges a Department of Buildings final determination dated January 7, 2011, is denied.

Adopted by the Board of Standards and Appeals, October 18, 2011.

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## 69-11-A & 70-11-A

APPLICANT – Sheldon Lobel, P.C., for Fiesta Latina Sports Bar Corporation, owner.

SUBJECT – Application May 23, 2011 – Appeal seeking a determination that the owner of has acquired a common law vested right to continue development commenced under the prior R6 zoning district. R4-1 Zoning District.

PREMISES AFFECTED – 88-11 & 88-13 173<sup>rd</sup> Street, East side of 173<sup>rd</sup> Street between 89<sup>th</sup> Avenue and Warwick Circle. Block 9830, Lot 22, 23 (tentative), Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Jordan Most.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of two attached three-story two-family homes under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in *The City Record*, and then to decision on October 18, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the east side of 173<sup>rd</sup> Street, between 89<sup>th</sup> Avenue and Warwick Circle, in an R4-1 zoning district; and

WHEREAS, the site consists of Tax Lot 22 (Tentative Lots 22 and 23) and has 34 feet of frontage on 173<sup>rd</sup> Street, a depth of 67 feet, and a total lot area of 2,266 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with two attached three-story two-family homes with a floor area of 1,832 sq. ft. each (the “Buildings”); and

WHEREAS, the subject site is currently located within an R4-1 zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Buildings comply with the former R6 zoning district parameters, specifically with respect to floor area ratio (“FAR”), perimeter wall height, side yards, minimum lot width and area, front yards, parking, and use; and

WHEREAS, however, on September 10, 2007 (the “Enactment Date”), the City Council voted to adopt the Jamaica Plan Rezoning, which rezoned the site to R4-1, as noted above; and

WHEREAS, the Buildings do not comply with the R4-1 zoning district parameters as to FAR, perimeter wall height, side yards, minimum lot width and area, front yards, parking, and attached homes are not permitted in R4-1 districts; and

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

WHEREAS, the Board notes that New Building Permit Nos. 402587848-01-NB and 402587857-01-NB were issued on June 13, 2007 (the “New Building Permits”), authorizing the development of two attached two-family homes pursuant to R6 zoning district regulations; and

WHEREAS, the Board notes that, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of their foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are permitted for the completion of construction and to obtain a certificate of occupancy; and

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

WHEREAS, the applicant states that construction was not completed and a certificate of occupancy was not obtained within two years of the Enactment Date; and

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

WHEREAS, the Board notes that the applicant failed to file an application to renew the New Building Permits pursuant to ZR § 11-332 within 30 days of their lapse on September 10, 2009, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, by letter dated June 3, 2011, DOB stated that the New Building Permits were lawfully issued, authorizing construction of the Buildings prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date; and

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

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

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ordinance”; and

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

WHEREAS, as to substantial construction, the applicant states that prior to the Enactment Date, the owner had completed the following: 100 percent of site preparation work; 100 percent of excavation; and 100 percent of the foundation; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: a construction schedule, a foundation plan; DOB inspection printouts; an affidavit from the general contractor; and photographs of the site; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

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

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$113,617.65, including hard and soft costs and irrevocable commitments, out of \$305,617.65 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, and invoices; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$95,000 for the work performed at the site as of the Enactment Date, representing 33 percent of the total projected hard costs for the development; and

WHEREAS, the applicant further states that the owner paid an additional \$18,617.65 in soft costs related to the work performed at the site as of the Enactment Date; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 37 percent of the projected total cost; and

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

WHEREAS, again, the Board’s consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights

under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if vesting were not permitted, the site’s FAR would have to be reduced from the proposed 1.62 to a maximum of 0.75, the perimeter wall height would have to be reduced from the proposed 35 feet to a maximum of 25 feet, side yards of at least four feet rather than the proposed no side yards would be required for each lot, a front yard of at least ten feet rather than the proposed four feet would be required, the lots would not comply with the minimum lot width requirement of 18 feet or the minimum lot area requirement of 1,700 sq. ft., and the required one parking space per dwelling unit could not be provided for the proposed building; and

WHEREAS, the applicant further states that attached homes are not permitted in R4-1 zoning districts; and

WHEREAS, accordingly, if required to construct pursuant to R4-1 district regulations, the applicant would be required to abandon the entire project as originally approved and substantially built, resulting in a loss of at least \$113,617.65; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any conforming construction, and the loss of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

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

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of the New Building Permits associated with DOB Application Nos. 402587848-01-NB and 402587857-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, October 18, 2011.

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## 219-10-A

APPLICANT – Sheldon Lobel, P.C., for 74-76 Adelphi Realty LLC, owner.

SUBJECT – Application November 24, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development

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commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, between Park and Myrtle Avenues, Block 2044, Lots 52, 53, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 15, 2011, at 10 A.M., for decision, hearing closed.

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## 232-10-A

APPLICANT – OTR Media Group, Incorporated, for 4th Avenue Loft Corporation, owner;

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings’ denial of a sign permit on the basis that the advertising sign had not been legally established and not discontinued as per ZR §52-83. C1-6 Zoning District.

PREMISES AFFECTED – 59 Fourth Avenue, 9th Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Eugene Travers.

**ACTION OF THE BOARD** – Laid over to December 6, 2011, at 10 A.M., for adjourned hearing.

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## 15-11-A

APPLICANT – Slater & Beckerman, LLP., for 1239 Operating Corporation, owner.

SUBJECT – Application February 10, 2011 – Appeal challenging the Department of Building's determination that a non-illuminated advertising sign and structure is not a legal non-conforming advertising sign pursuant to ZR §52-00. C6 zoning district.

PREMISES AFFECTED – 860 Sixth Avenue, through lot on the north side of West 30th Street, between Broadway and Avenue of the Americas, Block 832, Lot 1. Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Stuart Beckerman.

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

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## 29-11-A & 30-11-A

APPLICANT – Randy M. Mastro-Gibson, Dunn & Crutcher LLP, for Win Restaurant Equipment & Supply Corporation, owner; Fuel Outdoor, lessee.

SUBJECT – Application March 24, 2011 – An appeal challenging the Department of Building's revocation of sign permits. M1-5B Zoning District.

PREMISES AFFECTED – 318 Lafayette Street, Northwest corner of Houston and Lafayette Streets. Block 522, Lot 24, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to November 22, 2011, at 10 A.M., for adjourned hearing.

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## 40-11-A

APPLICANT – Bryan Cave LLP, Margery Perlmutter, Esq., for CPW Retail, LLC c/o American Continental Properties, LLC, owner.

SUBJECT – Application April 8, 2011 – Appeal challenging the Department of Building's determination that non-conforming commercial use was discontinued pursuant to ZR §52-61. R10A & C4-7 LSD Zoning district.

PREMISES AFFECTED – 25 Central Park West, West 62<sup>nd</sup> and West 63<sup>rd</sup> Streets, Block 1115, Lot 7501(2) Borough of Manhattan.

## COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Margery Perlmutter.

For Opposition: Paul A. Selver.

**ACTION OF THE BOARD** – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

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## 114-11-A

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Salanter Akiba Riverdale Academy, owner.

SUBJECT – Application August 10, 2011 – Proposed construction of stone wall, pier, curbs and related footings for an accessory parking area to SAR Academy to be located within the bed of the mapped street (West 245<sup>th</sup>), contrary to General City Law Section 35. R1-1/Riverdale SNAD zoning district.

PREMISES AFFECTED – 655 West 254<sup>th</sup> Street, north side of West 254<sup>th</sup> Street, between Palisade and Independence Avenues. Block 5947, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jay Segal.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 1, 2011, at 10 A.M., for decision, hearing closed.

# MINUTES

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**REGULAR MEETING  
TUESDAY AFTERNOON, OCTOBER 18, 2011  
1:30 P.M.**

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

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**ZONING CALENDAR**

**230-09-BZ**

APPLICANT – Peter Hirshman, for Mr. Filipp T Tortora,  
owner.

SUBJECT – Application July 20, 2009 – Variance (§72-21)  
for the construction of a three story, three family residence,  
contrary to front yard regulations (§23-45). R-5 zoning  
district.

PREMISES AFFECTED – 1700 White Plains Road,  
northeast corner of White Plains and Van Nest Avenue,  
Block 4033, Lot 31, Borough of Bronx.

**COMMUNITY BOARD #11BX**

APPEARANCES –

For Applicant: Peter Hirshman and Filippo Tortora.

**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 Bronx Borough  
Commissioner, dated June 30, 2011, acting on Department of  
Buildings Application No. 200870334, reads in pertinent part:

“23-45(a) ZR. The required minimum front yard(s)  
is contrary to the Zoning Resolution and therefore  
requires a variance from the Board of Standards and  
Appeals.

23-462 ZR. The required minimum side yard(s) is  
contrary to the Zoning Resolution and therefore  
requires a variance from the Board of Standards and  
Appeals.

25-23 ZR. The required number of parking spaces is  
contrary to the Zoning Resolution and therefore  
requires a variance from the Board of Standards and  
Appeals;” and

WHEREAS, this is an application under ZR § 72-21, to  
permit, in an R5 zoning district, the proposed construction of a  
three-story three-family home that does not provide the

required front yard, side yard, or parking, contrary to ZR §§ 23-  
45(a), 23-462 and 25-23; and

WHEREAS, a public hearing was held on this  
application on June 7, 2011 after due notice by publication in  
*The City Record*, with continued hearings on July 19, 2011 and  
September 13, 2011, and then to decision on October 18, 2011;  
and

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

WHEREAS, Community Board 11, Bronx, states that it  
has no objection to this application; and

WHEREAS, the site is located on the northeast corner of  
Van Nest Avenue and White Plains Road, within an R5 zoning  
district; and

WHEREAS, the site has a width of 25 feet, a depth of 95  
feet, and a total lot area of approximately 1,901 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a three-  
story three-family home on the site; and

WHEREAS, the proposed home will have the  
following complying parameters: 2,352 sq. ft. of floor area  
(1.23 FAR); lot coverage of 41 percent; a front yard with a  
depth of 18’-0” along the southern lot line; a side yard with  
a width of 25’-6” along the northern lot line; a wall height of  
26’-½””; and a total height of approximately 31’-4””; and

WHEREAS, however, the applicant proposes to provide  
no front yard along the western lot line (two front yards with  
minimum depths of 10’-0” and 18’-0” are required), a side yard  
with a width of 4’-0” along the eastern lot line (two side yards  
with minimum widths of 8’-0” each are required), and no  
parking spaces (a minimum of three parking spaces are  
required); and

WHEREAS, the applicant originally proposed to  
construct a three-story three-family home with a front yard  
with a depth of 4’-0” along the western lot line, no side yard  
along the eastern lot line, and which provided three parking  
spaces at the rear of the site; and

WHEREAS, although the original proposal would  
have eliminated the need for the requested side yard and  
parking waivers and would have reduced the degree of front  
yard non-compliance, the Board directed the applicant to  
revise its plans to reflect the current proposal in order to  
provide a 4’-0” side yard as a buffer between the proposed  
home and the adjacent home, and because the curb cut for  
the proposed parking spaces would have interfered with an  
existing bus shelter located on White Plains Road; and

WHEREAS, the applicant states that requested relief is  
necessary for the reasons stated below; thus, the instant  
application was filed; and

WHEREAS, the applicant states that the following is a  
unique physical condition, which creates practical difficulties  
and unnecessary hardship in developing the subject site in  
compliance with underlying district regulations: the narrowness  
of the subject site; and

WHEREAS, the applicant represents that the requested  
yard waivers are necessary to develop the site with a habitable  
home; and

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# MINUTES

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WHEREAS, specifically, the applicant represents that the pre-existing lot width of 20'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site is a corner lot, which requires two front yards with minimum depths of 10'-0" and 18'-0"; and

WHEREAS, the applicant states that the building would have an exterior width of only 10'-0" if front yard regulations were complied with fully; and

WHEREAS, the applicant further states that the subject site requires two side yards with minimum depths of 8'-0" each (unless the home abutted the side lot line wall pursuant to ZR § 23-49); and

WHEREAS, the applicant represents that the home would have an exterior width of only 2'-0" if both front yard and side yard regulations were complied with fully (and the home did not abut the side lot line wall); and

WHEREAS, accordingly, the applicant represents that the front and side yard waivers are necessary to create a home of a reasonable width; and

WHEREAS, the applicant submitted a 200-ft. radius diagram which reflects that there are only seven lots in the surrounding area with a lot width of 20 feet or less, and that the footprints of the buildings on all seven of these lots are constructed lot line to lot line, such that they occupy the entire width of the lot; and

WHEREAS, the radius diagram submitted by the applicant further reflects that there are only three lots in the surrounding area which are occupied by buildings with widths of less than 16 feet, and that all three of the buildings on these lots occupy the entire width of the lot; and

WHEREAS, the radius diagram further reflects that the subject site is the only vacant lot on the subject block, and one of only two vacant lots located wholly within a 200-ft. radius of the site; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable regulations; and

WHEREAS, the Board has determined that because of the subject site's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is predominantly residential in character; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development, which includes a four-story, 21-unit multiple dwelling located on the subject block fronting Van Nest Street; and

WHEREAS, the applicant notes that the proposed home complies with the R5 zoning district regulations for use, FAR, open space, lot coverage, and height; and

WHEREAS, the applicant represents that the proposed side yard with a width of 4'-0" along the eastern lot line will

not impair the adjacent home to the east of the site, as the adjacent home is constructed to the lot line and the proposed home could be built abutting the adjacent home as-of-right, pursuant to ZR § 23-49; and

WHEREAS, as to the requested parking waiver, the applicant submitted a parking survey which reflects that a minimum of 35 on-street parking spaces are available within a 400-ft. radius of the site during the evening peak hour periods; and

WHEREAS, accordingly, the applicant concludes that the parking demand generated by the proposed three-family home would be adequately accommodated by the availability of on-street parking in the surrounding area; and

WHEREAS, therefore, 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 unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's narrow width; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

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

WHEREAS, thus, 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 R5 zoning district, the proposed construction of a three-story three-family home that does not provide the required front yard, side yard, or parking, contrary to ZR §§ 23-45(a), 23-462 and 25-23; *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 August 30, 2011"- (6) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 2,352 sq. ft. of floor area (1.23 FAR); lot coverage of 41 percent; open space of 59 percent; a front yard with a depth of 18'-0" along the southern lot line; no front yard along the western lot line; a side yard with a width of 25'-6" along the northern lot line; a side yard with a width of 4'-0" along the eastern lot line; a wall height of 26'-½"; a total height of 31'-4", and no parking spaces, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

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;

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THAT substantial 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, October 18, 2011.

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## 54-10-BZ

APPLICANT – Eric Palatnik, P.C., for Richard Valenti as Trustee, owner; Babis Krasanakis, lessee.

SUBJECT – Application April 19, 2010 – Special Permit (§73-44) to permit reduction in required parking for an ambulatory diagnostic or treatment center. C4-2 zoning district.

PREMISES AFFECTED – 150(c) Sheepshead Bay Road, aka 1508 Avenue Z, south side of Avenue Z, between East 15<sup>th</sup> and East 16<sup>th</sup> Street, Block 7460, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO WITHDRAW** –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, October 18, 2011.

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## 194-10-BZ

APPLICANT – Eric Palatnik, P.C., for Revekka Kreposterman, owner.

SUBJECT – Application October 26, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 175 Exeter Street, north of Oriental Avenue, Block 8737, Lot 17, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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 Brooklyn Borough Commissioner, dated July 11, 2011, acting on Department of Buildings Application No. 320183207, reads:

“Proposed enlargement to existing home is

contrary to ZR section 23-141 with respect to floor area and lot coverage and open space and therefore must be referred to the NYC BSA;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, and open space, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on June 7, 2011, after due notice by publication in *The City Record*, with continued hearings on July 26, 2011, August 16, 2011 and September 13, 2011, and then to decision on October 18, 2011 and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application (hereinafter, the “Opposition”); and

WHEREAS, the subject site is located on the east side of Exeter Street, between Hampton Avenue and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 2,121 sq. ft. (0.35 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,121 sq. ft. (0.35 FAR) to 5,875 sq. ft. (0.98 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 38 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide an open space of 62 percent (65 percent is the minimum required); and

WHEREAS, the Opposition contends that the proposed home is out of context with the surrounding neighborhood because the FAR is excessive; and

WHEREAS, in response, the applicant submitted a survey of homes within a 400-ft. radius of the site, which indicates that there are 14 homes within the surrounding area with an FAR of 0.75 or greater, and six homes within the surrounding area with a floor area greater than 5,000 sq. ft.; and

WHEREAS, the Opposition contends that the methodology of the applicant’s FAR study is flawed because it relies on the Primary Land Use Tax Lot Output (“PLUTO”) for its FAR data, and there are inaccuracies in the PLUTO database; and

WHEREAS, the Board recognizes that the PLUTO data may have errors, however, it finds that the database can

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still be relied on to provide a general sense of the FARs in the surrounding neighborhood; and

WHEREAS, the Board notes that the PLUTO database is maintained by the Department of City Planning, and is relied upon for various land use studies; and

WHEREAS, the Board further notes that it has granted special permits for at least two homes in the immediate vicinity of the site with FARs greater than the proposed 0.98 FAR; at 135 Exeter Street, where the Board granted an FAR of 1.04 under BSA Cal. No. 174-98-BZ, and at 229 Exeter Street, where the Board granted an FAR of 0.99 under BSA Cal. No. 182-07-BZ; and

WHEREAS, the applicant originally proposed to construct a home with a floor area of 5,969 sq. ft. (0.99 FAR), a perimeter wall height of 21'-0" and a total height of 35'-0", and subsequently increased the proposed size of the home to 6,046 sq. ft. (1.01 FAR); and

WHEREAS, at the Board's direction, the applicant submitted revised plans which reduced the size of the home to 5,875 sq. ft. (0.98 FAR), with a perimeter wall height of 20'-4" and a total height of 34'-4"; and

WHEREAS, the Board notes that the proposed home provides complying side yards with widths of 5'-0" and 12'-0", respectively, a complying front yard with a depth of 15'-0", and a complying rear yard with a depth of 31'-0"; and

WHEREAS, the Board further notes that proposed home's non-compliances are limited to FAR, lot coverage and open space; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board therefore is not persuaded that there is any basis to deny the subject application, as the required findings have been met; and

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, and open space, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed

with this application and marked "Received August 9, 2011"-(16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 5,875 sq. ft. (0.98 FAR); a lot coverage of 38 percent; and an open space of 62 percent, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

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

Adopted by the Board of Standards and Appeals, October 18, 2011.

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## **196-10-BZ CEQR No. 11-BSA-036M**

APPLICANT – James Chin & Associates, LLC, for Turtle Bay Inn, LLC., owner.

SUBJECT – Application October 25, 2010 – Variance (§72-21) to allow ground floor commercial use in an existing residential building, contrary to use regulations (§22-00). R8B zoning district.

PREMISES AFFECTED – 234 East 53<sup>rd</sup> Street, mid-block parcel located on the south side of 53<sup>rd</sup> Street, between 2<sup>nd</sup> and 3<sup>rd</sup> Avenue, Block 1326, Lot 34, Borough of Manhattan.

### **COMMUNITY BOARD #6M**

APPEARANCES –

For Applicant: Chris Wright and James Chin.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative: Vice Chair Collins.....1

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated October 14, 2010, acting on Department of Buildings Application No. 120430382, reads:

The proposed use of the basement, as a commercial eating and drinking establishment (Use Group 6), is not permitted as-of-right in an R8B zoning district within the Transit Authority District (TA). This is contrary to Section 22-00 (use) of the Zoning Resolution and requires variance from the Board of Standards and Appeals; and

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WHEREAS, this is an application under ZR § 72-21, to permit, in an R8B zoning district within the Special Transit Land Use District, the commercial use and expansion of the basement of a four-story residential building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on March 15, 2011 after due notice by publication in the *City Record*, with continued hearings on July 26, 2011, August 23, 2011 and September 13, 2011, and then to decision on October 18, 2011; and

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

WHEREAS, Community Board 6, Manhattan, recommends disapproval of this application; and

WHEREAS, the subject site is located on the south side of East 53<sup>rd</sup> Street between Second Avenue and Third Avenue, in an R8B zoning district within the Special Transit Land Use District; and

WHEREAS, the site has a width of 20'-0", a depth of 100'-5", and a lot area of 2,008 sq. ft.; and

WHEREAS, the site is occupied by a four-story (including basement) residential building with a floor area of 3,938 sq. ft. (1.96 FAR) (the maximum permitted FAR is 4.0); and

WHEREAS, the applicant proposes to renovate the upper three floors of the building to provide five apartment units, convert the basement of the building to commercial use, and to construct a 767 sq. ft. horizontal enlargement of the basement at the rear of the site; and

WHEREAS, commercial use is not permitted in the subject R8B zoning district, thus, the applicant seeks a use variance to permit the proposed commercial use; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the history of use of the subject building as a single room occupancy ("SRO"); and (2) the obsolescence of the basement for conforming use due to the site's narrow frontage, small size, history of use, and the commercial context of the surrounding street; and

WHEREAS, the applicant states that the subject building was formerly used as an SRO, and that the costs associated with renovating the SRO building creates practical difficulties with providing a conforming use in the basement; and

WHEREAS, as evidence of the building's former use as an SRO, the applicant submitted an HPD I Card, which indicates that the building was converted to a rooming house in 1940; and

WHEREAS, the applicant also submitted a Certification of No Harassment from the Department of Housing Preservation and Development dated August 10, 2007 as evidence that the subject building is no longer legally required to remain an SRO; and

WHEREAS, the applicant states that the upper three

floors of the subject building will be converted from SROs to five modern apartment units, but that the physical limitations of the basement render it obsolete for a conforming use; and

WHEREAS, the applicant states that the basement of the subject building was used as a common area for the SRO tenants; and

WHEREAS, specifically, the applicant states that there is a kitchen at the rear of the basement which represents the only kitchen in the building, and the remainder of the basement includes a dining room, lobby, and communal bathroom for the upper floors; and

WHEREAS, the applicant further states that any conforming use of the basement would require its gut renovation, as the existing kitchen and demising walls would have to be removed and new wiring and plumbing would be required to accommodate the needs of a modern tenant; and

WHEREAS, the applicant represents that a conforming use of the basement would require compliance with ADA standards, which would necessitate the installation of a ramp from the sidewalk into the building, and extensive façade work to reconfigure the entrance; and

WHEREAS, the applicant further represents that, even if the basement underwent extensive renovations to accommodate a community facility use, the existing floor plate and street frontage are too small to attract a conforming community facility use; and

WHEREAS, specifically, the applicant states that the subject building provides street frontage of only 20 feet and a floor plate with a depth ranging from approximately 45'-7" to 62'-0", while many sites on the subject street offer street frontage ranging from 30 to 40 feet and floor plates with a depth ranging from 80 to 90 feet; and

WHEREAS, the applicant represents that, despite the larger floor plates and street frontage available at other sites, there are only three community facility uses located on the subject street and they are all occupied by longstanding religious institutions; and

WHEREAS, the applicant further represents that the subject basement is not suitable for conforming residential use because the basement unit lacks legal light and air in its current configuration; and

WHEREAS, the applicant states that even after being renovated into a one bedroom unit, the only potential location for windows is at the front and rear of the basement, and the front window is nearly flush with the sidewalk, offering no privacy from the street; and

WHEREAS, the applicant states that the subject building is the only property on the street for which the ground floor is not being used for commercial use, other than three religious institutions; and

WHEREAS, the applicant further states that there are no ground floor residential uses on the subject street, and the buildings abutting the site on both sides are developed to the sidewalk with commercial uses, while the subject basement is set back from the commercial street wall and is partially below grade with steps leading to the basement entrance;

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# MINUTES

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and

WHEREAS, accordingly, the applicant represents that any prospective basement tenant would be surrounded by commercial uses, as the subject street is dominated by commercial street activities, including constant pedestrian and commercial traffic such as trucks, vans, and delivery vehicles servicing the local restaurants and stores, which result in a significant amount of street noise and congestion, thereby making the subject basement an unsuitable residential unit; and

WHEREAS, in support of its request to expand the basement to the rear lot line, the applicant states that the additional basement floor area is necessary to provide a viable amount of commercial floor area; and

WHEREAS, the applicant states that the properties abutting the site on both sides have ground floor commercial uses that extend to the rear lot line; and

WHEREAS, the applicant submitted a table of ground floor uses which reflects that 16 of the 23 sites in the study area have a non-complying rear yard, and that of the seven sites that do provide a rear yard, six of them have at least two floors of commercial use; and

WHEREAS, the table submitted by the applicant further reflects that the total floor area dedicated to commercial use for each site ranges from 1,500 sq. ft. to 3,600 sq. ft., with an average commercial floor area of 2,200 sq. ft.; therefore, the applicant notes that the existing basement with a floor area of 1,057 sq. ft. would provide significantly less commercial floor area than any other site in the study area, and the proposed basement expansion, which increases the proposed commercial floor area to 1,824 sq. ft., merely enables the subject site to provide a comparable amount of commercial floor area as the surrounding sites; and

WHEREAS, the Board does not find the subject building's history of use as an SRO to be a unique physical condition, however, the Board agrees that the building is undersized, that the ground floor space is constrained because it was intended as non-unit space, and that the conversion of the basement to complying community facility or residential space is severely restricted by the existing obsolescence of the basement area and the surrounding conditions, and that these unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulties in developing the site in compliance with the current zoning; and

WHEREAS, initially, the applicant submitted a feasibility study which analyzed: (1) a conforming mixed-use building with community facility use in the basement and residential use on the upper floors; and (2) the proposed mixed-use building with retail use in the basement and residential use on the upper floors, and with a 767 sq. ft. enlargement of the basement at the rear of the building; and

WHEREAS, at hearing, the Board directed the applicant to revise the feasibility study to include a conforming scenario with an enlarged basement and a lesser variance scenario without an enlarged basement; and

WHEREAS, in response, the applicant submitted a

revised feasibility study which analyzed: (1) a conforming scenario with residential use on all floors and without a basement enlargement; (2) a conforming scenario with a community facility use in the basement, residential use on the upper floors, and a 767 sq. ft. enlargement of the basement; (3) a lesser variance scenario with retail use in the basement, residential use on the upper floors, and without a basement enlargement; and (4) the proposed scenario; and

WHEREAS, at hearing, the Board raised concerns that the costs associated with converting the upper floors of the building to residential units would be offset by the revenue such units would generate, and that the feasibility study did not sufficiently separate the basement space from the upper floors; and

WHEREAS, accordingly, the Board directed the applicant to revise the feasibility study to focus only on the economic impact of the ground floor space, in order to ensure that the economic hardship was not based on the SRO status of the upper floors; and

WHEREAS, in response, the applicant submitted a revised study which focused only on the economic impact of the ground floor space; and

WHEREAS, the revised study concluded that the conforming and lesser variance scenarios would not realize a reasonable return but that the proposed scenario 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 states that the subject block is characterized by mixed-use buildings with ground floor commercial use and residential use on the upper floors; and

WHEREAS, as noted above, the applicant submitted a table of ground floor uses which reflects that the subject street is dominated by ground floor commercial use, that 16 of the 23 properties in the study have expanded into the rear yard at the ground floor level, and that the average commercial floor area for the commercial uses in the study is 2,200 sq. ft., while the proposed conversion and expansion of the basement will only result in 1,824 sq. ft. of commercial floor area; and

WHEREAS, the applicant notes that the immediately adjacent buildings on both sides of the site have ground floor commercial uses which extend to the rear lot line, and therefore the proposed expansion of the subject basement will merely infill the rear of the site between the two adjacent buildings; and

WHEREAS, the applicant further notes that the proposed rear yard enlargement has a height of only 9'-10", while a rear yard encroachment with full lot coverage would be permitted as-of-right up to a height of 23'-0" if the building was occupied by a conforming community facility

# MINUTES

use; and

WHEREAS, the applicant represents that the proposed rear yard enlargement will allow all of the commercial use at the site to be enclosed within the building, which is preferable to the noise and privacy concerns that would arise from having an open commercial use at the rear of the site; and

WHEREAS, the applicant states that the proposed building will have a total floor area of 4,705 sq. ft. (2.34 FAR), which is well below the maximum permitted FAR of 4.0; 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) CEQR No. 11BSA036M, dated February 1, 2011; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration 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, in an R8B zoning district within the Special Transit Land Use District, the enlargement of the basement of a four-story (including basement) residential building and its conversion to commercial use, contrary to

ZR § 22-00; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 11, 2011" – one (1) sheet and "Received October 6, 2011" – eight (8) sheets ; and on further condition:

THAT the following shall be the bulk parameters of the proposed building: a commercial floor area of 1,824 sq. ft. (0.91 FAR), a residential floor area of 2,881 sq. ft. (1.43 FAR), and a total floor area of 4,705 sq. ft. (2.34FAR), as indicated on the BSA-approved plans;

THAT the commercial use shall have a closing time of no later than 11:00 p.m., Sunday through Thursday, and 12:00 a.m. Friday through Saturday;

THAT garbage pickup shall take place between 7:00 a.m. and 7:00 p.m.;

THAT the operation of the site shall be in compliance with Noise Code regulations;

THAT commercial signage shall be as indicated on the BSA-approved plans;

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

THAT the internal floor layouts on each floor shall be as reviewed and approved by DOB;

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

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

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

Adopted by the Board of Standards and Appeals, October 18, 2011.

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## 6-11-BZ

APPLICANT – Paul Bonfilio, for Denis Forde, Rockchapel Reality, LLC, owner.

SUBJECT – Application January 19, 2011 – Variance (§72-21) to permit the construction of a one family detached residence on a vacant corner tax lot contrary to ZR §23-711 for minimum distance between buildings on the same zoning lot; ZR §23-461 for less than the required width of a side yard on a corner lot and ZR §23-89(b) less than the required open area between two buildings. R2A zoning district.

PREMISES AFFECTED – 50-20 216<sup>th</sup> Street, corner of 51<sup>st</sup> Avenue, Block 7395, Lot 13, 16, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Paul Bonfilio.

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

THE VOTE TO GRANT –

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

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

## THE RESOLUTION –

WHEREAS, the decisions of the Queens Borough Commissioner, dated January 11, 2011 acting on Department of Buildings Application No. 420234400, read in pertinent part:

- Proposed construction of a single family dwelling in an R2A Zoning District on tax lot #16 does not have the required 20 foot side yard for a corner lot and is contrary to Section 23-461 of the Zoning Resolution;
- Proposed construction of a single family dwelling in an R2A Zoning District on tax lot #16 does not have the required minimum 40 foot distance from existing residential dwelling on lot #13 of the same zoning lot for legally required window to window condition and is contrary to Section 23-711 of the Zoning Resolution; and
- Proposed construction of a single family dwelling in an R2A Zoning District on tax lot #16 does not have the required 20 foot depth of open area for the designated rear wall of the proposed building together with the existing building on lot #13 on a zoning lot facing two streets and is contrary to Section 23-89(b) of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R2A zoning district, the proposed construction of a two-story single-family home that does not provide the required minimum distance between buildings, minimum side yard on a corner lot, or minimum open area, contrary to ZR §§ 23-461, 23-711, and 23-89; and

WHEREAS, a public hearing was held on this application on June 14, 2011 after due notice by publication in *The City Record*, with a continued hearing on July 26, 2011 and September 13, 2011, and then to decision on October 18, 2011; 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 11, Queens, recommends disapproval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends disapproval of this application; and

WHEREAS, City Council Speaker Christine C. Quinn, City Council Member Daniel J. Halloran III, New York State Senator Tony Avella, and New York State Assembly Member David I. Weprin provided testimony in opposition to this application; and

WHEREAS, the Bayside Hills Civic Association, the Auburndale Improvement Association, and certain members of the community testified in opposition to this application; and

WHEREAS, the above-mentioned elected officials, community groups, and neighbors (hereinafter, collectively referred to as the "Opposition") cited the following primary

concerns: (1) the proposed home is out of context with the surrounding neighborhood; (2) the site is too small to accommodate a second home; and (3) the subdividing of the lot constitutes a self-created hardship; and

WHEREAS, the site is located on the northwest corner of 51<sup>st</sup> Street and 216<sup>th</sup> Street, within an R2A zoning district; and

WHEREAS, the subject site is an irregularly shaped zoning lot with 18.26 feet of frontage along 51<sup>st</sup> Street, 109.96 feet of frontage along 216<sup>th</sup> Street, and a total lot area of 7,536.8 sq. ft.; and

WHEREAS, the subject zoning lot consists of two tax lots (Lots 13 and 16); and

WHEREAS, Lot 13 consists of a 4,218.6 sq. ft. parcel located on the northern portion of the site, which is occupied by an existing two-story single-family home with a floor area of 1,484.6 sq. ft. (0.35 FAR for Lot 13 and 0.19 FAR for the zoning lot); and

WHEREAS, Lot 16 consists of a 3,318.6 sq. ft. triangular-shaped parcel located on the southern portion of the site, which is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home on the Lot 16 portion of the site; and

WHEREAS, the proposed home will have the following complying parameters: 1,491 sq. ft. of floor area (0.45 FAR for Lot 16), for a total of 2,975.6 sq. ft. of floor area on the zoning lot (0.39 FAR for the zoning lot) (the maximum permitted FAR is 0.50); lot coverage of 11 percent, for a total lot coverage of 26 percent on the zoning lot (the maximum permitted lot coverage is 30 percent); front yards with a depth of 20'-0" along the eastern and southern lot lines (front yards with minimum depths of 15'-0' are required); a street wall height of 20'-0" (the maximum permitted street wall height is 21'-0"); a total height of 27'-4" (the maximum permitted total height is 35'-0"); and two parking spaces; and

WHEREAS, however, the applicant proposes to provide a side yard with a width of 5'-0" along the western lot line (a side yard with a minimum width of 20'-0" is required); a distance of 13'-0" between the proposed home on Lot 16 and the existing home on Lot 13 (a minimum distance of 40'-0" is required between a residential building and any other building on the same zoning lot, with a window to window condition); and non-compliance with the open area requirements; and

WHEREAS, the applicant originally proposed to construct a two-story home with a street wall height of 21'-0" and a total height of 28'-0"; and

WHEREAS, at the Board's direction, the applicant revised the plans to reflect a street wall height of 20'-0" and a total height of 27'-4"; and

WHEREAS, the applicant states that the requested relief is necessary for the reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the irregular shape of the subject corner lot, and the location of the existing home on the site; and

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WHEREAS, the applicant represents that the requested waivers are necessary to develop the site with a habitable home; and

WHEREAS, the applicant states that the subject zoning lot is a large, significantly under-developed corner lot that is triangular in shape; and

WHEREAS, specifically, the applicant states that the zoning lot has a lot area of 7,536.8 sq. ft. and is currently occupied by a single-family home with a floor area of 1,484.6 sq. ft. (0.19 FAR), which is significantly underdeveloped based on the maximum allowable floor area of 3,768.4 sq. ft. (0.50 FAR) for the site; and

WHEREAS, the applicant represents that as a result of the triangular shape of the site and the location of the existing home on Lot 13, the site cannot be developed with a second viable single-family home that complies with the underlying zoning regulations with regard to the minimum distance between the two homes, the required side yards for corner lots, and the minimum open area requirements; and

WHEREAS, the applicant notes that pursuant to the density regulations of ZR § 23-22, two homes are permitted to be constructed on the subject zoning lot as-of-right; and

WHEREAS, however, the applicant states that the triangular configuration of the lot and the location of the existing home create practical difficulties in constructing the second home, such that constructing a complying home would result in an irregularly-shaped building footprint of 268 sq. ft., which would not be viable for habitable use; and

WHEREAS, the applicant states that, if not for the triangular shape of the site and the location of the existing home, two viable single-family homes could be constructed that would comply with all zoning regulations in the underlying R2A district; and

WHEREAS, in support of this statement, the applicant submitted an analysis of a development consisting of a regularly-shaped lot with the same lot area as the subject site, which reflected that two homes that meet all the requirements of the Zoning Resolution could be located on either an interior or corner lot of the same size as the subject site provided that the lot was regularly-shaped; and

WHEREAS, in support of its claim that the subject site is uniquely underdeveloped, the applicant submitted a survey of the lots within a 400-ft. radius of the site, which reflects that, of the 104 properties included in the survey, the subject zoning lot is the largest site in the surrounding area and one of only two sites with an FAR of 0.19, which is the lowest FAR in the surrounding area; and

WHEREAS, the survey submitted by the applicant further reflects that most lots in the surrounding area are 4,000 sq. ft. and are developed with FARs ranging between 0.35 and 0.42, and that there are only two other sites on the subject block larger than 5,000 sq. ft. (Lot 1 at 6,200 sq. ft. and Lot 18 at 6,100 sq. ft.), and the other two sites are built to an FAR of 0.32 and 0.26, respectively; and

WHEREAS, the applicant represents that the enlargement of the existing home is not a viable option because it would require the redesign of the entire home, which would be prohibitively expensive, and because the floor area of homes

in the surrounding neighborhood generally range between 1,000 sq. ft. and 2,000 sq. ft., and enlarging the existing home to the average FAR in the surrounding neighborhood (between 0.35 and 0.42 FAR) would result in an oversized home with a floor area of 2,700 sq. ft. to 3,200 sq. ft., which would be out of context with the surrounding homes; and

WHEREAS, accordingly, the applicant concludes that the proposed construction of a two-story single-family home with a floor area of 1,491 sq. ft. (0.45 FAR on Lot 16) and a total floor area on the zoning lot of 2,975.6 (0.39 FAR on the entire zoning lot) is the only way to make the site viable and comparable to other sites in the surrounding area; and

WHEREAS, during the course of the hearing process, the Opposition identified a number of lots as being similar to the subject site and contends that the site is therefore not unique because there are many corner lots in the surrounding neighborhood which are underdeveloped and which have significant amounts of open space; and

WHEREAS, in response, the applicant states that the lots identified by the Opposition are located beyond the 400-ft. radius of the site, are significantly smaller than the subject site, and with the exception of Lot 34 in Block 7424, none of the other sites is entitled to a second home pursuant to ZR § 23-22; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable regulations; and

WHEREAS, initially, the applicant did not provide a financial analysis in support of the finding pursuant to ZR § 72-21(b); however, in response to questions raised by the Opposition regarding the financial feasibility of the site, the applicant subsequently provided a financial analysis; and

WHEREAS, specifically, the applicant submitted a feasibility study which analyzed: (1) the existing condition; (2) an as-of-right enlargement of the existing home; and (3) the proposed construction of a second home on Lot 16; and

WHEREAS, the study concluded that the existing and complying scenarios would not result in a reasonable return, but that the proposed scenario would realize a reasonable return; and

WHEREAS, the Board has determined that because of the subject site's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding community is characterized by detached single-family homes; and

WHEREAS, the applicant further states that the proposed home on Lot 16, with a floor area of 1,491 sq. ft., would be similarly sized to the homes in the surrounding area, which range between 1,000 sq. ft. and 2,000 sq. ft.; and

WHEREAS, the applicant notes that the proposed street wall height of 20'-0" and total height of 27'-4" are consistent with the existing homes in the surrounding area; and

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WHEREAS, the applicant states that the proposed home is compliant with floor area, height, front yards, open space, lot coverage, parking, and all other requirements of the underlying R2A zoning district, with the exception of the minimum distance between buildings, the side yard requirements for a corner lot, and the open area requirements; and

WHEREAS, the applicant represents that if the site had a lot area of 7,600 sq. ft. rather than 7,536.8 sq. ft. (a difference of only 63.2 sq. ft.), it could create two zoning lots which satisfied the minimum lot size requirements, and the required minimum distance between the two buildings would be reduced from 40 feet to 13 feet, and therefore the proposed home would be compliant with this requirement; and

WHEREAS, the applicant states that the proposed minimum distance between the two homes of 13'-0" is consistent with the existing homes located along the east and west side of 216<sup>th</sup> Street; and

WHEREAS, the applicant further states that the requested waiver for a side yard with a width of 5'-0" along the western lot line will not have a negative impact on the adjacent home to the west because that home is setback more than 20'-0" from the lot line and is further buffered by an existing garage; and

WHEREAS, therefore, 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 unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's irregular shape and the location of the existing home; and

WHEREAS, the Opposition contends that the subdivision of the lot is a self-created hardship and that the applicant is not entitled to construct two homes on the site; and

WHEREAS, in response, the applicant states that the zoning lot is not being subdivided, and that the tax lot subdivision is not relevant to the zoning analysis as no waiver is being requested related to the subdivision of the tax lot; and

WHEREAS, the applicant further states that the development of a second home on the subject site is expressly permitted pursuant to the density regulations of ZR § 23-22; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

WHEREAS, as noted above, the applicant originally proposed to construct a two-story home with a street wall height of 21'-0" and a total height of 28'-0", but reduced the proposed height of the building to a street wall height of 20'-0" and a total height of 27'-4" at the Board's direction; and

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

WHEREAS, thus, 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, in an R2A zoning district, the construction of a two-story single-family home that does not provide the required minimum distance between buildings, minimum side yard on a corner lot, or minimum open area, contrary to ZR §§ 23-711, 23-461, and 23-89; *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 September 27, 2011"- (5) sheets; and *on further condition*:

THAT the parameters of the proposed home shall be as follows: 1,491 sq. ft. of floor area (0.45 FAR for Lot 16), for a total of 2,975.6 sq. ft. of floor area on the zoning lot (0.39 FAR for the zoning lot); a side yard with a minimum width of 5'-0" along the western lot line; and a minimum distance of 13'-0" between the proposed home on Lot 16 and the existing home on Lot 13, as illustrated in the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed home shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

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

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

THAT significant construction shall proceed in accordance with ZR § 72-23; and

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

Adopted by the Board of Standards and Appeals, October 18, 2011.

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## 46-10-BZ

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.

SUBJECT – Application April 8, 2010 – Special Permit (§73-44) to permit a reduction in required parking for ambulatory and diagnostic treatment center. C4-2 zoning district.

PREMISES AFFECTED – 1401 Sheepshead Bay Road, Avenue Z and Sheepshead Bay Road, Block 7459, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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## 2-11-BZ

APPLICANT – Cozen O’Connor, for 117 Seventh Avenue South Property Company, LP, owner.

SUBJECT – Application January 4, 2011 – Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to setback (§33-432) and open space regulations (§23-14). C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, southeast corner of Seventh Avenue South and West 10<sup>th</sup> Street, Block 610, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Paul J. Proulx.

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

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## 3-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application January 10, 2011 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1221 East 22<sup>nd</sup> Street, between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to November 22, 2011, at 1:30 P.M., for adjourned hearing.

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## 39-11-BZ

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application April 8, 2011 – Variance (§72-21) to legalize a mixed use building, contrary to floor area (§24-162), parking (§25-31), permitted obstructions (§24-33/23-44), open space access (§12-10), side yard setback (§24-55), and distance required from windows to lot line (§23-861). R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Margery Perlmutter, Patrick Jones.

For Opposition: NYS Assemblyman Alan Maisel, Senator Golden Office Joan Byrnes, Johanna Mitchell, Ed Jaworski, Anna Spryha, Bela Rogan, Margaret McCarthy, C. Alessandro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

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

**ACTION OF THE BOARD** – Laid over to December 6, 2011, at 1:30 P.M., for decision, hearing closed.

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## 54-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Bay Parkway Group LLC, owner.

SUBJECT – Application April 21, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic or treatment facility building. R6/C1-3 zoning district.

PREMISES AFFECTED – 6010 Bay Parkway, west side of Bay Parkway between 60<sup>th</sup> Street and 61<sup>st</sup> Street, Block 5522, Lot 36 & 32, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: NYS Assemblyman William Colton, Council Member David G. Greenfield, Anna Cali, Natalie DeNicola, Rebecca Gray, Vito A. Pietanza and other.

**ACTION OF THE BOARD** – Laid over to November 22, 2011, at 1:30 P.M., for continued hearing.

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## 76-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Eli Braha, owner.

SUBJECT – Application May 26, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); rear yard (§23-47) and side yard (§23-461). R4/Ocean Parkway zoning district.

PREMISES AFFECTED – 2263 East 2<sup>nd</sup> Street, approximately 235’ south of Gravesend Neck Road, Block 7154, Lot 68, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Laid over to November 22, 2011, at 1:30 P.M., for continued hearing.

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## 106-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Tag Court Square, LLC, owner; Long Island City Fitness Group, LLC, owner.

SUBJECT – Application August 2, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). M1-5/R7-3/Long Island City zoning district.

PREMISES AFFECTED – 27-28 Thomson Avenue, triangular zoning lot with frontages on Thomson Street and Court Square, adjacent to Sunnyside Yards. Block 82, Lots 7501 (1001), Borough of Queens.

### COMMUNITY BOARD #2Q

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APPEARANCES –

For Applicant: Nora Martins.

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

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**\*CORRECTION**

This resolution adopted on October 5, 2004, under Calendar No. 585-91-BZ and printed in Volume 89, Bulletin No. 41, is hereby corrected to read as follows:

**585-91-BZ**

APPLICANT - Tarek M. Zeid, for Luis Mejia, owner.

SUBJECT - Application December 10, 2003 – request for a waiver of the Rules of Practice and Procedure, reopening for an extension of term of variance which expired March 30, 2003 and for an amendment to the resolution.

PREMISES AFFECTED – 222-44 Braddock Avenue, Braddock Avenue between Winchester Boulevard and 222<sup>nd</sup> Street, Block 10740, Lot 12, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES – None.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under Z.R. §§11-411 and 11-412 to request a waiver of the rules of practice and procedure, a re-opening to amend the resolution, a renewal of term for a previously granted variance that expired March 30, 2003, and approval of an enlargement; and

WHEREAS, a public hearing was held on this application on May 18, 2004 after due notice by publication in The City Record, with continued hearings on June 22, 2004 and September 14, 2004 and then to October 5, 2004 for decision; and

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

WHEREAS, Community Board No. 13 Queens has recommended approval upon the following conditions: (1) that the applicant removes curb-cut on Winchester Boulevard; (2) that the applicant will not park cars on the sidewalks or work on car engines outside of the shop bays; and (3) that the applicant will not offer motor vehicles for sale on the subject premises; and

WHEREAS, the premises is located on the southeast corner formed by the intersection of Braddock Avenue and Winchester Boulevard, Queens, and has a total lot area of 9,350 square feet; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since January 14, 1958, when under Calendar No. 658-52-BZ, the Board granted a variance for a change of use in a retail use district, to allow the erection and maintenance of a gasoline service station with accessory uses; and

WHEREAS, on April 11, 1989, the Board granted an amendment of the resolution, pursuant to Z.R. §11-412, to

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enlarge the existing accessory building through the addition of a 300 sq. ft. service bay; and

WHEREAS, on March 30, 1993, under Calendar No. 585-91-BZ, the Board: (1) extended the term of the variance for ten (10) years (expiring March 30, 2003); and (2) legalized both an enlargement to the existing accessory building and a change of use to automobile repair service with accessory automotive sales (Use Group 16) and accessory parking; and

WHEREAS, pursuant to Z.R. §11-411, the Board may, in appropriate cases, renew the term of a previously granted variance for a term of not more than ten years; and

WHEREAS, pursuant to Z.R. §11-412, the Board may, in appropriate cases, allow the enlargement of a building on a premises subject to a pre-1961 variance, provided that the building may not be enlarged in excess of 50 percent of the floor area of such building as existed as of December 15, 1961; and

WHEREAS, the applicant represents that prior to December 15, 1961, the subject original building had a floor area of 1,305 sq. ft and therefore Z.R. §11-412 permits a maximum enlargement of 50% or approximately 652 sq. ft.; and

WHEREAS, the applicant seeks to enlarge the existing building under ZR §11-412, through the installation of an additional service bay of 12 feet 6 inches by 28 feet 2 inches (350 sq. ft.), to be added to the west elevation of the existing building; and

WHEREAS, the applicant asserts that because the 1989 expansion entailed a 300 sq. ft. expansion, there remains an additional 352 sq. ft. of expansion available under Z.R. §11-412 that will be utilized to accommodate the proposed enlargement; and

WHEREAS, the applicant represents that since the prior BSA approval, the premises has been continuously utilized as an automobile service station with lubritorium, non-automatic auto wash, minor repairs with hand tools only, office, storage, sales of auto accessories and accessory parking for twelve (12) cars awaiting sales and six (6) cars awaiting service; and

WHEREAS, the applicant represents that there is no sale of autos currently at the premises and that this particular accessory use will not take place in the future; therefore, the applicant has no objection to a condition prohibiting sale of autos; and

WHEREAS, in response to the concerns of the Board, the applicant has agreed to reduce the total number of curb cuts, as shown on the BSA-approved plans.

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, pursuant to Z.R. §§11-411 and 11-412, so that as amended this portion of the resolution shall read: "To extend the term of the variance for ten (10) years from March 30, 2003, to expire on March 30, 2013, and to permit the installation of an additional service bay of 12 feet 6 inches by 28 feet 2 inches (350 sq. ft.) to be added to the West elevation of the existing building; on condition that all work shall substantially conform to drawings as they apply to the objections above

noted, filed with this application marked "Received September 20, 2004"-(4) sheets; and on further condition;

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 no parking of vehicles on the sidewalk;

THAT there shall be no work on the engines of automobiles outside the repair bays;

THAT there shall be no body repair, burning or welding performed on the premises;

THAT all curb cuts shall be as shown on BSA-approved plans;

THAT there shall be no sale of automobiles on the subject premises;

THAT fencing and landscaping shall be installed and/or maintained in accordance with the BSA-approved plans;

THAT all signage shall comply with the C1 zoning district regulations;

THAT the terms of this grant shall be for ten (10) years from March 30, 2003, to expire on March 30, 2013;

THAT these conditions appear on the Certificate of Occupancy;

THAT all other relevant conditions from prior Board grants remain in effect;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted. (DOB Application Nos. ALT 70/87 & 401749658)

Adopted by the Board of Standards and Appeals, October 5, 2004.

**\*The resolution has been revised to correct the Plans Dates which read: "September 20, 2004"-(8) sheets" now reads: "September 20, 2004"-(4) sheets. Corrected in Bulletin Nos. 41-43, Vol. 96, dated October 27, 2011.**