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126-06-BZ
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129-06-BZ
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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.

CALENDAR

AUGUST 8, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 8, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

565-57-BZ
APPLICANT – Arcadius Kaszuba, for Ann Shahikian, owner; Vandale Motors Incorporated, lessee.
SUBJECT – Application January 25, 2005 - Extension of Term/Amendment - to include a height change from the approved 17'-3" to 28'6" for the purpose of adding a storage mezzanine.
PREMISES AFFECTED – 5832 Broadway, a/k/a 196-198 West 239 Street, South east corner of Broadway and 239 Street, Block 3271, Lot 198, Borough of the Bronx.
COMMUNITY BOARD #8BX

1077-66-BZ
APPLICANT – Carl A. Sulfaro, Esq., for Richmond Petroleum, Incorporated, owner.
SUBJECT – Application May 10, 2006 - Pursuant to ZR72-01 & 72-22 to reopen and amend the BSA resolution for a change of use to an existing gasoline service station with minor auto repairs. The amendment is to convert the existing auto repair bays to a convenience store as accessory use to an existing gasoline service station. The premise is located in C2-2 in an R3-2 zoning district.
PREMISES AFFECTED – 1320 Richard Terrace, Southwest corner of Bement Avenue, Block 157, Lot 9, Borough of Staten Island.
COMMUNITY BOARD #1SI

301-85-BZ
APPLICANT – Francise R. Angelino, Esq., for 58 East 86th Street, LLC, owner.
SUBJECT – Application April 25, 2006 – Application for an extension of term for a previously approved use variance which allowed ground floor retail at the subject premises located in a R10(PI) zoning district. In addition the application seeks a waiver of the Board's Rules and Procedures for the experation of the term on February 11, 2006.
PREMISES AFFECTED – 58 East 86th Street, South side East 86th Street between Park and Madison Avenues, Block 1497, Lot 49, Borough of Manhattan.
COMMUNITY BOARD #8M

59-02-A
APPLICANT – Carlos Aguirre
SUBJECT – Application February 16, 2006 - Reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a two family house located in the bed of mapped street (24th Aveue). Proposal seeks to add an additional two family dwelling in the bed of mapped stret thereby making three two- family dwellings. Premises is located within an R3-2 Zoning Disrict . Companion cases 160-02-A and 27-06-A.
PREMISES AFFECTED – 23-81 89th Street, 583.67' Northeast of the corner of Astoria Boulevard & 89 Street, Block 1101, Lot 6, Borough of Queens.
COMMUNITY BOARD #3Q

160-02-A
APPLICANT – Carlos Aguirre
SUBJECT – Application February 16, 2006 - Reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a two family dwelling in the bed of a mapped street (24th Avenue) .Proposal seeks to add an additional two family dwelling in the bed of a mapped street thereby making three two family dwellings. Premises is located within an R3-2 Zoning District .Companion cases 59-02-A and 27-06-A.
PREMISES AFFECTED – 24-01 89th Street, 532.67' northeast of the corner of Astoria Boulevard & 89 Street, Block 1101, Lot 8, Borough of Queens.
COMMUNITY BOARD #3Q

27-06-A
APPLICANT – Carlos Aguirre
SUBJECT – Application February 16, 2006 - Application filed under Section 35 of the General City Law to allow the construction of a two family dwelling located within the bed of a mapped street (24th Avenue). Premises is located within a R3-2 Zoning District. Companion cases 59-02-A II and 160-02-A II
PREMISES AFFECTED – 23-83 89th Street, 561.67' Northeast, the corner of Astoria Boulevard & 89 Street, Block 1101, Lot 7, Borough of Queens.
COMMUNITY BOARD #3Q

212-03-A
APPLICANT – Eric Palatnik, P.C. for Excel Development Group, Incorporated, owner.
SUBJECT – Application April 4, 2006 - Application to reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the constrction of a sinlge family dwelling located partially within the bed of a mapped street (Hook Creek Boulevard). The application seeks to retain the current location of the dwelling which was built contrary to a BSA issued resolution and approved plans.
PREMISES AFFECTED – 129-32 Hook Creek Boulevard, East side, between 129th Road and 130th Avenue, Block

12891, Lot 2, Borough of Queens.
COMMUNITY BOARD #13Q

213-03-A
APPLICANT – Eric Palatnik, P.C. for Excel Development Group, Incorporated, owner.
SUBJECT – Application April 4, 2006 - Application to reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a sinlge family dwelling located within the bed of mapped street (Hook Creek Boulevard). The application seeks to retain the current location of the dwelling which was built contrary to a BSA issued resolution and approved plans.
PREMISES AFFECTED – 129-36 Hook Creek Boulevard, East side, between 129th Road and 130th Avenue, Block 12891, Lot 4, Borough of Queens.
COMMUNITY BOARD #13Q

APPEALS CALENDAR

21-06-A
APPLICANT - Walter T. Gorman, PE, for Breezy Point Cooperative Incorporated, owner; Michael & Jennifer Esposito, lessee.
SUBJECT – Application February 7, 2006 - Proposed enlargement of an existing one family dwelling located in the bed of a mapped street, (Rockaway Point Boulevard), is contrary to Section 35 of the General City Law.
PREMISES AFFECTED – 28 Rockaway Point Boulevard, a/k/a State Road, N/S 85.09' East of Beach 179th Street, Block 16340, Lot p/o 50, Borough of Queens.
COMMUNITY BOARD #14Q

AUGUST 8, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, *Tuesday Afternoon*, August 8, 2006, at 1:30 P.M., at 40 Rector Street, 6^{h} Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

175-05-BZ
APPLICANT – Eric Palatnik, P.C. for 18-24 Luquer Street Realty LLC, owner.
SUBJECT – Application July 28, 2005 - Zoning variance pursuant to Z.R. 72-21 to allow the construction of a proposed four (4) story multi-family dwelling containing sixteen (16) dwelling units and eight (8) accessory parking spaces. Project site is located in an M1-1 zoning district and is contrary to Z.R. 42-00.
PREMISES AFFECTED – 18-24 Luquer Street, Between Hicks Street and Columbia Street, Block 520, Lot 13,16, Borough of Brooklyn.
COMMUNITY BOARD #6BK

427-05-BZ
APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.
SUBJECT – Application December 28, 2005 – Pursuant to Z. R. 73-44 Special Permit to permit the proposed retail, community facility & office development (this latter portion is use group 6, parking requirement category B1, office use) which provides less than the required parking & is contrary to ZR Sec. 36-21.
PREMISES AFFECTED – 133-47 39th Avenue, between Prince Street and College, Block 4972, Lot 59, Borough of Queens.
COMMUNITY BOARD #7Q

40-06-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Ten Hanover LLC c/o The Witkoff Group, owner; Plus One Holding Incorporated, lessee.
SUBJECT – Application March 8, 2006 - Special Permit pursuant to Z.R. § 73-36 to allow the operation of a Physical Culture Establishment (PCE) on the cellar and sub-cellar levels in a 21-story mixed-use building. The PCE membership will be limited to employees of Goldman Sachs and residents of the subject premises in a space formerly occupied and used as an accessory PCE (1998 to 2004) for members of Goldman Sachs. The premises is located in a C5-5 (LM) zoning district. The proposal requests a waiver of Z.R. Section 32-00 (Use Regulations).
PREMISES AFFECTED – 10 Hanover Square, easterly block front of Hanover Square between Water Street and Pearl Street, Block 31, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #1M

66-06-BZ
APPLICANT – Slater & Beckerman, LLP, for Vaugh College of Aeronautics and Technology, owner.
SUBJECT – Application April 13, 2006 – Zoning variance pursuant Z.R. § 72-21- Application is filed by the Vaughn College of Aeronautics and Technology and seeks a variance to permit the construction of a new three story college dormitory that does not conform to the use regulations of the M1-1 zoning district.
PREMISES AFFECTED – 22-40 90th Street, east side of 90th Street the corner formed by the intersection of 23rd Avenue, Block 1064, Lot 100, Borough of Queens.
COMMUNITY BOARD #3Q

Jeffrey Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JUNE 20, 2006
10:00 A.M.

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

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, April 11, 2006 as printed in the bulletin of April 20, 2006, Volume 91, No. 16. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

565-57-BZ
APPLICANT – Arcadius Kaszuba, for Ann Shahikian, owner.
SUBJECT – Application to consider Dismissal.
PREMISES AFFECTED – 5832 Broadway (5848 Broadway or 196-198 West 239th Street) southeast corner of Broadway and 239th Street, Block 3271, Lot 198, Borough of The Bronx.
COMMUNITY BOARD #8BX
APPEARANCES –
For Applicant: Arcadius Kaszuba and Michael Rubinstein.
ACTION OF THE BOARD – Application withdrawn from dismissal.
THE VOTE TO WITHDRAW **–**
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0
Adopted by the Board of Standards and Appeals, June 20, 2006.

565-57-BZ
APPLICANT – Arcadius Kaszuba, for Ann Shahikian, owner.
SUBJECT – Application to consider Dismissal.
PREMISES AFFECTED – 5832 Broadway (5848 Broadway or 196-198 West 239th Street) southeast corner of Broadway and 239th Street, Block 3271, Lot 198, Borough of The Bronx.
COMMUNITY BOARD #8BX
APPEARANCES –
For Applicant: Arcadius Kaszuba and Michael Rubinstein.
ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for SOC calendar new cases.

289-58-BZ
APPLICANT – Eric Palatnik, P.C., for David Oil Corporation, owner.
SUBJECT – Application April 25, 2006 – Extension of Term of a variance for ten years, which expired on November 25, 2005, for a gasoline service station (Sunoco Station) and an Amendment to legalize a small convenience store as an accesory to the UG16-Automotive Service Station. The premise is located in an C2-3/R-7A zoning district.
PREMISES AFFECTED – 398-410 Kings Highway, southwest corner of Kings Place, Block 6678, Lot 73, Borough of Brooklyn.
COMMUNITY BOARD #11BK
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application made pursuant to Z.R. § 11-411, for a reopening and extension of term of a prior grant for a automotive and gasoline service station, which expired on November 25, 2005; and

WHEREAS, a public hearing was held on this application on June 6, 2006, after due notice by publication in *The City Record*, with a continued hearing on June 20, 2006, and then to decision on June 20, 2006; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject 10,563 sq. ft. lot is located on Kings Highway at the southwest corner of Kings Place; and

WHEREAS, the site is located within an R7A (C2-3) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 22, 1960 when, under BSA Cal. No. 289-58-BZ, Vol. II, the Board granted an application for the erection and maintenance of a gasoline service station, with lubritorium, minor repairs with hand tools only, non-automatic auto laundry, office, storage and sales of auto accessories, and parking of more than five motor vehicles awaiting service; and

WHEREAS, subsequently, the term has been extended and the grant amended by the Board at various times, most recently on March 4, 1997, under the subject calendar number, for a term of ten years from the expiration of the prior grant, expiring on November 25, 2005; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

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

WHEREAS, based upon its review of the application, the Board finds it appropriate to grant the requested extension of

term, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on November 22, 1960, so that as amended this portion of the resolution shall read: "to permit an extension of term, for an additional period of ten years from the expiration of the prior grant, to expire on November 25, 2015; *on condition* that all work shall substantially conform to drawings filed with this application marked 'Received April 25, 2006'–(3) sheets and 'June 13, 2006'–(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on November 25, 2015;

THAT the condition above shall be listed on the Certificate of Occupancy;

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

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

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

(N.B. 1730/60)

Adopted by the Board of Standards and Appeals, June 20, 2006.

540-84-BZ

APPLICANT – Kenneth H. Koons, for Herman Pieck, owner.

SUBJECT – Application December 8, 2005 – Pursuant to section Z.R. §52-332 to legalize the change in use of a custom cabinet workshop (UG16A) to auto repair shops (UG16B) and to extend the term of the variance for ten years. The previous term expired June 10, 2006. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, southwest corner of Bolton Avenue, Block 3473, Lot 43, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Kenneth H. Koons.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 4, 2006, acting on DOB Application No. 200940571 reads, in pertinent part:

> "The legalization of the proposed change of use of the premises for motor vehicle repair shops and the extension of the term of variance beyond June 10, 2006, in an R3-2 zoning district, is contrary to Section 22-00 Z.R. and BSA Resolution Cal. No. 540-84-BZ and Certificate of Occupancy #58357."; and

WHEREAS, this is an application under ZR §§ 11-412 and 11-413, on a site previously before the Board, to permit in an R3-2 zoning district, the legalization of the change from the previously approved Use Group 16 cabinet manufacturing use to a UG 16 automotive repair shop use, as well as minor interior changes related to this change of use, which is contrary to a variance previously granted under the subject calendar number; and

WHEREAS, a public hearing was held on this application on June 6, 2006 after due notice by publication in the *City Record*, and then to decision on June 20, 2006; and

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

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

WHEREAS, additionally, City Council Member Annabel Palma recommends approval of this application; and

WHEREAS, the premises is located on the southwest corner of Soundview and Bolton Avenues and has a lot area of 9,927 sq. ft.; and

WHEREAS, the lot is improved with an automotive repair station with a floor area of 7,037 sq. ft.; and

WHEREAS, on June 10, 1986, under the subject calendar number, the Board permitted the erection of a one-story custom cabinet shop in an R3-2 zoning district, for a term of 20 years; and

WHEREAS, the record indicates that the custom cabinet shop closed in the early 1990s and that the automotive service/repair use has been continuous since 1993; and

WHEREAS, the record indicates that the only physical changes to the site since 1993 were in the interior, and include the addition of a spray booth and the relocation of partitions; and

WHEREAS, the application seeks to legalize the change in use from cabinetmaking workshop to automotive service and repair station, as well as the interior changes; and

WHEREAS, the Board has determined that the existing automotive service repair establishment will not impair the essential character or future use of development of the area; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under §§ 11-412 and 11-413 of the Zoning Resolution; and

Therefore, it is Resolved that the Board of Standards and Appeals issues a negative declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 11-412 and 11-413 and authorizes, in an R3-2 zoning district, the legalization of the change from the previously approved Use Group 16 cabinet manufacturing use to a UG 16 automotive repair shop

use, as well as minor interior changes related to this change of use, which is contrary to a variance previously granted under the subject calendar number, *on condition* that all work substantially conforms to drawings as they apply to the objection above noted, filed with this application marked "Received May 1, 2006"-(1) sheet and "June 12, 2006"-(1) sheet; and *on further condition*;

THAT the term of the variance shall be limited to ten years from the date of this grant, expiring on June 20, 2015;

THAT there shall be no cars parked on, or obstructing, the sidewalk;

THAT the hours of operation shall be limited to 8:00 a.m. to 6:30 p.m., Monday through Saturday;

THAT fencing and screening shall be provided in accordance with BSA-approved plans;

THAT the premises shall be kept graffiti-free;

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

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

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

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

Adopted by the Board of Standards and Appeals, June 20, 2006.

393-66-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Athena Properties, owner; Ace Dropcloth Co., lessee.

SUBJECT – Application May 2, 2006 – Application for a waiver of the Rules and Procedure and an extension of time to obtain a certificate of occupancy.

PREMISES AFFECTED – 453 East Tremont Avenue, East Tremont Avenue and Washington Avenue, Block 3034, Lot 52, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING **–**

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for decision, hearing closed.

374-71-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Evelyn DiBenedetto, owner; Star Toyota, lessee.

SUBJECT – Application February 12, 2004 – Pursuant to Z.R. §§72-01 and 72-22 for an extension of term of a variance permitting an automobile showroom with open display of new and used cars (UG16) in a C2-2 (R3-2) district. The application also seeks an amendment to permit accessory customer and employee parking in the previously unused vacant portion of the premises.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 6269, Lots 14 and 20, located on the North West corner of Northern Boulevard and the Clearview Expressway, Borough of Queens.

COMMUNITY BOARD#11Q

APPEARANCES –

For Applicant: Adam Rothkrug and Michael Koufakis.

For Opposition: Henry Euler and Kevin Wallace.

THE VOTE TO CLOSE HEARING **–**

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

169-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for ZKZ Associates, LP, owner; TSI West 80 Inc., dba New York Sports Club, lessee.

SUBJECT – Application October 21, 2005 – Pursuant to ZR73-36 for the Extension of Term for a Physical Culture Establishment (New York Sports Club) which expired on May 17, 2004.

PREMISES AFFECTED – 246-248 West 80th Street, southwest corner of West 80th Street and Broadway, Block 1227, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING **–**

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

227-98-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for 41st Street Realty, LLC, owner; Gem Foods of Brooklyn, lessee.

SUBJECT – Application July 19, 2005 – Extension of term of a Special Permit for an easting and drinking establishment with an accessory drive-through facility. The premise is located in a C1-3(R-6) zoning district.

PREMISES AFFECTED – 41-01 4th Avenue, aka 400 41st Street, southeast corner of 4th Avenue and 41st Street, Block 719, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING **–**

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

197-00-BZII
APPLICANT – Rothkrug Rothkrug Weinberg Spector, for SLG Graybar Sublease, LLC., owner; Equinox 44th Street Inc., lessee.
SUBJECT – Application November 2, 2005 – Pursuant to ZR73-11 and ZR73-36 Amendment to a previously granted Physical Culture Establishment (Equinox Fitness) for the increase of 4,527 sq. ft. in additional floor area.
PREMISES AFFECTED – 420 Lexington Avenue, 208'-4" north of East 42nd Street, Block 1280, Lot 60, Borough of Manhattan.
COMMUNITY BOARD #5M
APPEARANCES –
For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for adjourned hearing.

112-01-BZ
APPLICANT – Sheldon Lobel, P.C., for Doris Laufer, owner.
SUBJECT – Application May 15, 2006 - Pursuant to ZR72-01 and 72-21 for an Extension of Time to obtain a Certificate of Occupancy which expired on November 20, 2003 for a Community Use Facility-Use Group 4 (Congregation Noam Emimelech) and an Amendment that seeks to modify the previously approved plans for floor area/FAR – ZR24-11, front wall height-ZR24-521, front yard-ZR24-31, side yard-24-35, lot coverage-ZR24-11 & ZR23-141(b) and off-street parking requirement for dwelling units-ZR25-22.
PREMISES AFFECTED – 102 & 1406 59th Street, Block 5713, Lots 8 &10, Borough of Brooklyn.
COMMUNITY BOARD #12BK
APPEARANCES –
For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for continued hearing.

121-02-BZ
APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Harbor Associates, owner.
SUBJECT – Application November 2, 2005 - Pursuant to ZR 73-11 for the proposed Extension of Term of Special Permit and Extension of Time to obtain a Certificate of Occupancy for a Physical culture Establishment (Harbor Fitness Club) which expired on January 1, 2006 is contrary to ZR32-10.
PREMISES AFFECTED – 9215 4th Avenue, aka 9216 5th Avenue, south of intersection with 92nd Street, Block 6108, Lot 17, Borough of Brooklyn.
COMMUNITY BOARD #10BK
APPEARANCES –
For Applicant: Adam Rothkrug.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

173-05-A
APPLICANT – Stuart Klein for Trevor Fray, owner.
SUBJECT – Application July 28, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.
PREMISES AFFECTED – 85-24 168th Place, west side of 168th Place, 200 feet south of the corner formed by the intersection of 18th Place and Gothic Drive. Block 9851, Lot 47, Borough of Queens.
COMMUNITY BOARD #12Q
APPEARANCES –
For Applicant: Adam Rothkrug.
ACTION OF THE BOARD – Application denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a proposed three-family, four-story building (the "Proposed Building") under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on February 14, 2006 after due notice by publication in *The City Record*, with continued hearings on March 14, 2006, April 11, 2006 and June 6, 2006, and then to decision on June 20, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Babbar; and

WHEREAS, the subject premises is an approximately 5,000 sq. ft. site fronting on 168th Place and was formerly occupied by a two-story residential structure; and

WHEREAS, the record indicates that the owner sought to subdivide the site into two lots, placing the Proposed Building on one of the new lots and an identical building on the other; and

WHEREAS, the premises is currently located within an R4A zoning district, but was formerly located within an R5 zoning district; and

WHEREAS, the zoning change occurred on October 13, 2004 (hereinafter, the "Enactment Date"), when the City

Council voted to adopt a zoning map amendment that affected the subject site; and

WHEREAS, the Proposed Building does not comply with the R4A district requirements, as that district only allows single and two family detached residences; and

WHEREAS, accordingly, the owner, represented by the applicant, made the instant vested rights application; and

WHEREAS, the Board observes that numerous cases establish that a vested rights claim must be predicated on a validly issued permit (see e.g. Jayne Estates v. Raynor, 22 N.Y.2d 417 (1968); Reichenbach v. Windward at Southampton, 364 N.Y.S.2d 283 (1975)); and

WHEREAS, thus, as a threshold matter in determining this appeal, the Board must find that the alleged work and expenditure claimed by the applicant as counting towards a vested rights determination was authorized by a valid permit; and

WHEREAS, the applicant claims that the following permits were obtained prior to the Enactment Date: (1) Demolition Permit No. 401865665, issued on or around May 21, 2004; and (2) Foundation Permit No. 402008723, issued on or around September 20, 2004 (hereinafter, the "Foundation Permit"); and

WHEREAS, the Board notes that the Foundation Permit was obtained pursuant to DOB's professional certification program by the developer's filing professional, and it did not receive a DOB plan examination prior to its issuance; and

WHEREAS, on June 9, 2004, the filing professional also submitted a professionally certified New Building Permit application, under Job No. 401954033 (for the Proposed Building); and

WHEREAS, this application was not approved at that time, and no New Building permit for the Proposed Building under this application was ever obtained, either prior to or after the Enactment Date; and

WHEREAS, additionally, no New Building Permit application was submitted for the adjacent building prior to the Enactment Date; and

WHEREAS, on October 28, 2004, which is after the Enactment Date, the New Building Permit application for the Proposed Building was erroneously professionally certified and approved as compliant with applicable laws by the owner's filing professional; and

WHEREAS, also on October 28, 2004, the owner's filing professional submitted a Subdivision Improvement application, in order to subdivide the site into two separate lots; and

WHEREAS, on October 29, 2004, the filing professional erroneously professional certified and approved the New Building Permit application for the adjacent building, under Job No. 401954024; and

WHEREAS, no permits were obtained under either of the New Building Permit approvals after the Enactment Date; and

WHEREAS, additionally, the Subdivision Improvement application was not approved; instead, the subdivision application was objected to by DOB on November 4, 2005; and

WHEREAS, this led to further DOB action as to the erroneously professionally certified New Building Permit approvals; and

WHEREAS, on January 27, 2005, DOB sent a notice of its intent to revoke the New Building Permit approvals; and

WHEREAS, DOB subsequently revoked the New Building Permit approvals on July 21, 2005; and

WHEREAS, it appears that the applicant applied to the Board only for the right to vest the Proposed Building, and not the adjacent building, presumably because no New Building Permit application for the adjacent building was submitted to DOB prior to the Enactment Date, as noted above; and

WHEREAS, however, DOB states that its determination that there were no valid permits for development on the site applies to both the Proposed Building and the adjacent building; and

WHEREAS, the Board notes again that there was no subdivision approval prior to the Enactment Date, and that there were no New Building permits obtained before the Enactment Date; and

WHEREAS, the Board finds that the New Building Permit approvals erroneously professionally certified after the Enactment Date have no relevance as to the applicant's vested rights application; and

WHEREAS, notwithstanding the irrelevance of the erroneous New Building approvals, the applicant claims that the alleged work and expenditures undertaken by the owner subsequent to the obtainment of the professionally certified Foundation Permit can count towards vesting of the Proposed Building; and

WHEREAS, however, while the instant application was pending, DOB performed an audit of the Foundation Permit and determined that it was also invalid when issued; and

WHEREAS, the DOB audit revealed that the owner's filing professional failed to submit, or otherwise satisfy, the following items prior to professional certification approval of the Foundation Permit application: (1) zoning plan approval for both of the proposed dwellings; (2) Builder's pavement plan; (3) sewer connection approval; (4) boring test report; (5) preliminary architectural survey; (6) PC-1 checklist for all required items; (7) application for required construction equipment permit; and (8) five day notice to owners of adjacent properties and proof thereof; and

WHEREAS, accordingly, DOB sent a notice of its intent to revoke the Foundation Permit within ten days on February 14, 2006, to both the owner and the filing professional; and

WHEREAS, the applicant stated at hearing that this letter was not received by him personally or by the owner (but did not go so far as to say whether the filing professional received the letter); and

WHEREAS, the applicant also stated that regardless of receipt of the letter, no response would be necessary since there is no reason to respond to a DOB action on a permit that he believes is valid; and

WHEREAS, having received no response to the letter, DOB revoked the Foundation Permit approximately two months later on April 10, 2006; and

WHEREAS, the Board notes that the applicant had notice of the DOB audit of the Foundation Permit as early as February 7, 2006, the date of DOB's initial submission on

this application; and

WHEREAS, this February 7 submission clearly states on page 2 that the audit revealed that the Foundation Permit did not comply with several provisions of the Building Code, and references the specific problems; and

WHEREAS, the Board observes that not only did the applicant have notice of the pending audit through this proceeding, but the applicant also had the opportunity to address the findings of the audit, notwithstanding the failure to respond directly to DOB; and

WHEREAS, because of this, the Board does not consider the allegation that the applicant himself or the owner did not receive the notice, even if true, relevant in any respect; and

WHEREAS, in fact, during the hearing process, the applicant availed himself of the opportunity to address certain of the DOB audit objections; and

WHEREAS, as to zoning plan approval, the applicant stated that zoning approval for the Proposed Development is not a requirement of a valid foundation permit; and

WHEREAS, however, DOB cites to Building Code § 27-164, which provides, in sum and substance, that applications for foundation permits shall be accompanied by a lot diagram as provided in Building Code § 27-157; and

WHEREAS, Building Code § 27-157 provides, in sum and substance, that a lot diagram must show compliance with the Zoning Resolution, and indicate the size, height, and location of the proposed construction; and

WHEREAS, the record reveals that no zoning information in the form of a lot diagram was submitted in conjunction with the Foundation Permit application itself; and

WHEREAS, the applicant notes that New Building Permit application No. 401954033, for the Proposed Building, contained zoning information, but did not contest the fact that this application was not professionally certified as approved (i.e. compliant with zoning and other applicable laws) by the owner's filing professional until after the Enactment Date; and

WHEREAS, DOB states that Building Code § 27-157 was not satisfied here because the filing professional who certified the New Building application as approved did so after the Enactment Date, when it no longer complied with the Zoning Resolution; and

WHEREAS, the applicant claims DOB routinely approves foundation permits without any zoning compliance review whatsoever, but no evidence of such approvals was submitted by the applicant; and

WHEREAS, further, while the Vice-Chair of the Board did opine at hearing that the zoning information for a proposed development could be reflected in a partially approved New Building application and that this could be acceptable by DOB for purposes of issuance of a foundation permit, he did not say that zoning approval in some form is unnecessary for issuance of a foundation permit; in fact, the Vice-Chair stated that a plan examiner would need to review the footprint of the proposed building for compliance with zoning; and

WHEREAS, thus, the applicant has not provided any evidence that: (1) the Foundation Permit itself contained the required information, as outlined above; or (2) that the New Building Permit application was approved as compliant with zoning prior to the Enactment Date; and

WHEREAS, the Board agrees with DOB that merely filing zoning information at DOB in a separate application, which was not even partially approved prior to the Enactment Date, is not the equivalent of compliance with the above-stated Building Code requirements for the Foundation Permit; and

WHEREAS, as to the submission of proof of the required five-day notice to affected property owners of foundation work, also cited as a deficiency of the Foundation Permit in the DOB audit, the applicant stated that the owner submitted this proof to DOB, and that he would submit this into the record; and

WHEREAS, however, no submission of this proof was received by the Board; and

WHEREAS, thus, leaving aside the deficiency of zoning plan approval, there were seven other cited deficiencies raised by DOB in the audit that provide a basis for revocation of the professionally certified Foundation Permit; and

WHEREAS, in sum, having had a reasonable opportunity during the course of this proceeding to respond to the DOB audit of the Foundation Permit, the Board finds that the applicant offered no persuasive response to the cited deficiencies; and

WHEREAS, based upon the above, the Board finds that DOB's revocation of the Foundation Permit as invalid upon issuance was a rational and supportable exercise of its authority as the City agency charged with review of such permit applications and enforcement of the Zoning Resolution and Building Code; and

WHEREAS, the Board notes that the applicant conceded in his July 6, 2006 submission that a property owner must proceed under a validly issued permit in order for rights to vest; in the instant case, DOB has determined, and the Board had confirmed, that there was no valid permit of any type under which vesting could be obtained; and

WHEREAS, notwithstanding this concession, when confronted with the revocation of the Foundation Permit, the applicant argued at the final hearing on this application that DOB has no authority to revoke a permit, even if invalid on its face, retroactively to the date of its issuance; and

WHEREAS, the applicant appears to be arguing that for vesting purposes, a permit is valid, and therefore presumably compliant with zoning and other applicable laws, up to the point at which DOB reviews the permit and discovers that in fact it is not valid because it does not comply with zoning or some other law; and

WHEREAS, the Board observes that if this argument was accepted, compliance with zoning and other legal requirements at the time of permit issuance would be rendered meaningless; and

WHEREAS, vested rights could be obtained under any permit obtained through professional certification, whether or not compliant with applicable laws; and

WHEREAS, as a consequence, developers and property owners would have an incentive to always professionally certify permit applications without first ascertaining whether the application and related plans complied with applicable laws; and

WHEREAS, the Board disagrees that it should modify, as suggested by the applicant, the well-established principle that a finding of common law vested rights must be predicated on a valid permit, especially when such modification is illogical, unprecedented, and results in an undesirable outcome; and

WHEREAS, nonetheless, the applicant claims that case law support this argument, and cited to certain cases at the last hearing, as well as in an unscheduled submission dated June 11, 2006; and

WHEREAS, one of the cited cases is Pantelidis v. Board of Standards and Appeals, 10 Misc. 3d 1077, 2005 WL 3722913 (2005) (hereinafter, "Pantelidis I"), a Supreme Court decision reviewing a Board action (the Board notes that this decision is currently being appealed); and

WHEREAS, this case arose not out of a vested rights determination, but out of a rejected variance application; and

WHEREAS, the Pantelidis I court held, in part, that for purposes of avoiding a finding that the hardship was self-created in the context of a variance application, a property owner may properly claim that there were expenditures made in good faith reliance upon a permit later ruled void on its face by the Board; and

WHEREAS, this decision does not address whether vested rights can be obtained based upon such good faith reliance; and

WHEREAS, in fact, the Board recognizes that the good faith reliance doctrine, which allows a variance to be predicated, in part, on reliance on an invalid permit, is an entirely separate construct from the common law vested rights doctrine, which requires a valid permit (see Reichenbach, 364 N.Y.S.2d at 294); and

WHEREAS, the applicant makes much of the fact that the Pantelidis I court uses the phrase "then-valid permit" liberally throughout the opinion, and that this phrase appeared to have been lifted from an earlier opinion of the First Department on a procedural matter related to the Pantelidis litigation, Pantelidis v. Board of Standards and Appeals, 13 AD3d 242 (1st Dep't, 2004) (hereinafter, "Pantelidis II"); and

WHEREAS, though not entirely clear from the applicant's oral or written statements, the argument appears to be that these two courts considered the permit revoked by the Board as contrary to zoning to be valid up until the point of revocation; and

WHEREAS, the Board is unconvinced that the Pantelidis I court was explicitly holding that permits are deemed to be valid until the time that either DOB or the Board determines that they were invalid when issued; and

WHEREAS, there is, in fact, nothing in the opinion to suggest that the Pantelidis I court was even reaching this question; the use of the phrase "then-valid permit" appears to be nothing more than an unfortunate choice of descriptive words; and

WHEREAS, in any event, as discussed above, the Board finds this argument untenable: if an approval and permit does not comply with applicable laws when issued, it is void on its face, regardless of when DOB or this Board issues a determination as to its validity; and

WHEREAS, accordingly, the Supreme Court opinion in Pantelidis I does not support the applicant's argument; and

WHEREAS, likewise, the Pantelidis II decision addresses the Supreme Court's ability to hold a good faith reliance hearing as to the variance application where the Board did not; it does not establish that DOB, upon audit of a permit, is prohibited from revoking a permit or declaring it invalid when issued; and

WHEREAS, furthermore, the cases that the two Pantelidis courts cited when discussing the good-faith reliance doctrine do not use the phrase "then-valid", nor do they hold that a finding of common law vesting may be obtained on a invalid permit; and

WHEREAS, the Board observes that in the seminal good faith reliance case, Jayne Estates, the Court of Appeals specifically referred to the permit at issue in that litigation as "invalid", and noted that the good-faith reliance was on an "invalid permit", not a "then-valid" permit; and

WHEREAS, finally, the Board notes that its revocation of the permit at issue in the Pantelidis litigation was upheld by the Supreme Court in an Article 78 proceeding that occurred prior to the Pantelidis I and II decisions; and

WHEREAS, specifically, in Pantelidis v. BSA, Index No. 110532/01 (filed January 10, 2002) (hereinafter, Pantelidis III), the court, when referring to the work proposed under the permit, stated that DOB had "impermissibly allowed" such construction and characterized DOB's approval of the work "misplaced" (see Pantelidis III at 16); and

WHEREAS, the Pantelidis III court also noted that the construction under the permit was illegal, and chastised the party that obtained the permit for its attempt to "circumvent to the applicable ZR roadblocks and gain DOB approval" for the proposed construction (see Pantelidis III at 17); and

WHEREAS, the Board reads the Pantelidis III decision as affirmation that a permit that is void on its face because it fails to comply with the Zoning Resolution and/or Building Code is not valid for any purpose at any time; and

WHEREAS, in conclusion, after reviewing the three cited Pantelidis decisions, the Board finds that none of them support the applicant's argument; and

WHEREAS, the June 11 submission also cites to Lefrak Forest Hills Corp. v. Galvin, 338 N.Y.S.2d 932 (1st Dep't 1972), and states that the Pantelidis I court applied the holding of this case in support of a conclusion that it was applicable to both zoning and administrative appeals cases; and

WHEREAS, the Board notes, however, that Lefrak does not appear to be applied or even cited in Pantelidis I; and

WHEREAS, unfortunately, the applicant's argument as to this point was not developed further in the June 11 submission; and

WHEREAS, in any event, the Board is aware of the Lefrak decision, and does not consider it relevant; there is no suggestion in the opinion that common law vested rights may be obtained without a valid permit; and

WHEREAS, the other cases cited by the applicant in the

June 11 submission concern the substantial expenditures and construction aspect of the common law vested rights doctrine; and

WHEREAS, because none of the alleged expenditure and work relate to valid permits, the Board finds that consideration of the applicant's contentions as to the degree of expenditure and work needed to vest under the common law doctrine of vested rights is unnecessary; and

WHEREAS, based upon its review of the record and the considerations set forth above, the Board concludes as follows: (1) binding case law holds that vested rights can not accrue when the work was performed under an invalid permit; (2) DOB correctly determined that the Foundation Permit was invalid when obtained by the owner's filing professional through professional certification; and (3) since none of the purported expenditure was incurred or work was performed pursuant to a valid permit, the applicant has no vested right to continue construction on the Proposed Building, or on the adjacent building, since the Foundation Permit was for both.

Therefore it is Resolved that the subject appeal, requesting a Board determination that the owner of the subject premises has obtained the right to complete a proposed three-family, four-story building under the common law doctrine of vested rights, is hereby denied.

Adopted by the Board of Standards and Appeals, June 20, 2006.

360-05-BZY

APPLICANT – Greenberg & Traurig, LLP for 400 15th Street, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 400 15th Street, Brooklyn, south side of 15th Street, 205' feet 5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deidre Carson.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative: 0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the foundation of a five-story residential building; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 368-05-A, decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with continued hearings on May 2, 2006 and May 16, 2006, and then to decision on June 20, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 7, Concerned Citizens of Greenwood Heights, and South Slope Community Group, appeared in opposition to the application; and

WHEREAS, certain elected officials, including State Senator Velmanette Montgomery, State Assemblyman James Brennan and Public Advocate Betsy Gotbaum, also provided testimony in opposition to the application; and

WHEREAS, the above-mentioned elected officials, community groups, and neighbors (hereinafter, collectively referred to as the "opposition") opposed the granting of any relief to the applicant, for reasons discussed below; and

WHEREAS, the subject premises is located on the south side of 15th Street, 205'-5" west of the intersection of Eighth Avenue and 15th Street; and

WHEREAS, the subject lot is approximately 75 ft. wide by 100 ft. deep, with a total lot area of 7,656 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a five-story residential building with 16,743 sq. ft. of residential floor area (2.2 FAR), with a full cellar, and a first-floor parking garage (the "Building"); and

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

WHEREAS, the Building complies with the former R6 zoning bulk parameters; specifically, building height (55 ft. was permitted), setback (a setback was required at 45 ft.) and floor area (2.2 FAR was the maximum permitted); and

WHEREAS, however, on November 16, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R6B, as noted above; and

WHEREAS, because the site is now within an R6B district, the proposed development would not comply with such

parameters; and

WHEREAS, on July 8, 2005, the Department of Buildings issued a New Building permit (New Building Permit No. 301748777; hereinafter the "NB Permit") for the Building; and

WHEREAS, the validity of the NB Permit when issued has not been questioned and is not at issue in this appeal; and

WHEREAS, because the Building violated the provisions of the new R6B zoning district and work on the foundation was not completed as of the Enactment Date, the NB Permit lapsed by operation of law; and

WHEREAS, additionally, the Department of Buildings issued a stop work order on November 22, 2005 for the NB Permit; and

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

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

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, based upon its review of the evidence, the Board has determined that excavation was not completed; and

WHEREAS, the Board notes that due to litigation with the neighbor at 396 15th Street, the court issued a temporary restraining order on August 5, 2005, which halted all non-remedial excavation and construction within 15 ft. of the neighboring property; and

WHEREAS, based upon the record before it, the Board is unable to conclude that excavation for the proposed development was complete or would have been completed had there not been a stop work order; and

WHEREAS, as to substantial progress on the foundation, the Board has only considered work completed as of the Enactment Date and excluded all remedial work ordered by DOB since that date; and

WHEREAS, the Board observes that while 39 percent of the total foundation costs have been expended for helical piles, shoring, and steel plates, a considerably smaller percentage of actual physical foundation work was completed; and

WHEREAS, specifically, the applicant represents that only 3.0 percent, or 2.5 tons out of a total of 73 tons, of rebar have been installed, and only 6 percent, or 58.5 cubic yards out of a total of 757 cubic yards, of concrete has been poured; and

WHEREAS, additionally, the Board notes that substantial progress has not been made on other primary elements of the foundation, including the reinforcement and concrete pouring; and

WHEREAS, again, based upon the record before it, the Board determines that substantial progress on the foundation was not completed; and

WHEREAS, accordingly, because excavation was not complete and substantial progress was not made on the foundation, the applicant is not entitled to relief pursuant to ZR § 11-331; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application, which requests a determination that the applicant has obtained a vested right under the common law to complete construction under the NB Permit; and

WHEREAS, accordingly, although the Board, through this resolution, denies the owner of the site the six-month extension for completion of construction that is allowed under ZR § 11-331, this denial is not an impediment to the reinstatement of the permit made by the Board under BSA Cal. No. 368-05-A.

Therefore it is Resolved that this application to renew DOB Permit No. 301748777 pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, June 20, 2006.

368-05-A

APPLICANT – Greenberg & Traurig, LLP for 400 15th Street, LLC, owner.

SUBJECT – Application December 22, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 400 15th Street, south side of 15th Street, 205'-5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

For Applicant: Deidre Carson.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a proposed development at the referenced premises; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 360-05-BZY (the "BZY Application"), decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-331; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with continued hearings on May 2, 2006 and May 16, 2006, and then to decision on June 20, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 7, the Concerned Citizens of Greenwood Heights, and the South Park Slope Community Group appeared in opposition to the application; and

WHEREAS, certain elected officials, including State Senator Velmanette Montgomery, State Assemblyman James Brennan, and Public Advocate Betsy Gotbaum provided testimony in opposition to the application; and

WHEREAS, the above-mentioned elected officials, community groups, and neighbors (hereinafter, collectively referred to as the "opposition") opposed the granting of any relief to the applicant, for reasons discussed below; and

WHEREAS, the applicant states that the subject premises fronts on the south side of 15th Street between 7th and 8th Avenues, on a 7,656 sq. ft. lot, with frontage of approximately 75 ft. and a depth of 100 ft.; and

WHEREAS, the applicant proposes to develop the site with a five-story plus cellar residential building, with 7,035 sq. ft. of floor area (the "Building"); and

WHEREAS, the subject premises was formerly located within an R6 zoning district; and

WHEREAS, on November 16, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R6B; and

WHEREAS, the Building complied with the former R6 zoning district parameters as to floor area, setback and height; and

WHEREAS, however, because the site is now within an R6B district, the proposed development would not comply with these bulk parameters; and

WHEREAS, the applicant notes that the construction on the site was often constrained; and

WHEREAS, the applicant provided the following chronology of development on the site: (1) excavation commenced in May 2005; (2) during excavation, the owner discovered that the foundations of adjacent buildings were unstable and that soil conditions were worse than anticipated; (3) permits for construction were issued on July 8, 2005; (4) the discovered foundation and soil problems resulted in the need to redesign the foundation for the Building; (5) the redesign included work that had to be performed on adjacent buildings, but one adjacent building owner did not consent; (6) this adjacent owner filed suit and the court issued a restraining order on August 5, 2005, preventing construction or excavation within 25 ft. of the adjacent owner's building; and (7) revised foundation plans under the construction permit, which addressed the soil conditions, were approved by DOB on October 4, 2005; and

WHEREAS, the applicant claims that construction was thus limited to certain portions of the site and that further delays arose out of the need to redesign the foundation; and

WHEREAS, the applicant contends that the owner was unable to ascertain the extent of soil and adjacent property conditions prior to commencement of construction; and

WHEREAS, the Board agrees that such construction difficulties are normal within the City; and

WHEREAS, however, the Board notes that the owner could have simply started construction sooner to avoid the impact that these problems may have had on the course of construction; and

WHEREAS, the Board finds that ensuring that work is done appropriately based on an assessment of the conditions on the site is a responsibility of the developer, even where it is difficult to assess how construction methods might need to be adjusted without first commencing construction; and

WHEREAS, thus, the Board bases its decision herein on the amount of work performed and expenditure made as of the Enactment Date, and is not granting any special exceptions in its analysis because the owner experienced construction difficulties; and

WHEREAS, the Board also notes in passing that work was performed at the site after the Enactment Date, but finds that the applicant conclusively established that this work was done with the express authorization of DOB, in furtherance of making the site safe; and

WHEREAS, notwithstanding the limited amount of time that construction was actually permitted, the applicant requests that the Board find that based upon the serious economic loss the owner would face if compelled to comply with the new zoning, the amount of work performed, and the amount of financial expenditures, including irrevocable commitments, the owner has a vested right to continue construction and finish construction of the Building; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

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

WHEREAS, the applicant states that on July 8, 2005, a New Building permit (Permit No. 301748777; hereinafter, the "NB Permit") for the Building was issued by DOB; and

WHEREAS, the Board notes that the validity of the NB Permit was not questioned by the opposition or DOB; thus, it is not an issue in the instant application; and

WHEREAS, assuming that a valid permit had been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where serious loss will result if the owner is denied the right to proceed under the prior zoning, and the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of a zoning change; 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 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 the serious loss finding, the applicant contends that the loss of floor area that would result if vesting was not permitted is significant; and

WHEREAS, the applicant notes that the permissible Floor Area Ratio (FAR) would decrease from 2.2 FAR to 2.0 FAR, but more importantly, because of the requirement for a setback at 40 ft., and the maximum height of 50 ft., the rezoning would require the owner to eliminate one full floor of the Building as proposed, and eliminate two units on the fourth floor; and

WHEREAS, the applicant states that this would result in an approximately one-third reduction in sellable floor area; and

WHEREAS, during the course of the public hearing process, the Board asked for further amplification of the owner's projected serious loss; and

WHEREAS, the Board suggested that design changes to the Building, such as a reduction in the floor to ceiling heights or a dropping of the height of the ground floor (proposed at 22.5 ft. from floor to ceiling), could avoid the projected loss of floor area; and

WHEREAS, the applicant responded by noting that a reduction in the floor to ceiling heights throughout the Building would decrease the desirability and marketability of the units, and therefore overall projected revenue would still be diminished; and

WHEREAS, further, in a submission dated June 6, 2006, the applicant stated that the first floor was designed with the above-mentioned floor to ceiling height, and was raised 4'-2" above grade level, in order to provide more marketable ground floor residential space, with windows that would look out above eye-level on the sidewalk; and

WHEREAS, further, this design allowed for a portion of the cellar to be above grade, which permits cellar windows; and

WHEREAS, the applicant states that if the ground floor were dropped 4.5 ft. into the cellar space in order to reduce the height of the building, the double-height area of the first floor would be reduced so that windows would be lowered to pedestrian eye-level, and the cellar height would be reduced so that no windows could be provided; and

WHEREAS, the applicant submitted a statement from a real estate broker, opining that such a redesign would diminish revenue from the ground floor unit from 600 to 450 dollars per sq. ft.; and

WHEREAS, the applicant also provided a detailed chart in the June 6 submission, outlining what hard and soft costs already incurred would be impossible to recoup if the Building had to comply with the new R6 zoning; and

WHEREAS, this chart sets forth both the dollar amount and the justification for the conclusion that the costs would be wasted; and

WHEREAS, the applicant states that $577,492 of costs would be wasted if the Building is required to comply with the new zoning; and

WHEREAS, the Board agrees that a diminution in the value of units within the building because of the need to redesign coupled with $577,492 of wasted costs constitutes a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, as a point of clarification, the Board notes that the instant application is not one for a variance based on hardship, but is rather an application for a finding that the owner has obtained a vested right to continue construction; and

WHEREAS, the vested rights doctrine is rooted in the 14th Amendment of the Constitution of the United States, and its application to construction in New York State has been guided and shaped by the courts; and

WHEREAS, unlike a variance, no showing of uniqueness is required, nor is the self-created hardship doctrine applicable; and

WHEREAS, further, the serious loss standard is not the same as the unnecessary hardship standard: the applicant does not have to show that no reasonable return could be gained from a development that complies with the new zoning; and

WHEREAS, a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning, but in the instant application, the determination was also grounded on the applicant's discussion of the diminution in income that would occur if the FAR, height and setback limitations of the new zoning were imposed; and

WHEREAS, as to substantial construction, the applicant states that the owner has completed demolition, land clearing and excavation; and

WHEREAS, the applicant also states that the owner has installed 164 out of the 200 required helical pile for underpinning, all of the required shoring, and one of the two necessary support walls for adjacent buildings; and

WHEREAS, in support of this statement, the applicant has submitted pictures, invoices for construction materials and labors, and plans reflecting the degree of underpinning

and wall work completed; and

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

WHEREAS, the Board's conclusion is based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work discussed by New York State courts; and

WHEREAS, specifically, the Board has reviewed the cases cited in the applicant's December 21, 2005 submission, as well as other cases of which it is aware through its review of numerous vested rights applications, and agrees that the degree of work completed by the owner in the instant case is comparable to the degree of work cited by the courts in favor of a positive vesting determination; and

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

WHEREAS, the applicant states that the owner has already expended or become obligated for the expenditure of $3.45 million of a $7 million project; and

WHEREAS, however, the Board notes that these totals include the purchase price; and

WHEREAS, the applicant states that this cost may properly be included in an analysis of expenditure; and

WHEREAS, the Board agrees that there is no impediment to consideration of such a cost, but also notes that it is not required; and

WHEREAS, the Board has not analyzed purchase price in its past consideration of vested rights cases, and declines to do so here; and

WHEREAS, while it is reasonable to conclude that a purchase price is based upon the zoning in effect at the time of the purchase, the Board notes that this is not always the case, and further observes that not all transactions are recent or arms-length; and

WHEREAS, thus, the Board finds that the relevance of this cost may be difficult to ascertain in many circumstances; and

WHEREAS, the Board concludes that it better to assess expenditure in light of total development costs absent the purchase price; and

WHEREAS, here, the stated acquisition price is $2.2 million; subtracting this amount from both the expenditure total and the development costs means that the owner expended or committed approximately $1.25 million out of $4.8 million (or approximately 26 percent); and

WHEREAS, the applicant states that other expenses relate to excavation, foundation work, architectural and engineering fees, insurance and filing fees, taxes, surveying costs, and a small amount of miscellaneous costs, among other items; and

WHEREAS, furthermore, as to actual construction costs related to foundation construction, the Board observes that the applicant has spent approximately $381,000 out of the expected total cost of $780,000, as illustrated in a chart provided in the applicant's initial submission; and

WHEREAS, as proof of the expenditures, the applicant has submitted an affidavit from the owner, bank statements, invoices for excavation and foundation work, checks and invoices for the other professional work, and proof of payment for the other items; and

WHEREAS, the Board considers the amount of expenditure and irrevocable commitments significant, both in of itself for a project of this size, and when compared against the development costs (minus the purchase price); 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 the prior zoning; and

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

WHEREAS, the opposition expressed concerns about various aspects of this application; and

WHEREAS, specifically, the opposition contended: (1) that the foundation was not complete; (2) that the percentage of foundation work was not sufficient to sustain a positive vesting determination; (3) that work was done illegally after-hours or in an unsafe manner; (4) that there were DOB violations issued that resulted in stop-work orders; and (5) that the purchase price was excessive and would skew the analysis if folded in; and

WHEREAS, the Board notes that there is no requirement under the common law of vested rights that the foundation for the development under consideration be completed; and

WHEREAS, as to the progress on foundations, the Board reiterates that the degree of construction at the site was substantial enough to meet the guideposts established by case law for such a finding; and

WHEREAS, as to impermissible work, the Board observes that no evidence of impermissible after-hours or weekend work was submitted into the record; and

WHEREAS, DOB's Building Information System records for the subject premises indicates that only one of the numerous complaints lodged with DOB from May 2005 (commencement of excavation) to November 16, 2005 (the date of the rezoning) was for after-hours work, and that this complaint was inspected, no work was observed, and no violation was issued; and

WHEREAS, as to the stop-work order contention, the Board notes that the only stop-work order issued by DOB was issued after the Enactment Date, because the zoning had changed; and

WHEREAS, finally, any concern that the owner overpaid for the site is rendered moot by the Board's removal of acquisition costs from the considered expenditures; and

WHEREAS, the Board understands that the community

and the elected officials worked diligently on the Park Slope South rezoning and that the Building does not comply with the new R6B zoning parameters; and

WHEREAS, however, the applicant has met the test for a common law vested rights determination, and the Board has determined that the equities in this case, given the established serious loss, and the degree of work performed and expenditures made, weigh in the favor of the owner; and

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 301748777, 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 four years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 20, 2006.

362-05-BZY

APPLICANT – Greenberg & Traurig, LLP for 6 on 6th LLC, owner.

SUBJECT – Application December 16, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a six story residential building under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 639 Sixth Avenue, Brooklyn, east side of Sixth Avenue 128'2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative: 0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

THE RESOLUTION –

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

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 367-05-A, decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with continued hearings on May 2, 2006, May 16, 2006, and then to decision on June 20, 2006; and

WHEREAS, the site was inspected by a committee of the Board consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, certain neighbors and community groups, including Community Board 7, Concerned Citizens of Greenwood Heights, and South Slope Community Group, appeared in opposition to the application; and

WHEREAS, certain elected officials, including City Council Member Sara Gonzalez, State Senator Velmanette Montgomery, State Assemblyman James Brennan, and Public Advocate Betsy Gotbaum, provided testimony in opposition to the application; and

WHEREAS, the above-mentioned elected officials, community groups, and neighbors (hereinafter, collectively referred to as the "opposition") opposed the granting of any relief to the applicant, for reasons discussed below; and

WHEREAS, the applicant states that the subject premises fronts on Sixth Avenue between 19th Street and the cut for the Prospect Expressway, on a 2,380 sq. ft. lot, with frontage of 34 ft. and a depth of 70 ft.; and

WHEREAS, the applicant proposes to develop the site with a six-story residential building, with 7,035 sq. ft. of floor area (the "Building"); and

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

WHEREAS, the Building complies with the former R6 zoning district parameters; specifically, building height (55 ft. was permitted), setback (a setback was required at 45 ft.) and floor area (2.2 FAR was the maximum permitted); and

WHEREAS, however, on November 16, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R6B; and

WHEREAS, because the site is now within an R6B district, the proposed development would not comply with such parameters; and

WHEREAS, the applicant states that on September 9, 2005, a New Building permit (Permit No. 301964765; hereinafter, the "NB Permit") for the proposed development was issued by the Department of Buildings; and

WHEREAS, the Board notes that DOB conducted an audit of the NB Permit, and concluded, after reviewing a response to the audit from the applicant, that it should not be revoked; and

WHEREAS, because the Building violated the provisions of the R6B zoning district and work on foundations was not completed at the Enactment Date, the NB Permit lapsed by operation of law; and

WHEREAS, the applicant now applies to the Board to reinstate the NB Permit pursuant to Z.R. § 11-331; and

WHEREAS, Z.R. § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to a person

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

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, as to the excavation, the applicant asserts that excavation was not completed due to the need to underpin the adjacent building and a subsequent stop work order from DOB; and

WHEREAS, additionally the applicant asserts that excavation could have been completed between when the permit was issued and the October 26, 2005 stop work order, but was practically and legally precluded from doing a full excavation due to: (1) the need to maintain a ramp in the site for further soil removal, and (2) the Owner's obligation to continue to maintain support for the adjacent property while underpinning progressed; and

WHEREAS, the Board is not persuaded by the assertion that the need to underpin the adjacent building and the stop work orders are extraordinary conditions that prevented the completion of the excavation; and

WHEREAS, the Board notes that the need to underpin adjacent buildings is common in such construction and excavation can be completed after the circumstances leading to interruption of work are remedied; and

WHEREAS, further, based upon its review of photographs submitted by the applicant, the Board observes that a significant portion of the site remains un-excavated; and

WHEREAS, accordingly, the Board finds that excavation for the proposed development was not complete; and

WHEREAS, as to substantial progress on the foundation, the applicant represents that 21 percent of the concrete has been poured as part of the underpinning, which is 60 percent complete, but that no foundation walls or shoring have been completed and no gunnite has been installed; and

WHEREAS, the applicant states further that the foundation work amounts to $36,000, or 13 percent, of the $269,000 total foundation costs; and

WHEREAS, in support of these statements, the applicant has submitted photographs and charts indicating the amount of work completed; and

WHEREAS, after review of the evidence, the Board determines that substantial progress on the foundation was not completed; and

WHEREAS, accordingly, because excavation was not complete and substantial progress was not made on the foundation, the applicant is not entitled to relief under Z.R. § 11-331; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application, which requests a determination that the applicant has obtained a vested right under the common law to complete construction under the New Building permit; and

WHEREAS, accordingly, although the Board, through this resolution, denies the owner of the site the six-month extension for completion of construction that is allowed under Z.R. § 11-331, this denial is not an impediment to the reinstatement of the permit made by the Board under BSA Cal. No. 367-05-A.

Therefore it is Resolved that this application to renew DOB Permit No. 301964765 pursuant to Z.R. § 11-331 is denied.

Adopted by the Board of Standards and Appeals, June 20, 2006.

367-05-A

APPLICANT – Greenberg & Traurig, LLP for 6 on 6th Avenue, LLC, owner.

SUBJECT – Application December 22, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 639 Sixth Avenue, east side of Sixth Avenue, 128'-2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a proposed development at the referenced premises; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 362-05-BZY (the "BZY Application"), decided the date hereof, which is a

request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to Z.R. § 11-331; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with continued hearings on May 2, 2006 and May 16, 2006, and then to decision on June 20, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Commissioner Collins; and

WHEREAS, certain neighbors and community groups, including Community Board 7, Concerned Citizens of Greenwood Heights, and South Slope Community Group appeared in opposition to the application; and

WHEREAS, certain elected officials, including City Council Member Sara Gonzalez, State Senator Velmanette Montgomery, State Assemblyman James Brennan, and Public Advocate Betsy Gotbaum provided testimony in opposition to the application; and

WHEREAS, the above-mentioned elected officials, community groups, and neighbors (hereinafter, collectively referred to as the "opposition") opposed the granting of any relief to the applicant, for reasons discussed below; and

WHEREAS, the applicant states that the subject premises fronts on Sixth Avenue between 19th Street and the cut for the Prospect Expressway, on a 2,380 sq. ft. lot, with frontage of 34 ft. and a depth of 70 ft.; and

WHEREAS, the applicant proposes to develop the site with a six-story residential building, with 7,035 sq. ft. of floor area (the "Building"); and

WHEREAS, the subject premises was formerly located within an R6 zoning district; and

WHEREAS, on November 16, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R6B; and

WHEREAS, the Building complied with the former R6 zoning district parameters as to floor area, setback and height; and

WHEREAS, however, because the site is now within an R6B district, the proposed development would not comply with these bulk parameters; and

WHEREAS, the applicant notes that the construction on the site was often constrained by DOB action; and

WHEREAS, the applicant provided the following chronology of development on the site: (1) demolition occurred in July 2005; (2) DOB issued a violation with a stop-work order on July 27 for failure to post a permit and for excavation without a permit; (3) the building permit for construction of the Building was issued on August 24; (4) the stop work order was lifted, because there was no illegal excavation; instead, demolition had revealed a pre-existing cellar; (5) on September 20, 2005, DOB issued another stop-work order, due to the fact that the professional retained by the owner to perform controlled inspections resigned from the job; (6) the September 20 stop-work order was lifted when a new professional was retained; (7) actual excavation commenced on October 9; (8) underpinning concrete was poured on October 23; and (8) a third stop-work order was issued by DOB on October 26, for failure to provide protection at the sides of excavation; and

WHEREAS, thus, the applicant concludes there was a small window of time where actual excavation and foundation work was performed; and

WHEREAS, the applicant contends that the owner was unable to ascertain the extent of necessary underpinning prior to commencing demolition and excavation; and

WHEREAS, the Board agrees that such construction difficulties are normal with the City; and

WHEREAS, however, the Board notes that the applicant does not allege that DOB acted improperly; thus, the Board does not impute any significance to the fact that the developer often could not work on the site due to DOB's enforcement actions; and

WHEREAS, ensuring that work proceeds in a manner that will not cause DOB to stop work is a responsibility of the developer, even where it is difficult to assess how construction methods might need to be adjusted without first commencing construction; and

WHEREAS, thus, the Board bases its decision herein on the amount of work performed and expenditure made as of the Enactment Date, and is not granting any special exceptions in its analysis because the owner experienced construction difficulties; and

WHEREAS, notwithstanding the limited amount of time that construction was actually permitted, the applicant requests that the Board find that based upon the serious economic loss the owner would face if compelled to comply with the new zoning, the amount of work performed, and the amount of financial expenditures, including irrevocable commitments, the owner has a vested right to continue construction and finish construction of the Building; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

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

WHEREAS, the applicant states that on August 24, 2005, a New Building permit (Permit No. 301970758; hereinafter, the "NB Permit") for the Building was issued by DOB; and

WHEREAS, the Board notes that DOB conducted an audit of the NB Permit, and concluded, after reviewing a response to the audit from the applicant, that it should not be revoked; and

WHEREAS, DOB then sent a rescission of its intent to revoke the NB Permit to the owner and the filing professional on June 1, 2006, stating that the revocation was not necessary; and

WHEREAS, assuming that a valid permit had been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where serious loss will result if the owner is denied the

right to proceed under the prior zoning, and the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of a zoning change; 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 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 the serious loss that the owner would incur if required to construct the building under the current zoning, the applicant states that the loss of floor area that would result if vesting was not permitted (from a Floor Area Ratio of 3.0 to 2.0) would lead to the elimination of the Building's top two floors and the units thereon, which are the most profitable in terms of sales price; and

WHEREAS, in support of this representation, the applicant submitted an offering plan schedule, which shows the total initial offering prices for the proposed units, and the individual prices of the top floor units; and

WHEREAS, the applicant also submitted an affidavit that establishes that the total construction costs needed to complete the Building exceed the projected revenue from a 2.0 FAR building; and

WHEREAS, at the request of the Board, the applicant provided further detail of the serious loss in a submission dated June 7, 2006; and

WHEREAS, in the June 7 submission, the applicant states that a reduction of 1.0 FAR would result in a loss of 1,856 sq. ft. of sellable floor area, and a loss in revenue of $1.33 million (based on the offering plan); and

WHEREAS, the applicant further states that while hard costs would be reduced by approximately $420,000, soft costs would increase by approximately $207,000 because the Building would have to be redesigned; and

WHEREAS, the applicant concludes that a 2.0 FAR building would result in a loss; and

WHEREAS, the Board agrees that a one-third reduction in salable floor area will result in a serious economic loss, and that the supplemental data submitted by the applicant supports this conclusion; and

WHEREAS, as a point of clarification, the Board notes that the instant application is not one for a variance based on hardship, but is rather an application for a finding that the owner has obtained a vested right to continue construction; and

WHEREAS, the vested rights doctrine is rooted in the 14th Amendment of the Constitution of the United States, and its application to construction in New York State has been guided and shaped by the courts; and

WHEREAS, unlike a variance, no showing of uniqueness is required, nor is the self-created hardship doctrine applicable; and

WHEREAS, further, the serious loss standard is not the same as the unnecessary hardship standard: the applicant does not have to show that no reasonable return could be gained from a development that complies with the new zoning; and

WHEREAS, a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning, but in the instant application, the determination was also grounded on the applicant's discussion of the diminution in income that would occur if the FAR, height and setback limitations of the new zoning were imposed; and

WHEREAS, as to substantial construction, the applicant states that the owner has completed demolition, land clearing and excavation; and

WHEREAS, the applicant also states that underpinning has been constructed around 50 percent of the site, and 90 cubic yards of concrete (or 21 percent of the concrete required for the underpinning) has been poured; and

WHEREAS, in support of this statement, the applicant has submitted pictures, invoices for concrete pours, and plans reflecting the degree of underpinning completed; and

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

WHEREAS, the Board's conclusion is based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work discussed by New York State courts; and

WHEREAS, specifically, the Board has reviewed the cases cited in the applicant's December 21, 2005 submission, as well as other cases of which it is aware through its review of numerous vested rights applications, and agrees that the degree of work completed by the owner in the instant case is comparable to, or in excess of, the degree of work cited by the courts in favor of a positive vesting determination; and

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

WHEREAS, the applicant states that the owner has already expended or become obligated for the expenditure of $1.47 million of a $3.24 million project; and

WHEREAS, however, the Board notes that these totals include the purchase price; and

WHEREAS, the applicant states that the purchase price may properly be included in an analysis of expenditure, and, in its May 10, 2006 submission, cites to cases where courts permitted such costs to be part of the analysis; and

WHEREAS, the Board agrees that there is no impediment to consideration of such a cost, but also notes that it is not

required; and

WHEREAS, the Board has not analyzed purchase price in its past consideration of vested rights cases, and declines to do so here; and

WHEREAS, while it is reasonable to conclude that a purchase price is based upon the zoning in effect at the time of the purchase, the Board notes that this is not always the case, and further observes that not all transactions are recent or arms-length; and

WHEREAS, thus, the Board finds that the relevance of purchase price may be difficult to ascertain in many circumstances; and

WHEREAS, the Board concludes that it better to assess expenditure in light of total development costs absent purchase price; and

WHEREAS, here, the stated acquisition price is $800,000; subtracting this amount from both the expenditure total and the development costs means that the owner expended approximately $470,000 out of $2.44 million (or approximately 19 percent); and

WHEREAS, the applicant states that other expenses relate to excavation, foundation work, architectural and engineering fees, insurance and filing fees, taxes, surveying costs, and a small amount of miscellaneous costs; and

WHEREAS, as proof of the expenditures, the applicant has submitted an affidavit from the owner, bank statements, invoices for excavation and foundation work, checks and invoices for the other professional work, and proof of payment for the other items; and

WHEREAS, the Board considers the amount of expenditure significant, both in of itself for a project of this size, and when compared against the development costs 9minus the purchase price); and

WHEREAS, 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 the prior zoning; and

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

WHEREAS, the opposition expressed concerns about various aspects of this application; and

WHEREAS, specifically, the opposition contended: (1) that construction proceeded in an unsafe manner, causing damage to the neighboring properties and that the owner should not be rewarded for unsafe work; (2) that some of the work was performed illegally; (3) that the property value in the immediate area had significantly risen such that a complying development was now feasible, and that to the extent it was not, it was due to the owner's alleged poor real estate investment skills; and (4) that the purchase price was excessive and would skew the analysis if folded in; and

WHEREAS, the Board notes that while violations and stop-work orders were issued during the course of foundation construction, only the last of the stop-work orders (issued on October 26, 2005) identified a failure to provide protection at side of excavation; the other stop work orders addressed permitting or controlled inspection issues; and

WHEREAS, the Board further notes that the first two stop-work orders were lifted when the alleged problems were either confirmed as erroneous or when they were remedied; and

WHEREAS, finally, the Board notes that the applicant represents that no work occurred when a stop-work order was in effect, and that no evidence to the contrary has been submitted into the record; and

WHEREAS, likewise, no evidence of impermissible after-hours or weekend work was submitted into the record; and

WHEREAS, while the opposition stated that complaints about such work were lodged with the City, DOB's Building Information System records for the subject premises does not corroborate this; in fact, none of the seven complaints lodged in 2005 against the premises were for after-hours work; and

WHEREAS, the Board, the members of which have considerable experience in construction-related matters, understands that development often proceeds in an unanticipated manner, and that construction violations may be issued even where there is no bad faith on the part of the developer; and

WHEREAS, while the Board agrees with the opposition that certain of the issued violations are serious, this does not lead to the conclusion that the owner is not entitled to a common law vested rights determination if a showing for such a determination is made; and

WHEREAS, as to increase in the value of the site, the Board notes that no firm evidence of such an increase was presented; and

WHEREAS, however, even assuming that the site did increase in value, the Board finds that this would not affect its conclusion about the owner's serious harm argument as the value of the proposed units would also likely increase; and

WHEREAS, consequently, the reduction in sellable FAR would have an even greater impact than as suggested by the applicant; and

WHEREAS, the Board also agrees with the applicant that the owner is not a position to recoup the purchase price and the costs of development, both hard and soft, from sale of the property as is, given the current condition of the site and the inherent problems related to its development; and

WHEREAS, as to the owner's alleged lack of skill in real estate development, the Board notes that no vested rights case that it is aware of holds that an owner's ability to obtain vested rights is negated or modified by his or her degree of expertise; and

WHEREAS, if anything, the slow pace of development and the compliance with the stop-work orders, indicates that the owner proceeded in good faith even as the date of the potential City Council approval of the rezoning approached; and

WHEREAS, moreover, any concern that the owner overpaid for the site is rendered moot by the Board's removal

of purchase price from the considered expenditures; and

WHEREAS, the Board understands that the community and the elected officials worked diligently on the Park Slope South rezoning and that the Building does not comply with the new R6B zoning parameters; and

WHEREAS, however, the applicant has met the test for a common law vested rights determination, and the Board has determined that the equities in this case, given the established serious loss, and the degree of work performed and expenditures made, weigh in the favor of the owner; and

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 301964765, 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 four years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 20, 2006.

8-06-A & 9-06-A

APPLICANT – Victor K. Han, for Kim Dong Ouk, owner.

SUBJECT – Application January 11, 2006 – Proposed construction of a two family semi- detached dwelling located within the bed of a mapped street which is contrary to Section 35 of the General City Law, Block 5380, Lot 49, Borough of Queens.

PREMISES AFFECTED –

42-32 149th Place, West side of 149th Place, 255' N/W of Beech Avenue, Block 5380, Lot 49, Borough of Queens.

42-34 149th Place, West side of 149th Place, 255' N/W of Beech Avenue, Block 5380, Lot 50, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Victor Han.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 9, 2006, acting on Department of Buildings Application Nos. 402265035 and 402265026 which reads, in pertinent part:

"Proposed new building w/accessory detached garage in a bed of a mapped street, contrary to Section 35 of the General City Law of New York. Board of Standards and Appeals grant is required."; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated March 31, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 17, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 25, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated March 9, 2006, acting on Department of Buildings Application Nos. 402265035 and 402265026, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received June 16, 2006"–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, June 20, 2006.

89-06-A

APPLICANT – Gary Lenhart, R.A., for the The Breezy Point Cooperative, owner; Noreen & Vincent Reilly, lessees.

SUBJECT – Application May 9, 2006 **–** Proposal to permit reconstruction and enlargement of an existing single family dwelling not fronting a mapped street is contrary to Section 36, Article 3 of the General City Law. Premises is located within the R-4 Zoning District.

PREMISES AFFECTED – 19 Beach 220th Street, 89.37, north of 4th Avenue, Block 16350, Lot 400, Rockaway Point, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on

condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 9, 2006, acting on Department of Buildings Application No. 402215955 which reads, in pertinent part:

> "The street giving access to the proposed building is not placed on the official map of the City of New York, therefore:
> A) Certificate of Occupancy may not be issued as per Article 3 Section 36 of the General City Law, and
> B) Existing dwelling to be altered does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space, and, therefore, is contrary to Section 27-291of the Administrative Code."; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in the *City Record*, closed and voted on same date; and

WHEREAS, by letter dated May 17, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, May 9, 2006, acting on Department of Buildings Application Nos. 402215955, 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 drawing filed with the application marked "Received May 9, 2006"–(1)sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, June 20, 2006.

263-03-A
APPLICANT – John W. Carroll, Wolfson & Carroll, for Ben Bobker, owner.
SUBJECT – Application August 20, 2003 – An administrative appeal challenging the Department of Buildings' final determination dated August 13, 2003, in which the Department refused to revoke the certificate of occupancy, on the basis that the applicant had satisfied all objections regarding said premises.
PREMISES AFFECTED – 1638 Eighth Avenue, west side, 110-5' east of Prospect Avenue, Block 1112, Lot 52, Borough of Brooklyn.
COMMUNITY BOARD #7BK
APPEARANCES –
For Applicant: John Carroll.
For Opposition: Deirdra Carson.
For Administration: Amanda Derr, Department of Buildings.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for decision, hearing closed.

231-04-A
APPLICANT – Joseph P. Morsellino, Esq., for Chris Babatsikos and Andrew Babatsikos, owners.
SUBJECT – Application June 17, 2004 – Proposed one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.
PREMISES AFFECTED - 240-79 Depew Avenue, corner of 243rd Street, Block 8103, Lot 5, Borough of Queens.
COMMUNITY BOARD#11Q
APPEARANCES –
For Applicant: Joseph Morsellino.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 11, 2006, at 10 A.M., for decision, hearing closed.

355-05-BZY
APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Adda 422 Prospect Avenue, LLC, owner.
SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.
PREMISES AFFECTED – 422 Prospect Avenue, Brooklyn, Prospect Avenue, west of 8th Avenue, Block 869, Lot 39, Borough of Brooklyn.
COMMUNITY BOARD #7BK
APPEARANCES –
For Applicant: Adam W. Rothkrug.
For Opposition: Aaron Brashear.
For Administration: Angelina Martinez-Rubio, Department of

Buildings.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

356-05-A & 357-05-A

APPLICANT – The Law Office of Fredrick A. Becker, for Structures LLC, owner.

SUBJECT – Application December 14, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning. New zoning district is R3X as of September 15, 2005.

PREMISES AFFECTED – 150 and152 Beach 4th Street a/k/a 1-70 Beach 4th Street, south of Seagirt Avenue, Block 15607, Lot 62 and 63, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra Altman, Michael Stern, Matt Probkwitz and Danny Krimsky.

For Opposition: Fran Tuccio, Susan Wagner, Donovan Richards, Tracy A. Conroy and Nathan Colen.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

361-05-BZY

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place, Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: John Caroll.

For Administration: Amanda Derr, Department of Buildings.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

366-05-A

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place, Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

For Applicant: Deirdre Carson.

For Opposition: John Caroll.

For Administration: Amanda Derr, Department of Buildings.

ACTION OF THE BOARD – Laid over to July 18, 2006, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 12:15 P.M.

REGULAR MEETING
TUESDAY AFTERNOON, JUNE 20, 2006
1:30 P.M.

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

ZONING CALENDAR

14-05-BZ
CEQR #05-BSA-087M

APPLICANT – The Law Office of Fred Becker, Esq. for Resorts 56 Inc. dba as Spa Ja, lessee; 8th and 56th Street Associates, owner.

SUBJECT – Application January 26, 2005 – under Z.R. § 73-36 to allow a physical Culture establishment on second and third floor of a three story commercial building. Premises is located within the C6-4 (CL) zoning district.

PREMISES AFFECTED – 300 West 56th Street, southwest corner of West 56th and 8th Avenue, Block 1046, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 11, 2006, acting on Department of Buildings Application No. 104063656, reads, in pertinent part:

> "Proposed physical culture establishment is not permitted as-of-right in C6-4 District (ZR 32-00).";
> and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C6-4 (CL) zoning district, the

legalization of a physical culture establishment ("PCE") located on the second and third floors of an existing three-story commercial building, contrary to Z.R. § 32-00; and

WHEREAS, a public hearing was held on this application on June 6, 2006, after due notice by publication in *The City Record*, and then to decision on June 20, 2006; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application, with the conditions set forth below; and

WHEREAS, the applicant operates the facility as a spa, doing business under the name Spa Ja; and

WHEREAS, the premises is located on West 56th Street at the southwest corner with Eighth Avenue, and has a lot area of 2,550 sq. ft.; and

WHEREAS, the PCE occupies 1,162 sq. ft. on the first floor and 1,162 sq. ft. on the second floor; and

WHEREAS, the applicant represents that the PCE provides massages and facials performed by licensed professionals; and

WHEREAS, the PCE operates during the following hours: 9:00 a.m. to 9:00 p.m., Monday-Saturday and 10:00 a.m. to 7:00 p.m., Sunday; and

WHEREAS, at hearing, the Board asked the applicant if a second means of egress could be provided; and

WHEREAS, the applicant represents that because each floor is less than 1,200 sq. ft., a second means of egress is not required; and

WHEREAS, the Board also asked the applicant to confirm that signage complies with district regulations; and

WHEREAS, in response, the applicant submitted an analysis indicating that the signage is compliant with district regulations; and

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

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

WHEREAS, the PCE does 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 special permit use is outweighed by the advantages to be derived by the community; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 05-BSA-87M, dated January 27, 2005, and

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

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03, to permit, within a C6-4 (CL) zoning district, the legalization of a physical culture establishment located on the first and second floors of an existing three-story commercial building, contrary to Z.R. § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 8, 2006"–(3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on June 20, 2016;

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

THAT the hours of operation shall be limited to 9:00 a.m. to 9:00 p.m., Monday-Saturday and 10:00 a.m. to 7:00 p.m., Sunday;

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

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all signage shall comply with regulations applicable in C6-4 zoning districts;

THAT all fire protection measures, including, but not limited to, area smoke detectors, manual pull stations at each exit, local audible and visual alarms and connection to a FDNY - approved central station, as indicated on the BSA-approved plans, shall be installed and maintained, as approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, June 20, 2006.

52-05-BZ
CEQR #05-BSA-104K
APPLICANT – Sheldon Lobel, P.C., for Coptic Orthodox Church of St. George, owner.
SUBJECT – Application March 4, 2005 – under Z.R. § 72-21 proposed development of a six-story and cellar building, with community use on floors one through three, residential use on floors three through six, and with parking in the cellar, located in a C1-2 within an R5 zoning district.
PREMISES AFFECTED – 6209 11th Avenue, northeast corner of 63rd Street, Block 5731, Lot 2, Borough of Brooklyn.
COMMUNITY BOARD #10BK
APPEARANCES – None.
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

Adopted by the Board of Standards and Appeals, June 20, 2006.

89-05-BZ
CEQR #05-BSA-120K
APPLICANT – Stadtmauer Bailkin, LLP (Steven M. Sinacori, Esq.) for 18 Heyward Realty, Inc., owner.
SUBJECT – Application April 12, 2005 – under Z.R. § 72-21 to allow an enlargement of the rear portion of an existing five-story community facility/commercial building; site is located in an R6 district; contrary to Z.R. § 24-11, § 24-37 and § 24-33.
PREMISES AFFECTED – 18 Heyward Street, Heyward Street, between Bedford and Wythe Avenues, Block 2230, Lot 7, Borough of Brooklyn.
COMMUNITY BOARD #1BK
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 14, 2005, acting on Department of Buildings Application No. 301908988, reads, in pertinent part:

"Proposed floor area is contrary to Zoning Resolution Section 24-11.

Proposed rear yard is contrary to Zoning Resolution Section 24-37 and 24-33."; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, on a site within an R6 zoning district, a proposed enlargement to the fourth and fifth floors of an existing five-story community facility building, which is contrary to Z.R. §§ 24-11and 24-37; and

WHEREAS, the community facility space, which comprises most of the building, will be occupied by the Omni Rehabilitation Center, with an existing non-conforming office use remaining on the third floor; and

WHEREAS, the applicant proposes to construct a two-story enlargement of 1,980 sq. ft., resulting in a new total floor area of 18,931 sq. ft. (18,887 sq. ft. is the maximum permitted), a Floor Area Ratio (FAR) of 4.83 (4.8 is the maximum permitted), and a rear setback of ten ft. at 47'-3 ¾" (a setback at 23'-0" is required); and

WHEREAS, the applicant initially proposed to construct an enlargement that would have squared off the fourth and fifth floors, resulting in full lot coverage and no rear setback; and

WHEREAS, one of the neighbors appeared in opposition to this proposal, citing concerns about the negative impact it would have on its light and air; and

WHEREAS, the applicant responded to these concerns by submitting the current version, which includes a 10 ft. rear setback, as described above; and

WHEREAS, after the applicant modified plans to include this setback, the neighbor did not make any further submissions; and

WHEREAS, a public hearing was held on this application on February 14, 2006, after due notice by publication in the *City Record*, with continued hearings on April 11, 2006 and June 6, 2006 and then to decision on June 20, 2006; and

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

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

WHEREAS, additionally, City Council Member David Yassky recommends approval of the application; and

WHEREAS, the subject premises is located on Heyward Street between Bedford and Franklin Avenues; and

WHEREAS, the lot has a total area of 3,914.37 sq. ft., and is irregularly-shaped, with 67'-0" of frontage and a depth reaching 75'-9" on its east lot line and 61'-6" on its west lot line; and

WHEREAS, the site is currently improved upon with a five-story community facility building, which occupies the entire area of the lot and which is adjacent to the rear lot line on the first through third floors; and

WHEREAS, because the first through third floors were erected prior to 1961, the rear yard encroachment at these levels is a legal noncompliance; and

WHEREAS, the fourth and fifth floors were built as-of-right in 2003-2004, and have complying 22-ft. rear yard setbacks; and

WHEREAS, the applicant proposes to add additional floor area at the rear of the building by enlarging the fourth floor to full lot coverage and enlarging the fifth floor while maintaining a ten-ft. rear setback; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the site has a shallow depth and is irregularly-shaped; and (2) the existence of the non-conforming three-story manufacturing building on the zoning lot; and

WHEREAS, as to uniqueness, the applicant states that the lot is irregularly-shaped, with a variation in depth from 61'-6" to 75'-9" and a variation in width from 57'-10½" to 58'-9½"; and

WHEREAS, the applicant submitted a 400-ft. radius diagram that demonstrates that of the 133 sites within the radius, only approximately 13 others are irregularly-shaped, and that only one or two other lots in the entire radius are as shallow as the subject lot; and

WHEREAS, the diagram further demonstrates that the 3,914.37 sq. ft. lot is one of the smaller lots within the radius; and

WHEREAS, the Board agrees that the irregular shape coupled with the relatively small size is a unique physical condition that leads to a hardship; and

WHEREAS, specifically, the Board notes that as a result of the site conditions, the site is under-developed, with the original three-story development built to 3.0 FAR for its prior manufacturing use, while the permitted community facility FAR is 4.8; and

WHEREAS, the applicant asserts that the existing position of the core and elevator in the center of the floor plates, as developed for the original three-story manufacturing building, is a further contributing factor to the unique physical conditions; and

WHEREAS, the Board agrees that this inefficient core design creates additional uniqueness and results in an under-built site despite full lot coverage; and

WHEREAS, the Board notes that the small floor plates and location of the core and elevator compromise the efficiency and usage of the floor plates and depresses the revenue of the existing two-story enlargement, built as-of-right; and

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

WHEREAS, initially, the applicant provided a financial analysis for the existing conforming community facility use; and

WHEREAS, the applicant concluded that the conforming scenario would not result in a reasonable return, due to reduced revenue because of the inefficient floor plates and the other above-stated unique physical conditions; and

WHEREAS, the Board had several concerns about the initial financial analysis and identified them at hearing; and

WHEREAS, specifically, the Board questioned the alleged constraints of the original three-story building and its potential income and rate of return without the 2003-2004 as-of-right enlargement, because community facility use on the lower three floors, pre- and post-enlargement, did not appear to be constrained; and

WHEREAS, in response, the applicant submitted a revised feasibility study that included development costs for a conversion of the original three-story structure to community facility use, and established that this would not realize a reasonable return; and

WHEREAS, the Board also asked the applicant to analyze the cost differences between a conversion of the original three-story building to community facility use and the development of the original structure with the fourth and fifth floors; and

WHEREAS, the applicant represents that the cost, for the three-story conversion, submitted in figures adjusted for inflation, would have been $1,069,000 and the cost for the 2003-2004 enlargement was $1,617,000; and

WHEREAS, the Board asked the applicant to describe the methodology used in determining the acquisition value, because the prior analyses set forth two acquisition values and the standard measure is fair market; and

WHEREAS, the applicant responded that the proposed scheme includes the estimated value of the original three-story building plus the costs of the conversion of the structure and the costs for the 2003-2004 enlargement; and

WHEREAS, based upon its review of the subsequent submissions of the applicant, 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 applicable zoning requirements 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 asserts that the neighborhood is characterized by three to six-story residential apartment buildings and two to four-story warehouses and community facilities; and

WHEREAS, the applicant submitted photographs and both a 400-ft. and 500-ft. radius diagram to support this assertion; and

WHEREAS, in addition, the applicant modified the original plans to include a ten-foot setback above the fourth floor in response to next door neighbors' concerns about light and air; and

WHEREAS, a community facility located to the rear of the site submitted its support of the current proposal, noting that it believed that the proposed enlargement would not have a negative impact on its access to light and air; and

WHEREAS, the current version of the proposal also reflects the resultant reduction in floor area, due to the smaller

fifth-floor enlargement; and

WHEREAS, the Board notes that the current proposal minimizes the impact on adjacent neighbors; and

WHEREAS, the Board further notes that the total building height will be maintained; 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 rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as stated above, the Board does not regard the retention of the existing building to be a self-created hardship; and

WHEREAS, in addition to the analyses of the conforming scenarios, the applicant also analyzed the proposal and concluded that it would realize a minimal return sufficient to overcome the site's inherent hardships; and

WHEREAS, the applicant initially proposed to build both the fourth and fifth floors out to the rear lot line; and

WHEREAS, in order to address certain neighbors' concerns about access to light and air, the Board asked the applicant to explore a scenario that provided a ten-foot rear setback at the fifth floor; and

WHEREAS, in response, the applicant stated that a ten-foot setback would require columns and would result in inefficient floor plates; and

WHEREAS, at hearing, the Board suggested that the applicant employ a transfer beam which could be used to expand the space between columns while creating more efficiency on the fourth and fifth floors; and

WHEREAS, the applicant agreed to explore the use of a transfer beam, though it noted that there are additional costs associated with a transfer beam and the required connecting staircase to the enlarged fifth floor; and

WHEREAS, nonetheless, the applicant revised the initial proposal so as to provide a ten ft. setback at the fifth floor; and

WHEREAS, the applicant originally sought an FAR waiver for a 4.98 FAR building, but with the addition of the fifth floor setback, this was reduced to 4.83; 4.80 FAR is permitted for community facilities in the zoning district; and

WHEREAS, accordingly, the Board finds that in light of the minor FAR waiver request and the inclusion of the ten-foot setback, this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; 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. 05BSA120K, dated October 25, 2005; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R6 zoning district, a proposed enlargement to the fourth and fifth floors of an existing five-story community facility building, which is contrary to Z.R. §§ 24-11and 24-37, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 5, 2006"–four (4) sheets and "Received June 13, 2006"–two (2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building, post-enlargement: a maximum of five stories, a total floor area of 18,931 sq. ft., a total FAR of 4.83, a total height of 55'-11", and a setback of ten feet from the rear lot line at the fifth floor, all as illustrated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, June 20, 2006.

321-05-BZ
CEQR #06-BSA-028Q
APPLICANT – Sheldon Lobel, P.C., for Little Neck Commons, LLC, owner; Dunkin Donuts, lessee.
SUBJECT – Application November 2, 2005 – Under Z.R. § 73-243 – requesting a Special Permit in order to legalize an existing accessory drive-through window in an as-of-right eating and drinking establishment.
PREMISES AFFECT – 245-02 Horace Harding Expressway, South side of Horace Harding Expressway, west of the intersection with Marathon Parkway, Block 8276, Lot 100, Borough of Queens.
COMMUNITY BOARD #11Q
APPEARANCES – None.
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0
Adopted by the Board of Standards and Appeals, June 20, 2006.

146-04-BZ
APPLICANT – Joseph Margolis for Jon Wong, Owner.
SUBJECT – Application April 5, 2006 – Pursuant to Z.R. § 72-21 – to allow the residential conversion of an existing manufacturing building located in an M3-1 district; contrary to Z.R. §42-00.
PREMISES AFFECTED – 191 Edgewater Street, Block 2820, Lot 132, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES – None.
ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for adjourned hearing.

124-05-BZ
APPLICANT – Greenberg Traurig LLP/Deirdre A. Carson, Esq., for Red Brick Canal, LLC, Contract Vendee.
SUBJECT – Application May 20, 2005 – Under Z.R. § 72-21 to allow proposed 11-story residential building with ground floor retail located in a C6-2A district; contrary to Z.R. §§ 35-00, 23-145, 35-52, 23-82, 13-143, 35-24, and 13-142(a).
PREMISES AFFECTED – 482 Greenwich Street, Block 7309, Lot 21 and 23, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES –
For Applicant: Deirdre Carson, Jack Freeman and Robert Alperstein.
For Opposition: Gregory Brenden, Office of the Assembly Member Glick, Peter Himmelstein, Filippo Manlia, Kate Koster, Brian Cook, Sol Rosenblatt, Jarvis Irving, Patrick McDonugh, Rich Herschlag and R. Barrett.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0
ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for decision, hearing closed.

128-05-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Yisroel Y. Leshkowitz & Esther S. Leshkowitz, owner.
SUBJECT – Application May 24, 2005 – under Z.R. § 73-622 – to permit the proposed enlargement of an existing single family residence, located in an R2 zoning district, which does not comply with the zoning requirements for floor area, open space ratio, also side and rear yard, is contrary to Z.R. § 23-141, § 23-461 and § 23-47.
PREMISES AFFECTED – 1406 East 21st Street, between Avenue "L" and "M", Block 7638, Lot 79, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Lyra Altman, David Shteierman and Fredrick A. Becker.
ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for continued hearing.

151-05-BZ
APPLICANT – The Law Office of Frederick A. Becker for 100 Varick Street, LLC, Owner.
SUBJECT – Application June 16, 2005 – Zoning Variance (use) pursuant to Z.R. § 72-21 to allow a proposed ten (10) story residential building containing seventy-nine (79) dwelling units located in an M1-6 district; contrary to Z.R. § 42-00.
PREMISES AFFECTED – 100 Varick Street, located on the easterly side of Varick Street between Watts and Broome Streets, Block 477, Lots 35 and 42, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES –
For Applicant: Fredrick A. Becker, Michael Even, Charles Fridman and John Sole.
For Opposition: Sheila Pozon.
ACTION OF THE BOARD – Laid over to July 18, 2006, at 1:30 P.M., for continued hearing.

202-05-BZ
APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner; Inn Spa World, Inc., lessee.
SUBJECT – Application August 24, 2005 – Under Z.R. § 73-36 to allow the proposed Physical Culture Establishment in a Manufacturing (M1-1) zoning district.
PREMISES AFFECTED – 11-11 131st Street, between 11th and 14th Avenues, Block 4011, Lot 24, Borough of Queens
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Eric Palatnik.
For Opposition: Maria Jones and Bryan Rivera, Councilman

Tony Avella.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 1:30 P.M., for decision, hearing closed.

334-05-BZ
APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for The Whitney Museum of American Art, owner.
SUBJECT – Application November 23, 2005 – Zoning Variance (use & bulk) pursuant to Z.R. § 72-21 to facilitate the expansion of an existing museum complex including the construction of a nine (9) story structure located in C5-1(MP) and R8B (LH-1A) zoning districts. The proposed variance would allow modifications of zoning requirements for street wall height, street wall recess, height and setback, mandatory use, and sidewalk tree regulations; contrary to Z.R. §§ 24-591, 99-03, 99-051, 99-052, 99-054, 99-06.
PREMISES AFFECTED – 933-945 Madison Avenue, 31-33 East 74th Street, East side of Madison Avenue between East 74th and East 75th Streets, Block 1389, Lots 21, 22, 23, 24, 25, 50, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Michael Sillerman.
For Opposition: Howard Zipser, Greg Dinella, Harold Gerber, Don Gringer, Teri Slater and Alan Flink.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for decision, hearing closed.

338-05-BZ
APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application November 25, 2005 – Special Permit Z.R. § 73-622 to permit the proposed enlargement of an existing single family home which creates non-compliances with respect to open space and floor area, Z.R. § 23-141, less than the required side yards, Z.R. § 23-461 and less than the required rear yard, Z.R. § 23-47.
PREMISES AFFECTED – 2224 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7374, Lot 15, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
For Opposition: Marilyn Schan, Robin Schan and Edward Jaworski.

ACTION OF THE BOARD – Laid over to August 8, 2006, at 1:30 P.M., for continued hearing.

352-05-BZ
APPLICANT – Jeffrey A. Chester, Esq., for Peter Procops, owner; McDonald's Corporation, owner.
SUBJECT – Application December 14, 2005 – Z.R. § 73-243 proposed re-establishment of an expired special permit for an eating and drinking establishment with an accesory drive-through, located in a C1-2 zoning district.
PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection at Beach Channel Drive, Block 15709, Lot(s) 101, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Jeffrey Chester.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18, 2006, at 1:30 P.M., for decision, hearing closed.

358-05-BZ
APPLICANT – Sheldon Lobel, P.C., for WR Group 434 Port Richmond Avenue, LLC, owner.
SUBJECT – Application December 15, 2005 – Zoning variance pursuant to Section 72-21 to allow UG 6 commercial use (open accessory parking for retail) in an R3A zoned portion of the zoning lot (split between C8-1 and R3A zoning districts).
PREMISES AFFECTED – 438 Port Richmond Avenue, northwest corner of Port Richmond Avenue and Burden Avenue, Block 1101, Lot 62, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES –
For Applicant: Richard Lobel and Valentino Pompeo.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin…….....3
Negative:.....0
Absent: Commissioner Collins……..1

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for decision, hearing closed.

11-06-BZ
APPLICANT – The Law Office of Frederick A. Becker for Miriam Schubert and Israel Schubert, owner.
SUBJECT – Application January 18, 2006 – Under Z.R. § 73-622 to permit the enlargement to an existing single family residence, located in an R-2 zoning district, which doe not comply with the zoning requirements for floor area ratio, open space ratio and rear yard (Z.R. § 23-141 and § 23-47).
PREMISES AFFECTED – 1245 East 22nd Street, East 22nd Street between Avenue K and Avenue L, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for continued hearing.

16-06-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application January 27, 2006 – Special Permit Z.R. § 73-622 to permit the proposed enlargement of a one family home, which creates non-compliances with respect to open space and floor area (Z.R. § 23-141), side yards (Z.R. § 23-461) and rear yard (Z.R. § 23-47).
PREMISES AFFECTED – 2253 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7375, Lot 50, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
For Opposition: Marilyn Schan and Robin Schan.

ACTION OF THE BOARD – Laid over to August 8, 2006, at 1:30 P.M., for continued hearing.

26-06-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Empire Staten Island Development, LLC, owner; L. A. Fitness International, LLC, lessee.
SUBJECT – Application February 16, 2006 – Special Permit application pursuant to Z.R. §§ 73-03 and 73-36 to operate a 51,609 square foot Physical Culture Establishment (LA Fitness) in an existing vacant one-story building. The site is located in within an existing shopping center in a M1-1 zoning district.
PREMISES AFFECTED – 145 East Service Road/West Shore Expressway, Block 2630, Lot 50, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Ellen Hay, Ed Applebome and Chris Calvert.
For Opposition: Kathleen Collura.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin…….....3
Negative:.....0
Absent: Commissioner Collins……..1

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for decision, hearing closed.

33-06-BZ

APPLICANT – Rampulla Associate Architects, for Carroll's Garden Florist Corporation, owner.
SUBJECT – Application February 28, 2006 – Zoning Variance under Z.R. §§ 72-21 to allow a horizontal and vertical enlargement of an existing one-story retail building (UG 6) located in an R1-2 district; contrary to Z.R. § 22-00.
PREMISES AFFECTED – 1457 Richmond Road, N/S Richmond Road 0'0" from the intersection of Delaware Street, Block 869, Lot 359, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Philip Rampulla.
For Opposition: Susan Fennimore and Salvatore Pabzzolo.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin…….....3
Negative:.....0
Absent: Commissioner Collins……..1

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for decision, hearing closed.

62-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Albert J and Catherine Arredondo, owners.
SUBJECT – Application April 10, 2006 – Pursuant to Z.R. § 72-21 Variance is to allow the addition of a second floor and attic to an existing one story, one family residence. The enlargement will increase the degree of non-compliance for the rear yard, side yards and exceed the permitted floor area.
PREMISES AFFECTED – 657 Logan Avenue, west side of Logan Avenue 100' south of Randall Avenue, Block 5436, Lot 48, Borough of The Bronx.
COMMUNITY BOARD #10BX
APPEARANCES –
For Applicant: Fredrick A. Becker.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin…….....3
Negative:.....0
Absent: Commissioner Collins……..1

ACTION OF THE BOARD – Laid over to July 25, 2006, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 6:00 P.M.