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# BULLETIN

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

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### DIRECTORY

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**Gregory R. Belcamino, *Counsel***

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<b>OFFICE -</b>	<b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>
<b>HEARINGS HELD -</b>	<b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>
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<b>TELEPHONE - (212) 788-8500</b>
<b>FAX - (212) 788-8769</b>

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**182-07-BZ**

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-----

**183-07-BZ**

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**184-07-BZ**

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**AUGUST 21, 2007, 10 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, *Tuesday morning*, August 21, 2007, at 10 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**

**214-96-BZ**

APPLICANT – Rampulla Associates Architects, for Colonial Funeral Home, owner.

SUBJECT – Application July 2, 2007 – Extension of Term of a previously granted Variance (§72-21) which expires on April 7, 2008, to permit in an R3-1 zoning district, a UG7 (Colonial Funeral Home) and the existing accessory parking on the adjacent lot (Lot 30) which houses a conforming UG1 single family home.

PREMISES AFFECTED – 2819 Hylan Boulevard, North side Hylan Boulevard east corner of Hylan Boulevard and Tysens Lane. Block 4256, Lot 34, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**7-00-BZ, Vol. III**

APPLICANT – Friedman & Gotbaum, LLP, for Trustees of the NYC Rescue Mission, owners.

SUBJECT – Application July 26, 2007 – Extension of Time to Complete Construction for a Variance previously granted on May 30, 2000 to permit within an M1-5 zoning district an enlargement to a UG3, non-profit homeless shelter for men, (New York City Rescue Mission) which expired on February 10, 2005.

PREMISES AFFECTED – 90 Lafayette Street, northwest corner of Lafayette and White streets, Block 195, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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**APPEALS CALENDAR**

**323-06-A**

APPLICANT – Vito J. Fossella, P.A., for Michael Sidnam, owner.

SUBJECT – Application December 14, 2006 – Proposed enlargement of an existing one family dwelling located within the bed of mapped street (North Avenue) which is contrary to Section 35 of the General City Law. R3X Zoning.

PREMISES AFFECTED – 389 College Avenue, Northside of College Avenue; 140.08' east of the corner formed by the intersection of College Avenue and Lockwood Place, running thence east 111.38', thence north 168.99', thence s/w 82.20', thence west 64.92', thence south 89.27'. Block 391, Lot 93, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**AUGUST 21, 2007, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, *Tuesday afternoon*, August 21, 2007, 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**

**315-05-BZ**

APPLICANT – David L. Businelli, AIA, for Diggy's LLC, owner.

SUBJECT – Application October 28, 2005 – Zoning variance under §72-21 to allow a two-story horizontal extension of an existing three-story mixed commercial retail (UG 6) and residential building containing one (1) dwelling unit. Twenty (20) open accessory parking spaces are proposed. Proposed commercial use is contrary to use regulations (ZR §22-10). R3X district (Special South Richmond District).

PREMISES AFFECTED – 862 Huguenot Avenue, South side of Huguenot Avenue, 0' east from Hawley Avenue. Block 6815, Lot 32, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**328-06-BZ**

APPLICANT – Francis R. Angelino, Esq., for Okada Denki Sanyo Company Limited, owner.

SUBJECT – Application December 20, 2006 – Zoning variance under ZR §72-21 to allow an eight (8) story residential building containing six (6) dwelling units and ground floor retail use; contrary to regulations for use (§42-00, §111-104(e), and §111-102(b)). M1-5 district (Area B-2 of Special TriBeca Mixed Use District).

PREMISES AFFECTED – 50-52 Laight Street, Between Hudson and Greenwich Streets, Block 219, Lots 2 & 3, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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**80-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for 319 West LLC, owner. The Lantern Group, Incorporated, lessee.

SUBJECT – Application April 12, 2007 – Variance (§72-21) to permit a nine-story and cellar not-for-profit institution with sleeping accommodations and accessory supportive social service space. The proposal is contrary to community facility floor area (§24-111), wall height, setback, and sky exposure plane (§24-522), rear yard (§24-36), permitted reconstruction to allow the construction of a nine-story community facility building (§54-41). R8 zoning district.

PREMISES AFFECTED – 319 West 94<sup>th</sup> Street, West 94th Street between Riverside Drive and West End Avenue.

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# CALENDAR

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Block 1253, Lot 10, Borough of Manhattan.

**COMMUNITY BOARD #7M**

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**118-07-BZ**

APPLICANT – Rothkrug Rothkurg & Spector LLP, for A Very Special Place, Incorporated, owner.

SUBJECT – Application May 11, 2007 – Special Permit (§73-44) to allow the proposed two-story, Use Group 6B office development which has less than the required parking. The proposal is contrary to section 36-21. C1-1/R3-2 district.

PREMISES AFFECTED – 49 Cedar Grove Avenue, Between Wavecrest Street and Seaform Street. Block 4087, Lot 1 & 70, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**142-07-BZ**

APPLICANT – Moshe M. Friedman, for Steven Weinberger, owner.

SUBJECT – Application May 29, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and side yards (§23-461) & (§23-48) in an R3-2 zoning district.

PREMISES AFFECTED – 2216 Avenue R, 56'-0" west of intersection formed by Avenue R and East 23rd Street. Block 6828, Lot 7, Borough of Brooklyn.

**COMMUNITY BOARD # 15BK**

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**146-07-BZ**

APPLICANT – Slater & Beckerman, LLP, for PDPR Realty Corporation, owner.

SUBJECT – Application June 5, 2007 – Application filed pursuant to §§11-411 & 11-412 for the structural alteration and enlargement of a pre-existing nonconforming two-story parking (Use Group 8) garage allowed by a 1924 BSA action. The proposal would permit the addition of a third floor and a first floor mezzanine and the expansion of the cellar in order to increase the capacity of the public parking garage from 96 cars to the proposed 147 cars. The project is located in an R8B zoning district.

PREMISES AFFECTED – 439 East 77<sup>th</sup> Street, North side of East 77<sup>th</sup> Street, Between First and York Avenues. Block 1472, Lot 17, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**166-07-BZ**

APPLICANT – Wolf Block, Schorr & Solis-Cohen LLP, for Mindy Guzzone, owner. JCR Fitness, Incorporated d/b/a Fitness Together, lessee.

SUBJECT – Application June 15, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture establishment on the ground floor of a five-story mixed-use building. The proposal is contrary to section 32-00. C2-3 zoning district.

PREMISES AFFECTED – 213 Court Street, between Wyckoff and Warren Streets. Block 390, Lot 5, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JULY 24, 2007  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**1236-27-BZ, Vol. II**

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

SUBJECT – Application February 22, 2007 – Extension of Term for a previously granted special permit of a UG 16 Automotive Service Station (BP Products North America) which expired on February 22, 2007 in a C2-2/R3-1 zoning district.

PREMISES AFFECTED – 163-01 Cross Bay Boulevard, southeast corner of 163<sup>rd</sup> Street, Block 14201, Lot 63, Borough of Queens.

**COMMUNITY BOARD #10Q**

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term for a previously granted variance for an automotive service station, which expired on February 22, 2007; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication in *The City Record*, and then to decision on July 24, 2007; and

WHEREAS, Community Board 10, Queens, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of Cross Bay Boulevard and 163<sup>rd</sup> Street; and

WHEREAS, the site is located in a C2-2 (R3-1) zoning district and is improved upon with an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 29, 1928 when, under the subject calendar number, the Board granted a variance for the reconstruction of an existing automotive service station; and

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

WHEREAS, most recently, on August 10, 1999, the grant was amended to permit certain site modifications and an extension of term, to expire on February 22, 2007; and

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

WHEREAS, pursuant to ZR § 11-411, the Board may

permit an extension of term for a previously granted variance; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on May 29, 1928, 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 February 22, 2007 to expire on February 22, 2017, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received May 21, 2007’–(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 22, 2017;

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 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.”

(Alt. 1094/61)

Adopted by the Board of Standards and Appeals, July 24, 2007.

**704-59-BZ**

APPLICANT – Peter Hirshman, for S & B Bronx Realty Associates, owner; G. R. Parking Lot, lessee.

SUBJECT – Application December 5, 2006 – Extension of Term/waiver of the rules for a previously granted variance of a UG8 Parking lot for more than five motor vehicles which expired on June 3, 2000 in an R8 zoning district.

PREMISES AFFECTED – 53 East 177<sup>th</sup> Street, northeast corner of Walton Avenue and East 177<sup>th</sup> Street, Block 2828, Lots 1, 45, 46, Borough of Bronx.

**COMMUNITY BOARD #5BX**

APPEARANCES –

For Applicant: Peter Hirshman.

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

THE VOTE TO GRANT –

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

Negative:.....0

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a parking lot, which expired on June 3, 2000; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication

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in *The City Record*, and then to decision on July 24, 2007; and

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

WHEREAS, the subject premises is located on the northeast corner of Walton Avenue and East 177<sup>th</sup> Street; and

WHEREAS, the site is located within an R8 zoning district and is occupied by a parking lot with a total lot area of approximately 7,500 sq. ft.; and

WHEREAS, on March 8, 1960, under the subject calendar number, the Board granted a variance to allow parking and storage of more than five motor vehicles at the site; and

WHEREAS, this grant was extended four times; and

WHEREAS, most recently on June 5, 1990, the grant was extended for a term of ten years to expire on June 3, 2000; and

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

WHEREAS, the applicant represents that there have not been any changes to the site; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated March 8, 1960, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from the expiration of the prior grant, to expire on June 3, 2010; *on condition* that the use shall substantially conform to the drawings filed with the application marked “Received December 5, 2006”-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 3, 2010;

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

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

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

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

(Alt. 279/59)

Adopted by the Board of Standards and Appeals, July 24, 2007.

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Richmond Avenue LLC, owner.

SUBJECT – Application October 28, 2006 – Extension of Term and waiver of the rules for a Variance, granted on August 12, 1986 to permit in an R3-2 zoning district a two story building for use as a retail establishment and business offices (UG6) which does not conform with the use regulations.

PREMISES AFFECTED – 2025 Richmond Avenue, east side of Richmond Avenue, 894.75’ north of Rockland Avenue, Block 2015, Lot 48, Borough of Staten Island.

## COMMUNITY BOARD #2SI

### APPEARANCES –

For Applicant: Eric Palatnik.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for retail and office use in an R3-2 zoning district, which expired on August 12, 2006; and

WHEREAS, a public hearing was held on this application on May 8, 2007, after due notice by publication in *The City Record*, with a continued hearing on May 22, 2007 and July 10, 2007, and then to decision on July 24, 2007; and

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

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

WHEREAS, the subject premises is located on the east side of Richmond Avenue, 894.75 feet north of Rockland Avenue; and

WHEREAS, the site is located within an R3-2 zoning district and is occupied by a three-story building with retail and office use; and

WHEREAS, On July 19, 1977, under BSA Cal. No. 839-76-BZ, the Board granted a variance to permit the construction of a one-story building for use as a restaurant, which was never built; and

WHEREAS, on February 23, 1982, under BSA Cal. No. 945-76-BZ, the Board granted a variance to permit the construction of a one-story catering and restaurant establishment, which was never built; and

WHEREAS, on August 12, 1986, under the subject calendar number, the Board granted a variance to permit the construction of retail stores and offices (Use Group 6) at the site for a term of 20 years; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional 20 years; and

WHEREAS, the applicant represents that there have not been any changes to the site; and

WHEREAS, at the Board’s direction, the applicant provided a sign analysis, which reflects that the signage

## 177-85-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2025

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complies with the approved plans; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated August 12, 1986, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of 20 years from the expiration of the prior grant, to expire on August 12, 2026; *on condition* that the use shall substantially conform to the drawings filed with the application marked "Received April 2, 2007"- (7) sheets and "Received June 18, 2007"- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on August 12, 2026;

THAT all signage shall conform with the BSA-approved plans;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 500845516)

Adopted by the Board of Standards and Appeals, July 24, 2007.

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## 21-91-BZ

APPLICANT – Kenwyn A. Sandy, R.A., for Hardath Latchminarain, owner.

SUBJECT – Application March 12, 2007 – Extension of Term/Waiver of the rules of practice and procedures for a previously granted Variance (72-21) to operate an automobile glass and minor establishment (UG7) with sales of used cars (UG16) and an Extension of Time to obtain a Certificate of Occupancy in an R-5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Ron Mandel.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver, a reopening, an extension of time to obtain a certificate of

occupancy, and an extension of term for a previously granted variance for an automotive glass establishment with used car sales, which expired on June 10, 2005, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on April 17, 2007, after due notice by publication in *The City Record*, with continued hearings on May 22, 2007 and June 19, 2007, and then to decision on July 24, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 5, Brooklyn, recommends disapproval of this application, citing concerns that the site is not properly maintained and that it has a negative effect on the adjacent property; and

WHEREAS, the Concerned Homeowners Association recommends disapproval of this application, citing concerns about the incompatibility of the use, and the failure to comply with conditions of prior grants, including the permitted hours of operation, the number of cars parked at the site, the presence of a trailer at the site, and poor maintenance of the site; and

WHEREAS, certain community members provided testimony in opposition to the application, citing concerns about site maintenance and the incompatibility of the use; and

WHEREAS, the site is located on the northeast corner of Linden Boulevard and Montauk Avenue; and

WHEREAS, the site is located in an R5 zoning district and is occupied by an automotive glass and minor repair establishment with used car sales; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 29, 1958 when, under BSA Cal. No. 963-57-BZ, the Board granted a variance for the construction of an automotive service station with accessory uses; and

WHEREAS, the grant was subsequently extended and amended at various times until the use was discontinued in 1979 and the variance lapsed; and

WHEREAS, on June 20, 1995, under the subject calendar number, the Board granted a new variance to permit the legalization of a change in use from an automotive service station (Use Group 16) to an automobile glass establishment (Use Group 7) with used car sales (Use Group 16) for a term of ten years to expire on June 20, 2005; and

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

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

WHEREAS, the applicant represents that no additional changes to the site are proposed; and

WHEREAS, at hearing, the Board directed the applicant to address the following concerns: (1) the poor maintenance of the site; (2) the presence of a trailer, which is not permitted per the BSA-approved plans; (3) the excess signage; (4) insufficient street trees and landscape buffering; (5) the presence of barbed wire fencing; (6) non-opaque chain link fencing adjacent to the residential use; and (7) the negative impact on the adjacent property; and

WHEREAS, in response to the noted concerns, the applicant proceeded to bring the site into compliance and provided photographs into the record reflecting that (1) the site and the adjacent site have been cleaned up; (2) the trailer has



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been removed from the site; (3) the excess signage has been removed; and (4) the barbed wire has been removed; and

WHEREAS, additionally, the applicant agreed to work with the Department of Parks and Recreation to replace any missing street trees; and

WHEREAS, also, the applicant revised the site plan to reflect that (1) the curb cut on Montauk Avenue has been removed and the gate there has been welded shut; (2) parking spaces are limited to the approved number of cars, 13 for sale; and (3) a planted buffer is provided along the northwest property line adjacent to the residential use; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on June 20, 1995 and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for two years from the date of this grant, to expire on July 24, 2009, and to permit a six-month extension of time to obtain a certificate of occupancy, *on condition* that the use shall substantially conform to drawings as filed with this application, marked "Received March 12, 2007"-(3) sheets and "June 12, 2007"-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on July 24, 2009;

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

THAT opaque fencing and a landscape buffer shall be provided along the northwest property line;

THAT the site conditions shall conform to the BSA-approved plans;

THAT the number of cars for sale at the site shall be limited to 13;

THAT all signage shall comply with C1 zoning district regulations;

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

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

THAT the site shall be brought into compliance with all conditions of this grant and a certificate of occupancy shall be obtained by February 24, 2008;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 302033396)

Adopted by the Board of Standards and Appeals, July 24, 2007.

## 145-92-BZ

APPLICANT – Deirdre Carson of Greenberg Traurig, for PPI New York, LLC, owner; Eddie Gyms LLC, lessee.

SUBJECT – Application March 23 2007 – Extension of Term/Amendment/Waiver to request a renewal of the term of a special permit granted pursuant to (Z.R.§73-36) which permits the operation of a Physical Culture Establishment located on the third and fourth stories of a building located in a C2-8/C8-4 zoning district.

PREMISES AFFECTED – 403 East 91<sup>st</sup> Street, north side of East 91<sup>st</sup> Street between 1<sup>st</sup> and York Avenues, Block 1571, Lot 5, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES – None.

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

## THE VOTE TO GRANT –

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

Negative:.....0

## THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on May 16, 2004; and

WHEREAS, on March 14, 2007, the Manhattan Borough Commissioner of the Department of Buildings, acting on Application No. 104247316, issued objections, which stated:

"Proposed layout indicates a physical cultural establishment and is not permitted as of right & use is contrary to [Z.R.] 32-00"; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in *The City Record*, and then to decision on July 24, 2007; and

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

WHEREAS, the subject premises is located on the north side of East 91<sup>st</sup> Street, between First and York Avenues; and

WHEREAS, the site is located within a C2-8/C8-4 zoning district, and is occupied by a four-story and cellar building formerly used to manufacturing purposes; and

WHEREAS, the PCE occupies a total of 7,987 sq ft. on the third (2,631 sq. ft.) and fourth (5,356) floors of the building; and

WHEREAS, the PCE is operated as Edge Gym; and

WHEREAS, on May 17, 1994, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize an existing PCE on the third and fourth floors of the subject building; and

WHEREAS, on December 10, 2002, under the subject calendar number, the Board reopened and amended the resolution to permit a reduction in the amount of floor area occupied on the third floor of the building by the PCE; and

WHEREAS, the instant application seeks to extend the

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term of the special permit for an additional ten years; and  
WHEREAS, no change is proposed in the operating hours of the PCE; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 10, 2002, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of ten years from the expiration of the last grant to expire on May 16, 2014; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 23, 2007"-(6) sheets; and; 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 expire on May 16, 2014;

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.

(DOB Application No. 104247316)

Adopted by the Board of Standards and Appeals, July 24, 2007.

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## 1328-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC., owner.

SUBJECT – Application June 5, 2007 – Extension of Term for a variance, originally granted under §60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 165 West End Avenue, 100' northwest corner of West 66<sup>th</sup> Street and End Avenue, Block 1179, Lot 17, Borough of Manhattan.

## COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

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## 1330-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of Time to request a variance, originally granted under §60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 205 West End Avenue, West 70<sup>th</sup> Street, between West End and Freedom Place, Block 1179,

Lot 60, Borough of Manhattan.

## COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

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## 1332-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of Term – To request a variance, originally granted under Section 60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 185 West End Avenue, northwest corner of West 66<sup>th</sup> Street and West End Avenue, Block 1179, Lot 50, Borough of Manhattan.

## COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

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## 247-85-BZ

APPLICANT – Francis R. Angelino, Esq., for Herald Towers, LLC, owner; TSI Herald, Inc., lessee.

SUBJECT – Application January 8, 2007 – Extension of Term/Waiver – Reopening of a special permit for a Physical Culture Establishment located in an C5-3, C6-6(MID) zoning district.

PREMISES AFFECTED – 40/60 West 34<sup>th</sup> Street, a/k/a 1282/130 Broadway, southeast corner of West 34<sup>th</sup> Street and Broadway, Block 835, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 7, 2007, at 10 A.M., for decision, hearing closed.

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## 200-00-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Blans Development Corp., owner.

SUBJECT – Application January 22, 2007 – Extension of Term/Waiver of a previously approved variance, which expired on July 17, 2006 for an existing physical culture establishment at the second floor of the premises located in a R6B (C1-4) zoning district

PREMISES AFFECTED – 107-24 37<sup>th</sup> Avenue, a/k/a 37-16 108<sup>th</sup> Street, southwest corner of 108<sup>th</sup> Street and 37<sup>th</sup> Avenue, Block 1773, Lot 10, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

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## THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August  
21, 2007, at 10 A.M., for decision, hearing closed.

## 20-02-BZ

**APPLICANT** – The Law Office of Fredrick A. Becker, for  
303 Park Avenue South Leasehold Co., LLC, owner; New  
York Sports Club, lessee.

**SUBJECT** – Application September 18, 2006 – Extension of  
Term/Amendment – To allow the operation of a Physical  
Culture Establishment/Health Club and change in hour of  
operation, on portions of the cellar, first floor and second  
floor of the existing five story mixed use loft building.

**PREMISES AFFECTED** – 303 Park Avenue South,  
northeast corner of Park Avenue South and East 23<sup>rd</sup> Street,  
Block 879, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #5M

### APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Laid over to August  
21, 2007, at 10 A.M., for continued hearing.

## APPEALS CALENDAR

## 287-05-A

**APPLICANT** – New York City Board of Standards and  
Appeals.

**OWNER:** 32-42 33 Street, LLC, owner.

**SUBJECT** – Application September 15, 2005 – To consider  
dismissal for lack of prosecution.

**PREMISES AFFECTED** – 32-42 33<sup>rd</sup> Street, between  
Broadway and 34<sup>th</sup> Avenue, Block 612, Lot 53, Borough of  
Queens.

## COMMUNITY BOARD #1Q

**APPEARANCES** – None.

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

### THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown and Commissioner  
Hinkson...4

### THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board  
in response to a letter dated August 17, 2005, addressed to the  
appellant and to Councilmember Vallone that purports to be a  
final determination of the Commissioner of the NYC  
Department of Buildings (“DOB”) (the “Final Determination”);  
and

WHEREAS, the Final Determination states, in pertinent  
part:

This responds to your letter dated August 4, 2005  
wherein you express concern about the proliferation  
of cellular antennas in the City and specifically

question the Department’s justification for issuing a  
permit dated May 22, 2003 for the installation of  
cellular equipment at 32-42 33<sup>rd</sup> Street, Queens (the  
“Premises”), without a special permit from the Board  
of Standards and Appeals (the “BSA”).

This letter affirms the Department’s determination to  
permit the cellular antennas on the roof of the  
Premises without obtaining a special permit from  
BSA. While you correctly note that the Zoning  
Resolution § 22-21 provides that “telephone  
exchanges or other communication equipment  
structures” are permitted by special permit from the  
BSA, Included in this category are the telephone  
wires that extend across properties, and related  
telephone boxes that are often attached to buildings,  
in order to provide land telephone service to homes in  
a neighborhood. These wires and boxes have been  
routinely permitted for many years notwithstanding  
that the service they provide may not be limited  
solely, or even primarily, to the building or zoning lot  
on which they are situated.

Likewise, on July 1, 1998, the Department issued  
Technical Policy and Procedure Notice #5/98 which  
recognized that cellular telephony had become a  
prevalent form of communication essential to the  
public interest and clarified the conditions under  
which small antennas and related equipment would  
not be classified “communication equipment  
structures.” The cellular installation that was  
permitted at the Premises meets the requirements of  
TPPN 5/98 and therefore is not subject to the  
requirement for a Special Permit from BSA.

We trust this responds to your inquiry. This is a final  
determination that may be appealed to the Board of  
Standards and Appeals.

WHEREAS, the Final Determination was provided in  
response to a letter dated August 4, 2005 from Councilmember  
Vallone and the appellant Astoria Neighborhood Coalition, Inc.  
(“Appellant”), which represents that it is a New York not-for-  
profit corporation, that requested a final determination with  
respect to the permit issued on May 22, 2003 for the cellular  
telephone equipment installed on the roof of the Premises so  
that this appeal could be filed; and

WHEREAS, the Appellant challenges DOB’s  
determination, in compliance with TPPN 5/98, that the  
installation of cellular telephone equipment on the roof of 32-  
42 33<sup>rd</sup> Street, Queens (the Premises) does not require a special  
permit pursuant to ZR § 22-21 from the Board; and

WHEREAS, a public hearing was held on this appeal on  
April 10, 2007, after due notice by publication in *The City  
Record*, with continued hearings on June 5, 2007 and July 17,  
2007, and then to decision on July 24, 2007; and

WHEREAS, the premises had a site and neighborhood  
examination by Chair Srinivasan; and

WHEREAS, DOB and Omnipoint Communications, Inc.  
(“Omnipoint”), the owner of the cellular telephone equipment  
installed at the Premises, have been represented by counsel  
throughout this Appeal, and Appellant has been represented by  
one of its members, who lives in close proximity to the

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Premises; and

## PROCEDURAL HISTORY

WHEREAS, the Alteration Type 2 DOB permit for installation of the cellular telephone equipment (consisting of antennas and equipment cabinets) on the roof of the Premises was issued on May 22, 2003 pursuant to DOB Application No. 401572712; and

WHEREAS, installation of the equipment on the roof of the Premises was completed no later than January 2004; and

WHEREAS, after correspondence with Appellant and Councilperson Vallone, the Commissioner of DOB issued the Final Determination on August 17, 2005; and

WHEREAS, on September 15, 2005, the Appellant filed the instant appeal; and

WHEREAS, on April 11, 2006 Omnipoint filed a "Statement in Support of Dismissal"; and

WHEREAS, the Board declined to dismiss the appeal and held three hearings on the instant appeal prior to closing the matter and setting a decision date of July 24, 2007; and

WHEREAS, the Board notes that it has in several instances granted extensions of time to Appellant; and  
SECTION 22-21 OF THE ZONING RESOLUTION AND THE SPECIAL PERMIT

WHEREAS, Z.R. § 22-21 lists uses that are permitted in residential districts by special permit pursuant to Z.R. § 73-14 from the Board of Standards and Appeals in residential districts; and

WHEREAS, in all residential districts, "Public utility or public service facilities" are permitted by special permit from the BSA; and

WHEREAS, furthermore, the specific enumeration of "public utility or public service facilities" includes "telephone exchanges or other communications equipment structures"; and

WHEREAS, Z.R. § 73-14 provides, in pertinent part, that:

In all *Residence Districts*, the Board of Standards and Appeals may permit . . . telephone exchanges or other communications equipment structures, provided that the following findings are made:

- (a) that such *use* will serve the residential area within which it is proposed to be located; that there are serious difficulties in locating it in a district wherein it is permitted as of right and from which it could serve the *residential* area, which make it necessary to locate such *use* within a *Residence District*; and

\* \* \* \* \*

The Board may prescribe appropriate conditions or safeguards to minimize adverse effects on the character of the surrounding area, including requirements that . . . any such use shall be landscaped; and

WHEREAS, Appellant contends that the cellular telephone equipment installed at the Premises falls within the category of "telephone exchanges or other communications equipment structures," and it therefore requires a special permit from BSA, regardless of size; and

WHEREAS, DOB, as explained below, asserts that it has the authority under the New York City Charter to interpret or "clarify" the Zoning Resolution; and

## THE TPPN

WHEREAS, TPPN #5/98, dated July 1, 1998, reads, in pertinent part:

"The Department recognizes that cellular telephony has become a prevalent form of communication essential to the public interest. As such, those companies wishing to erect cellular antennas, and install related equipment are to be treated with the deference afforded other public utilities. Thus, to the extent the cellular antennas and related equipment meet the specifications and requirements set forth below, they are not subject to zoning. These specifications and requirements are based on the standards for cellular telephony at this time, and are designed to permit necessary and customary public utility service. To the extent the antenna and related equipment do not meet these criteria, they may be classified as Use Group 7 'communication equipment structures,' and as such, may require a special permit in residence districts pursuant to Z.R. § 22-21.

1. The antennas must be attached to a building or other structure that has a use independent of supporting the antennas.
2. The antennas may not extend higher than six (6) feet above the height of the roof or parapet on the roof, or six feet above any penthouse or bulkhead, if placed on such penthouse or bulkhead.
3. The antennas shall each have an area no more than 8.45 square feet or one meter in diameter.
4. The related cellular equipment must not occupy more than 5% of the floor area on a zoning lot or 400 square feet"; and

WHEREAS, TPPN #5/98 contains additional Building Code requirements, which are not at issue in the instant appeal; and

WHEREAS, in April 2007, through both a review of plans and a physical inspection, DOB confirmed that the antennas and cabinets installed at the Premises comply with TPPN #5/98; and

WHEREAS, Appellant does not dispute that the antennas and other equipment fall within the category of equipment exempted from special permit requirements set forth in TPPN #5/98 but rather challenge the ability of the jurisdiction of DOB to issue the TPPN; and

## DISCUSSION

A. DOB's Authority to Interpret the Zoning Resolution

WHEREAS, Appellant argues that DOB's issuance of TPPN #5/98 was beyond its authority and effectively changed the Zoning Resolution without going through the public process required for text amendment of the Zoning Resolution; and

WHEREAS, DOB asserts that the City Charter gives DOB the power to enforce the Zoning Resolution, and concomitant with the power to enforce or administer the Zoning Resolution is the power to clarify or interpret; and

WHEREAS, DOB further argues that TPPN #5/98 is a clarification, rather than a "variance" from the requirements of the Zoning Resolution; and

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WHEREAS, Appellant in its April 24, 2007 submission provides a list of TPPNs printed from DOB's web page at [www.nyc.gov](http://www.nyc.gov) as evidence that only TPPN #5/98 changes the Zoning Resolution instead of merely clarifying or interpreting it; and

WHEREAS, Appellant discusses none of the listed TPPNs or makes any attempt otherwise to distinguish them from TPPN #5/98; and

WHEREAS, Omnipoint points out that other TPPNs on the list submitted by appellants – specifically, TPPN #10/99 (setting a specific square footage minimum for determining whether a convenience store is accessory to an automotive service station) and TPPN #11/93 (setting criteria to qualify Pet Receiving Facilities similar to other veterinary medical facilities for use and siting purposes) – are analogous to TPPN #5/98 in carving out certain categories of uses for a different standard of regulatory scrutiny; and

WHEREAS, the Board notes that neither of the key phrases -- “telephone exchanges” or “communications equipment structures” – or their component words, is a defined term within the Zoning Resolution; and

WHEREAS, if DOB cannot interpret or define the phrases “telephone exchange” and “communications equipment structure,” it would not be possible for DOB to enforce ZR § 22-21; and

WHEREAS, furthermore, Omnipoint observes that § 641 of the City Charter gives broad authority to the Commissioner of DOB to regulate alterations of buildings and equipment, including “the regulation of electrical wires and wiring apparatus . . . used . . . for signaling, communication, alarm and data transmission in or on any building or structure . . .”; and

WHEREAS, although not dispositive on the issue of DOB's authority to interpret the Zoning Resolution, Omnipoint also cites language from federal regulations, the Building Code and the Zoning Resolution that supports its position that the cellular telephone equipment at issue in the instant appeal is neither a “telephone exchange” nor a “communications equipment structure”; and

WHEREAS, both DOB and Omnipoint also cite In the Matter of Cellular Telephone Company, D/B/A Cellular One v. Armand Rosenberg, et al., 82 N.Y.2d 364 (1993) for the proposition that wireless carriers provide an essential public service and should be accorded favored treatment in matters of zoning; and

B. DOB's Interpretation of ZR § 22-21 in TPPN #5/98 is a Reasonable Exercise of its Authority to Interpret the Zoning Resolution

WHEREAS, DOB observes that in the six months between September 1, 2006 and February 28, 2007, it issued over 100 permits for cellular antennas in residential districts; and

WHEREAS, TPPN #5/98 was issued in response to the growing number of applications for permits to install cellular telephone equipment; and

WHEREAS, TPPN #5/98 has the effect of expediting the permitting by DOB of many small cellular telephone equipment installations that fall below the minimum specifications set forth in TPPN #5/98 and that are no more obtrusive than landline telephone poles and wires that do not

require approvals from DOB or the Board; and

WHEREAS, only small installations, which are unlikely to have other significant impacts, fall within the ambit of TPPN #5/98; and

WHEREAS, given the limited requirement of the special permit set forth at Z.R. § 73-14 that the “telephone exchange or other communications equipment structures” serve the residential area in which they are located and that there are “serious difficulties” in locating them elsewhere, along with the nature of such cellular telephone antennas as are at issue in the instant appeal to serve only the area in which they are located, the siting of such small structures would be expected to be routine and therefore a proper area for DOB's exercise of its authority to interpret the Zoning Resolution; and

WHEREAS, the Zoning Resolution does not define “telephone exchange” or “communications equipment structure” in such a way as to preclude DOB from exercising its authority to interpret the Zoning Resolution; and

WHEREAS, Omnipoint argues that the cellular telecommunications equipment at issue in this appeal is neither a “telephone exchange” nor a “communications equipment structure” and therefore not even within the scope of the special permit; and

WHEREAS, Omnipoint further points to Appellant's omission of the word “structure” from its characterization of Z.R. § 22-21 in its April 24, 2007 submission in order to broaden the applicability of the special permit beyond the structures intended to be covered; and

WHEREAS, whether or not Omnipoint's argument that the antennas in the instant case are not “structures” regulated under the special permit is correct, their small size and ubiquity make their status under the Zoning Resolution appropriate for clarification by DOB through TPPN #5/98; and

WHEREAS, at hearing, Omnipoint cited statistics indicating the level of integration of cellular communications into the New York telecommunications network, including usage of the particular cellular antennas at issue in the instant appeal, which included 1,443 “911” calls in 2006, and 1.6 million minutes of calls in 2007; and

WHEREAS, the effect of TPPN #5/98 is to streamline the siting process for small cellular telephone equipment installations, which provide a public benefit and which are now thoroughly integrated into the telephone communications network; and

WHEREAS, DOB explicitly recognized in TPPN #5/98 that cellular telephone equipment has become “a prevalent form of communication essential to the public interest”; and

WHEREAS, the Final Determination reiterates that “it has long been accepted that there are certain public utility uses that are so essential to the public interest and that are so incidental to the principal uses on the zoning lot, that they are not the intended subject of zoning use restrictions”; and

WHEREAS, in its submission of March 23, 2007, DOB states that, “[a]s cellular telephone service has become a service effectively comparable in ubiquity to traditional landline phone service, it is necessary and appropriate to treat cellular antenna

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facilities comparably to telephone wiring facilities, with the provisions of the Zoning Resolution being inapplicable to basic transmission facilities of reasonable, minimal size and scope as described in the TPPN"; and

WHEREAS, the Board finds that DOB reasonably exercised its authority to interpret the Zoning Resolution in issuing TPPN #5/98 by permitting certain categories of cellular telephone equipment without requiring a special permit from the Board of Standards and Appeals; and

C. Prior BSA Decisions Do Not Contradict DOB's Authority to Issue the TPPN

WHEREAS, Appellant argues that TPPN #5/98 removed cellular telecommunications equipment installations like the one at issue in the instant appeal from public review and BSA jurisdiction under Z.R. § 73-14; and

WHEREAS, the Board directed Appellant to provide evidence of its assertion that BSA has customarily granted special permits pursuant to Z.R. § 73-14 to such telecommunications equipment installations; and

WHEREAS, Appellant did not introduce any such evidence into the record; and

WHEREAS, Appellant cites BSA Cal. No. 631-87-BZ, which involved the issuance of a special permit for the installation of cellular telephone transmission equipment on and in a Queens building as precedent for requiring a special permit for installation of all rooftop cellular telephone transmission equipment; and

WHEREAS, the DOB objection on which BSA Cal. No. 631-87-BZ was based states:

The use of a portion of the cellar in an R4 Zone for a "telephone exchange or other communications equipment structure," including roof mounted antennae, in Use Group 6 is contrary to Section 22-10 of the Zoning Resolution; and

WHEREAS, the language of the DOB objection makes clear that the denial was based on the equipment proposed to be installed in the cellar, and not on the antennas; and

WHEREAS, BSA Cal. No. 631-87-BZ, decided over ten years prior to the issuance of TPPN #5/98, is distinguishable from the matter in the instant appeal in that 1) it involved the installation of a substantial amount of equipment in the cellar of the building, 2) it would not fall within the exemption from special permit requirement created by TPPN #5/98, and 3) it arose during the early implementation of a cellular telephone network, and before either the federal Telecommunications Act of 1996 or before DOB had reasonably determined, based on the proliferation of cellular communications, that certain small cellular installations should not be required to go through the application process for a special permit from the Board; and

WHEREAS, even if the cellular equipment at issue in BSA Cal. No. 631-87-BZ were comparable to that giving rise to the instant appeal, DOB correctly notes and the Board agrees that cellular communications companies are always free to seek a special permit, as the TPPN does not – and could not – prohibit an applicant from seeking a special permit or prohibit the BSA from granting one; and

D. Federal Law

WHEREAS, Omnipoint, in its Statement in Support of Dismissal, cites the federal Telecommunications Act of 1996

(the "Act") in support of its argument that Appellant lacks standing (a question not addressed by the Board herein); and

WHEREAS, the Act specifically provides that "[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulation concerning such emissions, 47 U.S.C. § 332(c); and

WHEREAS, Omnipoint also cites Cellular Telephone Co. v. Oyster Bay, 166 F.3d 490 (2d Cir. 1999) and Reno v. ACLU, 521 U.S. 844, 857 (1997) for the general proposition that federal policy is to promote the availability of cellular communication; and

WHEREAS, although the Act explicitly limits local authority only with respect to regulating cellular transmission facilities on the basis of potential health effects; and

WHEREAS, TPPN #5/98, to the extent it makes the siting of small cellular telephone transmission facilities less burdensome, is consonant with federal policy; and

WHEREAS, in the absence of City legislation to regulate small cellular telecommunications installations, federal policy supports the rationale behind TPPN #5/98; and  
**ISSUES NOT ADDRESSED IN THIS APPEAL**

WHEREAS, in its "Statement in Support of Dismissal," dated April 11, 2006, Omnipoint makes a number of arguments in support of dismissal of the instant appeal, including arguments based on statutory law and equitable principles; and

WHEREAS, in the interest of deciding the substantive issues presented by this appeal, the Board declines to rule on any of the above reasons for dismissal of the instant appeal; and  
**CONCLUSION**

WHEREAS, the Board finds that DOB acted within the scope of its authority in issuing TPPN #5/98; and

WHEREAS, the Board also finds that DOB acted reasonably in exercising its authority to interpret the Zoning Resolution in TPPN #5/98; and

WHEREAS, DOB's clarification of Z.R. § 22-21 is consistent with its practice in issuing prior Technical Policy and Procedure Notices; and

WHEREAS, the Board declines to substitute its judgment for either that of DOB, which is charged with interpretation of the Zoning Resolution, or that of the City Council, which may act to provide citizens the opportunity to be heard on all matters, however small, involving the installation of cellular telephone equipment; and

*Therefore it is Resolved* that the instant appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated August 17, 2005, determining that the cellular telephone equipment installed at the Premises did not require a special permit from the Board of Standards and Appeals pursuant to Z.R. § 22-21, is hereby denied.

Adopted by the Board of Standards and Appeals, July 24, 2007.

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**87-06-A & 88-06-A**

APPLICANT – Patrick W. Jones, P.C. for Zhen Hu, owner.  
SUBJECT – Application May 8, 2006 – Proposal to permit

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construction of two, four story mixed use building within the bed of the mapped, unimproved Delong Street contrary to General City Law Section 35. Premise is located within a C4-2 Zoning District.

PREMISES AFFECTED – 131-04 & 131-06 40<sup>th</sup> Road, south side of 40<sup>th</sup> Road, 430' west of intersection with College Point Boulevard, Block 5060, Lot 70 & 71, Borough of Queens.

## COMMUNITY BOARD #7Q

### APPEARANCES –

For Applicant: Patrick W. Jones.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated May 2, 2006, acting on Department of Buildings Application Nos. 402285674 & 402285665, reads in pertinent part:

Respectfully request to waive objection #1. Proposed new building is in the bed of a mapped street and is contrary to Section 35 of the General City Law Section; and

WHEREAS, a public hearing was held on this application on July 10, 2007, after due notice by publication in the *City Record*, and then to decision on July 24, 2007; and

WHEREAS, this application seeks a waiver of General City Law Section 35 to permit, within the bed of a mapped street (Delong Avenue), two, four-story buildings to be occupied by retail use (UG 6A) on the basement, mezzanine, and first floor levels and with apartments on the second, third, and fourth floors; and

WHEREAS, Community Board 7, Queens, has recommended approval of this application on condition that it complies with all applicable laws and zoning regulations including any conditions related to the Long Island Railroad and any right of way; and

WHEREAS, by letter dated June 22, 2006, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 22, 2007, the Department of Environmental Protection states that it has reviewed the revised site plan, which reflects widths of 19'-8.75" at the narrowest point of Delong Avenue and 46'-8" at the widest point of Delong Avenue, which will be available for the maintenance and or reconstruction of the existing and future 12-inch diameter sanitary and 36-inch diameter storm sewers and states that it has no further comments on the application; and

WHEREAS, by letter dated September 5, 2006, the Department of Transportation (DOT), states that it has reviewed the application and advised the Board that it requires additional information from the developer with respect to the provisions for emergency vehicle access/turnaround, such as a cul de sac, at the dead end of 40<sup>th</sup> Road, the number of off-

street parking spaces and location of all proposed curb cuts, in addition to the number of dwelling units, square footage for retail activities, and the peak-hour vehicular trips generated; and

WHEREAS, the Board notes that the September 5, 2006 letter did not state that DOT intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, by letter dated October 23, 2006, in response to DOT's request, the applicant states that the Fire Department does not have any issues regarding the development of the lots, and that these lots are not situated at the terminus of 40<sup>th</sup> Road and should not be connected to the DOT technical review of the cul de sac; and

WHEREAS, by letter dated May 22, 2007, the DOT has reviewed the October 23, 2006 submission of the applicant, which included the approval letter from the Fire Department, and has advised the Board that it will defer to the Fire Department's authority and not request the inclusion of a cul de sac at the end of 40<sup>th</sup> Road; and

WHEREAS, by letter dated June 28, 2007, the applicant has provided that no analysis of vehicular trip generation is warranted given that the size of the proposed development does not reach the City Environmental Quality Review (CEQR) threshold for additional traffic review and no curb cuts or parking spaces are proposed; and

WHEREAS, by letter dated July 19, 2007, DOT states that it has reviewed the applicant's submission and has no further comments or objections; 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, dated May 2, 2006, acting on Department of Buildings Application Nos. 402285674 & 402285665, 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 May 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;

THAT the lot subdivision is to be as approved by DOB; 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, July 24, 2007.

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50-07-A

# MINUTES

APPLICANT – Gerald J. Caliendo, R.A., A.I.A., for Yosi Shem-tov, owner.

SUBJECT – Application February 22, 2007 – Construction of a five story three family dwelling (UG2) with ground floor community facility use (UG4) located within the bed of a mapped street (101<sup>st</sup> Street) contrary to General City Law Section 35. R6B Zoning District.

PREMISES AFFECTED – 100-21 39<sup>th</sup> Avenue, northside of 39<sup>th</sup> Avenue, Block 1767, Lot 61, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated January 23, 2007, acting on Department of Buildings Application No. 402188725, reads in pertinent part:

Proposed building is in the bed of a mapped street. Comply with Section 35 of the General City Law or refer to the Board of Standards and Appeals for an Administrative Appeal; and

WHEREAS, a public hearing was held on this application on July 10, 2007 after due notice by publication in the *City Record*, and then to decision on July 24, 2007; and

WHEREAS, this application seeks a waiver of General City Law Section 35 to permit the construction of a five-story three-family building (UG 2) with a community facility medical office (UG 4) within the bed of a mapped street; and

WHEREAS, Community Board 3, Queens, has recommended approval of this application on condition that approvals are obtained from the Department of Transportation (DOT), the Department of Environmental Protection (DEP), and the Fire Department (FDNY); and

WHEREAS, by letter dated June 13, 2007, the FDNY states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated April 9, 2007, DEP states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated May 22, 2007, the DOT states that it reviewed the application and advises the Board that it has concerns with regard to the availability of any parking in the area; and

WHEREAS, further, DOT requires that the applicant provide a site plan showing the number of off-street parking spaces, if any are intended, as well as the location of all curb cuts; and

WHEREAS, the Board notes that the May 22, 2007 letter did not state that DOT intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, by letter dated June 11, 2007, in response to DOT's request, the applicant submitted a revised plot plan and statement reflecting two accessory off-street parking spaces and

the location of the proposed curb cut on 39<sup>th</sup> Avenue; and

WHEREAS, by letter dated July 12, 2007, DOT states that it has reviewed the applicant's revised submission and has no further comments or objections; 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, dated January 23, 2007, acting on Department of Buildings Application No. 402188725, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received June 22, 2007"-(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, July 24, 2007.

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## 149-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Edward Joyce, lessee.

SUBJECT – Application June 7, 2007 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street contrary to Article 3, Section 36 of the General City Law and the proposed upgrade on an existing legal non-conforming private disposal system partially in the bed of the Service Road is contrary to Building Department Policy. R4 Zoning District. PREMISES AFFECTED – 17 Roosevelt Walk, southeast corner of Roosevelt Walk and West End Avenue, Block 16350, Lot p/o 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough



# MINUTES

Commissioner, dated May 25, 2007, acting on Department of Buildings Application No. 402564444, reads in pertinent part:

- A-1 The street giving access to the existing building to be reconstructed and enlarged is not duly placed on the official map of the City of New York, therefore:
  - A) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law
  - B) The existing dwelling to be reconstructed and enlarged does not provide at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code
- A-2 The proposed upgraded private disposal system is partially in the bed of the service road contrary to Building Department policy; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, by letter dated June 11, 2007, the Fire Department states that it has reviewed the application and has no objections; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated May 25, 2007, acting on Department of Buildings Application No. 402564444, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received June 7, 2007"-(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, July 24, 2007.

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## 320-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Furman LLC, owner.

SUBJECT – Application December 11, 2006 – An appeal challenging DOB's interpretation of their DOB Memo 9/21/86 in which compliance with the special provisions of §23-49 (a) & (c) are applicable to the current design of the

proposal when the party walls are utilized or shared for 50% or more of the depth of the building. R5 zoning district. PREMISES AFFECTED – 4368 Furman Avenue, between East 236<sup>th</sup> and East 237<sup>th</sup>, Block 5047, Lot 12, Borough of Bronx.

## COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Mark Davis.

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

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## 84-07-A & 85-07-A

APPLICANT – Law Office of Anthony J. Tucci, for Brook Property Management, LLC, owner.

SUBJECT – Application April 18, 2007 – Proposal to build two, semi- attached, one family homes which does not front on a mapped street contrary to Article 3, §36 of the General City Law and NYC Building Code §27-291. R3-1 Zoning District.

PREMISES AFFECTED –12 & 14 Brook Avenue, near Hylan Boulevard, Block 4721, Lots 45 & 46, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant:

For Opposition: John Lafemina.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 7, 2007, at 10 A.M., for decision, hearing closed.

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## 96-07-A

APPLICANT – Sheldon Lobel, P.C., for 4175 Building Corp., owner.

SUBJECT – Application April 20, 2007 – Appeal challenging Department of Buildings determination that since both buildings contain Community Facility uses, Section 24-551 of the Zoning Resolution which regulates side setbacks must be complied with. R5 Zoning District.

PREMISES AFFECTED – 41-30/34 75<sup>th</sup> Street, 41<sup>st</sup> Avenue and Woodside Avenue, Block 1494, Lots 48 & 49, Borough of Queens.

## COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Irving Minkin and Christopher Papa.

For Opposition: Janina Gaylard.

For Administration: Janine Gaylard.

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, JULY 24, 2007  
1:30 P.M.**

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

**ZONING CALENDAR**

**333-06-BZ**

APPLICANT – Joseph P. Morsellino, Esq., for Alfred Caligiuri, owner.

SUBJECT – Application December 29, 2006 – Variance (§72-21) to permit the enlargement of an existing two family dwelling in an R2A zoning district which complies with the districts bulk and yard requirements but does not permit two family dwellings.

PREMISES AFFECTED – 29-26 Bell Boulevard, Bell Boulevard and 32<sup>nd</sup> Avenue, Block 6053, Lot 34, Borough of Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: Joseph Morsellino.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

WHEREAS, the denial of reconsideration by the Queens Borough Commissioner dated July 7, 2006, acting on Department of Buildings (DOB) Application No. 402388527 reads, in pertinent part:

“Proposed use Group 2 contrary to R2A district in that 2 family dwelling not permitted in R2A zone. (ZR 21-11 and 22-00)”;

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R2A zoning district, the enlargement of a non-conforming two-family house (UG 2), contrary to ZR § 21-11 and 22-00; and

WHEREAS, the proposed enlargement otherwise conforms with all zoning requirements, except for its continued use as a two-family house; and

WHEREAS, a public hearing was held on this application on July 10, 2007, after due notice by publication in *The City Record*, and then to decision on July 24, 2007; and

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

WHEREAS, on December 26, 2006, Community Board 11, Queens, recommended approval of the application; and

WHEREAS, on March 9, 2007, the Queens Borough President recommended approval of the application; and

WHEREAS, the subject premises is located on the west side of Bell Boulevard, between 29<sup>th</sup> and 32<sup>nd</sup> Avenues, and is occupied by an existing non-conforming two-family house; and

WHEREAS, the Board initially approved the construction of the existing wood-frame two-family house under BSA Cal. No. 1042-48-A; and

WHEREAS, the premises was subsequently rezoned to an R2A district, in which the existing two-family house is a non-conforming use; and

WHEREAS, the proposal provides for enlargement of the existing, non-conforming two-family house as follows: 3,312 sq. ft. of floor area (3,325 sq. ft. is the maximum permitted); an FAR of 0.5 (0.5 FAR is the maximum permitted); 29% lot coverage (30% is permitted); total building height of 34’ – 2’’ (35’ – 0’’ is the maximum permitted); a front yard of 15’ – 0’’ (a front yard of 15’ - 0’’ is required); two side yards of 5’ - 0’’ and 8’ – 7’’ (5’ - 0’’ and 8’ – 0’’ side yards are required); and off-street parking for 2 vehicles (a minimum of 2 parking spaces are required); and

WHEREAS, the only non-compliance would be with respect to the number of dwelling units in the building; and

WHEREAS, with respect to ZR § 72-21(a), the applicant states that the unique characteristics of the premises are that the existing two-family house is situated on a 6,650 square foot lot that is significantly larger than most other lots in the neighborhood and is significantly underbuilt, with a house of only 927 square feet and 0.15 FAR (3,325 square feet and 0.5 FAR are permitted); and

WHEREAS, the applicant states that of the 92 lots within 400’ of the premises, only eight are as large as the premises; and

WHEREAS, the applicant states further that the two- and three-family houses along Bell Boulevard in the neighborhood of the premises have an average FAR of 1.2 (and a range of from 0.47 to 2.05 FAR); and

WHEREAS, the applicant argues it would suffer unnecessary hardship and practical difficulties if it had to convert the two-family house to a single-family house in order to expand; and

WHEREAS, the Board agrees that the premises is one of the few oversized lots in the area underdeveloped with a legal non-conforming two-family house; and

WHEREAS, the Board acknowledges that the large lot size and underbuilt nature of the premises does create unnecessary hardship and practical difficulties for the owner; 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 neighborhood surrounding the premises is fully developed with many one-, two-, and three-family houses that have greater bulk than the existing house on the premises and that exceed permitted FAR; and

WHEREAS, furthermore, the Board notes that in all respects the enlargement of the currently legal two-family

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house complies with zoning; and

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

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title but is attributable to the physical characteristics of the premises and to the rezoning of the area to a 2A zoning district, which caused the existing two-family house to become a non-conforming use; and

WHEREAS, with respect to ZR § 72-21(e), the applicant states that the proposed expansion will comply with all applicable zoning requirements except that the two-family house will remain a non-conforming use in the R2A zoning district; and

WHEREAS, the Board agrees that the variance sought is the minimum required to afford 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

*Therefore it is Resolved* that the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R2A zoning district, the enlargement of a Use Group 2 two-family residence, contrary to ZR §§ 21-11 and 22-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 30, 2007" – (11) sheets and "Received July 17, 2007" – (1) sheet; and *on further condition*:

THAT the building parameters shall be: one two-family house (UG 2) with 3,312 sq. ft. of floor area; an FAR of 0.5; 29% lot coverage; total building height of 34' – 2"; front yard of 15' – 0"; two side yards of 5' – 0" and 8' – 7"; and off-street parking for 2 vehicles;

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

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

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

THAT 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, July 24, 2007.

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## 43-07-BZ

### CEQR #06-BSA-060M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Covenant House, owner; Hampshire House Hotels & Resorts, lessee.

SUBJECT – Application February 8, 2007 – Zoning variance under §72-21 to allow a proposed twelve (12) story

mixed-use development containing seventy-four (74) apartment hotel rooms (U.G. 2), two-hundred and seventy (270) transient hotel rooms (U.G. 5) and retail use (U.G. 6) and/or a physical culture establishment (PCE) on the ground and cellar levels. Proposed commercial uses (transient hotel, retail and PCE) are contrary to use regulations (§22-00). Proposed apartment hotel rooms exceed maximum number of dwelling units (§23-22) and are contrary to recreation requirements of the Quality Housing Program (§28-32). Proposed development would also violate regulations for floor area (§23-145), lot coverage (§23-145), rear yard for interior portion of lot (§23-47), rear yard equivalent for through lot portion (§23-533), height and setback (§23-633), and location requirements for outdoor swimming pool (§12-10).

PREMISES AFFECTED – 346-360 West 17<sup>th</sup> Street, a/k/a 351-355 West 16<sup>th</sup> Street, Block 740, Lot 55, Borough of Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 24, 2007, acting on Department of Buildings Application No. 104579029, reads in pertinent part:

1. Proposed Use Group #5 (Transient Hotel), UG #6 (Retail and Offices) and Physical Culture Establishment in R8B is contrary to 22-00 ZR.
2. Proposed converted building is contrary to 23-633 ZR and 23-633(b) ZR in that it exceeds maximum base height and maximum building height.
3. Proposed accessory hotel space and mechanical equipment room located within the rear yard equivalent contrary to 23-44 ZR; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8B zoning district, the modification and conversion of an existing community facility building into a transient hotel (Use Group 5) with 316 rooms, accessory hotel use (Use Group 5), retail use (Use Group 6), and a physical culture establishment (PCE), which does not conform with use regulations, contrary to ZR § 22-00, and

WHEREAS, the application includes the partial demolition (to create an interior courtyard) and reconstruction of the existing building, which results in a total floor area of 150,646 sq. ft. (5.95 FAR), a streetwall height of 83.5 feet and total height of 97.5 feet on West 16<sup>th</sup> Street, a streetwall height of 135.67 feet and a total height of 150.67 feet on West 17<sup>th</sup> Street, and does not comply with height, setback, and rear yard equivalent regulations, contrary to ZR §§ 23-44, 23-633, and 23-633(b); and

WHEREAS, the existing building (1) is overbuilt at 162,123 sq. ft. and 6.4 FAR (101,200 sq. ft. and 4.0 FAR are

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the maximum permitted), (2) has 100 percent lot coverage (70 percent is the maximum permitted), (3) exceeds the maximum permitted heights on both wings (a 60'-0" streetwall and a 75'-0" total height are the maximum permitted), and (4) does not provide any rear yards or rear yard equivalents at grade (rear yards of 30'-0" or rear yard equivalents of 60'-0" are the minimum required); and

WHEREAS, the Board notes that the proposed building will maintain existing non-compliances as to lot coverage and rear yard; decreases non-compliance as to floor area and FAR; and increases the degree of non-compliance as to height and setback and rear yard equivalent; and

WHEREAS, the applicant initially proposed a 6.2 FAR mixed-use building with a transient hotel (270 rooms) and a residential apartment hotel (74 units), with a partial demolition and reconstruction for a total floor area of 156,523 sq ft.; and

WHEREAS, the original proposal required all of the requested waivers noted above as well as (1) a waiver for the failure to provide recreation space accessible only from the residential portion of the building as required by the Quality Housing Program; (2) a waiver to permit the requested residential density; and (3) a waiver to permit an insufficient distance between the pool, which would be accessory to the residential use, and the lot line; and

WHEREAS, a public hearing was held on this application on May 22, 2007, after due notice by publication in the *City Record*, with a continued hearing on July 10, 2007, and then to decision on July 24, 2007; and

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

WHEREAS, Community Board 4, Manhattan, approved the original application with the following recommendations: (1) that a 15'-0" setback be provided above the sixth floor on the West 16<sup>th</sup> Street frontage, (2) that a traffic attendant be provided, (3) that a night club or other Use Group 10 use be prohibited, and (4) that the building be designed to conform to the standard for LEED certification; and

WHEREAS, City Council Speaker Christine Quinn provided testimony in support of the application, noting that the applicant has agreed to the noted Community Board recommendations; and

WHEREAS, the Community Board subsequently reviewed the current proposal and recommends its approval; and

WHEREAS, the site is located 100 feet east of Ninth Avenue, with frontage on West 16<sup>th</sup> Street and West 17<sup>th</sup> Street, within an R8B zoning district; and

WHEREAS, the site is irregularly-shaped with a lot area of 25,300 sq. ft., a lot width of approximately 175 feet at its West 17<sup>th</sup> Street frontage, a lot depth of 184 feet in its two separate through-lot segments (with widths of 25 feet and 75 feet on the West 16<sup>th</sup> Street frontage), and a depth of 92 feet at two other segments with frontage only on West 17<sup>th</sup> Street; and

WHEREAS, separate lots comprise the remaining 75 feet of frontage on West 16<sup>th</sup> Street abutting the site and are not part of this application; and

WHEREAS, the site is occupied by a building with (1) an

11-story portion for the width of the West 17<sup>th</sup> Street frontage (the "West 17<sup>th</sup> Street Wing"), which will be enlarged; (2) a five-story portion for the 75 ft. wide segment of the West 16<sup>th</sup> Street frontage, which will be partially demolished and reconstructed (the "West 16<sup>th</sup> Street Wing"); and a one-story garage on the 25 ft. wide segment of the West 16<sup>th</sup> Street frontage, which will be enlarged (the "Garage Building"); and

WHEREAS, on December 15, 1964, under BSA Cal. No. 1086-64-BZ, the Board granted a variance to permit on a site within what was then partially an M1-5 zoning district and partially an R8 zoning district, the construction of an 11-story union training and recreation building that was non-complying as to rear yard, rear yard equivalent, setback, and lot coverage regulations; and

WHEREAS, the entire site has since been rezoned to be within an R8B zoning district; and

WHEREAS, the existing building was built for the National Maritime Union and included dormitory-style sleeping accommodations and other services, as noted above, for union members; it was most recently occupied by Covenant House, a social service institution that will relocate; and

WHEREAS, the West 17<sup>th</sup> Street Wing has a unique design, built to reflect the union's nautical heritage, with circular windows and a sloping façade on its street frontage, which results in each successive floor having a shallower depth than the floor below; and

WHEREAS, the applicant now proposes to demolish the second through fifth floors of the rear portion of the West 16<sup>th</sup> Street Wing and to relocate a portion of the demolished floor area by constructing new sixth and seventh stories above the West 16<sup>th</sup> Street Wing, and a new twelfth story above the West 17<sup>th</sup> Street Wing; and

WHEREAS, the applicant also proposes to add two floors above the existing Garage Building to be occupied by a loading dock, accessory hotel use, and mechanical space, which will be connected to the West 17<sup>th</sup> Street Wing; and

WHEREAS, the two wings are to be connected at the first floor and cellar level; and

WHEREAS, the cellar will be occupied by accessory hotel use, retail storage, and/or a PCE; and

WHEREAS, the first floor will be occupied by accessory hotel use, retail use, and/or a PCE; and

WHEREAS, the second floor will be occupied by the courtyard pool area, accessory hotel use, and hotel rooms; and

WHEREAS, the remainder of both wings will be occupied by hotel rooms, except for the twelfth floor of the West 17<sup>th</sup> Street Wing, which will be occupied by accessory hotel use; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance and compliance with applicable zoning district regulations: (1) the existing building is overbuilt and obsolete for a conforming use; and (2) the site is irregularly-shaped; and

WHEREAS, as to the existing building, as noted, the building was specifically tailored to meet the Maritime Union's needs and to support a unique community facility program; and

WHEREAS, the design of the existing building includes the following features: (1) full lot coverage for the five-story

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base that cannot be fully utilized because of large floor plates that do not provide sufficient access to light and air for a conforming residential or community facility use without significant expense to demolish four floors at the interior of the site; (2) the absence of windows in the West 16<sup>th</sup> Street Wing; (3) an 8.5 degree slope that sets back and narrows at each floor in the north façade of the West 17<sup>th</sup> Street Wing; and (4) the unique fenestration – a pattern of circular windows - of the West 17<sup>th</sup> Street Wing; and

WHEREAS, as to the lot coverage and the lack of fenestration on the West 16<sup>th</sup> Street Wing, the applicant represents that this was viable for the original user which located support facilities on the lower floors, which did not require access to light and air; and

WHEREAS, the applicant asserts that community facility reuse of the existing building is limited to an institution that could be accommodated with large amounts of non-living space with few windows, and rooming units on the upper floors, and that marketing attempts to identify such a user were unsuccessful; and

WHEREAS, the applicant represents that in order to accommodate a new community facility use or a conforming residential use, the second through fifth floors of the West 16<sup>th</sup> Street Wing must be demolished to provide the access to light and air required by those uses through the introduction of a central courtyard and new windows on the interior walls of both wings; and

WHEREAS, the applicant represents that the location of the existing column lines precludes the demolition of the middle portion of the West 16<sup>th</sup> Street Wing to grade to provide the required rear yard because it would require a complicated and costly alteration of the basic building structure; and

WHEREAS, the applicant has documented the additional costs associated with demolishing the interior portion of the building and creating two new interior facades in order to provide the courtyard; and

WHEREAS, the applicant represents that the demolished floor area cannot be replaced as of right because the building would still be overbuilt and the heights of both wings of the existing building exceed the height limits set forth in R8B zoning district regulations; and

WHEREAS, additionally, the Board notes that the cellar covers the entire lot and was viable for community facility uses but has limited potential for a conforming use; and

WHEREAS, accordingly, the Board finds that the proposed use of the cellar for accessory hotel use, an accessory restaurant and kitchen, retail storage, and/or a PCE is appropriate; and

WHEREAS, as to the sloping façade, the applicant states that this condition results in none of the 11 floors of the West 17<sup>th</sup> Street Wing having the same depth; and

WHEREAS, specifically, the applicant represents that the depths of the West 17<sup>th</sup> Street Wing's middle floors – 51.8 feet to 55.5 feet - are too shallow for a double-loaded corridor layout yet too deep for a single-loaded layout, which would result in smaller, less desirable residential units; and

WHEREAS, the applicant represents that there are similar problems associated with the even shallower upper floors; and

WHEREAS, the applicant notes that this design was able to accommodate the specific original use of transient dormitory-style rooming units on the upper floors, based on the standards for such accommodations when the building was built; and

WHEREAS, the applicant asserts that these conditions do not meet current requirements and are not satisfactory for standard community facilities; and

WHEREAS, thus, the applicant asserts that the unique layout of the floors is more compatible with the proposed use and requires less significant modifications to accommodate the proposed use than would be required to accommodate a conforming residential use; and

WHEREAS, the applicant represents that the varying floor depths result in higher construction costs because they prevent the subdivision of each floor into units of the same size and configuration and require additional offsets in the vertical elements of the plumbing and HVAC systems because they cannot accommodate the basic straight line connections between floors that a typical building can; and

WHEREAS, this condition reduces the ratio of sellable to gross floor area from the 85 to 88 percent found in a typical conversion to approximately 76 percent in the 4.7 FAR residential and community facility building scenario discussed below; and

WHEREAS, as to the fenestration, as noted, the West 16<sup>th</sup> Street Wing does not have any windows and the West 17<sup>th</sup> Street Wing has a unique circular-windowed design; and

WHEREAS, the applicant states that neither condition is compatible with a residential use and that there are considerable costs associated with providing a new skin for the entire building in order to provide sufficient access to light and air; and

WHEREAS, the applicant represents that, given the unique built conditions, the costs associated with converting this building to a conforming use are greater than they would be to convert a comparably-sized building with a conventional form; and

WHEREAS, as noted, the applicant represents that the considerable costs associated with converting the building to a conforming residential use cannot be overcome because the building cannot feasibly accommodate residential units that would be marketable; and

WHEREAS, as to the site's shape, as noted, the lot is irregularly-shaped with a frontage of 175 feet on West 17<sup>th</sup> Street, its widest point, with segments which extend through the block to West 16<sup>th</sup> Street with widths of 75 feet and 25 feet and two segments which only extend halfway through the block; and

WHEREAS, this condition results in different portions of the lot having different rear yard requirements since the through lot portions could provide rear yard equivalents and the remainder must provide a standard 30 ft. rear yard; and

WHEREAS, the applicant represents that because the site is irregularly-shaped and has a higher percentage of perimeter wall area than a standard rectangular site, there is an increase in construction costs and it is more difficult to create efficient floorplates; and

WHEREAS, the applicant represents that the condition of

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a full lot coverage building of this size in the mid-block on a through lot in a residential zoning district is unique; and

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

WHEREAS, the applicant submitted a feasibility study analyzing (1) a conversion to another as-of-right community facility use; (2) a 4.7 FAR conforming residential and community facility use; (3) a 5.2 FAR hotel, which does not recapture the demolished floor area for the courtyard; (4) a 6.2 FAR conforming residential use with community facility; and (5) the initial proposal for a 6.2 FAR mixed-use apartment hotel/transient hotel; and

WHEREAS, the applicant concluded that due to the uniqueness of the lot, the existing building conditions, and premium construction costs: (1) the community facility would result in a loss, (2) the conforming 4.7 FAR residential and community facility use would result in a loss, (3) the 5.2 FAR hotel would result in an insufficient return; and (4) the 6.2 FAR residential building would result in an insufficient return; and

WHEREAS, the applicant concluded that the initial proposal for a 6.2 FAR mixed-use apartment hotel/transient hotel would result in a sufficient return; and

WHEREAS, at hearing, the Board asked the applicant to provide additional analysis of the 5.2 FAR hotel alternative, a lesser variance request which recaptures less floor area and reduces the height and setback waivers; and

WHEREAS, the applicant submitted a supplementary analysis which reflects that a 5.2 FAR hotel would be 18,043 sq. ft. smaller than the proposed building and would contain 276 rooms as opposed to the 316 rooms proposed; and

WHEREAS, the applicant represents that this reduced number of rooms cannot generate the income required to offset the incremental costs incurred in addressing the site's physical conditions, specifically, costs associated with the demolition of the interior portion of the building to create a courtyard and the cost of a new skin on each of the building's four principal facades, which are not present on the typical building site; and

WHEREAS, the applicant also notes the additional hard costs associated with creating a 60'-0" courtyard rather than the proposed 50'-0" courtyard; and

WHEREAS, the applicant revised the proposal to its current iteration as a 5.95 FAR transient hotel with accessory uses with the noted changes to the building envelope and has submitted evidence reflecting that it achieves a reasonable return; and

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

WHEREAS, the applicant represents that the proposed 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, as to the proposed use, the applicant notes that the existing building, designed for and used as a community facility with transient sleeping accommodations, has not been used for conforming residential use; and

WHEREAS, further, the applicant represents that the immediate area is a mix of commercial, residential, and institutional uses with some remaining manufacturing/industrial uses; and

WHEREAS, specifically, the Maritime Hotel is adjacent to the site; the former Port Authority Building (the "Terminal Building") occupies the entire block across from the site on West 16<sup>th</sup> Street, within an M1-5 zoning district; and the Fulton Houses, a high density housing development with multiple buildings is across Ninth Avenue; and

WHEREAS, the Board notes that there is also a large school building across West 17<sup>th</sup> Street, which occupies a through lot for a majority of the block; and

WHEREAS, as to the proposed height and setback, the applicant notes that the Maritime Hotel, which spans a through lot from West 16<sup>th</sup> Street to West 17<sup>th</sup> Street on Ninth Avenue, has 13 stories; the Terminal Building has 17 stories; and the Fulton Houses comprises buildings with seven and 25 stories; and

WHEREAS, the applicant proposes to nestle the West 17<sup>th</sup> Street Wing's new twelfth floor between the existing mechanical and stair towers, which reach a height of 150.67 feet, and to set it back 12'-8" from the floor below, which is itself set back from the street due to the sloping facade; and

WHEREAS, similarly, the three-story enlargement to the West 16<sup>th</sup> Street Wing increases the height of the existing street wall by only 4'-0", which closely matches the existing parapet height, before a 15'-0" setback above the sixth floor, and the enlargement of the Garage Building is within zoning district parameters except for the portion which increases the degree of non-compliance as to rear yard; and

WHEREAS, accordingly, the applicant notes that the relocation of the floor area from the interior of the site to the exterior wings will provide additional open space and, because the new floors are almost all set back, there is no significant effect on the building's scale; and

WHEREAS, further, the applicant notes that the proposal reflects the conversion of an existing building, with transient sleeping accommodations to another use with transient sleeping accommodations; and

WHEREAS, as to traffic circulation, the applicant proposes to locate the hotel entrance on West 16<sup>th</sup> Street, directly adjacent to the Maritime Hotel and across the street from the Terminal Building's loading bays in an effort to be more compatible with nearby uses, which are characterized by predominantly commercial uses to the site's south and west and predominantly residential and institutional uses to the north and east of the site; and

WHEREAS, as noted below, the applicant also agrees to provide a traffic attendant during certain hours, daily; and

WHEREAS, as to the accessory uses on the site, the applicant has agreed to limit the uses in the cellar to (1) uses accessory to the transient hotel (Use Group 5); (2) cooking facilities for the accessory restaurant(s); (3) storage space accessory to the first floor retail use (Use Group 6); and (4) a

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PCE; and

WHEREAS, the applicant also agreed to limit the retail space, other than potential cellar storage space, to the first floor and to a floor area of 10,000 sq. ft. per establishment; and

WHEREAS, as to the demolition of the center portion of the building, the applicant notes that the creation of an interior courtyard reduces the degree of non-compliance as to rear yard for the second through fifth floors and increases access to light and air for the interior of the block; and

WHEREAS, at hearing, the Board inquired about the use of the pool area and the proposed screening and buffering around it; and

WHEREAS, the applicant responded that the pool area is approximately 2,300 sq. ft., would be limited in occupancy, and that opaque screening and a sound buffer with a height of 8'-0" would be provided around it; and

WHEREAS, the applicant agrees to the following requests of the Community Board and City Council Speaker, some of which were noted above: (1) to provide a 15'-0" setback, rather than a 10'-0" setback above the sixth floor of the West 16<sup>th</sup> Street Wing; (2) to provide a dedicated employee (separate from the doorman) to coordinate hotel traffic in front of the West 16th Street Wing between the hours of 5:00 p.m. and 1:00 a.m., daily; and (3) to prohibit a night club or other Use Group 10 use; and

WHEREAS, the Board notes that an agreement to design the building to conform to the standard for LEED certification may be made by the parties, but is beyond its purview; and

WHEREAS, the Board agrees that the proposed use has been designed to minimize any effect on nearby conforming uses and that the changes to the existing building envelope are compatible with the surrounding area; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, the Board notes that the applicant initially stated that a 6.2 FAR mixed-use transient hotel/residential apartment hotel building was required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site and the existing building that require a portion of the building to be demolished and a new window configuration to be installed, which still results in inefficient and irregular floorplates, thus restricting the allowable floor area within the permitted building envelope, but disagrees that the initially proposed 6.2 FAR was required to make the building feasible; and

WHEREAS, accordingly, the applicant revised the proposal to eliminate the residential use, which had generated a number of additional waiver requests, noted above; and

WHEREAS, as noted, the applicant also eliminated the proposed eighth and ninth floors on the West 16<sup>th</sup> Street Wing and provided a 12'-8" setback for the proposed twelfth floor of the West 17<sup>th</sup> Street Wing, in order to reduce the FAR to 5.95, to reduce the height and setback waivers, and to reflect a more

appropriate distribution of floor area on the site; and

WHEREAS, the Board notes that the current proposal requires fewer waivers than the original proposal and although it maintains the existing non-compliance as to lot coverage for the first floor and increases the rear yard waiver at the Garage Building, it provides greater access to light and air at the center of the site through the introduction of the courtyard between the two wings; and

WHEREAS, accordingly, the Board finds that the current 5.95 FAR proposal is the minimum necessary to offset the additional construction costs associated with the uniqueness of the site and 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 action pursuant to Sections 617.2 and 617.6 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. 07BSA060M, dated January 31, 2007; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an R8B zoning district, the modification of an existing community facility building and its conversion into a transient hotel (Use Group 5) with 316 rooms, accessory hotel use (Use Group 5), retail use (Use Group 6), and a physical culture establishment, which does not conform with use or comply with height, setback, and rear yard equivalent regulations and is contrary to ZR §§ 22-00, 23-44, 23-633, and 23-633(b), *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 17, 2007"--twenty-one (21) sheets and "Received July 23, 2007"--two (2) sheets; and *on further condition*:

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THAT the following shall be the bulk parameters of the proposed building: seven stories, a wall height of 83.5 feet, and a total height of 97.5 feet for the West 16<sup>th</sup> Street Wing; three stories and a total height of 45.5 feet for the Garage Building; 12 stories, a wall height of 135.67 feet, and a total height of 150.67 feet for the West 17<sup>th</sup> Street Wing; and a total floor area of 150,646 sq. ft. (5.95 FAR);

THAT the use of the cellar shall be limited to one or more of the following: (1) uses accessory to the hotel (Use Group 5); (2) cooking facilities for the accessory restaurant(s); (3) storage space accessory to the first floor retail use (Use Group 6); and (4) a PCE;

THAT no retail establishment shall have a floor area in excess of 10,000 sq. ft. on the first floor, as per the BSA-approved plans;

THAT the east-west dimension of the elevator bulkhead on the West 16<sup>th</sup> Street frontage shall not exceed 30 feet, above a height of 107.5 feet and exclusive of the screen wall, as per the BSA-approved plans;

THAT the applicant shall provide a dedicated employee (separate from the doorman) to coordinate hotel traffic in front of the building on West 16th Street between the hours of 5:00 p.m. and 1:00 a.m., daily;

THAT a nightclub or other Use Group 10 use is prohibited;

THAT opaque screening of a height of eight feet shall be provided around the courtyard pool area;

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

THAT prior to the establishment of a PCE, a DOI application and proposed plans must be submitted to the Board for approval;

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 this grant is contingent upon final approval from the Department of Environmental Protection before issuance of construction permits other than permits needed for soil remediation; 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, July 24, 2007.

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## 117-07-BZ CEQR #06-BSA-082M

APPLICANT – Ellen Hay, Wachtel & Masyr LLP, for Rosebud Associates, LLC, owner.

SUBJECT – Application May 10, 2007 – Special Permit (§73-36) to allow the operation of the proposed PCE on a portion of the first floor and the second floor in vacant space in an existing 21-story mixed-use building. The Premises is located in a C1-9A "TA" zoning district. The proposal is

contrary to section 32-00.

PREMISES AFFECTED – 222 East 34<sup>th</sup> Street, south side of East 34<sup>th</sup> Street, between Second and Third Avenues, Block 914, Lot 36, Borough of Manhattan.

## COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ellen May.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 10, 2007, acting on Department of Buildings Application No. 104741549, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ is not permitted as-of-right in C1-9A zoning district. This use is contrary to Section 32-10 ZR”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9A zoning district within Special Transit Land Use “TA” Zoning District, the establishment of a physical culture establishment (PCE) in a portion of first and all of the second floor of an existing 21-story mixed use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 10, 2007, after due notice by publication in *The City Record*, and then to decision on July 24, 2007; and

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

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

WHEREAS, the subject site is located on the south side of East 34<sup>th</sup> Street, between Second and Third Avenues; and

WHEREAS, the site is occupied by a 21-story mixed-use commercial and residential building; and

WHEREAS, the PCE will be located in a currently vacant part of the commercial portion of the building; and

WHEREAS, the PCE will occupy a total of 26,193 sq. ft. of floor area, which includes 4,444 sq. ft. on the first floor and 21,749 sq. ft. on the second floor; and

WHEREAS, the applicant represents that the PCE will offer classes and equipment for physical improvement, personal training, strength training, weight training, group fitness programs, and cardiovascular programs, with locker rooms, steam and sauna rooms, a spa, kids’ club and lounge/juice bar; and

WHEREAS, the PCE will be operated by Club H. NY, LLC; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 5:00 a.m. to 11:00 p.m.; Friday



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5:00 a.m. to 9:00 p.m., and Saturday and Sunday, 7:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing the Board expressed concern about the location of the PCE in proximity to the residential portion of the building; and

WHEREAS, applicant represented that it has retained an acoustic consultant to ensure that there is not noise impact on residential units and has agreed to implement the consultant's recommendations; and

WHEREAS, additionally, applicant submitted a copy of its lease, which requires the PCE to provide soundproofing; and

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

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

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

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

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

WHEREAS, the 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. 07BSA082M dated May 2, 2007; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the

Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-1 zoning district, the establishment of a physical culture establishment on portions of the first and second floors of a building within a commercial mall complex, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 10, 2007"-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 24, 2017;

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 11:00 p.m.; Friday 5:00 a.m. to 9:00 p.m., and Saturday and Sunday, 7:00 a.m. to 7:00 p.m.;

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

THAT measures are implemented to ensure there is no noise impact from the PCE in residential units in the building;

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);

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, July 24, 2007.

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## **25-06-BZ**

APPLICANT– Dominick Salvati and Son Architects, for Josef Packman, owner.

SUBJECT – Application February 14, 2006 – Variance (§72-21) to allow an eight (8) story residential building with ground floor community facility use to violate applicable regulations for dwelling unit density (§23-22), street wall height (§23-631 and §24-521), maximum building height (§23-631), front yard (§24-34), side yards (§24-35 and §24-551), FAR (§24-11, §24-162 and §23-141) and lot coverage (§23-141 and §24-11). Project is proposed to include 29 dwelling units and 31 parking spaces. R3-2 district.

PREMISES AFFECTED – 2908 Nostrand Avenue, Block 7690, Lots 79 and 80, Borough of Brooklyn.

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## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Peter Hirshman, Nick Recchia and Robert Pauls.

For Opposition: Zipporah Sokolow Friedman.

**ACTION OF THE BOARD** – Laid over to September 11, 2007, at 1:30 P.M., for continued hearing.

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## 114-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Aleksandr Levchenko, owner.

SUBJECT – Application June 6, 2006 – Special Permit (§73-622) to allow the legalization of an enlargement to a single family home in an R3-1 zoning district, which exceeds the allowable floor area ratio, open space and lot coverage (§23-141); provides less than the minimum required side yards (§23-48).

PREMISES AFFECTED – 124 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 10, Borough of Brooklyn

## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

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## 306-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 60 Lawrence, LLC, owner.

SUBJECT – Application November 21, 2006 – Variance (§72-21) to permit the construction of a one and six-story religious school building with the one-story portion along the rear lot line. The premises is located in a split M1-1/R5 zoning district and the Ocean Parkway Special Zoning District. The proposal is contrary to the use regulations (§42-00), floor area and lot coverage (§24-11), front yard (§24-34), side yards (§24-35), and front wall (§24-52).

PREMISES AFFECTED – 50 Lawrence Avenue, south side of Lawrence Avenue, approximately 36' east of McDonald Avenue, Block 5422, Lot 10, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### APPEARANCES –

For Applicant: Richard Lobel and Hiram Rothkrug.

**ACTION OF THE BOARD** – Laid over to October 2, 2007, at 1:30 P.M., for continued hearing.

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## 319-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 211 Service LLC., owner.

SUBJECT – Application December 8, 2006 – Special Permit pursuant to §73-49 to allow seventy-five (75) accessory parking spaces for an automotive service establishment (UG 16) on the rooftop of an existing building. M1-1 district.

PREMISES AFFECTED – 211/283 63<sup>rd</sup> Street, located on the north side of 63<sup>rd</sup> Street, between 2<sup>nd</sup> and 3<sup>rd</sup> Avenues, Block 5798, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

### APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

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## 325-06-BZ

APPLICANT – Eric Palatnik, P.C., for Escava Brothers, owners; Ludlow Fitness, lessee.

SUBJECT – Application December 15, 2006 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment to be located on the second floor of the building under construction. The proposal is contrary to §32-00. C6-1 district.

PREMISES AFFECTED – 100 Delancey Street, between Ludlow Street and Essex Street, Block 410, Lot 71, Borough of Manhattan.

## COMMUNITY BOARD #1M

### APPEARANCES –

For Applicant: Eric Palatnik.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 1:30 P.M., for decision, hearing closed.

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## 327-06-BZ

APPLICANT – Eric Palatnik, P.C., for 58<sup>th</sup> and Lex Associates, owner; Manhattan Sports Performance, LLC, lessee.

SUBJECT – Application December 20, 2006 – Special Permit (§73-36) to legalize the existing PCE located at the sixth floor in a fourteen-story plus penthouse commercial building. The proposal is contrary to §32-10. C5-2 district.

PREMISES AFFECTED – 133 East 58<sup>th</sup> Street, between Lexington and Park Avenues, Block 1313, Lot 14, Borough of Manhattan.

## COMMUNITY BOARD #5M

### APPEARANCES –

For Applicant: Eric Palatnik.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 1:30 P.M., for decision, hearing closed.

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## 52-07-BZ

APPLICANT – Lewis Garfinkel, R.A., for Egal Shasho, owner.

SUBJECT – Application February 23, 2007 – Special Permit (§73-622) for the enlargement of an existing one family detached residence. This application seeks to vary open space and floor area (23-141); perimeter wall height (23-361) and rear yard (23-47) in an R3-2 zoning district.

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PREMISES AFFECTED – 1576 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, Block 6773, Lot 43, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to September 11, 2007, at 1:30 P.M., for continued hearing.

**53-07-BZ**

APPLICANT – Wolf Block, Schorr & Solis-Cohen, LLP, for 1901 Realty Realty, LLC, owner.

SUBJECT – Application February 23, 2007 – Variance (§72-21) to permit the redevelopment and conversion of an existing three-story factory/warehouse to residential use. The proposal is contrary to §42-00. M1-1 district.

PREMISES AFFECTED – 1901 Eighth Avenue, corner of Eight Avenue and 19<sup>th</sup> Street, Block 888, Lot 7, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

APPEARANCES –

For Applicant: K. Fisher, Robert Pauls and Mr. Ferrero.

**ACTION OF THE BOARD** – Laid over to September 11, 2007, at 1:30 P.M., for continued hearing.

**66-07-BZ**

APPLICANT – Eric Palatnik, P.C., for High Definition Fitness, Inc., owner.

SUBJECT – Application – Special Permit (§73-36) to allow a PCE on the third floor of a three-story building. The proposal is contrary to §42-31. M1-1 district.

PREMISES AFFECTED – 3038 Atlantic Avenue, between Essex and Sheperd Avenues, Block 3972, Lot 22, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 1:30 P.M., for decision, hearing closed.

**71-07-BZ**

APPLICANT– Walter T. Gorman, P.E., for Exxon Mobile Corporation, owner; Ted Zorbas, lessee.

SUBJECT – Application March 26, 2007 – Re-instatement for the continued use of a Variance (ZR §11-411 and §73-01(d)) which expired June 27, 2001 for the operation of a UG16 Gasoline Service Station (Exxon Mobil) in anC1-4/R-6 & R-5 zoning district.

PREMISES AFFECTED – 32-05 21<sup>st</sup> Street, south side 21<sup>st</sup> Street blockfront between Broadway and 33<sup>rd</sup> Avenue, Block 555, Lot 16, Borough of Queens.

**COMMUNITY BOARD #1Q**

APPEARANCES –

For Applicant: John Ronan.

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

**98-07-BZ**

APPLICANT – Eric Palatnik, P.C., for Yuri Gokhberg, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); rear yard (§23-47) and side yard (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 67 Amherst Street, north of Hampton Avenue, south of Shore Boulevard, Block 8727, Lot 38, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Francine Olk and Judy Baron.

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

**99-07-BZ**

APPLICANT – Eric Palatnik, P.C., for Orkin Arkadly, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area, open space and lot coverage (§23-141) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 170 Girard Street, north of Oriental Boulevard, south of Hampton Avenue, Block 8749, Lot 271, Borough of Brooklyn.

**COMMUNITY BOARD#15BK**

APPEARANCES –

For Applicant: Eric Palatnik and Serge Mozer.

For Opposition: Judy Baron and Dr. Len Flug.

**ACTION OF THE BOARD** – Laid over to August 21, 2007, at 1:30 P.M., for a continued hearing.

*Jeff Mulligan, Executive Director*

*Adjourned: 4:00 P.M.*