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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 91, Nos. 31-32

August 17, 2006

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## DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

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*Commissioners*

**Jeffrey Mulligan**, *Executive Director*

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**John E. Reisinger**, *Counsel*

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|------------------------|--|
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# DOCKETS

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New Case Filed Up to August 8, 2006  
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**166-06-BZY**

84-59 162nd Street, South of the corner formed by the intersection of 84th Drive and 162nd Street, Block 9786, Lot 7, Borough of **Queens, Community Board: 8**. Extension of Time for construction.  
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**167-06-A**

519 Browns Boulevard, South side Browns Boulevard, 18.87' north of mapped Beach 182nd Street., Block 16340, Lot 50, Borough of **Queens, Community Board: 14**. General City Law Section 36, Article 3-Proposed reconstruction and enlargement of existing single family dwelling not fronting a mapped street.  
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**168-06-A**

176 Reid Avenue, West of Reid Avenue(unmapped street) north of Breezy Point Boulevard., Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 36, Article 3-Proposed reconstruction and enlargement of an existing single family home not fronting on a mapped street.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**SEPTEMBER 19, 2006, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 19, 2006, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **167-55-BZ**

APPLICANT – Vassalotti Associates Architects, for Gargano Family Patnership, owner; Joseph Brienza, lessee. SUBJECT – Application April 25, 2006 – Pursuant to ZR§11-411 & ZR§11-412 to Reopen and Extend the Term of Variance/Waiver for a Gasoline Service Station (Gulf Station), with minor auto repairs which expired on October 7, 2005 and for an Amendment to permit the sale of used cars. The premise is located in R3-1 zoning district. PREMISES AFFECTED – 20-65 Clintonville Street, north corner of the intersection of Clintonville Street and Willets Point Boulevard, Block 4752, Lot 1, Borough of Queens  
**COMMUNITY BOARD #7Q**

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### **131-93-BZ**

APPLICANT – Eric Palatnik, P.C., for Al & Selwyn, Inc., owner. SUBJECT – Application April 10, 2006 – Extension of Term/Amendment - pursuant to Z.R. §§11-411 & 11-412 to extend the term of an automotive service station which expired on November 22, 2004. The application seeks an amendment of the previous BSA resolution so as to authorize the enlargement of the existing one story masonry building to include two additional service bays and to expand the auto sales use to accommodate the display of twenty motor vehicles an increase from the previously approved five motor vehicles. The subject premises is located in a C2-2/R5 zoning district. PREMISES AFFECTED – 3743-3761 Nostrand Avenue, north of the intersection of Avenue “Y”, Block 7422, Lot 53, Borough of Brooklyn.  
**COMMUNITY BOARD #15BK**

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### **133-94-BZ**

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner. SUBJECT – Application November 23, 2005 – Pursuant to

ZR 11-411 & 11-413 For the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.

PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167<sup>th</sup> Street, Block 5341, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

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### **171-95-BZ**

APPLICANT – Law Office of Howard Goldman, LLC, for The Chapin School Limited, owner. SUBJECT – Application July 21, 2006 – Pursuant to ZR §§72-01 & 72-22 for an amendment to a not-for-profit all girls school (The Chapin School) for a three floor enlargement which increases the floor area and the height of the building. The premise is located in an R8B/R10A zoning district. PREMISES AFFECTED – 100 East End Avenue, between 84<sup>th</sup> and 85<sup>th</sup> Streets, Block 1581, Lot 23, Borough of Manhattan.  
**COMMUNITY BOARD #8M**

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### **228-96-BZ**

APPLICANT – Sheldon Lobel, P.C., for Five D's Irrevocable Trust, owner. SUBJECT – Application July 15, 2006 – Extension of Term of a previously granted special permit under section 73-44 of the zoning resolution which permitted the reduction, from 40 to 25 in the number of required accessory off-street parking spaces for a New York vocational and educational counseling facility for individuals with disabilities (Use Group 6, Parking Requirement Category B1) located in an M1-1 zoning district. PREMISES AFFECTED – 1209 Zerega Avenue, west side of Zerega Avenue between Ellis Avenue and Gleason Avenue, Block 3830, Lot 44, Borough of The Bronx.  
**COMMUNITY BOARD #9BX**

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## **APPEALS CALENDAR**

### **69-06-BZY**

APPLICANT – Stuart A. Klein, for SMJB Associates, LLC, owner. SUBJECT – Application April 19, 2006 – Proposed extension of time to complete construction of a minor

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# CALENDAR

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development pursuant to ZR 11-331 for a six- story mixed use building. Prior zoning R-6. New zoning district is R5-B as of April 5, 2006.

PREMISES AFFECTED – 1599 East 15<sup>th</sup> Street, northeast corner of East 15<sup>th</sup> Street and Avenue P, Block 6762, Lot 52, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**  
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**90-06-A**

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner.

SUBJECT – Application May 8, 2006 – Proposal to permit reconstruction and enlargement of an existing one family dwelling located in the bed of a mapped street, and the upgrade of an existing private disposal system in the bed of a mapped street and service lane is contrary to Section 35, Article 3, General City Law and Buildings Department Policy.

PREMISES AFFECTED – 9 Bedford Avenue, north side of Bedford Avenue, intersection of mapped Bayside Drive and Beach 202<sup>nd</sup> Street, Block 163, Lot 300, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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**167-06-A**

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Janet and John Durante, owners.

SUBJECT – Application July 31, 2006 – Proposed reconstruction and enlargement of existing single family dwelling not fronting a mapped street is contrary to Article 3 Section 36 of the General City Law. Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 519 Browns Boulevard, Block 16340, Lot 50, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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**168-06-A**

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Tom Elbe, lessee.

SUBJECT – Application August 3, 2006 – Proposed reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 176 Reid Avenue, west of Reid Avenue, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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**SEPTEMBER 19, 2006, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, September 19, 2006, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:  
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**ZONING CALENDAR**

**344-05-BZ**

APPLICANT– Rothkrug Rothkrug & Spector, for Cornerstore Residence, LLC, owner.

SUBJECT – Application December 2, 2006 – Variance pursuant to Z.R. §72-21 to permit the construction of a two-family dwelling that does not permit one of the two front yards required for a corner lot. The premise is located in an R4 zoning district. The proposal requests a waiver of Z.R. Section 23-45 relating to the front yard.

PREMISES AFFECTED – 109-70 153<sup>rd</sup> Street aka 150-09 Brinkerhoff Avenue, northwest corner of 153<sup>rd</sup> Street and 110<sup>th</sup> Avenue, Block 12142, Lot 21, Borough of Queens.

**COMMUNITY BOARD #12Q**  
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**29-06-BZ**

APPLICANT– Sheldon Lobel, P.C., for Iliya Honovich, owner.

SUBJECT – Application February 16, 2006 – Zoning variance pursuant to ZR Section 72-21 to allow a proposed multiple family dwelling containing fourteen (14) dwelling units to violate applicable floor area, open space, lot coverage, density, height and setback, and front and side yards requirements; contrary to ZR sections 23-141, 23-22, 23-45, 23-461 and 23-633. Premises is located within an R4 district.

PREMISES AFFECTED – 1803 Voorhies Avenue, East 18<sup>th</sup> Street and East 19<sup>th</sup> Street, Block 7463, Lots 47, 49, Borough of Brooklyn.

**COMMUNITY BOARD # 15BK**  
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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, AUGUST 8, 2006  
10:00 A.M.**

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

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, May 16, 2006 and Wednesday Morning May 17, 2006 as printed in the bulletin of May 19, 2006, Vol. 91, No. 21 & 22. If there be no objection, it is so ordered.

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## SPECIAL ORDER CALENDAR

### 499-29-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum, owner; BP Products, lessee.

SUBJECT – Application March 3, 2006 – Application for the Extension of Term of an Automotive Service Station with an accessory automotive repair establishment located in a C1-2/R3-2 zoning district. The term expired on March 23, 2006.

The application is seeking a 10 year extension.

PREMISES AFFECTED – 248-70 Horace Harding Expressway, southwest corner of Marathon Parkway, Block 8276, Lot 660, Borough of Queens.

### COMMUNITY BOARD #11Q

#### APPEARANCES –

For Applicant: Eric Palatnik.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application, pursuant to ZR § 11-411, for an extension of the term of the previously granted variance, which permitted an automotive service station and which expired on March 23, 2006; and

WHEREAS, a public hearing was held on this application on May 16, 2006, after due notice by publication in *The City Record*, with continued hearing on July 18, 2006, and then to decision on August 8, 2006; and

WHEREAS, Community Board 11, Queens, and the Queens Borough President recommend approval of this application; and

WHEREAS, the site located on the southwest corner of the Horace Harding Expressway and Marathon Parkway; and

WHEREAS, the site is located within a C1-2(R3-2) zoning district, and is improved upon with an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 13, 1952 when, under the subject

calendar number, the Board granted a variance to construct and maintain a gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; it was most recently extended on May 27, 1998 for a term of ten years from the expiration of the prior grant (March 23, 1996); and

WHEREAS, during its review of the application, the Board identified the removal of two parking spaces; and

WHEREAS, at hearing, the Board asked the applicant to explain the removal of two parking spaces; and

WHEREAS, the applicant responded that one parking space was removed to accommodate a handicapped-accessible parking space and the other was removed to improve traffic circulation; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* the resolution, as adopted on June 13, 1952, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from March 23, 2006, to expire on March 23, 2016, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘August 3, 2006’-(7) sheets; and *on further condition*:

THAT the term of this grant shall expire on March 23, 2016;

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

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

THAT DOB shall review all signage for compliance with C1-1 zoning district regulations;

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

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

(DOB Application No. 402284906)

Adopted by the Board of Standards and Appeals, August 8, 2006.

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## 286-79-BZ

APPLICANT – Walter T. Gorman, P.E., for Amerada Hess Corp., owner.

SUBJECT – Application April 13, 2006 – Proposed Extension of Term for an automobile service station located in a C1-2/R2 zoning district. The application also seeks to waive the Board's rules of practice and procedure and extend the term of the special permit for a period of ten (10) years which expired on June 19, 2004 and extend it to June 19, 2014.

PREMISES AFFECTED – 219-28 to 219-38 Hillside Avenue, southeast corner of Springfield Boulevard, Block 10680, Lot 1, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan.

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

**THE VOTE TO GRANT**–

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of the term for a previously granted special permit for an gasoline service station, which expired on June 19, 2004; and

WHEREAS, a public hearing was held on this application on July 7, 2006, after due notice by publication in *The City Record*, and then to decision on August 8, 2006; and

WHEREAS, Community Board 13, Queens, and the Queens Borough President recommended approval of this application; and

WHEREAS, the premises is located on the southeast corner of Hillside Avenue and Springfield Boulevard; and

WHEREAS, the site is located within a C1-2 (R2) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 19, 1979 when, under the subject calendar number, the Board granted an application for a gasoline service station; and

WHEREAS, subsequently, the Board extended the term of the special permit, most recently on April 15, 1997 for a period of ten years from the expiration of the prior grant (June 19, 1994); and

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

WHEREAS, at hearing, the Board asked for confirmation that a certificate of occupancy (CO) based on the last extension was obtained; and

WHEREAS, in response, the applicant conceded that no CO was obtained; and

WHEREAS, as indicated below, a CO must be obtained within 18 months of this grant; and

WHEREAS, accordingly, based upon the submitted

evidence, the Board finds the requested extension of term appropriate, with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals waives the Rules of Practice and Procedure and *reopens and amends* the resolution, as adopted on June 19, 1979, as subsequently extended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 19, 2004, to expire on June 19, 2014, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘April 13, 2006’–(5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, to expire on June 19, 2014;

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

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

THAT a new certificate of occupancy shall be obtained by February 8, 2008;

THAT DOB shall review and approve the layout of the onsite parking;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 402308668)

Adopted by the Board of Standards and Appeals, August 8, 2006.

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## 173-95-BZ

APPLICANT – Stephen J. Rizzo, Esq., for 80 East 85<sup>th</sup> Street Company, owner; David Barton Gym Corp., lessee.

SUBJECT – Application March 10, 2006 – Pursuant to ZR §73-11 and §73-36 for the Extension of Term/Waiver of a Physical Culture Establishment (David Barton Gym) in a portion of the first floor and the entire second floor of a 30 story residential building.

PREMISES AFFECTED – 30 East 85<sup>th</sup> Street, Madison Avenue and East 85<sup>th</sup> Street, Block 1496, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Karen Samardo.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the

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Rules of Practice and Procedure and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on August 15, 2005; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on August 8, 2006; and

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

WHEREAS, the subject premises is located at the southwest corner of Madison Avenue and East 85<sup>th</sup> Street; and

WHEREAS, the site is occupied by a 30-story mixed use building, located within a C5-1 (Special Madison Avenue Preservation) zoning district, with commercial uses on the first and second floor and residential use above; and

WHEREAS, the PCE is operated as a David Barton Gym; and

WHEREAS, on August 15, 1995, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of a PCE in a portion of the first floor and on the entire second floor of the subject building; and

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

WHEREAS, at hearing the Board asked the applicant if the PCE provided sufficient sound attenuation between it and residential uses within the building; and

WHEREAS, in response, the applicant represents that the implemented sound attenuation measures have been effective and that there have not been any noise complaints; and

WHEREAS, accordingly, the Board finds that a ten-year extension is appropriate, with the conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated August 15, 1995, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked “Received August 3, 2006”–(5) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from August 15, 2005, expiring August 15, 2015;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or

configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, August 8, 2006.

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**83-00-BZ**

APPLICANT – Eric Palatnik, P.C., for KFC US Properties, Inc., owner.

SUBJECT – Application September 21, 2005 – Reopening for a waiver of the Rules of Practice and Procedure and for an extension of the term of special permit which expired September 26, 2003.

PREMISES AFFECTED – 87-11/21 Northern Boulevard, northern corner of 88<sup>th</sup> Street, Block 1417, Lot 36, Borough of Queens.

**COMMUNITY BOARD #3Q**

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term of a special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on September 26, 2003, as well as an amendment to extend the hours of operation; and

WHEREAS, a public hearing was held on this application on February 28, 2006, after due notice by publication in *The City Record*, with continued hearings on April 11, 2006, May 16, 2006, and July 11, 2006, and then to decision on August 8, 2006; and

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

WHEREAS, Community Board 3, Queens, and the Queens Borough President recommend approval of this application on the condition that hedges be planted at the front of the site on Northern Boulevard and sidewalk trees be planted on the 88<sup>th</sup> Street side; and

WHEREAS, during the hearing process, neighbors of the site provided testimony in opposition to the approval, citing concerns about the amplified menu board that is part of the drive-through facility; these concerns are addressed below; and

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

WHEREAS, the site has a lot area of 12,735 sq. ft., and is occupied by an existing eating and drinking establishment (a Kentucky Fried Chicken fast food restaurant), with a drive-



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through facility and nine accessory parking spaces; and

WHEREAS, on September 26, 2000, under the subject calendar number, the Board granted a special permit authorizing the operation of this establishment with an accessory drive-through facility for a term of three years, which expired on September 26, 2003; and

WHEREAS, in addition to an extension of term, the applicant requests Board approval of an extension of the hours of operation to 1:00 a.m., daily, for the drive-through; and

WHEREAS, the previously-approved hours of operation for the drive-through are 10:30 a.m. to 11:00 p.m., Sunday through Thursday, and 10:30 a.m. to 12:00 a.m., Saturday and Sunday; and

WHEREAS, the applicant states that the restaurant needs the additional hours of operation in order to compete with nearby fast food restaurants; and

WHEREAS, the Board asked the applicant to examine the volume of the amplified board and to see if the sound could be lowered or re-directed away from the neighbor's windows; and

WHEREAS, the applicant represents that the amplified menu board was defective and that a new, more advanced sound system which is able to detect noise level and reduce sound emissions would be installed; and

WHEREAS, the applicant submitted evidence into the record that the new sound system was installed on July 1, 2006; and

WHEREAS, the applicant represents that the sound level from ten feet away is less than 45 decibels; and

WHEREAS, based upon the above, the Board finds that the applicant's application for an extension of term and amendment is appropriate, so long as the restaurant complies with all relevant conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, and *reopens and amends* the resolution, said resolution having been adopted on September 26, 2000, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the special permit for an additional five years from September 26, 2003, and to permit the extension of hours of operation; *on condition* that all work and site conditions shall comply with drawings marked 'Received March 28, 2006'-(7) sheets; and *on further condition*:

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

THAT the term of this grant shall be for five years from the expiration of the prior grant, to expire on September 26, 2008;

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

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

THAT all garbage removal shall be performed between the hours of 7 a.m. and 11 p.m.;

THAT the sound emitted from the amplified menu board shall not exceed 45 decibels;

THAT the hours of operation for the drive-through shall be from 10:30 a.m. to 1 a.m. on weekdays, and from 10:30 a.m. to 1 a.m. on Saturday and Sunday;

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

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

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

(DOB App. No. 401076483)

Adopted by the Board of Standards and Appeals, August 8, 2006.

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## 182-04-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Chelsea Village Associates, owner; Harmic III, LLC, lessee.

SUBJECT – Application January 17, 2006 – Reopening for an amendment permit proposed eating and drinking establishment (comedy theater), Use Group 12, on a zoning lot, split between a C6-2A and R8B zoning district, of which a portion is located in the R8B district, is contrary to Z.R. §22-10.

PREMISES AFFECTED – 351/53 West 14<sup>th</sup> Street, north side, between Eighth and Ninth Avenues, Block 738, Lot 8, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Steve Sinacori.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance, which permitted the establishment of an eating and drinking establishment in an existing building at the premises; and

WHEREAS, a public hearing was held on this application on July 13, 2006 after due notice by publication in the *City Record*, with continued hearing on July 18, 2006, and then to decision on August 8, 2006; and

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

WHEREAS, the site is located on a zoning lot split between C6-2A and R8B zoning districts, and is partially within the Gansevoort Market Historic District; and

WHEREAS, the subject zoning lot is a through lot located

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on the north side of West 14<sup>th</sup> Street and the south side of West 15<sup>th</sup> Street, between 8<sup>th</sup> and 9<sup>th</sup> Avenues, with a depth of approximately 206.6 feet and frontages of 50 feet along each street; and

WHEREAS, the zoning lot is currently improved with two residential buildings, with addresses of 362/64 West 15<sup>th</sup> Street and 351/53 West 14<sup>th</sup> Street; and

WHEREAS, the record indicates that the subject building has a one story portion and a four story portion, with residential use on the upper stories; and

WHEREAS, the ground floor extends 150 feet in depth from the front of the building, with 103.25 feet (69 percent) located in the C6-2A district and the remaining 46.75 feet (31 percent) located in the R8B district; and

WHEREAS, on September 21, 2004, the Board granted an application under ZR § 72-21, to permit the establishment of an eating and drinking establishment (specifically, a comedy theater), Use Group 12, on the ground floor of this building, in the portion that is within the R8B zoning district, contrary to ZR § 22-10; and

WHEREAS, the applicant proposes to eliminate the proposed 1,345 sq. ft. mezzanine previously approved by the Board in the original grant, and to expand the proposed cellar space; the applicant also proposes to rearrange some of the functions of the establishment; and

WHEREAS, specifically, the applicant represents that the kitchen area will be relocated to the proposed expanded cellar space, the women's lavatory in the cellar will be expanded, and offices, staff bathrooms and storage space will be added to the cellar; and

WHEREAS, the cellar will also provide space for a waiting area and a handicapped accessible restroom (which were formerly to be located on the proposed mezzanine); and

WHEREAS, the Board notes that all of the cellar space will be located completely below grade and will not alter the building envelope nor add zoning floor area; and

WHEREAS, the Board further notes that the cellar expansion does not increase the square footage of the performance space nor the patron capacity; and

WHEREAS, thus, the effect of this cellar expansion is negligible; and

WHEREAS, the plans include the provision of an elevator in order to make the cellar handicapped-accessible; and

WHEREAS, the applicant also proposes to replace the existing obsolete heating, ventilation, and air conditioning (HVAC) systems located on the roof of the one-story portion of the building; and

WHEREAS, the applicant represents that the new equipment will be installed with the manufacturer's sound attenuation package, including an insulated sound barrier wrapped around each unit; and

WHEREAS, additionally, the applicant represents that the HVAC equipment will be located as far as possible from residential uses and will be enclosed by a fence covered with acoustical sound absorbing panels; and

WHEREAS, in support of these assertions, the applicant

submitted a letter from a sound attenuation consultant stating that the HVAC equipment as proposed will comply with New York City's Noise Code Standards; and

WHEREAS, the Board notes that the applicant worked with the building owner and neighbors to try to minimize the impact of the new HVAC equipment; and

WHEREAS, the Board notes that the new HVAC systems will occupy a larger footprint than the existing systems but will have improved sound attenuation measures; and

WHEREAS, the Board concludes that the proposed amendment does not affect the prior findings for the variance; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

*Resolved*, that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on September 21, 2004, so that as amended this portion of the resolution shall read: "to permit the removal of the proposed mezzanine, the enlargement of the proposed cellar and other interior reconfigurations, and the relocation and replacement of the HVAC systems, *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received July 5, 2006'-(6) sheets; and *on further condition*:

THAT all HVAC equipment shall be installed as indicated on the BSA-approved plans, with sound attenuation, and shall be maintained in good working order;

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

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

THAT all exiting requirements, including from the cellar area, shall be as reviewed and approved by the Department of Buildings;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application. No. 103733925)

Adopted by the Board of Standards and Appeals, August 8, 2006.

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**565-57-BZ**

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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

APPEARANCES –

For Applicant: Arcadius Kaszuba and Michael Rubinstein.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

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## 1077-66-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Richmond Petroleum, Incorporated, owner.

SUBJECT – Application May 10, 2006 – Pursuant to ZR §72-01 & §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

APPEARANCES –

For Applicant: Carl Sulfaro.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

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## 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 expiration of the term on February 11, 2006.

PREMISES AFFECTED – 58 East 86<sup>th</sup> Street, South side East 86th Street between Park and Madison Avenues, Block 1497, Lot 49, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino and Andrew Duer.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

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## 197-00-BZ, Vol. II

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for SLG Graybar Sublease, LLC, owner; Equinox 44<sup>th</sup> Street Inc., lessee.

SUBJECT – Application November 2, 2005 – Pursuant to ZR §73-11 and ZR §73-36 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 42<sup>nd</sup> Street, Block 1280, Lot 60, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

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## 112-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Doris Laufer, owner.

SUBJECT – Application May 15, 2006 – Pursuant to ZR §72-01 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 – ZR §24-11, front wall height-ZR §24-521, front yard-ZR §24-31, side yard-24-35, lot coverage-ZR §24-11 and ZR §23-141(b) and off-street parking requirement for dwelling units-ZR §25-22.

PREMISES AFFECTED – 102 & 1406 59<sup>th</sup> Street, Block 5713, Lots 8 &10, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to September 26, 2006, at 10 A.M., for adjourned hearing.

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## 59-02-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 – Reopen and amend a previously granted waiver under Section 35 of the

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General City Law that allowed the construction of a two family house located in the bed of mapped street (24<sup>th</sup> Avenue). Proposal seeks to add an additional two family dwelling in the bed of mapped street thereby making three two-family dwellings. Premises is located within an R3-2 Zoning District. Companion cases 160-02-A II and 27-06-A. PREMISES AFFECTED – 23-81 89<sup>th</sup> Street, 583.67' northeast of the corner of Astoria Boulevard and 89<sup>th</sup> Street, Block 1101, Lot 6, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Kenny Lee and Carlos Aguirre.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

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## 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 (24<sup>th</sup> 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 89<sup>th</sup> Street, 532.67' northeast of the corner of Astoria Boulevard and 89<sup>th</sup> Street, Block 1101, Lot 8, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Kenny Lee and Carlos Aguirre.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

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## 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 (24<sup>th</sup> 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 89<sup>th</sup> Street, 561.67' northeast, the corner of Astoria Boulevard and 89<sup>th</sup> Street, Block 1101, Lot 7, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Kenny Lee and Carlos Aguirre.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

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## 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 construction of a single 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 129<sup>th</sup> Road and 130<sup>th</sup> Avenue, Block 12891, Lot 2, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik and Deborah Fulton.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

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## 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 single 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 129<sup>th</sup> Road and 130<sup>th</sup> Avenue, Block 12891, Lot 4, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik and Deborah Fulton.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 153-05-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for MSP Development, owner.

SUBJECT – Application filed on June 28, 2005 – Proposed construction of a two family homes, which lies in the bed of a mapped street (141<sup>st</sup> Avenue) which is contrary to Section 35 of the General City Law. Premises is located in R3-2 zoning district.

PREMISES AFFECTED – 222-50 and 222-54 141<sup>st</sup> Avenue, Block 13149, Lot 148, 48, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 7, 2005, acting on Department of Buildings Application Nos. 402077195 and 402077186 which reads, in pertinent part:

“The proposed construction is located within the bed of a mapped street contrary to Section 35 of the General City Law. Therefore, approval from the Board of Standards and Appeals is required.”; and

WHEREAS, a public hearing was held on this application on May 9, 2006 after due notice by publication in the *City Record*, with continued hearings on June 13, 2006 and July 18, 2006, and then to decision on August 8, 2006; and

WHEREAS, by letters dated April 27, 2006 and July 31, 2006, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated September 7, 2005, the Department of Environmental Protection (DEP) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that it forwarded the entire application, including the proposed site plan, to the Department of Transportation (DOT) on August 2, 2005; and

WHEREAS, DOT responded on March 7, 2006, stating that it reviewed the application and advising the Board that the development of the lots will create a sight distance problem for the vehicular traffic given the proximity to the Long Island Railroad tracks; and

WHEREAS, additionally, DOT states that the proposed development will be so located in the bed of the street such that it will prevent future development of a roadway connection to 224<sup>th</sup> Street from 141<sup>st</sup> Avenue; and

WHEREAS, the Board notes that the March 7, 2006 letter did not indicate any DOT intent to take the applicant’s property

for the purposes of construction of this proposed roadway connection, nor did it indicate that the proposed connection was part of a ten-year capital plan; it also did not indicate any time-frame for when this connection might be constructed; and

WHEREAS, by letter dated April 3, 2006, the applicant asked DOT for an explanation of the sight distance issue; and

WHEREAS, the record does not contain any response to this letter from DOT; and

WHEREAS, in a letter dated May 11, 2006, the Board: (1) asked DOT for clarification as to its concern about compromised sight distance; and (2) requested that DOT submit a map showing the exact location of the proposed roadway connection relative to the premises and the proposed residential development; and

WHEREAS, the Board asked that DOT respond within 20 days of the date of the letter, but DOT did not submit any response in this time frame, and the case was subsequently closed; and

WHEREAS, the Board notes that there is no evidence in the record supporting the contention that the proposed development would impact sight distance for vehicular traffic given the proximity to the Long Island Railroad tracks; and

WHEREAS, further, as discussed above, there is no evidence in the record supporting the contention that the proposed development will prevent future development of a roadway connection to 224<sup>th</sup> Street from 141<sup>st</sup> Avenue, that the subject property will be taken for this purpose, or that the connection is part of an approved ten-year capital plan; and

WHEREAS, prior to the decision date, DOT informed the Board that it was no longer concerned about a potential sight distance problem, and that it would accept the proposal so long as the applicant could show that the development would not affect the sidewalks; and

WHEREAS, the applicant subsequently submitted a revised site plan showing the relationship of the proposed buildings to the sidewalk, which DOT indicated was acceptable; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, April 20, 2006, acting on Department of Buildings Application Nos. 402077195 and 402077186, and 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 August 8, 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

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

Adopted by the Board of Standards and Appeals, August 8, 2006.

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## 299-05-A

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

SUBJECT – Application October 4, 2005 – Proposal to build one, two story, one family home which lies in the bed of a mapped street (Getz Avenue), which is contrary to Section 35 of the General City Law, Borough of Queens.

PREMISES AFFECTED – 369 Wilson Avenue, north side of Wilson Avenue between Eltingville Boulevard and Ridgewood, Block 5507, Lot 13, Borough of Staten Island.

### COMMUNITY BOARD #3SI

#### APPEARANCES –

For Applicant: Zara Fernandes.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated September 8, 2005, acting on Department of Buildings Application No. 500667904, reads, in pertinent part:

“The proposed building is in the bed of a mapped street and contrary to Article 3, Section 35 of the General City Law. Therefore, approval from the Board of Standards and Appeals is required.”; 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 July 11, 2006, and then to decision on August 8, 2006; and

WHEREAS, the Board notes that the subject lot fronts on Wilson Avenue, on a block bounded by Wilson, Eltingville Boulevard, Lamoka Avenue and Ridgewood Avenue; this block has another right of way (Getz Avenue) mapped through its center, but only a small portion of Getz is opened; and

WHEREAS, by letter dated May 31, 2006, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated April 18, 2006, the Department of Environmental Protection states that it has reviewed the application and requires that the applicant amend Drainage Plan No. D-2-2 for Getz Avenue between Wilson Avenue and Lamoka Avenue to create high points for both a 12-inch diameter storm sewer and a 10-inch diameter sanitary sewer prior to obtaining permits for sewer connection; and

WHEREAS, in response to DEP’s request, the applicant

has agreed to amend the drainage plan; and

WHEREAS, by letter dated February 17, 2006, the Department of Transportation has reviewed the application and has indicated that the applicant’s property is not presently included in its Capital Improvement Program; and

WHEREAS, however, DOT also noted to the Board in this letter that a lot to the north of the site (Lot 109) is landlocked and that the proposed construction may affect that property’s access to Wilson Avenue; the Board asked that the applicant respond to this concern; and

WHEREAS, the applicant responded that Lot 109 has access to Eltingville through Lot 31, which is in the same ownership as Lot 109; thus, Lot 109 would not need access through the subject site; and

WHEREAS, the applicant has submitted evidence of this representation, in the form of records of the City’s Department of Finance, tax maps and photographs, which the Board finds acceptable; and

WHEREAS, the applicant also notes that for the subject site to be used as access for Lot 109 to Wilson Avenue, the City would need to condemn both the subject site and the site to the immediate north (Lot 11, which is in between the subject site and Lot 109); the applicant confirmed that such roadway construction is not within DOT’s 10-year Capital Improvement Program; and

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

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated September 8, 2005, acting on Department of Buildings Application No. 500667904, 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 drawings filed with the application marked “Received April 6, 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 DOB shall not issue a building permit prior to DEP’s approval of the amended drainage plan;

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, August 8, 2006.

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## 355-05-BZY

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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 8<sup>th</sup> Avenue, Block 869, Lot 39, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

### APPEARANCES –

For Applicant: Eric Palatnik.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; 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, June 6, 2006, June 20, 2006, and July 18, 2006, and then to decision on August 8, 2006; and

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

WHEREAS, Community Board 7, Brooklyn, opposed the granting of any relief to the applicant, citing concerns about the various violations and stop work orders issued by the Department of Buildings (“DOB”) during construction; and

WHEREAS, the Concerned Citizens of Greenwood Heights and the South Park Slope Community Group also opposed the granting of any relief to the applicant, citing concerns similar to the Community Board’s; all of these concerns are addressed below; and

WHEREAS, in addition, Public Advocate Gotbaum and State Senator Montgomery opposed this application; and

WHEREAS, the subject premises consists of one 2,004 sq. ft. lot on the north side of Prospect Avenue between Seventh and Eighth Avenues; and

WHEREAS, the subject premises was formerly located within an R5 zoning district; and

WHEREAS, the subject premises is proposed to be developed with a three-family, three-story plus cellar residential building; and

WHEREAS, however, on November 16, 2005 (hereinafter, the “Rezoning Date”), the City Council voted to enact the South Park Slope rezoning proposal, which changed the zoning district from R5 to R5B, rendering the proposed

development non-complying as to floor area and parking; and  
WHEREAS, because the foundation construction was commenced but not completed as of the Rezoning Date, the building permit under which construction proceeded lapsed by operation of law; and

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

WHEREAS, because the proposed development contemplates construction of one building on a single zoning lot, it meets the definition of a “minor development”, as defined in ZR § 11-31(c); and

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

WHEREAS, the applicant represents that the relevant building permit was lawfully issued to the owner of the subject premises; and

WHEREAS, specifically, the record indicates that on September 28, 2005, a new building permit (Permit No. 301949523-01-NB; hereinafter, the “NB Permit”) for the proposed development was lawfully issued to the owner of the premises by the Department of Buildings; and

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WHEREAS, during the public hearing process on this application, DOB audited the NB Permit and objections were issued; and

WHEREAS, these objections were subsequently resolved; and

WHEREAS, the applicant represents that, as of the Rezoning Date, excavation had been completed and substantial progress had been made on foundations; and

WHEREAS, the applicant represents that excavation of the site commenced on September 18, 2005; and

WHEREAS, however, on September 22, 2005, DOB issued violations to the site for failure to provide protection at the sides of the excavation (the "Protection Violation") and failure to provide an eight ft. high fence (the "Fence Violation"); DOB also issued a stop work order ("SWO") on this date; and

WHEREAS, the applicant states that the violations were resolved over the next three days, and that work resumed on September 28, 2005; and

WHEREAS, the applicant further states that foundation work commenced on the southerly portion of the site, while excavation and underpinning work continued on the westerly lot line; and

WHEREAS, the applicant represents that excavation continued on the other portions of the site and was completed on the easterly part of the site on or around October 28, 2005; the underpinning on this part of the lot was also completed as of this date; and

WHEREAS, the applicant states that from October 24<sup>th</sup> to the 28<sup>th</sup>, foundation construction commenced, which included the pouring of footings and foundation walls; and

WHEREAS, the applicant states that excavation of the entire site, including the northerly part, was completed on or around October 31, 2005, and that foundation work continued thereafter until November 9, 2005; and

WHEREAS, however, on November 9<sup>th</sup>, DOB issued another violation and stop work order, on the basis that underpinning on the westerly side of the lot was poured three inches in excess of the approved plans (the "Underpinning Violation"); and

WHEREAS, the applicant states that corrective action as to this underpinning was then undertaken; and

WHEREAS, during the hearing process, the applicant initially cited to another DOB violation and SWO, issued on the Rezoning Date, in support of the contention that excavation was completed and substantial progress had been made on foundations; and

WHEREAS, this violation, which was issued because of the rezoning, contains the following notation "Foundation approx. 50 percent completed"; and

WHEREAS, the applicant stated that actual completion of foundation work was at approximately 75 percent; and

WHEREAS, however, at hearing, the Board informed the applicant that while probative, the DOB inspector's assessment of the site as of the Rezoning Date as reflected in the violations did not constitute dispositive evidence in support of the application, especially in light of the discrepancy between the

DOB observation and the applicant's own representations; and

WHEREAS, thus, the Board requested that the applicant provide an accurate color-coded set of plans, showing the extent of work completed versus what remained, and also suggested that any pictures taken by DOB of the site be obtained and submitted into the record; and

WHEREAS, the Board also noted that there was a discrepancy between the amount of concrete poured as represented by the applicant in the statement of facts as opposed to the amount reflected in the back-up evidence, such as the contractor's affidavit and the concrete pour summary; and

WHEREAS, after repeated urging on the part of the Board, the applicant submitted an acceptable color coded plan set, which shows the degree of underpinning, footing, and foundation wall completion as of the Rezoning Date, and the amount of foundation work remaining; and

WHEREAS, additionally, in a submission dated June 20, 2006, DOB submitted a photo taken by the inspector on the Rezoning Date, which appears to corroborate the photos submitted by the applicant; and

WHEREAS, the Board finds that both the color-coded map and the DOB photo support the applicant's contentions as to the degree of work completed; and

WHEREAS, however, the applicant also conceded that the initial information submitted by the contractor was not accurate, and instead submitted a revised cost estimate from a new contractor, which was based on an assessment of the foundation work done as reflected in the DOB photo and a site visit; and

WHEREAS, the Board notes that certain of the listed costs were soft costs and costs related to excavation, which the Board generally does not consider when evaluating substantial progress on foundations in an application under ZR § 11-331; rather, the Board considers those costs directly related to the foundation construction (labor, materials, etc.); and

WHEREAS, here, the cost estimate provided the cost of the concrete poured at the site; specifically, \$11,000 was expended on concrete for footings, and \$15,025 was expended on concrete for walls; and

WHEREAS, the cost estimate indicates that \$5,095 of concrete remains to be poured, which means that 83 percent of the concrete costs have been expended; and

WHEREAS, the Board finds that this is a significant outlay of expenditure, and supports the finding that substantial progress has been made on foundations; and

WHEREAS, additionally, the applicant has also submitted an affidavit from the engineer hired to review and correct the non-compliant underpinning; and

WHEREAS, this affidavit states that when the engineer inspected the site on November 9, 2005, he observed that 100 percent of the digging and excavation had been completed, 100 percent of the footings had been installed, and approximately 75 percent of the foundation walls had been completed; and

WHEREAS, finally, in the last submission, dated July 8, 2006, the applicant states that the owner estimates that 26 cubic yards of concrete had been poured, out of the 48 cubic yards needed to finish the required foundation; the Board notes that



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the financial information discussed above corroborates this estimate; and

WHEREAS, the Board has reviewed all of the submitted evidence, and agrees that it supports the conclusion that excavation was complete and substantial progress was made on foundations as of the Rezoning Date; and

WHEREAS, further, the Board finds that the evidence submitted by the applicant in response to the Board's requests sufficient and credible; and

WHEREAS, opposition to this application makes the following arguments: (1) that the developer should not be rewarded with a favorable determination on this application when violations were issued as to fencing, failure to protect adjacent properties during excavation, and underpinning; (2); that work occurred in violation of issued SWOs; and (3) that work was performed after hours; and

WHEREAS, the Board notes at the outset that the issuance of the three above-cited violations by DOB does not automatically disqualify the owner from obtaining a renewal of the NB Permit pursuant to ZR § 11-331; and

WHEREAS, as the Board has previously determined in prior applications made under ZR § 11-331, issuance of violations during ground-up construction is quite common, and a favorable determination under this statute may still be had in spite of their issuance; and

WHEREAS, however, the Board may take into consideration violations that reflect certain construction activities that result in an improper time savings during some facet of excavation or foundation work, or work that precedes such construction, such as demolition or site preparation; and

WHEREAS, when the Board, in its discretion, determines that the violated conduct did result in a time savings, a reasonable deduction from the amount of construction completed may be made if the circumstances warrant; and

WHEREAS, the notes of the DOB inspector who issued the Protection Violation are available on DOB's computerized Building Information Systems ("BIS"); the notes state, in part "FAILURE TO PROVIDE PROTECTION AT SIDES OF EXCAVATION. NOTED APPROX 20' X 15' X 12' HIGH EXCAVATED AT AREA WITH NO BRACING OR SHORING."; and

WHEREAS, thus, it appears that there was an approximately 300 sq. ft. area on a lot of 2,000 sq. ft. that was not properly braced; and

WHEREAS, the Fence Violation is also available on BIS, and the notes read "FAILURE TO PROVIDE 8 FOOT HIGH FENCE WHERE REQUIRED DURING EXCAVATION OPERATIONS. NOTED: EXCAVATED AREA APPROX 20' X 15' X 12' HIGH WITHOUT 8' HIGH CONSTRUCTION FENCE ENCLOSING PREMISES"; and

WHEREAS, while it is unclear from the record whether there was an actual intent on the part of the owner or the contractor to gain a time advantage, the Board conservatively determines that the two violations together likely created an ability to proceed with construction more quickly than if the time had been taken to provide the fencing and shoring; and

WHEREAS, thus, in order to be conservative, the Board determines that a time deduction is reasonable; and

WHEREAS, here, the record indicates that it took three days to remedy the cited conditions; and

WHEREAS, however, if the Board deducted this amount of time from the overall construction schedule, it would not affect the determination that the technical requirements of ZR § 11-331 have been met, since the record indicates that excavation and significant underpinning and foundation work was completed approximately one to two weeks prior to the Rezoning Date; and

WHEREAS, finally, the Board observes that the Underpinning Violation reflects what appears to be a minor error in actual underpinning construction (the record indicates that the underpinning was poured three inches beyond what was set forth on the DOB-approved plans); and

WHEREAS, further, this violation does not reflect an action on the part of the contractor or owner that can be said to have resulted in a time advantage; and

WHEREAS, accordingly, the Underpinning Violation is not relevant to the Board's consideration; and

WHEREAS, the Board notes that some violations were issued to the premises after the Rezoning Date; however, these violations are also not relevant to the Board's inquiry herein, since no work performed after this date was considered by the Board; and

WHEREAS, as to the allegation that work proceeded in violation of an issued SWO, the opposition states that after the issuance of the SWO on September 22<sup>nd</sup>, work was observed at the site the next day; and

WHEREAS, however, DOB's computerized Building Information Systems ("BIS") records indicate that an inspection was conducted by DOB on that day, and that the work being performed was to remedy the conditions cited in the Protection and Fence Violations, which was permitted; and

WHEREAS, consequently, even though this work was observed by a DOB inspector, no violation was issued; and

WHEREAS, as to the allegation that work was performed after hours or on weekends, the Board again notes that BIS does not indicate that a violation was issued for this; and

WHEREAS, in fact, BIS indicates that only one complaint was made on this basis (on September 17, 2005), and that DOB inspected the site the same day and did not observe any impermissible work; and

WHEREAS, the Board understands that the community and elected officials worked diligently on the Park Slope South rezoning and that the proposed development at the site does not comply with the new R5B zoning parameters; and

WHEREAS, however, the applicant has met the requirements as set forth at ZR § 11-331, even assuming a time reduction for the Fence and Protection Violations; 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 excavation was complete and that substantial progress had been made on the foundation, and

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additionally, that the applicant has adequately satisfied all the requirements of ZR § 11-331.

*Therefore it is Resolved* that this application to renew New Building permit No. 301949523-01-NB pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on February 8, 2007.

Adopted by the Board of Standards and Appeals, August 8, 2006.

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## 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

#### APPEARANCES –

For Applicant: John Ronan.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 30, 2006, acting on Department of Buildings Application No. 402279100, reads, in pertinent part:

“Proposal to construct a second story on a home which lies within an R4 zoning district but also lies within the bed of a mapped street (Rockaway Point Boulevard a/k/a State Road ) is contrary to Article 3, Section 35 of the General City Law and must, therefore, be referred to the Board of Standards & Appeals for approval.”; and

WHEREAS, a public hearing was held on this application on August 8, 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 July 31, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated March 30, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated, June 27, 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, January 30, 2006, acting on Department of Buildings Application No. 402279100, 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 February 7, 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, August 8, 2006.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 10:30 A.M.

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**REGULAR MEETING  
TUESDAY AFTERNOON, AUGUST 8, 2006  
1:30 P.M.**

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

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**ZONING CALENDAR**

**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, Charles Fridman, John  
Sole and Doris Diether of Community Board #2.

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

THE VOTE TO GRANT –

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

Negative:.....  
0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough  
Commissioner, dated May 20, 2005, acting on Department of  
Buildings Application No. 103625436, reads, in pertinent part:

“Proposed residential use is contrary to ZR 42-00 in  
M1-6 zoning district”; and

WHEREAS, this is an application under ZR § 72-21, to  
permit, on a site within an M1-6 zoning district, an eight-story  
plus cellar residential building, which is contrary to ZR § 42-00;  
and

WHEREAS, the bulk parameters of the proposed building  
are as follows: a total residential floor area of 52,648 sq. ft., a  
total residential Floor Area Ratio (FAR) of 7.97, 78’-9” total  
building height (with bulkheads), 61 residential units, and 100  
percent lot coverage; no parking spaces will be provided; and

WHEREAS, additionally, no setback will be provided,  
which is acceptable to both this Board and Community Board 2,  
Manhattan; the Community Board recommends approval of the  
application on condition that the FAR of the proposed building  
be limited to 8.0; and

WHEREAS, initially, however, the applicant proposed a  
10 FAR, ten-story, 109 ft. high building, with 79 dwelling units;  
and

WHEREAS, for reasons discussed below, the Board did  
not find that a FAR of 10.0 was justified, and required the  
applicant to reduce the FAR to a level consonant with the degree  
of financial hardship present at the site; and

WHEREAS, as a threshold issue, the Board notes that the  
site is burdened by an Height Restriction Agreement, dated  
September 3, 1981 (the “Agreement”), that benefits the property  
located at 125 Varick Street (as well as another nearby  
property); and

WHEREAS, this Agreement requires that any new  
development on the site be limited to eighty feet above the level  
of the sidewalk of Varick Street; this height limit encompasses  
bulkheads and penthouses; and

WHEREAS, a representative of 125 Varick Street  
appeared at hearing and argued that the Board could not hear the  
application since it proposed a building form that would violate  
the Agreement; and

WHEREAS, the applicant represents that the owner of the  
subject premises is in the process of negotiating the termination  
of the Agreement with the owner of 125 Varick Street, but that  
this has not occurred yet; and

WHEREAS, accordingly, in order to comply with the  
requirements of the Agreement, the Board required that a  
building no higher than 80 ft. from the sidewalk be proposed;  
and

WHEREAS, since the proposed building will have a  
maximum total height of 78’-9” (including bulkhead), the  
Agreement is not violated; and

WHEREAS, a public hearing was held on this application  
on May 2, 2006, after due notice by publication in the *City  
Record*, with a continued hearing on June 6, 2006, and then to  
decision on July 11, 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 and  
Commissioner Collins; and

WHEREAS, the subject premises is located on the east  
side of Varick Street between Watt and Broome Streets, across  
the street from the Hudson Tunnel entry plaza, and is comprised  
of two separate tax lots, Lots 35 and 42; the total lot area of the  
zoning lot is 6,598 sq. ft.; and

WHEREAS, Lot 35 has 4,540 sq. ft. of lot area, and is  
slightly irregular in shape, with a depth ranging from 35’-0” at  
its south lot line to 56’-2” at its north lot line; and

WHEREAS, Lot 42 has 2,058 sq. ft. of lot area, and is  
rectangular; and

WHEREAS, the site is currently occupied by two separate  
three-story buildings (formerly, the buildings were connected),  
with a total floor area of 19,794 sq. ft. and an FAR of 3.0; the  
buildings are proposed to be demolished; and

WHEREAS, the applicant states that the buildings were  
previously used for offices, but had been only 50 percent  
occupied or vacant since 1999, when the current owner took  
possession, until late 2001; and

WHEREAS, in 2001, the Red Cross leased the buildings  
for a five year term, but terminated the lease early in 2003; the

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applicant states that the buildings have largely been vacant since then, and that marketing of the buildings has not resulted in any new lessees aside from a temporary tenant on the ground floor; and

WHEREAS, accordingly, the owner now applies to the Board for a use variance, which would permit the construction of the proposed residential building; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the size of the site is sub-standard in terms of lot area; (2) the site is in an area with many other more viable commercial and manufacturing buildings; and (3) the existing buildings are obsolete for office or industrial, in that floor plates are narrow and the central elevator core minimized productive use of the floors; and

WHEREAS, the Board does not view the second or third cited factors to be actual bases of uniqueness; and

WHEREAS, specifically, the Board does not recognize proximity to arguably better conforming buildings as a unique physical condition, especially where, as here, the applicant has not supported this argument with proof or engaged in any substantial analysis of it; and

WHEREAS, further, as noted above, the existing buildings are proposed to be demolished; thus, any obsolescence argument is rendered moot since the developer will then have an empty, developable site; and

WHEREAS, however, the Board does view the small size of the site, and its shallow depth, as legitimate unique physical conditions; and

WHEREAS, specifically, the Board notes that these two features lead to a floor plate with a maximum usable depth of approximately 35 ft., which is inefficient and unattractive to modern office or manufacturing users, and would thus realize a minimal rent; and

WHEREAS, the applicant also notes that a commercial building would need a central core and hallways running the length of the building, which would use approximately 25 percent of the floor plates; and

WHEREAS, based upon its review of the submitted radius diagram and its site and neighborhood inspection, the Board observes that the site's size and depth is relatively unique within the area and the subject M1-6 zoning district; and

WHEREAS, specifically, the Board observes that while there are smaller lots in the area, these lots are regularly shaped and are typically occupied by lawful non-conforming dwellings, garages, or community facilities; and

WHEREAS, the Board also observes that the site is the shallowest of its size in the area; and

WHEREAS, based upon the above, the Board finds that one of the aforementioned unique physical conditions – namely, the small size and shallowness of the lot - creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following conforming scenarios: (1) the

existing commercial and office buildings; (2) a 10.0 FAR complying and conforming commercial office building, with a retail component; and

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

WHEREAS, however, the Board had concerns regarding certain aspects of this study, and identified them at hearing; and

WHEREAS, specifically, the Board questioned: (1) the stated land valuation; (2) the claimed overall operating costs related to the residential proposal (discussed in more detail below); and

WHEREAS, as to the land valuation, the Board initially expressed concern that it was too high, given the contours of the site and the compromised floor plates of the existing buildings; and

WHEREAS, further, the Board noted that the Agreement limited the height of any building, such that the 10.0 FAR commercial building could not be constructed; the Board asked for a refined land valuation that took this limitation into account; and

WHEREAS, in response, the applicant submitted a valuation that was reduced by 20 percent and which was based on a complying commercial structure with an FAR of 8.0; and

WHEREAS, the Board continued to question the validity of the valuation, noting that the Agreement had a more significant effect on the amount of commercial FAR that could be developed on the site, which would be reflected in the valuation; the Board again requested that the applicant provide a revised valuation; and

WHEREAS, in response, the applicant revised the land valuation to reflect a 7.0 FAR complying and conforming building, and used a formula of 7.0 FAR times the original land cost per square foot to arrive at this valuation; the applicant concludes that the 7.0 FAR scenario does not realize a reasonable return; and

WHEREAS, the Board has reviewed this revised valuation and the supporting analysis and finds it acceptable; 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 conformance 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 states that the immediate area surrounding the site contains significant residential use, notwithstanding the manufacturing zoning classification; and

WHEREAS, the applicant specifically cites to lots on the subject block occupied by dwellings, as well as residential uses on Blocks 491 and 578, located to the north and west of the site; and

WHEREAS, the applicant also notes that that there is a

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ten-story multiple dwelling fronting on Varick Street on Block 477, immediately to the south of the site; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, based upon its review of this map and upon its site and neighborhood inspection, the Board agrees that the area is best characterized as mixed-use, and that the proposed residential use is compatible with the character of the community; and

WHEREAS, the Board also finds that the proposed amount of residential FAR (7.97) and the amount of units (61) will not have a negative effect on the character of the community or adjacent properties; and

WHEREAS, further, the Board notes that the proposed height of the building (78'-9") respects the Agreement, and is compatible with the context of the surrounding area, as illustrated by a streetscape drawing submitted by the applicant; and

WHEREAS, the Board also notes that if the Agreement was not in place, a 100 ft. high building with no more than the approved FAR (7.97) would also be compatible with the context of the surrounding area; and

WHEREAS, at hearing, the Board expressed concern about: (1) the density and the proposed size of the residential units; (2) the roof configuration and compliance with the need for a bulkhead for the stair case; and

WHEREAS, as to density and unit size, the Board seeks to ensure that the proposed building complies in each respect to a Quality Housing-type residential building that would be developed in a residential district that allows a comparable amount of FAR, such as an R9A zoning district, which allows an FAR of 7.5; and

WHEREAS, specifically, the Board asked if each proposed unit was a minimum of 400 sq. ft., as required by ZR § 28-21; and

WHEREAS, in response, the applicant's architect confirmed that the proposed dwelling units will comply with the minimum unit size parameters in effect in a residential district that allows a comparable amount of FAR; and

WHEREAS, the Board also observes that the proposed amount of units complies with the density requirements of an R9A district; and

WHEREAS, finally, the Board notes that a condition will be placed on this grant requiring compliance with Multiple Dwelling Law requirements concerning provision of light and air; and

WHEREAS, as to the roof configuration, the Board noted that the single staircase core of the proposed building requires a bulkhead, and that the proposal did not reflect a covered bulkhead for roof access; and

WHEREAS, in response, the applicant noted that the roof of the building will be sufficiently sloped that roof access is not required, so no separate covered staircase bulkhead is required, as per Building Code § 27-375; and

WHEREAS, accordingly, the Board finds that this action

will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

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

WHEREAS, as noted above, the applicant originally proposed a ten-story, 10.0 FAR building with 79 units; and

WHEREAS, the Board expressed its dissatisfaction with this proposal at the first hearing, given that it reflected a degree of relief not consonant with the amount of hardship on the site; the Board was also concerned that the proposed FAR was too significant for the area, given that the nearest residential district was recently rezoned to a C6-2A zoning district, which allows a residential FAR of 6.02; and

WHEREAS, the Board also noted the site valuation and operating costs problems in the initial feasibility study, as discussed above; and

WHEREAS, as to the operating costs for the proposed residential building, the Board stated that they appeared to be excessive for the amount of residential units proposed; and

WHEREAS, in response, the applicant reduced the operating costs in its subsequent analyses of variance proposals; and

WHEREAS, specifically, the lower operating cost was reflected in a 6.0 residential FAR scheme and an 8.0 FAR residential scheme, both with a height of approximately 100 ft., that the applicant submitted after the first hearing at the request of the Board; and

WHEREAS, the applicant concluded that the 6.0 scheme did not provide a reasonable return, but that the 8.0 FAR scheme did; and

WHEREAS, as noted above, the Board recognized that the 8.0 scheme was compatible with the context of the neighborhood in terms of its height; and

WHEREAS, however, this scheme proposed a building height that did not fit within the bulk form dictated by the Agreement; and

WHEREAS, additionally, both analyses suffered from the site valuation problem noted above, and the Board did not accept them for this reason; and

WHEREAS, subsequently, the applicant submitted a feasibility analysis for a 7.97 FAR residential scenario that reflected an appropriate site valuation and complied with the Agreement in terms of height; and

WHEREAS, the applicant concluded that the 7.97 FAR scenario would realize a reasonable return; and

WHEREAS, the Board has reviewed the last analysis and agrees that the 7.97 FAR scenario represents the degree of relief necessary to overcome the site's inherent hardship; and

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

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

WHEREAS, the project is classified as an Unlisted

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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. 05BSA140M, dated April 11, 2006; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, on a site within an M1-6 zoning district, an eight-story, 73'-7" high, 7.97 FAR residential building, with 61 dwelling units and accessory residential use in the cellar, which is contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 7, 2006"—eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building shall be as follows: a total residential floor area of 52,648 sq. ft., a total residential FAR of 7.97, eight stories plus a cellar, 78'-9" total building height (with bulkheads), 61 residential units, no setback, and 100 percent lot coverage, all as illustrated on the BSA-approved plans;

THAT all units shall have at least 400 sq. ft. of floor area;

THAT all residential units shall comply with all Multiple Dwelling Law requirements as to provision of light and air;

THAT the fresh air intakes not be placed on the Varick Street side of the building

THAT the all dwelling units contain double glazed windows with good sealing properties, and air conditioning, to provide 35-dBA noise attenuation in order to ensure an acceptable interior noise environment of 45-dBA;

THAT a construction protection plan approved by the Landmarks Preservation Commission must be submitted to the Department of Buildings before the issuance of any building

permit;

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, August 8, 2006.

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## 182-05-BZ

APPLICANT – Eric Palatnik, P.C., for 4 Park Avenue Associates, owner.

SUBJECT – Application August 4, 2005 – Under Z.R. §73-36 to allow the legalization of a physical culture establishment in a C5-3 zoning district.

PREMISES AFFECTED – 4 Park Avenue, between East 33rd and East 34<sup>th</sup> Streets, Block 863, Lot 44, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 27, 2005 acting on Department of Buildings Application No. 104098343, reads, in pertinent part:

"Proposed physical culture establishment within C5-3 zoning district is contrary to this section [ZR 32-10] hence it is not permitted."; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C5-3 zoning district, the legalization of a physical culture establishment ("PCE") located on the first, mezzanine, and second floors of an existing 21-story mixed-use building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on March 28, 2006, after due notice by publication in *The City Record*, with continued hearings on May 2, 2006 and July 11, 2006, and then to decision on August 8, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 5, Manhattan,

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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 subject site is located on the west side of Park Avenue between East 33<sup>rd</sup> and East 34<sup>th</sup> Streets; and

WHEREAS, the PCE occupies 120 sq. ft. on the first floor, 1,936 sq. ft. on the mezzanine, and 14,996 sq. ft. on the second floor, for a total PCE floor area of 17,052 sq. ft.; and

WHEREAS, the applicant represents that the PCE will offer exercise equipment and classes in aerobics, martial arts, and physical conditioning; and

WHEREAS, the applicant operates the facility as Synergy Fitness; and

WHEREAS, the proposed hours of operation for the PCE are as follows: Monday through Thursday, 5:00 a.m. to 12:00 a.m.; Friday, 8:00 a.m. to 8:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 8:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant what sound attenuation measures were in place to create a buffer between the PCE and the residential use; and

WHEREAS, the applicant responded that there are offices on the third floor, between the PCE and the residential uses on the fourth floor, and that this provides a sufficient sound buffer; and

WHEREAS, additionally, the Board asked the applicant whether the entire facility was handicapped-accessible; and

WHEREAS, the applicant modified the plans to incorporate a handicapped-accessible lift to the mezzanine level; and

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

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

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

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

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

WHEREAS, the 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.06-BSA-009M, dated January 25, 2006; 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 continued 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 ZR §§ 73-36 and 73-03, to permit, within a C5-3 zoning district, the continued operation of a physical culture establishment located within an existing 21-story mixed-use building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 25, 2006"-(4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on August 8, 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 Monday through Thursday, 5:00 a.m. to 12:00 a.m.; Friday, 8:00 a.m. to 8:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 8:00 p.m.;

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 C5-3 zoning district regulations;

THAT all fire protection measures, 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 DOB;

THAT sound attenuation shall be as reviewed and approved by DOB;

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

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

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of

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

Adopted by the Board of Standards and Appeals,  
August 8, 2006.

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### 303-05-BZ

APPLICANT – Eric Palatnik, P.C., for Adoo East 102 Street Corp., owner; Aspen Fitness, lessee.

SUBJECT – Application October 12, 2005 – under Z.R. §72-21 to permit the legalization of the second floor of an existing two story commercial structure for use as a physical culture establishment. Premises is located within the R8-B zoning district.

PREMISES AFFECTED – 428 East 75<sup>th</sup> Street, between York and First Avenues, Block 1469, Lot 36, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 20, 2005, acting on Department of Buildings Application No. 104086775, reads, in pertinent part:

“The proposed 2<sup>nd</sup> floor plan is designed and arranged as a Physical Culture Establishment as per Sec 12.10 ZR definitions and is not permitted in a residential zoning district as per 22-00 (ZR).”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8B zoning district, the legalization of a physical culture establishment (“PCE”) located on the second floor of an existing two-story commercial structure, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on June 6, 2006 after due notice by publication in *The City Record*, with continued hearing on July 11, 2006, and then to decision on August 8, 2006; and

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

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

WHEREAS, the subject building is located on the south side of East 75<sup>th</sup> Street between First and York Avenues; and

WHEREAS, the existing PCE occupies a total of 3,469 sq. ft. on the second floor of the existing two-story legal non-conforming commercial building; and

WHEREAS, the PCE is operated as Aspen Fitness; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties

and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: (1) the history of development at the site; and (2) the functional obsolescence of the building; and

WHEREAS, the applicant represents that the building was designed as a commercial/manufacturing structure in the late 19th Century and has been continuously used in that capacity; and

WHEREAS, the applicant represents that the uses at the site have included a manufacturing/warehouse establishment and automobile repairs; and

WHEREAS, the applicant notes that the history of intense commercial and manufacturing uses at the site, particularly on the first floor, did not create an ability to place residential use on the second floor; and

WHEREAS, moreover, the applicant notes that residential use would not be permitted as of right because the maximum permitted lot coverage is exceeded and there is insufficient access to light and air; and

WHEREAS, additionally, the applicant represents that since the building was constructed as a wood-framed garage, it cannot take additional floor loads; thus, adaptive re-use is impractical; and

WHEREAS, the Board notes that the first floor is currently occupied by legal non-conforming commercial uses, including a veterinary office; and

WHEREAS, as to the functional obsolescence for commercial purposes, the applicant represents that the lack of a freight elevator impedes permitted commercial use on the second floor; and

WHEREAS, additionally, the small floor plates and lack of a lobby and security make office use impractical; and

WHEREAS, based on the above, the Board finds that there are unique physical conditions inherent to the site, and the absence of the building, which was developed as a commercial building, create an unnecessary hardship in conforming strictly with the applicable use provisions of the Zoning Resolution; and

WHEREAS, the applicant has submitted a feasibility study demonstrating that developing the building with a legal non-conforming commercial use would not yield the owner a reasonable return; and

WHEREAS, the Board observes that without the variance, such space would not provide a reasonable return, given its lack of desirability for other as of right commercial uses because of its location and configuration; and

WHEREAS, additionally, the site is under built and income must be derived from both floors in order to obtain a reasonable return; and

WHEREAS, accordingly, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood, impair appropriate use or development of adjacent property or



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be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding mid-block area is occupied by six and seven-story multiple dwellings, and that the existing PCE, since it is low intensity, is compatible with these residential uses; and

WHEREAS, additionally, the applicant represents that there is a long history of commercial and automotive uses on the block, a number of which remain; and

WHEREAS, the Board notes that no changes will be made to the exterior of the building; and

WHEREAS, the hours of operation for the PCE are 6:00 a.m. to 9:00 p.m., Monday through Friday; and 8:00 a.m. to 3:00 p.m., Saturday and Sunday; and

WHEREAS, the applicant has installed sound attenuated double-glazed windows to minimize impacts on adjacent residential uses; and

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

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

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

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

WHEREAS, the Board notes that although a variance is being requested, the subject application meets all the requirements of the special permit for a PCE, except for the required zoning district; and

WHEREAS, specifically, the PCE contains facilities for classes, instruction and programs for physical improvement, bodybuilding, weight reduction and aerobics; 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 project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR 06-BSA-024M, dated Feb, 22, 2006; 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; 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 proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.4, 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, to permit the legalization of a physical culture establishment located on the second floor of an existing two-story commercial building within an R8B zoning district, contrary to ZR § 22-00; *on condition* that all work shall substantially conform to drawings, filed with this application marked “Received July 17, 2006”-(1) sheet and “August 7, 2006”-(1) sheet; and *on further condition*:

THAT the term of this variance will be ten years from August 8, 2006, to expire on August 8, 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 6:00 a.m. to 9:00 p.m., Monday through Friday; and 8:00 a.m. to 3:00 p.m., Saturday and Sunday;

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

THAT all fire protection measures indicated on the BSA-approved plans shall be installed and maintained, as approved by DOB;

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

THAT all exiting requirements shall be as reviewed and approved by the DOB;

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

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

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

Adopted by the Board of Standards and Appeals, August 8, 2006.

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## **22-06-BZ**

APPLICANT – Harold Weinberg, P.E., for Margret Riordan, owner.

SUBJECT – Application February 9, 2006 – under Z.R. §72-21 to permit the enlargement of an existing single family dwelling on a pre-existing undersized lot. The proposed enlargement increases the degree of non-compliance at the front yard, rear yard and side yards; (Z.R. §23-45, §23-47 and

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§23-48) the proposed enlargement also exceeds the allowable setback and is contrary to Z.R. §23-631. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 8 Gotham Avenue, between Fane Court, south side and Shell Bank Creek, Block 8883, Lot 978, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Eric Palatnik.

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

### THE VOTE TO GRANT –

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

Negative:.....0

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### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 8, 2006, acting on Department of Buildings Application No. 301961553, reads, in pertinent part:

1. The proposed enlargement of an existing one family residence in an R4 zoning district has less than the required front yard and is contrary to Section 23-45 and also increases the degree of non-compliance which is contrary to Section 54-32 ZR. The deficient front yard also exceeds the allowable setback and is contrary to Section 23-631.
2. The proposed enlargement of an existing one family residence in an R4 zoning district has less than the required rear yard and is contrary to Section 23-47 and also increases the degree of non-compliance which is contrary to Section 54-32 ZR.
3. The proposed enlargement of an existing one family residence in an R4 zoning district has less than the minimum required side yard and is contrary to Section 23-48 and also increases the degree of non-compliance which is contrary to Section 54-32 ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, the proposed enlargement of an existing single-family residence that does not provide the required front yard, setback, rear yard, and side yard, and increases the degree of non-compliance of the yards, contrary to ZR §§ 23-45, 23-631, 23-47, 23-48 and 54-32; 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 July 11, 2006, and then to decision on August 8, 2006; and

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

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

WHEREAS, the site is located on the south side of Gotham Avenue, 624 ft. west of the intersection of Gotham and Fane Court South; and

WHEREAS, the site is a 1,680 sq. ft. lot, 24 ft. in width by 70 ft. in depth; and

WHEREAS, the existing single-family dwelling is a one-and-two-story structure with a complying total floor area of 1,056.4 sq. ft. (1,512 sq. ft. is permitted), a complying Floor Area Ratio (FAR) of 0.62 (0.9 is permitted pursuant to the ZR provisions concerning predominantly built up areas), a non-complying front yard and front setback of 9’-3” (10 ft. is required), one non-complying side yard of 3’-11” (five ft. is required), another complying side yard of 5’-2”, and a non-complying rear yard of 12’-6” (30 ft. is required); and

WHEREAS, the wall height is 23 ft. (25 ft. is the maximum permitted) and the total height is 28 ft. (35 ft. is the maximum permitted); and

WHEREAS, the applicant proposes a small enlargement to be built atop the existing first floor in front and in back of the existing second floor, such that all of the yard dimensions will remain the same at the second floor level; and

WHEREAS, the building as enlarged will have an FAR of 0.81 and a floor area of 1365.7 sq. ft., which will still comply with applicable R4 district requirements; additionally, the wall and total heights will remain the same; and

WHEREAS, however, any enlargement must comply with the above-mentioned zoning parameters as to yards and setbacks; additionally, any increase in the non-complying conditions violates ZR § 54-31; and

WHEREAS, while the existing house is within an area where a home enlargement special permit is allowed pursuant to ZR § 73-622, the applicant states that any enlargement pursued under such special permit would have to setback 10 feet from the front lot line and 30 feet from the rear lot line, thereby creating a very limited second floor enlargement that would not use available floor area; thus, the instant variance application was filed; and

WHEREAS, the Board also observes that the special permit would not allow any front yard non-compliance, and due to the shallowness of the lot, the rear yard waiver that is permissible under the special permit would not be available; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties in developing the subject site in compliance with underlying district regulations: the site is improved upon with an existing under-built and obsolete home, and is also narrow and shallow; and

WHEREAS, specifically, the applicant notes that the size of the home, at 1,056.4 sq. ft., is particularly small, and that this amount of floor area is significantly less than permitted; and

WHEREAS, the applicant also observes that the lot is very narrow, such that an enlargement that complies with applicable side yard regulations would result in a second floor that is also very narrow; and

WHEREAS, further, because of the lot’s shallowness, no complying enlargement at the rear of the lot is possible, which

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means that any enlargement would be very limited in size and would not utilize available floor area; and

WHEREAS, finally, the applicant contends that not only is an as of right enlargement not viable, but that the construction of such an enlargement is cost-prohibitive since new structural elements would be needed in order to transfer the load of the second story to the existing foundation system; and

WHEREAS, the Board has reviewed the statements of the applicant and agrees that the cited conditions create a practical difficulty in proceeding with an as of right enlargement of the subject under-sized and obsolete home, which would effectively use available floor area; and

WHEREAS, as to uniqueness, the Board notes that the lot width and depth appear to be typical conditions on Gotham Avenue; thus, the Board asked that the applicant address the difference between the subject lot and others in the area; and

WHEREAS, in response, the applicant submitted an analysis of area homes, particularly ones along Gotham Avenue, and concluded that the subject lot is one of the few that is both narrow, shallow, and developed with a significantly under-built home; and

WHEREAS, additionally, the Board observes that upon an examination of a broader area, it becomes apparent that a significant section of the south side of Gotham Avenue on the subject block suffers from narrower and shallower lots than other streets; thus, it does not reflect an area-wide condition in the larger context of the Gerritsen Beach neighborhood; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in enlarging the existing home in strict compliance with applicable R4 zoning regulations; and

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

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

WHEREAS, the applicant states that the rear portion of the proposed addition to the second floor will match up with the existing first floor rear wall line, and would generally not be observable from the street; and

WHEREAS, the applicant also states that the front portion of the addition would be compatible with existing conditions along the south side of Gotham Avenue; and

WHEREAS, the Board agrees that the proposed enlargement is minor, as it continues pre-existing non-complying conditions and does not result in a floor area or height non-compliance; and

WHEREAS, the Board notes that the home as enlarged will match up with the attached homes to the east, in terms of front yard and setback at the second floor level; and

WHEREAS, the Board also notes that the perimeter wall height and total height will remain the same; and

WHEREAS, finally, at the request of the Board, the applicant submitted a streetscape, which further reinforces the

contention that the home as enlarged will be compatible with the adjacent homes; and

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

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, within an R4 zoning district, the proposed enlargement of an existing single-family residence that does not provide the required front yard, setback, rear yard, and side yard, and increases the degree of non-compliance of the yards, contrary to ZR §§ 23-45, 23-631, 23-47, 23-48 and 54-32; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 13, 2006"–(9) sheets; and *on further condition:*

THAT the attic shall be used for accessory storage only;

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

THAT the parameters of the proposed building shall be as follows: an FAR of 0.81; a floor area of 1,365.7 sq. ft.; a front yard and front setback of 9'-3"; one side yard of 3'-11"; another side yard of 5'-2"; a rear yard of 12'-6"; a wall height of 23 ft.; and a total height of 28 ft.; and

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

THAT there shall be no habitable floor area in the attic;

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, August 8, 2006.

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**44-06-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, for Philip & Laura Tuffnell, owners.

SUBJECT – Application March 14, 2006 – Pursuant to ZR §72-21 Variance for the vertical enlargement of an existing

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single family residence which exceeds the maximum permitted floor area, ZR §23-141 and does not provide the required side yard, §23-461.

PREMISES AFFECTED – 150-24 18th Avenue, South side of 18th Avenue, 215 east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 16, 2006, acting on Department of Buildings Application No. 402282123, reads, in pertinent part:

- “1. Proposed enlargement of an existing non-complying one-family dwelling, without the required side yard is contrary to 54-31 and 23-461 ZR. Note: Existing exterior wall is greater than 6” from lot line and cannot be considered as lot line wall.”
2. Proposed enlargement of one-family dwelling, which will exceed permitted floor area ratio, is contrary to Section 23-141 ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3A zoning district, the proposed enlargement of an existing one-story with cellar single-family home, which will increase the degree of noncompliance as to side yards and floor area, contrary to ZR §§ 23-141, 23-461, and 54-31; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on August 8, 2006; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, the site is located on the south side of 18th Avenue, 215 feet east of 150<sup>th</sup> Street; and

WHEREAS, the site is 20 ft. in width and 100 ft. in depth, with a total lot area of 2,000 sq. ft.; and

WHEREAS, the site is currently improved upon with a 728 sq. ft. one-story with cellar single-family home; and

WHEREAS, the applicant represents that available records indicate that the existing structure was constructed in 1931; and

WHEREAS, on December 15, 1961, the site was mapped within an R3-1 zoning district, but on December 21, 2005, the area was rezoned to R3A; and

WHEREAS, the applicant proposes to add a second story to the existing one-story house; and

WHEREAS, this addition will increase the floor area from 728 sq. ft. (0.36 FAR) to 1,320 sq. ft. (FAR of 0.66); the maximum floor area permitted is 1,200 sq. ft. (FAR of 0.60);

and

WHEREAS, the proposed enlargement will maintain the two non-complying 0’-11” side yards (one side yard of 8’-0” is required); and

WHEREAS, the enlargement will maintain the complying front yard of 12’-0” (a minimum front yard of 10’-0” is required) and rear yard of 48’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, although the side yards will remain the same, the proposed enlargement will increase the degree of non-compliance because the encroachments will be within the non-complying yards; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the narrow width of the site and (2) the existing non-complying side yards; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which showed that out of approximately 116 lots within the radius, only four are 20 feet wide and the subject site is the only one with a width of 20 ft. within the R3A zoning district; and

WHEREAS, the Board notes that the majority of lots within the radius diagram have widths greater than 30 ft.; and

WHEREAS, the applicant notes that the two existing 0’-11” side yards create additional obstacles to constructing an enlargement in compliance with relevant zoning regulations in that a complying enlargement would be 12 ft. in width, so narrow that it would be unusable; and

WHEREAS, the Board finds that the aforementioned unique physical conditions create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that a complying enlargement using available floor area would be habitable; and

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

WHEREAS, the applicant states that the bulk of the proposed building is consistent with the surrounding one- and two-family two-story residences; and

WHEREAS, the applicant notes that the existing home has an attic, and, therefore the addition of a second floor will only increase the height by four feet, from 21’-0” to 25’-0”;

and

WHEREAS, the Board notes that the proposed height is within the permitted parameters of the zoning district; and

WHEREAS, moreover, the Board notes that the requested FAR increase to 0.66, ten percent more than the district allows, is within the guidelines of ZR § 73-621, a special permit that would allow a ten percent increase in floor area; and

WHEREAS, however, the special permit does not allow development within non-complying side yards; and

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WHEREAS, further, the applicant asserts that any impact is minimized because the non-complying side yards already exist and there is a driveway to the west of the home which provides open space; and

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

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, in an R3A zoning district, the proposed enlargement of an existing one-story with cellar single-family home, which will increase the degree of noncompliance as to side yards and floor area, contrary to ZR §§ 23-141, 23-461, and 54-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 7, 2006"– (4) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.66; a floor area of 1,320 sq. ft.; two side yards of 0'-11"; a front yard of 12'-0"; and a rear yard of 48'-0";

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

THAT the use and layout of the cellar shall be as approved by DOB;

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

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

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

Adopted by the Board of Standards and Appeals, August 8, 2006.

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## 74-06-BZ

APPLICANT – Sheldon Lobel, P.C., for William Guarinello, owner.

SUBJECT – Application April 24, 2006 – Special Permit pursuant to ZR §73-622 for the enlargement of single family residence which exceeds the allowable floor area ratio, lot

coverage and open space as per ZR §32-141, less than the minimum side yards as per ZR §23-461 and less than minimum rear yard as per ZR §34-47. This special permit application also purposes to convert from a one family residence to a two family residence.

PREMISES AFFECTED – 1416 80<sup>th</sup> Street, south side of 80<sup>th</sup> Street, Block 6281, Lot 14, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Richard Lobel.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 29, 2006 acting on Department of Buildings Application No. 302088194, reads, in pertinent part:

- “1. (23-145) Show compliance with ZR 23-145, proposed floor area seems to exceed maximum permitted.
2. (23-141) Show compliance with ZR 23-141, maximum permitted lot coverage and minimum required open space seems to exceed maximum/minimum permitted.
3. (23-461) Show compliance with ZR 23-461, minimum required side yards to total 13' between the two sides.
4. (23-461) Show compliance with ZR 23-47, 30' minimum rear yard.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a two-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-145, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on August 8, 2006; and

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

WHEREAS, the subject lot is located on the south side of 80th Street, approximately 120 feet east of 14<sup>th</sup> Avenue; and

WHEREAS, the subject lot has a total lot area of 2,633 sq. ft., and is occupied by a 1,230 sq. ft. (0.47 FAR) lawful two-family dwelling (illegally converted to a single-family, as discussed below); and

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

WHEREAS, at hearing, the Board asked the applicant if

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the proposal for the enlargement included a request for a conversion from a single-family to two-family; and

WHEREAS, the Board noted that ZR § 73-622 does not allow it to authorize such conversion; and

WHEREAS, the applicant replied that the home was a legal two-family and that there was no request for a conversion; and

WHEREAS, the applicant submitted evidence into the record that indicates that the home is a legal two-family home, including DOB and Department of Finance records; and

WHEREAS, the applicant also submitted affidavits from neighbors, the owner, and a contractor who performed work on the house, all attesting to the existence of a two-family home at the site prior to its purchase in 1965; and

WHEREAS, the applicant represents that the dwelling was illegally converted to a one-family dwelling but would be used as a two-family home subsequent to this grant; and

WHEREAS, upon review of the submitted evidence, the Board has determined that the subject dwelling is legally a two-family residence and the applicant's request comports with the requirements of the subject special permit; and

WHEREAS, the applicant seeks an increase in the floor area from 1,230 sq. ft. (0.47 FAR) to 2,336 sq. ft. (0.89 FAR); the maximum floor area permitted is 1,972.5 sq. ft. (0.75 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 26 percent to 44 percent (the maximum permitted lot coverage is 45 percent) and reduce the open space ratio from 74 percent to 56 percent (the minimum required open space is ratio is 45 percent); and

WHEREAS, the proposed enlargement will reduce the rear yard from 46'-0" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the enlargement will maintain the existing non-complying side yards of 4'-0" each (side yards totaling 13'-0" are required with a minimum width of 5'-0" for one); and

WHEREAS, the enlargement will maintain the complying 23'-0" front yard (a minimum front yard of 10'-0" is required); and

WHEREAS, also, the complying total height of 24'-0" and perimeter height of 19'-6" will be maintained; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

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

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a two-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-145, 23-45, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 14, 2006" – (11) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,336 sq. ft., a total FAR of 0.89, a perimeter wall height of 19'-6", and a total height of 24'-0", all as illustrated on the BSA-approved plans;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled SK9-SK18, stamped July 14, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT the use and layout of the cellar shall be as approved by DOB;

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

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

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

Adopted by the Board of Standards and Appeals, August 8, 2006.

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**76-06-BZ**

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for 150 East 58<sup>th</sup> Street, LLC/Vornado Realty, owner; Sitaras Fitness, LLC, lessee.

SUBJECT – Application April 26, 2006 – Special Permit under Z.R. §73-36 – Proposed physical cultural establishment

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to be located on a portion of the 11th and 12th floor of a thirty-nine story commercial building. Premises is located within an C5-2 Zoning District.

PREMISES AFFECTED – 150 East 58<sup>th</sup> Street, south side of East 58<sup>th</sup> Street, 85 feet east of the corner formed by the intersection of Lexington Avenue and East 58<sup>th</sup> Street, Block 1312, Lot 41, Borough of Manhattan.

## COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Lori Cuisinier.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 18, 2006, acting on Department of Buildings Application No. 104392471, reads, in pertinent part:

“The proposed Physical Culture Establishment use on a portion of the 11<sup>th</sup> and 12<sup>th</sup> floors of the building in a C5-2 zoning district is not permitted pursuant to Section 32-10 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C5-2 zoning district, the establishment of a physical culture establishment (“PCE”) located on portions of the 11<sup>th</sup> and 12<sup>th</sup> floors of an existing commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on August 8, 2006; and

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

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the subject site is located on the south side of East 58<sup>th</sup> Street, 85 feet east of Lexington Avenue; and

WHEREAS, the proposed PCE will occupy a total of 5,274 sq. ft. of floor area, with 3,458 sq. ft. on the 11<sup>th</sup> floor and 1,816 sq. ft. on the 12<sup>th</sup> floor, within the 39-story portion of the building; and

WHEREAS, the applicant represents that the PCE, to be operated as Sitaras Fitness, will offer physical training programs; and

WHEREAS, the PCE will have the following hours of operation: Monday through Friday, 6:00 a.m. to 8:00 p.m., and Saturday and Sunday, 8:00 a.m. to 6:00 p.m.; 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 establishment of the PCE will not interfere with any pending public improvement project; and

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

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

WHEREAS, the 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. 06-BSA-079M, dated May 26, 2006 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 ZR §§ 73-36 and 73-03, to permit, within a C5-2 zoning district, the establishment of a PCE located on portions of the 11<sup>th</sup> and 12<sup>th</sup> floors of an existing commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially

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conform to drawings filed with this application marked "Received July 24, 2006"--(4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on August 8, 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: Monday through Friday, 6:00 a.m. to 8:00 p.m., and Saturday and Sunday, 8:00 a.m. to 6:00 p.m.; and

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) 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, August 8, 2006.

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### **334-04-BZ**

APPLICANT – Sheldon Lobel, P.C., for L & L Realty, owner. Great Roosevelt Plaza Corporation, lessee.

SUBJECT – Application October 8, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a seven-story mixed-use building containing retail, general office and community facility space. No parking will be provided. The site is currently occupied by two commercial buildings which will be demolished as part loading of the proposed action. The site is located is located in a C4-2 zoning district. The proposal is contrary to Z.R. §36-21 (Required parking), §36-62 (Required loading berth), and §33-432(Sky exposure plane and setback requirements).

PREMISES AFFECTED – 135-28 Roosevelt Avenue, Roosevelt Avenue between Prince Street and Main Street. Block 5036, Lots 26(fka 25/26), Borough of Queens.

### **COMMUNITY BOARD #7Q**

APPEARANCES –

Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to September 26, 2006, at 1:30 P.M., for adjourned hearing.

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### **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**

APPEARANCES –

For Applicant: Eric Palatnik, Robert Pauls and John Chaskopoulos.

**ACTION OF THE BOARD** – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

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### **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 14<sup>th</sup> 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, Phil Harris and Seymour Esses.

For Opposition: Marilyn Schan and Robin Schan.

**ACTION OF THE BOARD** – Laid over to September 19, 2006, at 1:30 P.M., for continued hearing.

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### **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 14<sup>th</sup> 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, Phil Harris and Seymour Esses.

For Opposition: Marilyn Schan and Robin Schan.

**ACTION OF THE BOARD** – Laid over to September 19, 2006, at 1:30 P.M., for continued hearing.

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### **369-05-BZ**



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APPLICANT – Eric Palatnik, P.C., for 908 Clove Road, LLC, owner.

SUBJECT – Application December 22, 2005 – Variance ZR §72-21 to allow a proposed four (4) story multiple dwelling containing thirty (30) dwelling units in an R3-2 (HS) Zoning District; contrary to Z.R. §§23-141, 23-22, 23-631, 25-622, 25-632.

PREMISES AFFECTED – 908 Clove Road (formerly 904-908 Clove Road) between Bard and Tyler Avenue, Block 323, Lots 42-44, Borough of Staten Island.

## COMMUNITY BOARD #1SI

### APPEARANCES –

For Applicant: Eric Palatnik, Robert E. Englert, Sean Sweeney, CB #1, Rocco Defelippis, Joe Lione, Robert Pauls. For Opposition: Vincent DiGesù, Phyllis Savarese and Robert Savarese.

**ACTION OF THE BOARD** – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

## 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

### APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug. For Opposition: Earle Tolkmán.

**ACTION OF THE BOARD** – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

## 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

### APPEARANCES –

For Applicant: Fredrick A. Becker.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2006, at 1:30 P.M., for decision, hearing closed.

## 66-06-BZ

APPLICANT – Slater & Beckerman, LLP, for Vaughn 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 90<sup>th</sup> Street, east side of 90th Street the corner formed by the intersection of 23<sup>rd</sup> Avenue, Block 1064, Lot 100, Borough of Queens.

## COMMUNITY BOARD #3Q

### APPEARANCES –

For Applicant: Carole Slater, Donald Elliott, Dr. John Fitz-Patrick, and Kurt Vichinsky.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2006, at 1:30 P.M., for decision, hearing closed.

*Jeff Mulligan, Executive Director*

*Adjourned: 5:30 P.M.*