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157-12-A
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159-12-BZ
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163-12-BZ
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164-12-A
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165-12-BZ
1286 East 23rd Street, west side of East 23rd Street, 60' north of Avenue M., Block 7640, Lot(s) 82, Borough of **Brooklyn, Community Board: 14**. This application is filed pursuant to Z.R.§73-622, as amended, to request a special permit to allow the enlargement and partial legalization of a single family residence located in a residential (R2) zoning district. R2 district.

166-12-A
638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C., Block 393, Lot(s) 26, Borough of **Manhattan, Community Board: 3**. Applcaition filed by the Department of Buildings seeking to revoke the Certificate of Occupancy that was issued in error . R8B zoning distirct . R8B district.

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

CALENDAR

JUNE 19, 2012, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning. June 19, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

718-56-BZ
APPLICANT – Walter T. Gorman, P.E., for 741 Forest Service Corp., owner; Avi Diner, lessee.
SUBJECT – Application April 10, 2012 – Extension of Term of a previously approved variance permitting the operation of an automotive service station (UG 16B) with accessory uses which is set to expire on July 2, 2012. C2-1/R3-2 zoning district.
PREMISES AFFECTED – 741 Forest Avenue, northwest corner North Burgher Avenue, Block 183, Lot 52, Borough of Staten Island.
COMMUNITY BOARD #1SI

311-71-BZ
APPLICANT – Eric Palatnik, P.C., for SunCo, Inc. (R&M), owner.
SUBJECT – Application March 13, 2012 – Amendment (§11-412) to permit the conversion automotive service bays to an accessory convenience store of an existing automotive service station (Sunoco); Extension of Time to obtain a Certificate of Occupancy which expired July 13, 2000; waiver of the rules. R-5 zoning district.
PREMISES AFFECTED – 1907 Crospey Avenue, northeast corner of 19th Avenue. Block 6439, Lot 5, Borough of Brooklyn.
COMMUNITY BOARD #11BK

120-02-BZ
APPLICANT – Stuart Klein, Esq., for East Village Gardens Corp., owner; Muscles Metamorphasis, lessee.
SUBJECT – Application March 22, 2012 – Extension of Term of previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (Iron & Silk Fitness Center) which expired on February 1, 2012; an Amendment for the change in ownership; waiver of the rules. R7A zoning district.
PREMISES AFFECTED – 42-46 Avenue A, corner of Avenue A and East 3rd Street, Block 399, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #3M

294-06-BZ
APPLICANT – Goldman Harris LLC, owner; Club Fitness NY, lessee.
SUBJECT – Application February 8, 2012 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (*Club Fitness*) on the second and third floors in a three-story building. C2-2 zoning district.
PREMISES AFFECTED – 31-11 Broadway, between 31st and 32nd Streets, Block 613, Lots 1 & 4, Borough of Queens.
COMMUNITY BOARD #1Q

238-07-BZ
APPLICANT – Goldman Harris, LLC, for OCA Long Island City, LLC;OCA Long Island City II, LLC, owner; OCA Long Island City III, LLC, lessee.
SUBJECT – Application May 25, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a 13 story residential building to be used as a student dormitory (UG3) and faculty housing (UG2) for CUNY Graduate Center which expires on September 28, 2012. M1-4/R6A(LIC) & M1-4 zoning district.
PREMISES AFFECTED – 5-11 47th Avenue, western half of block bounded by 46th Road, 47th Avenue, Vernon Boulevard and 5th Street. Block 28, Lots 12, 15, 17, 18, 21 & 121, Borough of Queens.
COMMUNITY BOARD #2Q

APPEALS CALENDAR

47-12-A
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for FHR Development, LLC, owner.
SUBJECT – Application March 2, 2012 – Appeal seeking determination that the Department of Buildings improperly denied application for permit for new building based on erroneous decision that proposed building did not qualify for rear yard reduction pursuant to Z.R. §23-52.
PREMISES AFFECTED – 22 Lewiston Street, west side of Lewiston Street, 530.86' north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.
COMMUNITY BOARD #2SI

103-12-A
APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.
SUBJECT – Application April 12, 2012 – An appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.
PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of

Brooklyn.
COMMUNITY BOARD #2BK

JUNE 19, 2012, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 19, 2012, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

165-11-BZ
APPLICANT – Sheldon Lobel, P.C., for Agudath Israel Youth of Boro Park, owner.
SUBJECT – Application October 19, 2011 – Z.R. §72-21, as amended, to request a variance of §24-36 (rear Yard) and §24-11 (lot coverage) in order to permit the enlargement of the existing Use Group 4A house of worship (*Agudath Israel Youth of Boro Park*) to build an educational center on the proposed third and fourth floors and legalize two interior balconies at the second floor level of the existing building, located within the required rear yard.
PREMISES AFFECTED – 1561 50th Street, near the corner of 16th Avenue, Block 5453, Lot 51, Borough of Brooklyn.
COMMUNITY BOARD #12BK

12-12-BZ & 110-12-A
APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.
SUBJECT – Application January 19, 2012 – Variance (§72-21) to allow for a new residential building with ground floor retail in a manufacturing zone, contrary to §§42-10, 43-43 & 44-43. Also, seeking a variance of §§26(7) and 30 of the MDL (pursuant to Section 310 of the MDL) to facilitate the new building. M1-6 zoning district.
PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.
COMMUNITY BOARD #2M

58-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Shlomo Dabah, owner.
SUBJECT – Application March 15, 2012 – Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, lot coverage and opens space (§23-141); side yards (§23-461); less than the required rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 3960 Bedford Avenue, west side of Bedford Avenue between Avenue R and Avenue S, block 6830, Lot 30, Borough of Brooklyn.
COMMUNITY BOARD #15BK

70-12-BZ
APPLICANT – Francis R. Angelino, Esq., for C.S. Edward Kang, owner; Aqua Studio NY LLC, lessee.
SUBJECT – Application March 23, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Aqua Studio NY LLC*). C6-2A zoning districts.
PREMISES AFFECTED – 78 Franklin Street, between Broadway and Church Street, Block 175, Lot 4, Borough of Manhattan.
COMMUNITY BOARD #1BK

76-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owner.
SUBJECT – Application April 2, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-141) and less than the minimum side yards (§23-461). R3-1 zoning district.
PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.
COMMUNITY BOARD #15K

Jeff Mulligan, Executive Director

REGULAR MEETING
TUESDAY MORNING, JUNE 5, 2012
10:00 A.M.

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

SPECIAL ORDER CALENDAR

820-67-BZ
APPLICANT – Willy C. Yuin, R.A., for Rick Corio, Pres. Absolute Car, owner.
SUBJECT – Application October 28, 2011 – Extension of Term of an approved Variance (§72-21) for the operation of a automotive repair shop (UG16) which expired on November 8, 2011. R-3A zoning district.
PREMISES AFFECTED – 41Barker Street, east side of 414.19' south Woodruff Lane, Block 197, Lot 34, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES – None.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an extension of term of a previously granted variance to permit the operation of an automotive repair shop (Use Group 16), which expired on November 8, 2011; and

WHEREAS, a public hearing was held on this application on February 14, 2012, after due notice by publication in *The City Record*, with continued hearings on March 20, 2012, May 1, 2012, and then to decision on June 5, 2012; and

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

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

WHEREAS, the subject site is located on the east side of Barker Street, between Castleton Avenue and Woodruff Lane, within an R3A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 13, 1945 when, under BSA Cal. No. 248-39-BZ, the Board granted a variance to permit the site to be used as an automobile repair shop, for a term of five years; and

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

WHEREAS, on October 31, 1967, under the subject calendar number, the Board granted a variance to permit the continuation of the existing automobile repair shop which had expired on February 21, 1961, for a term of five years; and

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

WHEREAS, most recently, on August 6, 2002, the Board granted a ten-year extension of term, which expired on November 8, 2011; and

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

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

WHEREAS, at hearing, the Board questioned whether the applicant had a permit from the Department of Environmental Protection ("DEP") for the spray booth at the site; and

WHEREAS, in response, the applicant submitted a Certificate of Operation for the spray booth from DEP, which expires on July 19, 2015; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 31, 1967, so that as amended this portion of the resolution shall read: "to extend the term for ten years from November 8, 2011, to expire on November 8, 2021; *on condition* that the use and operation of the site shall comply with the BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of the grant will expire on November 8, 2021;

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

THAT the above conditions will be reflected on the certificate of occupancy;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 520080867)

Adopted by the Board of Standards and Appeals June 5, 2012.

305-00-BZ
APPLICANT – Robert A. Caneco, for Robert Gullery, owner.
SUBJECT – Application April 16, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously approved Variance (§72-21) for the continued operation of a UG8 parking lot which expired on January 15, 2004; waiver of the Rules. R3-1 zoning district.
PREMISES AFFECTED – 268 Adams Avenue, south side of Adams Avenue between Hylan Boulevard and Boundary

Avenue, Block 3672, Lot 14, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES – None.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy, which expired on January 15, 2004; and

WHEREAS, a public hearing was held on this application on May 1, 2012 after due notice by publication in *The City Record*, and then to decision on June 5, 2012; and

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

WHEREAS, the site is located on the south side of Adams Avenue between Hylan Boulevard and Boundary Avenue, within an R3-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 15, 2002 when, under BSA Cal. No. 305-00-BZ, the Board granted a variance to permit a parking lot (Use Group 8), contrary to ZR § 22-10; a condition of the grant was that a certificate of occupancy be obtained by January 15, 2004; and

WHEREAS, the applicant notes that the variance for the subject parking lot was granted in conjunction with a variance under BSA Cal. No. 304-00-BZ to permit the enlargement of an existing auto repair center at 2044 Hylan Boulevard, which triggered the need for additional parking; and

WHEREAS, the applicant states that a certificate of occupancy has not been obtained for the parking lot because the owner did not install lighting at the site in accordance with the BSA-approved plans and the requirements of the Building Code; and

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

WHEREAS, the applicant states that prior to obtaining a certificate of occupancy the owner will install lighting in the parking lot in accordance with the BSA-approved plans; and

WHEREAS, based upon the above, the Board finds that the requested extension of time 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 January 15, 2002, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy for one year from the date of this resolution, to expire on June 5, 2013; *on condition* that the use and operation of the site shall comply with the BSA-approved plans associated with the prior grant; and *on further condition*:*:*

THAT lighting will be installed in the parking lot in accordance with the BSA-approved plans;

THAT a new certificate of occupancy will be obtained by June 5, 2013;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 500429253)

Adopted by the Board of Standards and Appeals June 5, 2012.

395-04-BZ
APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah, owner; Meyer Unsdorfer, lessee.
SUBJECT – Application April 3, 2012 – Extension of Time to Complete Construction of a previously approved variance (§72-21) for the construction of a UG4 synagogue which expired on November 1, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on November 1, 2009; waiver of the Rules. R5 zoning district.
PREMISES AFFECTED – 1232 54th Street, southwest side 242'6" southeast of the intersection formed by 54th Street and 12th Avenue, Block 5676, Lot 17, Borough of Brooklyn.
COMMUNITY BOARD #12BK
APPEARANCES –
For Applicant: Tzvi Friedman.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction of a previously granted variance to permit the construction of a Use Group 4 synagogue, which expired on November 1, 2009; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, and then to decision on June 5, 2012; and

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

WHEREAS, this application is brought on behalf of

Congregation Imrei Yehudah, a non-profit entity; and

WHEREAS, the subject site is located on the west side of 54th Street, between 12th Avenue and New Utrecht Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since November 1, 2005 when, under the subject calendar number, the Board granted a variance to permit the construction of a new synagogue and rectory, including a rabbi's apartment and a sexton's apartment (Use Group 4), with non-compliances as to floor area, lot coverage, front wall and sky exposure plane, side and front yards, and parking; and

WHEREAS, on April 17, 2007, the Board granted an amendment to permit the addition of a second floor mezzanine connected to the synagogue on the first floor to accommodate women congregants, and other interior layout modifications; and

WHEREAS, substantial construction was to be completed by November 1, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant also requests to modify the plans to permit minor changes to the interior layout of the site; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction and obtain a certificate of occupancy, and the requested modifications to the plans, 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, dated November 1, 2005, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction and obtain a certificate of occupancy for a term of four years, to expire on June 5, 2016, and to permit the noted modifications to the BSA-approved plans; *on condition* that the use and operation of the site shall comply with the BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction shall be completed and a certificate of occupancy obtained by June 5, 2016;

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. 301860706)

Adopted by the Board of Standards and Appeals, June 5, 2012.

635-57-BZ

APPLICANT – Francis R. Angelino, Esq., for Landmark 115 East 69th Street, L.P, owner.

SUBJECT – Application March 1, 2012 – Extension of Term (§11-411) of a previously approved variance permitting the continued use of the cellar, first and second floors of a five-story building for general office use (UG6) which expired on January 26, 2012; waiver of the rules. R8B zoning district.

PREMISES AFFECTED – 115 East 69th Street, north side, 185' east of Park Avenue, Block 1404, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Frank Angelino.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

433-61-BZ

APPLICANT – Harold Weinberg, for Shin J. Yoo, owner.

SUBJECT – Application November 28, 2012 – Extension of Term (§11-411) of a variance which permitted a one story and mezzanine retail building, contrary to use regulations; Waiver of the Rules. R7A zoning district.

PREMISES AFFECTED – 1702-12 East 16th Street, between Quentin Road and Avenue R. Block 6798, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Laid over to July 10, 2012, at 10 A.M., for continued hearing.

678-74-BZ

APPLICANT – Tyree Service Corp., for Capitol Petroleum Group, owners.

SUBJECT – Application March 30, 2012 – Amendment of a previously approved variance (§72-21) which permitted the operation of an automotive service station (UG 16B) with accessory uses. The application seeks to legalize the placement of fueling islands and number of fueling dispensers. C1-6 zoning district.

PREMISES AFFECTED – 63 8th Avenue, southwest corner of West 13th Street and 8th Avenue, Block 616, Lot 46, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Steve Guacci and Terry Fitzgerald.

THE VOTE TO CLOSE HEARING –

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

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

ACTION OF THE BOARD – Laid over to June 19, 2012, at 10 A.M., for decision, hearing closed.

271-90-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for EPT Realty Corp., owner.
SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.
PREMISES AFFECTED – 68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68th Street, Block 1348, Lot 53, Borough of Queens.
COMMUNITY BOARD #2Q
APPEARANCES –
For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to July 10, 2012, at 10 A.M., for adjourned hearing.

37-93-BZ
APPLICANT – Sheldon Lobel, P.C., for Vornado Forest Plaza, LLC, owner; 2040 Forest Avenue Fitness Group LLC, lessee.
SUBJECT – Application February 14, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*Planet Fitness*) which expired on November 9, 2003; Waiver of the Rules. C8-1 zoning district.
PREMISES AFFECTED – 2040 Forest Avenue, south side of Forest Avenue between Heaney Avenue and Van Name Avenue, Block 1696, Lot 8, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES –
For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to July 10, 2012, at 10 A.M., for continued hearing.

64-96-BZ
APPLICANT –Vassalotti Associates Architects, LLP, for Michael Koloniaris and Nichol Koloniaris, owners.
SUBJECT – Application January 10, 2012 – Extension of Term for the continued operation of a UG16B automotive repair shop (*Meniko Autoworks, Ltd.*) which expired on December 11, 2011. C1-2/R3A zoning district.
PREMISES AFFECTED – 148-20 Cross Island Parkway, East south of 14th Avenue, Block 4645, Lot 3, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Todd Dale.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

135-01-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.
SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver of the Rules. C1-2(R5) zoning district.
PREMISES AFFECTED – 1815/17 86th Street, 78'-8.3"northwest 86th Street and New Utrecht Avenue, Block 6344, Lot 69, Borough of Brooklyn.
COMMUNITY BOARD #11BK
APPEARANCES –
For Applicant: Todd Dale.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

359-01-BZ
APPLICANT – Sheldon Lobel, P.C., for Bnos Zion of Bobov, Inc., owner.
SUBJECT – Application February 3, 2012 – Amendment to previously approved variance (§72-21) for a school (*Bnos Zion of Bobov*). Amendment would legalize the enclosure of an one-story entrance, contrary to lot coverage and floor area ratio (§24-11). R6 zoning district.
PREMISES AFFECTED – 5002 14th Avenue, aka 5000-5014 14th Avenue, aka 1374-1385 50th Street, Block 5649, Lot 38, Borough of Brooklyn.
COMMUNITY BOARD #12BK
APPEARANCES –
For Applicant: Josh Rinesmith.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

290-06-BZ
APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 368 LLC, owner; Great Jones Lafayette LLC, lessee.

SUBJECT – Application February 2, 2012 – Amendment of an approved variance (§72-21) for a new residential building with ground floor commercial, contrary to use regulations. The amendment requests an increase in commercial floor area and a decrease in the residential floor area. M1-5B zoning district.
PREMISES AFFECTED – 372 Lafayette Street, block bounded by Lafayette, Great Jones and Bond Streets, Shinbone Alley, Block 530, Lot 13, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 19, 2012, at 10 A.M., for deferred decision.

112-07-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Congregation Bnai Shloima Zalman by Eugene Langsam, owners.
SUBJECT – Application October 12, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a two story and cellar (UG4) synagogue (*Bnai Shloima Zalman*) which expired on September 11, 2011. R-2 zoning district.
PREMISES AFFECTED – 1089-1093 East 21st Street, between Avenue I and Avenue J, Block 7585, Lot 21 & 22, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to July 10, 2012, at 10 A.M., for continued hearing.

128-10-BZ
APPLICANT – Eric Palatnik, P.C., for Merhay Yagudayev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.
SUBJECT – Application December 21, 2011 – Amendment to previously approved variance (§72-21) for a synagogue. Amendment would allow increased non-compliance in building height (§24-521), floor area (§24-11) and lot coverage (§24-11) regulations. R4 zoning district.
PREMISES AFFECTED – 147-58 77th Road, 150th Street and 77th Road, Block 6688, Loy 31, Borough of Queens.
COMMUNITY BOARD #8Q
APPEARANCES –
For Applicant: Eric Palatnik, Sandy Anagnostov and Rizwan Salam.

ACTION OF THE BOARD – Laid over to July 10, 2012, at 10 A.M., for continued hearing.

175-10-BZ
APPLICANT – Sheldon Lobel, P.C., for Zacker Oil Corp., owner; Leemits Petroleum, Inc., lessee.
SUBJECT – Application April 30, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously approved gasoline service station (*Getty*) which expired on March 29, 2012. R4 zoning district.
PREMISES AFFECTED – 3400 Baychester Avenue, northeast corner of Baycheser and Tillotson Avenue, Block 5257, Lot 47, Borough of Bronx.
COMMUNITY BOARD #12BX
APPEARANCES –
For Applicant: Josh Rinesmith.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

154-11-A
APPLICANT – Eric Palatnik, for Atlantic Outdoor Advertising, Inc., owner.
SUBJECT – Application October 3, 2011 – Appeal seeking reversal of a Department of Buildings' determination that the non-illuminated sign located on top the building of the site is not a legal non-conforming advertising sign that may be maintained and altered. M1-9 zoning district.
PREMISES AFFECTED – 23-10 Queens Plaza South, between 23rd Street and 24th Street, Block 425, Lot 5, Borough of Queens.
COMMUNITY BOARD #2Q
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Appeal Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to the determination of the Borough Commissioner of the Department of Buildings ("DOB"), dated September 23, 2011, to deny the approval of Application No. 420469415, for a sign at the subject site (the "Final Determination"); and

WHEREAS, the Zoning Resolution Determination Form ("ZRD1") (dated June 3, 2010) attached to the Final Determination reads, in pertinent part:

1. As per documentation submitted, it is established that the relationship between the sign and the use of the zoning lot (building owned by Electrical Realty Corp) for which the sign was erected in 1936 to be considered as an accessory business sign.
2. No other evidence of legal use of an advertising sign prior to 1961 was submitted. Proposed conversion to an advertising sign

shall comply with Zoning and Building Code regulations.

Please note that, existing non-conforming accessory roof sign that existed prior to 12/15/1961 can be restored to previous non-compliance if evidence demonstrates that no discontinuance for a period of two years from 1936 onwards has occurred as per ZR 52-61; and

WHEREAS a public hearing was held on this application on April 24, 2012, after due notice by publication in *The City Record*, with a continued hearing on May 15, 2012, and then to decision on June 5, 2012; and

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

WHEREAS, the subject site is located within 200 feet of the approach to the Ed Koch Queensboro Bridge between 23rd Street and 24th Street, within an M1-9/R9 zoning district within the Special Long Island City Mixed Use District; and

WHEREAS, the site is occupied by a five-story factory building formerly occupied by Eagle Electric Manufacturing Company ("Eagle Electric") (the "Building") with an indirectly illuminated rooftop sign with the dimensions of 25'-0" by 78'-0" and a surface area of 1,950 sq. ft. (the "Sign"); and

WHEREAS, the Sign occupies the western edge of the roof of the Building, facing west on Queens Plaza South; and

WHEREAS, this appeal is brought on behalf of the lessee of the Sign (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's determination that the Sign is an accessory business sign and therefore not permitted to be used as an advertising sign based on Appellant's contention that the Sign is a non-conforming advertising sign; and

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

PROCEDURAL HISTORY

WHEREAS, the Appellant asserts that the Sign was constructed in 1936 by Eagle Electric; and

WHEREAS, the Appellant asserts that Eagle Electric operated a manufacturing facility for electrical products at the site but the Building is currently vacant; and

WHEREAS, as evidenced by photographs, the Sign reflected the company name and slogans including "Since 1920 We've been in your home" and "Perfection is not an Accident;" and

WHEREAS, the Appellant asserts that since 1999 the Sign has been leased to a sign company which has used it as an advertising sign for different products not related to the site; and

WHEREAS, by determinations of the Queens Borough Commissioner in 2001 and 2002, the Sign was determined to be an accessory sign; specifically, the Borough Commissioner wrote: "[i]t is my determination based on the evidence submitted, to consider the sign in question a business sign" and "It is the determination that the sign is grandfathered as an accessory business sign. The sign may not be converted to an advertising sign;" and

WHEREAS, on May 6, 2010, the Appellant again sought a Zoning Resolution Determination from DOB about whether the Sign is an advertising sign; and

WHEREAS, on June 3, 2010, DOB denied the request, which included the following determination: " . . . that the relationship between the Sign and the use of the zoning lot [established the sign] as an accessory business sign;" and

WHEREAS, on August 9, 2011, the Appellant filed a permit application (Job No. 420469415) to "chang[e] wording on existing roof-top accessory business sign;" and

WHEREAS, on September 23, 2011, DOB denied the request based on the June 3, 2010 DOB determination that the existing sign was an "accessory," rather than an "advertising" sign; and

RELEVANT STATUTORY PROVISIONS

ZR § 12-10 *Definitions*

Accessory use, or accessory (2/2/11)

An "accessory use":

(a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an #accessory building or other structure#, or as an #accessory use# of land), except that, where specifically provided in the applicable district regulations or elsewhere in this Resolution, #accessory# docks, off-street parking or off-street loading need not be located on the same #zoning lot#; and

(b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and

(c) is either in the same ownership as such principal #use#, or is operated and maintained on the same #zoning lot# substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal #use#.

When "accessory" is used in the text, it shall have the same meaning as #accessory use#.

* * *

Sign, advertising (4/8/98)

An "advertising sign" is a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a #use# located on the #zoning lot#.

* * *

ZR § 42-55 *Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways*

. . . (c) The more restrictive of the following shall apply:

(1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to

June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; and

THE ACCESSORY SIGN VS. ADVERTISING SIGN ANALYSIS

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) the Sign was lawfully-established in 1936 as an advertising sign as defined by ZR § 12-10 and may therefore be maintained as a legal non-conforming advertising sign pursuant to ZR § 42-55(c)(1), (2) the Sign was never used in an accessory manner, as evidence by its positioning and advertising content, and (3) the Sign is a legal non-conforming advertising sign that has existed without being discontinued and may be maintained and altered pursuant to ZR § 52-83; and

WHEREAS, the Appellant relies in part on the definitions for "advertising sign" and "accessory use" set forth at ZR § 12-10 and in part on the purpose and intent of the Sign, which are conditions not addressed in the definitions; and

WHEREAS, as noted above, ZR § 12-10 defines an advertising sign as "a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a #use# located on the #zoning lot#;" and

WHEREAS, the Appellant asserts that the Sign is an advertising sign because it directed attention to several Eagle Electric products (including fuses and light switches) that were sold elsewhere than the Site and, thus, meets the advertising sign definition since it directs attention to a commodity sold or offered somewhere other than upon the same zoning lot; and

WHEREAS, in further support of its claim that the Sign was established as and always was an advertising sign, the Appellant looks to the purpose, function, and intent of the Sign; and

WHEREAS, the Appellant asserts that the Sign never generated attention to a use within the site; and

WHEREAS, the Appellant asserts that the Sign's purpose was to direct attention to Eagle Electric's products sold elsewhere and the Sign was not directing anyone to purchase the electrical parts shown on the Sign (or any other parts) at the Building; and

WHEREAS, the Appellant also cites to the location of the Sign above the Building, visible to drivers on the Queensboro Bridge as opposed to passersby on the street, which presented a unique opportunity to promote the Eagle Electric brand; and

WHEREAS, the Appellant states that the position and display of the Sign were designed strictly for advertising purposes including its location on top of the Building, where it is not visible from the streets adjacent to the site; and

WHEREAS, the Appellant states that the Sign did not include the Building address or directional cues leading visitors to the site; and

WHEREAS, further, the Appellant contrasts the Sign with accessory business signs which target drivers and facilitate access; and

WHEREAS, in support of its assertions regarding the intent of the Sign, the Appellant submitted letters from a former Eagle Electric employee and from consultants with expertise in New York City advertising; and

WHEREAS, one consultant stated that the Eagle Electric sign reflected a larger marketing campaign and the craftsmanship that went into the Sign exceeded that of a typical accessory sign; and

WHEREAS, the Appellant disagrees with DOB and finds that a sign can be both advertising and accessory; and notes that the ZR does not define "accessory sign"; and

WHEREAS, the Appellant asserts that the Sign does not satisfy the paragraph (a) portion of the ZR § 12-10 definition of "accessory use," because although the Eagle Electric sign was located on the same zoning lot as the principal use of the site for the Eagle Electric factory, the Sign was not an accessory use since there was never a sufficient causal connection between the Building and Sign to form the requisite principal-accessory relationship; and therefore the Sign is not restricted from being an advertising sign;

WHEREAS, the Appellant states that in order to establish an accessory use, the accessory use must be so connected to the principal use that if the principal use were removed, the accessory use would no longer serve any logical purpose; and

WHEREAS, the Appellant cites to Matter of 7-11 Tours Inc. v. Board of Zoning Appeals of the Town of Smithtown, 90 A.D.2d 486 (2d Dept. 1982) citing Lawrence v. Zoning Bd. of Appeals of Town of North Branford, 158 Conn. 509, 512-513 (1969) for the principle that an accessory use must not be just subordinate to the primary use but also concomitant; and

WHEREAS, the Appellant states that the cessation of Eagle Electric's operations in the Building did not eliminate the utility of the Sign and, accordingly, the Sign was not dependent upon the operation of the business; and

WHEREAS, the Appellant asserts that the Sign is not "clearly incidental to and customarily found in connection" with the manufacturing use of the Building as per paragraph (b) of the ZR § 12-10 definition of "accessory use"; and

WHEREAS, the Appellant asserts that the language "clearly incidental to" in paragraph (b) of the definition requires that a sign and a business cannot be separated from each other and that the Sign without the business would not serve any purpose; and

WHEREAS, the Appellant cites to the example of the McDonald's golden arches as being "clearly incidental" to the McDonald's restaurant in that, the Appellant asserts, the purpose of the sign is to attract customers to a specific location and not to advertise the McDonald's brand; and

WHEREAS, the Appellant states that there was no relationship between the use of the Building and the Sign because the Sign could logically remain in its location regardless of the use of the Building; and

WHEREAS, secondly, the Appellant asserts that the Sign was not of the kind that is "customarily found in connection with" the use of the Building because such a sign would not have been installed if the Building were not located in view of such a significant amount of vehicular and train traffic; and

WHEREAS, the Appellant asserts that because the Sign's design and large size can be distinguished from other signs on the roofs of other buildings in the vicinity, it does not meet the condition of being customarily found; and

WHEREAS, the Appellant cites to other Eagle Electric signs on other nearby Eagle Electric buildings which it finds to be examples of accessory signs because they are customarily found on buildings; and

WHEREAS, however, the Appellant concedes that the requirement set forth at paragraph (c) of the "accessory use" definition is met in that the Sign and Building were in common ownership and on the same zoning lot; and

WHEREAS, as to the continued use of the Sign, the Appellant asserts that pursuant to ZR § 42-55(c)(1) an advertising sign in an M1 district displayed within 660 feet of an arterial highway prior to June 1, 1968 may be granted non-conforming status as to its size; the text was adopted in 2001 rendering advertising signs non-conforming; and

WHEREAS, the Appellant asserts that the Sign was constructed in 1936 and is within 660 feet of the Queensboro Bridge and therefore should be deemed a non-conforming advertising sign pursuant to ZR § 42-55(c)(1); and

WHEREAS, the Appellant asserts that the Sign may be structurally altered as a non-conforming sign within a manufacturing district; and

WHEREAS, the Appellant states that under ZR § 52-83, any sign deemed as a non-conforming advertising sign under ZR § 42-55(c)(1) may be altered, reconstructed, or replaced provided there is no increase in the degree of non-conformity; and

WHEREAS, finally, the Appellant asserts that DOB's current position is inconsistent with its previous determinations that the Sign was an advertising sign; and

WHEREAS, the Appellant cites to two prior Board cases to support its assertion that DOB and the Board have viewed similar signs as advertising signs; the first case is the Newport Cigarette sign (BSA Cal. No. 45-96-A), which involved a site occupied by a gasoline service station and a Use Group 6 retail store with a sign advertising Newport cigarettes that had a dimension of 48'-0" by 14'-0" located on a sign structure that extended 62'-0" off the ground facing an arterial highway; DOB and the Board rejected it as an accessory sign, finding that "the sign [was] larger than the store itself" and that to be accessory, a sign must be "directing attention to the business on the zoning lot, as opposed to the sale of the product generally"; and

WHEREAS, the Appellant draws a parallel between the Sign and the Newport sign in that both are large signs elevated above the site that do not direct attention to the lot, do not provide information to direct drivers to the premises, are not readily visible to those in the immediate vicinity, face only the arterial highway and refer to products generally sold throughout the City, and do not direct attention to the business on the zoning lot as opposed to the sale of the product generally; and

WHEREAS, secondly, the Appellant cites to the New York Post case (BSA Cal. No. 90-99-A) in which there was a 50'-0" by 25'-0" sign on the upper side of a six-story building owned by the New York Post; the sign included a photograph of the New York Life Building with text "Humanity is our cornerstone/New York Life" and at the bottom of the photograph "as advertised in the New York Post;" and

WHEREAS, the Appellant asserts that the Eagle Electric sign is similar to the New York Post sign since the mention of Eagle Electric is insufficient to determine that the sign directs a viewer to the zoning lot; and

WHEREAS, the Appellant also points to the Pepsi sign in Long Island City, which remains and is identified as an advertising sign despite the cessation of Pepsi operations at the site; and

WHEREAS, lastly, the Appellant cites to Contest Promotions-NY v. NYC Department of Buildings, Sup. Ct, NY County, October 15, 2010, Rakower, J., Index No. 112333/10, for the principle that the court affirmed that the contest promotion signs were accessory business signs because they reflected "a contest that's being held within the business" (p. 122); the Appellant distinguished the subject facts in which one could not participate in an activity referenced on the Sign at the site as there were not any electrical parts for sale at the subject lot and there was no possibility for a person to manufacture his or her own parts at the site; and

DOB's POSITION

WHEREAS, DOB makes the following primary points to support its position that the Sign is an accessory sign: (1) an advertising sign was never lawfully established; and (2) the advertising sign has not been shown to have existed without discontinuance; and

WHEREAS, as to the classification of the Sign, DOB asserts that the ZR § 12-10 definitions of advertising sign and accessory use establish the necessary distinctions between the two classifications of signs; and

WHEREAS, DOB identifies the distinction as accessory signs direct attention to activity *on* the zoning lot and advertising signs direct attention to activity *off* the zoning lot; and

WHEREAS, DOB notes that advertising signs have been prohibited at the site since June 28, 1940 (see 1916 ZR, Art. V § 21-B), were prohibited per the 1961 ZR § 42-53, and remain prohibited under the current zoning as set forth at ZR § 42-55; and

WHEREAS, DOB notes that accessory signs were permitted at the site under the 1916 Zoning Resolution and are permitted today, with certain limitations; and

WHEREAS, DOB states that it found in 2001, 2002, 2010, and 2011 that to the extent the Sign was established at the site in the 1930s, it was a legal accessory sign; and

WHEREAS, DOB states that the Appellant conceded that only the Eagle Electric sign existed at the site as of the establishment of the Sign and that one sign could not simultaneously establish an accessory and an advertising sign because the establishment of one by definition precludes establishment of the other; and

WHEREAS, accordingly, DOB concludes that an advertising sign did not exist at the site as of June 28, 1940 and cannot exist today; and

WHEREAS, DOB states that the Eagle Electric sign was accessory because it was "located on" and "directed attention to" the "*same* zoning lot" as the Eagle Electric manufacturing facility and the fact that customers may not have visited the site is irrelevant; and

WHEREAS, DOB notes that there is not any exception for a sign that does not directly invite customers to transact retail business on the lot nor for a sign that does not identify the address of the business identified by the sign; and

WHEREAS, finally, the Appellant asserts that it is irrelevant whether the Sign was "intended" to build brand recognition or expand the business' image; and

WHEREAS, DOB states that the Sign could not have been an advertising sign since it was located on the same lot as Eagle Electric; and

WHEREAS, DOB states that the Sign was established as an accessory sign and remained as such until its removal; however, since it was removed prior to February 27, 2001, any accessory sign at the site is subject to the restrictions of ZR §§ 42-53 through 42-55 which limit the size of such signs to 500 sq. ft. of surface area; and

WHEREAS, DOB states that even if it accepted a single undated photograph to cover the period from 1936 to 1999 to establish that the Sign existed at the site from December 15, 1961 to 1999, the only other evidence of there being an advertising sign at the site for the subsequent 12 years is six photographs dated July 16, 2011, reflecting a Lexus automobile advertising sign; and

WHEREAS, additionally, as to the decision in Contest Promotions-NY, LLC v. NYC Department of Buildings, Sup. Ct, NY County, October 15, 2010, Rakower, J., Index No. 112333/10, DOB asserts that the Appellant's reliance is misplaced; and

WHEREAS, DOB states that the case involved a challenge to a DOB interpretation that certain proposed signs were advertising, rather than accessory and it does not have any relevance to the facts of the subject appeal; additionally, the Appellate Division reversed Judge Rakower's decision on March 6, 2012 citing that the property owner had failed to exhaust administrative remedies; and

THE SIGN'S CONTINUITY

WHEREAS, as to continuity, the Appellant asserts that the presence of the Sign has been continuous and obvious; and

WHEREAS, the Appellant asserts that DOB has acknowledged that the Sign was installed in 1936; and

WHEREAS, the Appellant's evidence to establish the Sign's continuity through 2000 includes a letter from a former Eagle Electric employee which addresses the Sign's presence in the 1940s; an artist's statement that she viewed the Sign in 1989 and 2000; and the complexity of the Sign's construction which includes painted metal, neon, and illumination; and

WHEREAS, the Appellant cites to DOB's acknowledgment that where a sign contains the same copy over a period of time, substantial weight may be given to an argument of continuity; and

WHEREAS, the Appellant did not submit additional photographs of the Sign's continuity but rested on the prominent location and the fact that the Sign would have been difficult to dismantle and reassemble; and

WHEREAS, as to the use since 2000, the Appellant submitted invoices and contracts from the Sign Company since it took control of the Sign in 1999; and

WHEREAS, the Board notes that the Appellant could restore the Sign to the non-conforming accessory dimensions if it has not been discontinued for more than two years, however the Appellant concedes that the Eagle Electric sign has been removed and an accessory sign has not been installed on the site for more than two years; thus, an accessory sign can no longer be installed at the formerly permitted dimensions; and

WHEREAS, as to the question of continuity, DOB states that even if the Sign were deemed to be advertising rather than accessory, the Appellant has not established that such sign existed on December 15, 1961 (the relevant date for the Sign being protected as a non-conforming use) and has continued without an interruption of two or more years pursuant to ZR § 52-61; and

WHEREAS, DOB states that the evidence submitted – one photograph of the Sign from the period of 1936 to 1999 and an affidavit from an Eagle Electric employee - fails to satisfy its standards as summarized in Technical Policy and Procedure Notice 14/1998; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the Sign was established as an accessory sign as it meets the ZR § 12-10 definition of accessory use and fails to meet the ZR § 12-10 definition of advertising sign; and

WHEREAS, the Board finds that the Sign meets the criteria of "accessory" because at its establishment and through its removal, the Sign was (1) "a use conducted on the same zoning lot as the principal use to which it is related;" (2) "clearly incidental to and customarily found in connection with such principal use;" and (3) "in the same ownership as such principal use or is operated and maintained on the same zoning lot;" and

WHEREAS, the Board disagrees with the Appellant that only the third condition is met as the Sign was a use conducted on the same zoning lot as the related principal use (the manufacturing business) and the Board also finds that a sign identifying the specific business on the site is clearly incidental to and customarily found throughout New York

City and beyond; and

WHEREAS, the Board finds it misguided for the Appellant to assert that there was no relationship between the use of the Building and the Sign as a sign for a business that operates on the site most certainly has a relationship to the business on the site; and

WHEREAS, the Board finds that the ZR § 12-10 definition of "advertising sign" is clear that the two classifications of signs are mutually exclusive as the definition clearly states that an advertising sign is "not accessory to a use located on the zoning lot;" and

WHEREAS, the Board does not find any basis to evaluate the purpose, function, and intent of the Sign when the definition is clear and unambiguous; and

WHEREAS, the Board notes that lack of visibility to passersby and a retail function or the complexity of sign construction and its message are not elements of the definition and cannot lead to a conclusion that the Sign was intended to advertise rather than to be accessory; and

WHEREAS, the Board asserts that by the Appellant's reasoning that patrons be able to visit sites in order for the signs to be considered accessory, no manufacturing business could have an accessory sign and all signs on manufacturing buildings would be considered advertising signs; the text does not support such a conclusion; and

WHEREAS, the Board asserts that there would be many fewer accessory signs if one of the conditions for an advertising sign is that if a sign remains after the associated business ceases the sign still serves a purpose; by that reasoning, any time a business has multiple locations, the argument could be made that the associated sign is not accessory because the business could leave and the sign could still serve a purpose of advertising other branches of the business or the brand, generally; and

WHEREAS, the Board is not persuaded by the Appellant's distinction between the Sign and accessory business signs located at different Eagle Electric buildings; to the contrary, the Board finds the Sign is similar in size, location and copy, including the slogan, as the other signs which the Appellant concedes are accessory business signs; and

WHEREAS, neither is the Board persuaded by the Appellant's McDonald's example in that the McDonald's sign would serve the purpose of promoting the McDonald's brand absent the restaurant as is the case with businesses with multiple branches; a sign established as an accessory use to a principal business use may very well still provide a purpose after the business ceases to operate at the site; in fact, the Board finds that the McDonald's signs are a good comparison in that they generally do not include addresses or instructions for how to access the site and can be seen as vehicles for brand recognition, and yet, they are most often accessory signs to the restaurant on site; and

WHEREAS, the Board distinguishes the two prior Board cases the Appellant cites;

WHEREAS, specifically, in its decision in the Newport case, the Board noted that the sign was larger than the store, and that when a sign directs attention to a product generally sold throughout the City, the sign must be designed so that it is clear that it is "accessory" to and directing attention to the business on the zoning lot as opposed to the sale of the product generally; and

WHEREAS, the Board further notes that DOB considered a variety of factors in determining that the large Newport advertising sign was not accessory to the convenience store; two of the primary factors were that (1) such a large sign, which is larger than the store itself does not satisfy the accessory requirement that the sign be incidental to the primary use and (2) it was not satisfied that such a sign was "customarily found" in connection with a comparable type of retail store; additionally, the Board agreed with DOB's interpretation "that a sign may refer to a product rather than a business name, where the business at the site is readily identified by the product;" such a conclusion was not possible in the Newport example for a store which sold many products, but fits well for Eagle Electric as the business at the site was readily identified by the products reflected on the Sign; and

WHEREAS, as to the New York Post example, the New York Post sought to have the sign recognized as an accessory business sign since it referenced the newspaper which was published in the subject building but DOB determined that it was an advertising sign because the citation to the New York Post was not the focus of the sign; and

WHEREAS, the Board notes that in the New York Post example the sign's primary purpose was to advertise the New York Life Company (and was not directly related to the principal newspaper business on the site), a business and product available elsewhere than the zoning lot and that the mention of the New York Post at the bottom of the sign did not suffice to extinguish the advertising nature of the sign, within the ZR § 12-10 definition; and

WHEREAS, the Board does not find the identification of the Pepsi sign as an advertising sign to be dispositive that the Eagle Electric sign is also an advertising sign; further, the Board notes that the Appellant does not seek to maintain the Eagle Electric sign after the cessation of the Eagle Electric operations at the site, but the Appellant has rather changed the Sign to advertise products and businesses which do not now nor ever did occupy the site, unlike the Pepsi sign which remains as a vestige after the cessation of the Pepsi business at the site; and the Board is not persuaded by the nexus argument and finds that there was a nexus between the Pepsi sign and the Pepsi business formerly at the site; and

WHEREAS, as to the question of continuity, the Board finds that since the threshold matter of the classification of the Sign is not met, it is not necessary to address whether there has been any two-year discontinuous of the Sign; and

WHEREAS, the Board finds that the Appellant has failed to provide evidence that the Sign was established as an advertising sign prior to 1940 and, thus, is not eligible for legal non-conforming status as an advertising sign today; and

WHEREAS, based on the limited evidence in the

record, the Board finds that the Sign was established as an accessory sign likely in 1936 and that its status as an accessory sign eligible for the pre-2001 accessory sign regulations ceased at the Appellant's admitted 1999 removal of the Eagle Electric sign; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant's application to change the copy of the Sign because it is an accessory sign.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated September 23, 2011, is hereby denied.

Adopted by the Board of Standards and Appeals, June 5, 2012.

173-11-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Southside Manhattan View LLC, owner.

SUBJECT – Application November 7, 2011 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to complete construction under the prior R4 zoning. R4-1 Zoning district.

PREMISES AFFECTED – 68-10 58th Avenue, south side of 58th Avenue, 80' east of intersection of 58th Avenue and Brown Place, Block 2777, Lot 11, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete the enlargement of a mixed-use residential/commercial building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on April 3, 2012, after due notice by publication in *The City Record*, with a continued hearing on May 1, 2012, and then to decision on June 5, 2012; and

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

WHEREAS, Community Board 5, Queens, recommended disapproval of the original iteration of this application, because it did not provide off-street parking for the eight apartment units; and

WHEREAS, the site is located on the south side of 58th Avenue between Brown Place and 69th Street, within an R4-1 zoning district; and

WHEREAS, the site has 80 feet of frontage on 58th Avenue, a depth of 100 feet, and a total lot area of 8,000 sq. ft.; and

WHEREAS, the applicant proposes to construct a three-story (including basement) horizontal enlargement consisting of six apartment units to the existing 4,722 sq. ft. two-story mixed-use residential/commercial building, and to convert the second floor of the existing building into two apartment units, resulting in a total of eight apartment units and a total floor area of 10,782 sq. ft. (1.35 FAR); and

WHEREAS, the subject site was formerly located within an R4 zoning district; and

WHEREAS, the proposed mixed-use building complies with the former R4 zoning district parameters; and

WHEREAS, however, on July 29, 2009 (hereinafter, the "Rezoning Date"), the City Council voted to adopt the Middle Village, Glendale and Maspeth Rezoning, which rezoned the site to R4-1; and

WHEREAS, the proposed building does not comply with the R4-1 district parameters as to floor area and density; and

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

WHEREAS, the Board notes that Alteration Permit No. 401996337-01-AL (the "Permit"), which authorized the proposed enlargement of the building and conversion of the second floor of the existing building pursuant to R4 zoning district regulations was issued on August 8, 2005; and

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

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

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

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

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

WHEREAS, the Board notes that the applicant failed to file an application to renew the Permit pursuant to ZR § 11-332 within 30 days of its lapse on July 29, 2011, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, by letter dated February 29, 2012, the Department of Buildings ("DOB") states that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Rezoning Date; and

WHEREAS, the Permit lapsed by operation of law on the Rezoning Date because the plans did not comply with the new R4-1 zoning district regulations and DOB determined that the required work had not been completed; and

WHEREAS, thus, the Board finds that the Permit was validly issued by DOB to the owner of the subject premises and was in effect until its lapse by operation of law on the Rezoning Date; and

WHEREAS, in response to the Community Board's concerns regarding the lack of parking, the applicant states that the approved plans failed to indicate parking spaces that would be required pursuant to ZR § 25-23 under the R4 zoning; and

WHEREAS, the applicant submitted a reconsideration request from DOB reflecting that DOB approved the applicant's proposal to amend the plans to provide four accessory off-street parking spaces at the site, in compliance with ZR § 25-23; and

WHEREAS, assuming that valid permits had been issued and that work proceeded under them, the Board notes that a common law vested right to continue construction generally exists where: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, the applicant cites to Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15 (2d Dept. 1976) for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;" and

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

WHEREAS, as to substantial construction, the applicant states that as of the two year anniversary of the Rezoning Date, the owner had completed approximately 90 percent of all work on the site, including: 100 percent of excavation, backfill, drywell installation, footing, waterproofing, structural frame installation, interior demolition, exterior walls, insulation, water and sewer mains, and windows; and

WHEREAS, the applicant states that the only remaining work on the site consists of interior finishing work, installation of roofs and gutters, and exterior landscaping and parking areas; and

WHEREAS, the applicant submitted the following evidence to support its assertions regarding completed work: affidavits from the architect and project manager; construction schedules; and photographs of the site; and

WHEREAS, the Board concludes that, based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the rezoning, and that said work was substantial enough to meet the guideposts established by case law; and

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

WHEREAS, the applicant states that prior to the two year anniversary of the Rezoning Date, the owner expended $1,056,260, including hard and soft costs and irrevocable commitments, or 86 percent out of approximately $1,227,800 budgeted for the entire enlargement; and

WHEREAS, as proof of the expenditures, the applicant has submitted expense charts and affidavits from the architect; and

WHEREAS, at hearing, the Board questioned the basis for the cost estimates in the expense charts; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the cost estimates in the expense chart are based on industry standards used when filing the proposed work with DOB based on figures on the 2010 National Construction Estimator by Craftsman Book Company, as well as over 30 years of professional experience in the field of architecture and construction; and

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

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

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

WHEREAS, the applicant contends that the loss of the $101,049 associated with pre-Rezoning Date project costs that would result if this appeal were denied is significant; and

WHEREAS, the applicant states that if required to build in accordance with the new zoning, the owner would be limited to a maximum of 0.75 FAR (0.90 with attic bonus) and a maximum density of a one- or two-family semi-detached home; and

WHEREAS, the applicant states that complying with the R4-1 district regulations would therefore require the demolition of the completed enlargement and the reconstruction of a two-family home on that portion of the site (in conjunction with the existing two-story mixed-use building) to reduce the occupancy from eight dwelling units to three dwelling units, and from an FAR of 1.35 to 0.75; and

WHEREAS, the applicant submitted a letter from a demolition company stating that the estimated cost for the

demolition work that would be required for the site to comply with R4-1 zoning, would be approximately $298,000; and

WHEREAS, the applicant submitted a letter from a real estate broker stating that the estimated rental income for the entire site under R4-1 district regulations would be $6,800 per month ($4,200 for two three bedroom dwelling units, $1,400 for a first floor commercial space, and $1,200 for the second floor apartment); and

WHEREAS, the letter from the real estate broker estimated that the monthly rental income for the proposed building would be $14,450; therefore, compliance with the R4-1 district regulations would result in a loss of $7,650 in monthly rental income; and

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

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

Therefore it is Resolved that this appeal made pursuant to the common law doctrine of vested rights requesting a reinstatement of DOB Permit No. 401996337-01-AL, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 5, 2012.

19-12-A

APPLICANT – Goldman Harris LLC, for 38-30 28th Street, LLC, owner.

SUBJECT – Application January 30, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior zoning district. M1-2/R5B/LIC zoning district.

PREMISES AFFECTED – 38-30 28th Street, between 38th and 39th Avenues. Block 386, Lot 27. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Vivien R. Krieger.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of an eight-story hotel building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, and then to decision on June 5, 2012; and

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

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

WHEREAS, the site is located on the west side of 28th Street between 38th Avenue and 39th Avenue; and

WHEREAS, the site has 25 feet of frontage on 28th Street, a depth of approximately 98 feet, and a total lot area of 2,450 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with an eight-story, 16-room hotel building with a floor area of 12,250 sq. ft. (5.0 FAR) (the "Building"); and

WHEREAS, the subject site is currently located in an M1-2/R5B zoning district within the Special Long Island City District ("LIC"), but was formerly located within an M1-3D zoning district; and

WHEREAS, the Building complies with the former M1-3D zoning district parameters, specifically with respect to floor area and street wall height; and

WHEREAS, however, on October 7, 2008 (the "Rezoning Date"), the City Council voted to adopt the Dutch Kills Rezoning, which rezoned the site to M1-2/R5B (LIC) zoning district, as noted above; and

WHEREAS, the Building does not comply with the M1-2/R5B (LIC) zoning district parameters; and

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

WHEREAS, the applicant states that Alteration Building Permit No. 402232534-01-AL was issued in July 16, 2007 (the "Permit"), authorizing the development of an eight-story hotel building pursuant to M1-3D zoning district regulations; and

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

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

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

WHEREAS, the applicant states that construction was not completed and a certificate of occupancy was not obtained

within two years of the Rezoning Date; and

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

WHEREAS, the Board notes that the applicant failed to file an application to renew the Permit pursuant to ZR § 11-332 within 30 days of its lapse on October 7, 2010, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, by letter dated February 29, 2012, DOB states that the Permit was lawfully issued, authorizing construction of the Building prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date; and

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

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

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

WHEREAS, as to substantial construction, the Board notes that DOB determined that the applicant had completed 100 percent of its foundation prior to the Rezoning Date, such that the right to continue construction had vested pursuant to ZR § 11-331; and

WHEREAS, the applicant states that, in addition to completing all excavation and foundation work, as of the two year anniversary of the Rezoning Date the applicant had completed approximately 30 percent of the total construction work, including 100 percent of the metal superstructure, 100 percent of the scissor stairs, 98 percent of the metal deck work, 90 percent of the concrete slab work, 86 percent of the fire proofing work, 85 percent of the standpipe work, 50 percent of the elevator work, 50 percent of the concrete block work, 50 percent of the exterior insulation and waterproofing, 20 percent of the interior insulation, ten percent of the exterior brick work, and five percent of the plumbing, sprinkler, and electrical work; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: a construction log, construction contracts, an affidavit from the construction manager, and photographs of the site showing the amount of work completed prior to the two year anniversary of the Rezoning Date; and

WHEREAS, the applicant states that certain work continued on the site after the two year anniversary of the Rezoning Date; and

WHEREAS, the Board notes that all of the work performed on or after the two year anniversary of the Rezoning Date has been discounted from the substantial construction analysis; and

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

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

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

WHEREAS, the applicant states that the owner expended $3,250,978, including hard and soft costs and irrevocable commitments, out of $3,699,800 budgeted for the entire project; and

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

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred $2,873,030.07 for the work performed at the site as of the two year anniversary of the Rezoning Date; and

WHEREAS, the applicant further states that the owner paid an additional $377,947.93 in soft costs related to the work performed at the site as of the two year anniversary of the Rezoning Date; and

WHEREAS, thus, the expenditures up to the two year anniversary of the Rezoning Date represent approximately 88 percent of the projected total cost; and

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

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also

considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if the owner is not permitted to vest under the former M1-3D zoning, the floor area would decrease from the proposed 12,250 sq. ft. (5.0 FAR) to a maximum realizable floor area of 4,900 sq. ft. (2.0 FAR), representing a loss of 7,350 sq. ft. of floor area, and the street wall height would have to be reduced from its current height of approximately 80 feet to a maximum street wall height of 60 feet; and

WHEREAS, the applicant further states that in order to comply with the M1-2/R5B (LIC) district parameters, the owner would have to demolish the top five floors, which would eliminate 12 of the 16 proposed hotel rooms; and

WHEREAS, the applicant represents that the resulting four room hotel building would not be viable; and

WHEREAS, the Board agrees that the reduction in floor area of the Building, coupled with the loss of expenditures and outstanding fees that could not be recouped and the need to demolish and redesign, constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; and

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of Alteration Permit No. 402232534-01-AL, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 5, 2012.

41-12-A

APPLICANT – Queen First Properties, LLC, for Mohammad Uddin, owner.

SUBJECT – Application February 15, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 Zoning District. R5A zoning district.

PREMISES AFFECTED – 112-26 38th Avenue, 225' from the corner of 112th Street and 38th Avenue. Block 1785, Lot 10. Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES – None.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a five-story residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, and then to decision on June 5, 2012; and

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

WHEREAS, the site is located on the south side of 38th Avenue between 112th Street and 114th Street; and

WHEREAS, the site has 50 feet of frontage on 38th Avenue, a depth of 125 feet, and a total lot area of 6,250 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a five-story residential building with 14 condominium units (the "Building"); and

WHEREAS, the subject site is currently located within an R5A zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters, specifically with respect to floor area; and

WHEREAS, however, on March 24, 2009 (the "Rezoning Date"), the City Council voted to adopt the North Corona 2 Rezoning, which rezoned the site to R5A, as noted above; and

WHEREAS, the Buildings does not comply with the R5A zoning district parameters; and

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

WHEREAS, the applicant states that New Building Permit No. 402159132-01-NB was issued on May 11, 2006 (the "New Building Permit"), authorizing the development of a five-story residential building pursuant to R6 zoning district regulations; and

WHEREAS, the Board notes that as of the Rezoning Date the owner had obtained a permit for the development and had completed 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings ("DOB") to determine that construction may continue under such circumstances; and

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

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

WHEREAS, the applicant states that construction of the proposed building was completed, but a certificate of occupancy was not obtained within two years of the Rezoning

Date; and

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

WHEREAS, the Board notes that the applicant failed to file an application to renew the New Building Permit pursuant to ZR §11-332 within 30 days of its lapse on March 24, 2011 and is therefore requesting additional time to complete construction under the common law and obtain a certificate of occupancy; and

WHEREAS, by letter dated May 25, 2012 DOB stated that the New Building Permit was lawfully issued, authorizing construction of the Buildings prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date; and

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

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

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

WHEREAS, as to substantial construction, the Board notes that DOB determined that the applicant had completed 100 percent of its foundation prior to the Rezoning Date, such that the right to continue construction had vested pursuant to ZR § 11-331; and

WHEREAS, the applicant states that since DOB vested the New Building Permit under ZR § 11-331, the owner has completed all construction on the Building and the only work that remained before obtaining a certificate of occupancy was the sprinkler sign off; and

WHEREAS, in support of the assertion that the owner has undertaken substantial construction, the applicant submitted the following evidence: a construction timeline, copies of cancelled checks, and photographs of the Building; and

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

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

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

WHEREAS, the applicant states that the owner has expended $1,967,992, including hard and soft costs and irrevocable commitments, out of $1,967,992 budgeted for the entire project, or 100 percent of the total cost of the Building; and

WHEREAS, as proof of the expenditures, the applicant has submitted expense charts and copies of cancelled checks; and

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

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

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

WHEREAS, the applicant states that if the owner is not permitted to vest under the former R6 zoning, the floor area would decrease from the proposed 12,498.5 sq. ft. (2.0 FAR) to a maximum realizable floor area under the R5A zoning district of 6,874 sq. ft. (1.10 FAR); and

WHEREAS, accordingly, the applicant states that complying with the R5A district regulations would result in the loss of approximately 5,625 sq. ft. of floor area, requiring extensive demolition of the completed building; and

WHEREAS, the applicant further states that the loss of floor area as a result of the rezoning would reduce the overall value of the project by approximately $1,968,750; and

WHEREAS, the Board agrees that the reduction in floor area of the Building, coupled with the cost of demolition and the loss of expenditures and outstanding fees that could not be recouped and the need to redesign, constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures

made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Buildings had accrued to the owner of the premises as of the two year anniversary of the Rezoning Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 402159132-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 5, 2012.

80-11-A, 84-11-A, 85-11-A & 103-11-A
APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9th Realty, LLC, owner.
SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for enlargement to a five-story building, contrary to MDL §§ 51, 143, 146, 148 and 149. R8B zoning district.
PREMISES AFFECTED – 331, 333, 335, 329 East 9th Street, between 1st and 2nd Avenue, Block 451, Lot 46, 45, 44, 47, Borough of Manhattan.
COMMUNITY BOARD #3M
APPEARANCES –
For Applicant: Marvin B. Mitzner.
For Opposition: John Bartos of NYS Senator Duane, Michele Burger of Council Member Rosie Mendez, Johana R. Duborsky of Community Board 3, and Andito L.

ACTION OF THE BOARD – Laid over to July 17, 2012, at 10 A.M., for continued hearing.

83-11-A
APPLICANT – Marvin B. Mitzner, Esq., for 159 West 78th Street, Corp., for Felix and Lisa Oberholzer-Gee, owners.
SUBJECT – Application June 9, 2011 – Appeal pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for a one-story enlargement of a four-story building, contrary to Multiple Dwelling Law §171(2)(f). R8B zoning district.
PREMISES AFFECTED – 159 West 78th Street, north side of West 78th Street, between Columbus and Amsterdam Avenues, Block 1150, Lot 8, Borough of Manhattan.
COMMUNITY BOARD #7M
APPEARANCES –
For Applicant: Marvin B. Mitzner.

ACTION OF THE BOARD – Laid over to July 17, 2012, at 10 A.M., for continued hearing.

155-11-A
APPLICANT – Sheldon Lobel, P.C., for 10 Stratford Associates, owners.
SUBJECT – Application October 3, 2011 – Appeal seeking a common law vested right to continue construction commenced under the prior R6 zoning district regulations. R3X zoning district.
PREMISES AFFECTED – 480 Stratford Road, west side of Stratford Road, through to Coney Island Avenue between Dorchester and Ditmas Avenue, Block 5174, Lot 16, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to July 10, 2012, at 10 A.M., for deferred decision.

163-11-A
APPLICANT – FDNY, for Badem Buildings, owner.
SUBJECT – Application October 17, 2011 – Appeal to modify the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building.
PREMISES AFFECTED – 469 West 57th Street, between 9th and 10th Avenue, Block 1067, Lot 4, Borough of Manhattan.
COMMUNITY BOARD #4M
APPEARANCES –
For Applicant: Anthony Scaduto of Department of Fire.
For Opposition: Eric Palatnik.
THE VOTE TO REOPEN HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2012, at 10 A.M., for continued hearing.

180-11-A & 181-11-A
APPLICANT – Eric Palatnik, P.C., for Eran Yousfan, owner.
SUBJECT – Application November 30, 2011 – An appeal seeking a common law vested right to continue development commenced under the prior R6B zoning district. R5 zoning district.
PREMISES AFFECTED – 34-57 & 34-59 107th Street, between 34th and 37th Avenues, Block 1749, Lot 60 (Tent. Lot #s 60 & 61), Borough of Queens.
COMMUNITY BOARD #3Q
APPEARANCES –
For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over to June 19, 2012, at 10 A.M., for continued hearing.

38-12-A & 39-12-A
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Birb Realty, owner.
SUBJECT – Application February 10, 2012 – Proposed construction of a single family home that does not front on a legally mapped street, contrary to General City Law Section 36. R3-1 Zoning District.

PREMISES AFFECTED – 131 & 133 Aviston Street, 80' northwest corner of intersection of Aviston Street and Riga Street, Block 4683, Lot 22, 23, Borough of Staten Island.
COMMUNITY BOARD #3SI
APPEARANCES –
For Applicant: Todd Dale.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to June 19, 2012, at 10 A.M., for decision, hearing closed.

REGULAR MEETING
TUESDAY AFTERNOON, JUNE 5, 2012
1:30 P.M.

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

ZONING CALENDAR

187-10-BZ
CEQR #11-BSA-030Q
APPLICANT – Khalid M. Azam, Esq., owner.
SUBJECT – Application October 5, 2010 – Variance (§72-21) to permit the legalization of a three-family building, contrary to side yard zoning requirements (§23-462(c)). R6B zoning district.
PREMISES AFFECTED – 40-29 72nd Street, between Roosevelt Avenue and 41st Avenue, Block 1304, Lot 16, Borough of Queens.
COMMUNITY BOARD #2Q
APPEARANCES – None.
ACTION OF THE BOARD – Application Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 3, 2010, acting on Department of Buildings Application No. 401711073, reads in pertinent part:

> "Proposed side yard from ground level and up is contrary to section 23-462(c) ZR. A minimum of an eight foot separation is required from side lot line and building wall;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R6B zoning district, the legalization of an existing five-story (including penthouse) three-family residential building that does not provide the required side yard, contrary to ZR § 23-462(c); and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, and then to decision on June 5, 2012; and

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

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

WHEREAS, the site is located on the east side of 72nd Street, between Roosevelt Avenue and 41st Avenue, within an R6B zoning district; and

WHEREAS, the zoning lot has a width of approximately 25'-0", a depth ranging from 106'-4" to 109'-0", and a total lot area of 2,692 sq. ft.; and

WHEREAS, the site is occupied by a five-story (including penthouse) three-family residential building with a side yard with a width of 4'-0" above the first floor along the northern lot line, and no side yard along the southern lot line; and

WHEREAS, the Board notes that pursuant to ZR § 23-462(c), no side yards are required but if an open area extending along a side lot line is provided at any level, it must have a minimum width of 8'-0"; and

WHEREAS, because the existing building provides a 4'-0" side yard above the first floor along the northern lot line, the applicant seeks the subject variance; and

WHEREAS, the Board notes that the variance application was filed on October 5, 2010; and

WHEREAS, on November 3, 2010, Board staff issued a Notice of Comments to the applicant, requesting additional information; and

WHEREAS, the Notice of Comments informed the applicant that failure to respond in a timely manner could lead to the dismissal of the application for lack of prosecution; and

WHEREAS, the Board did not receive any subsequent response from the applicant; and

WHEREAS, accordingly, the Board placed the matter on the February 14, 2012 dismissal calendar; and

WHEREAS, the applicant appeared at the February 14, 2012 hearing and submitted a written request for additional time to respond to the Board's Notice of Comments; and

WHEREAS, accordingly, the Board removed the application from the dismissal calendar and granted the applicant additional time to respond to the Notice of Comments; and

WHEREAS, the applicant now seeks a variance of the side yard requirement based on the practical difficulty and unnecessary hardship, which it represents result from reliance in good faith on DOB's approval of a "Request for Reconsideration" regarding the subject side yard non-compliance; and

WHEREAS, the applicant sets forth the following timeline for the approval and construction process: (1) on August 18, 2003, DOB approved an application for construction of the subject building based on professionally

certified plans; (2) on October 4, 2005, after the building was substantially constructed, DOB audited the plans and issued objections, including Objection No. 9, for non-compliance with the side yard regulations of ZR § 23-462(c); (3) on May 15, 2006 the applicant submitted a "Request for Reconsideration of Objection No. 9" to DOB, proposing to address the non-compliance by extending the first floor of the building to the side lot line; (4) on May 16, 2006 the Chief Engineer of DOB's Queens Borough Office approved the reconsideration request, stating "OK to accept that the proposed first floor will be built from side lot line to side lot line (with no side yard provided) provided that drawings will be revised to reflect the same;" (5) on August 16, 2006, the Chief Engineer updated its approval of the reconsideration request, stating "Second, third and fourth floors will remain the same;" (6) the applicant revised the drawings based upon the approved reconsideration and extended the first floor to the side lot line, thereby eliminating the 4'-0" side yard at the first floor; (7) DOB subsequently conducted a special audit, at which time it again raised an objection regarding non-compliance with side yard regulations under ZR § 23-462(c); (8) on June 4, 2010 the Queens Borough Commissioner denied the applicant's reconsideration request regarding the side yard non-compliance with ZR § 23-462(c), stating "Denied. Contrary to 23-462(c) in that any level open space shall be provided as 8';" and

WHEREAS, the Board notes that New York State courts have recognized that property owners may invoke the good faith reliance principle when they have made expenditures towards construction that was performed pursuant to a building permit, which is later revoked due to non-compliance that existed at the time of the permit issuance; the principle is raised within the variance context when applicants assert that the reliance creates a unique hardship and seek to substitute it for the customary uniqueness finding under ZR § 72-21(a); and

WHEREAS, in Jayne Estates, Inc. v. Raynor, 22 N.Y.2d 417 (1968), the Court of Appeals determined that the expenditures the property owner made in reliance on the invalid permit should be considered in the variance application because: (1) the property owner acted in good faith, (2) there was no reasonable basis with which to charge the property owner with constructive notice that it was building contrary to zoning, and (3) the municipal officials charged with carrying out the zoning resolution had granted repeated assurances to the property owner; and

WHEREAS, more recently, in Pantelidis v. Board of Standards and Appeals, 10 N.Y.3d 846, 889 N.E.2d 474, 859 N.Y.S.2d 597 (2008), the Court of Appeals, in a limited opinion, held that it was appropriate that the state Supreme Court had conducted a good faith reliance hearing, to determine whether the property owner could claim reliance, rather than remanding the case to the Board to do so in the context of an Article 78 proceeding to overturn the Board's denial of a variance application; the Court established that the Board should conduct such a hearing and that good faith reliance is relevant to the variance analysis; and

WHEREAS, the Board notes, however, that the body of cases, which address the good faith reliance principle and a property owner's ability to establish detrimental reliance which can be introduced into a variance application, is limited to those where there is a unique history of approvals from high-level municipal officials (including the Village Board of Trustees in Jayne and DOB's Borough Commissioner in Pantelidis) after a series of meetings on the precise matter at issue, rather than merely a review and approval by one DOB examiner; and

WHEREAS, the Board identifies the key questions that have emerged in the good faith reliance inquiry as: (1) whether the permit was void on its face; (2) whether there was any way the applicant could have known about the invalidity of the permit; and (3) whether there were multiple municipal assurances of validity; and

WHEREAS, the applicant contends that it satisfies the criteria for a finding of good faith reliance based on DOB's approval of its "Request for Reconsideration of Objection No. 9" on May 16, 2006 and August 16, 2006, as it revised the plans and extended out the first floor to the side lot line in reliance on DOB's approval; and

WHEREAS, however, the Board finds that the applicant has not met the standard to establish that a hardship was incurred due to good faith reliance on DOB's approval; and

WHEREAS, ZR § 23-462(c) provides, in pertinent part, that in R6B zoning districts, "no *side yards* are required. However, if any open area extending along a *side lot line* is provided at any level, it shall measure at least eight feet wide for the entire length of the *side lot line*"; and

WHEREAS, the Board considers the text of ZR § 23-462(c) to be unambiguous, and therefore the applicant had constructive notice that the text applied to the subject site; and

WHEREAS, the Board notes that the applicant has given no justification as to why the architect, filing under the Professional Certification Program, determined that a side yard with a width of 4'-0" would be permitted under ZR § 23-462(c); and

WHEREAS, the Board further notes that the applicant has not provided evidence that there were multiple municipal assurances of validity; rather, the applicant relies on a single reconsideration issued by the Chief Engineer of the Queens Borough Office; and

WHEREAS, significantly, the reconsideration relied upon by the applicant was not issued until May 16, 2006 (and updated August 16, 2006), after construction of the building with a 4'-0" side yard along the northern lot line was substantially complete; and

WHEREAS, the Board finds that a claim of good faith reliance cannot be supported where the municipal determination which forms the basis of the applicant's alleged good faith reliance was not issued until after the construction was complete; and

WHEREAS, further, the applicant has acknowledged that the only construction that was performed in reliance upon the 2006 reconsideration was the extension of the first floor of the building to the side lot line, which merely consisted of the addition of a one-story covered passageway along the side of the building; and

WHEREAS, the Board notes that the applicant made a

supplemental argument that ZR § 23-462(c) does not apply to the subject building because the first floor has been extended to the side lot line, and the 4'-0" wide open area along the northern lot line above the first floor is not, by definition, a side yard, because it is not open from the lowest level of the building to the sky; and

WHEREAS, the Board considers the applicant's argument, which challenges DOB's interpretation of ZR § 23-462(c), to be outside the scope of an application for a variance; however, the Board also disagrees with the applicant's interpretation of ZR § 23-462(c), given that the text refers to "an open area extending along the side lot line…at any level," and therefore clearly contemplates the 4'-0" wide open area along the side lot line above the first floor of the subject building; and

WHEREAS, for all of the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(a); and

WHEREAS, since the application fails to meet the findings set forth at ZR § 72-21(a) its variance request must be denied; and

WHEREAS, because the Board finds that the application fails to meet the findings set forth at ZR § 72-21(a), as modified by the good faith reliance doctrine, which is a threshold finding that must be met for a grant of a variance, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 3, 2010, acting on Department of Buildings Application No. 401711073, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, June 5, 2012.

112-11-BZ
CEQR #12-BSA-009K
APPLICANT – Eric Palatnik, P.C., for Louis N. Petrosino, owner.
SUBJECT – Application August 9, 2011 – Variance (§72-21) to legalize the extension of the use and enlargement of the zoning lot of a previously approved scrap metal yard (UG 18), contrary to §32-10. C8-1 zoning district.
PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54th Street. Block 6947, Lot 260. Borough of Brooklyn.
COMMUNITY BOARD #13BK
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 29, 2011, acting on Department of Buildings Application No. 320126458, reads in pertinent part:

> The proposed use of scrap metal yard, UG 18, in a C8-1 zoning district is contrary to Section 32-10 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located in a C8-1 zoning district, the enlargement of the zoning lot for a scrap metal yard (Use Group 18) and the legalization of the enlargement to the existing one-story warehouse building on the site, which does not conform to district use regulations, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, with continued hearings on March 6, 2012 and April 24, 2012, and then to decision on June 5, 2012; and

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

WHEREAS, Community Board 13, Brooklyn, recommends approval of this application; and

WHEREAS, City Council Member Domenic M. Recchia, Jr. recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Cropsey Avenue and Bay 54th Street, within a C8-1 zoning district; and

WHEREAS, the site consists of a single lot (Lot 260) with a total lot area of 34,527 sq. ft., formed by two previously separate lots: (1) former Lot 260, an irregularly shaped lot bounded by Bay 54th Street to the north, Cropsey Avenue to the east, and the Coney Island Creek to the south, with a lot area of 24,903 sq. ft.; and (2) former Lot 8900, a narrow, irregularly-shaped lot adjacent to the west of former Lot 260, with a width of approximately 40 feet, a depth of approximately 220 feet, and a lot area of 9,624 sq. ft.; and

WHEREAS, the site is currently occupied by a scrap metal yard (Use Group 18); and

WHEREAS, the Board has exercised jurisdiction over the former Lot 260 portion of the site since March 2, 1965 when, under BSA Cal. No. 1069-64-BZ, the Board granted a variance to permit, at an existing scrap metal yard, the construction of a one-story building for the storage of scrap metal within an R4 zoning district, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended on various occasions; and

WHEREAS, on December 2, 1980, under BSA Cal. No. 703-80-BZ, the Board granted a variance to permit the enlargement of the existing scrap metal storage building into the required front yard at the site, for a term of ten years; and

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

WHEREAS, most recently, on July 25, 2000, the Board granted an extension of the term, which expired on December 2, 2010; and

WHEREAS, the Board notes that the applicant initially sought to file an application for an extension of term and an amendment to legalize the 822.5 sq. ft. enlargement of the existing one-story warehouse building on the site, however, the

Board directed the applicant to file a new variance application because the applicant also seeks to enlarge the zoning lot; and

WHEREAS, the applicant states that, since the time of the most recent grant, the owner acquired former Lot 8900, which was created by the City in 2004 from a mapped, unbuilt street known as West 19th Street; and

WHEREAS, the applicant submitted a copy of the "Agreement, Deed of Cession and Grant of Easement" reflecting that former Lot 8900 was conveyed from the City to the owner in 2005; and

WHEREAS, the applicant notes that there is a 17'-6" wide sewer easement running along the west side of former Lot 8900 from Bay 54th Street southward to the bulkhead at the edge of Coney Island Creek; and

WHEREAS, the applicant states that the sewer easement prohibits permanent structures of any kind (other than a fence) from being constructed on the easement; and

WHEREAS, the applicant now seeks to enlarge the zoning lot occupied by the scrap metal storage yard to include former Lot 8900, and to legalize the 822.5 sq. ft. enlargement of the existing one-story warehouse building on the site; and

WHEREAS, because an increase in the degree of the existing non-conforming manufacturing use is not permitted in the C8-1 zoning district, the applicant seeks a variance for the site; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the history of use of the site; (2) the existence of the sewer easement along a significant portion of former Lot 8900; and (3) the narrow size and configuration of former Lot 8900; and

WHEREAS, the applicant notes that the scrap metal yard has been located on the site for over 45 years and was the subject of two prior variance applications before the Board, which originally permitted the use to be established in the prior R4 zoning district, and later permitted the enlargement of the non-conforming use on the site; and

WHEREAS, the prior variances granted by the Board found that there were unique conditions on the site which created practical difficulties and unnecessary hardship in developing the site as a conforming use; and

WHEREAS, the applicant states that it now merely seeks to enlarge the existing building by 822.5 sq. ft. and to enlarge the zoning lot by incorporating former Lot 8900 located immediately to the west of the zoning lot, and that otherwise the conditions on the site have not changed since the Board's prior grants; and

WHEREAS, the applicant notes that former Lot 8900 has been historically vacant, as it was created from a portion of the mapped but unbuilt street known as West 19th Street; and

WHEREAS, as to the existence of a sewer easement on former Lot 8900, the applicant states that the mapped but unbuilt West 19th Street had a width of 80 feet and included a 35-ft. wide sewer easement running down its center; former Lot 8900 was created by the City in 2004 and consists of the eastern half of West 19th Street, which includes 17'-6" of the sewer easement; and

WHEREAS, the applicant states that, as noted above, former Lot 8900 was deeded to the subject owner in 2005 and the applicant submitted an "Agreement, Deed of Cession and Grant of Easement," which reflects that no permanent structure of any kind (other than a fence) can be constructed within the easement area; and

WHEREAS, the applicant states that as a result of the easement, the buildable portion of former Lot 8900 has an average width of only 24 feet, which severely limits the viability of the lot for commercial use independent of former Lot 260; and

WHEREAS, specifically, the applicant states that as a result of the easement, any conforming building on former Lot 8900 would be difficult to configure into a functional layout due to the narrow buildable width and significant depth of the site, and could accommodate a building with a floor area of only 4,458 sq. ft.; and

WHEREAS, as to the configuration of the site the applicant states that the only public street frontage provided on former Lot 8900 is the 44-ft. wide span along Bay 54th Street, located along the northern lot line of the site; and

WHEREAS, the applicant notes that, due to the easement which occupies nearly half of former Lot 8900, only approximately 26 feet of the frontage along Bay 54th Street can be built upon, and therefore the layout of a conforming use at the site would be extremely inefficient, with a 26-ft. wide building entrance leading to a building that could extend to a depth of nearly 200 feet; and

WHEREAS, the applicant states that Bay 54th Street is a dead end street with only the existing scrap metal yard and a Home Depot located along the southern side of the street; and

WHEREAS, the applicant further states that former Lot 8900 is set back from the street line of Bay 54th Street and the fence of the existing scrap metal facility on former Lot 260 blocks the view of former Lot 8900 from Cropsey Avenue; as a result, a conforming commercial use on former Lot 8900 would have almost no public visibility, which would further inhibit its viability as a conforming use; and

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

WHEREAS, the applicant initially submitted a feasibility study analyzing the following scenarios: (1) an as-of-right development over the entire 34,527 sq. ft. site, consisting of an 11,306 sq. ft., one-story retail building with accessory parking; and (2) the proposed use of the entire site for the existing scrap metal yard use; and

WHEREAS, the feasibility study concluded that the as-of-right development would not realize a reasonable return, but that the proposed development would realize a reasonable return; and

WHEREAS, at hearing, the Board directed the applicant to revise the proposed scenario to include a smaller as-of-right commercial building on former Lot 8900; and

WHEREAS, in response, the applicant submitted a revised feasibility study which analyzed (1) an as-of-right

scenario consisting of a 2,821 sq. ft. retail building on former Lot 8900 considered in conjunction with the existing scrap metal yard on former Lot 260; and (2) an as-of-right 2,821 sq. ft. retail building on former Lot 8900 considered in isolation from the existing scrap metal yard; and

WHEREAS, the revised feasibility study concluded that neither of the scenarios featuring the smaller retail building on former Lot 8900 would realize 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 variance 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 submitted a 400-ft. radius diagram which reflects that the surrounding area is characterized by a mix of commercial, manufacturing, and residential uses; and

WHEREAS, the applicant states that the enlargement of the existing scrap metal yard is imperceptible from Cropsey Avenue and is only visible from the Home Depot site which is immediately adjacent to the west; and

WHEREAS, the applicant further states that the only change that is visible from the adjacent Home Depot site is the location of the fence, which will be relocated 22 feet to the west of its current location, and which will be increased in length from 187 feet to 255 feet; and

WHEREAS, the applicant notes that the increased length of the fence is located entirely at the southern end of the site and will only be noticeable from the southern end of parking lot at the Home Depot site; and

WHEREAS, the applicant states that the enlargement of the existing building is located entirely on the former Lot 260 portion of the site and solely consists of an 822.5 sq. ft. enlargement to the one-story warehouse structure to provide an enclosure that protects the existing electrical framework and generator from the elements; and

WHEREAS, the applicant represents that neither the enlargement to the building nor the enlargement of the zoning lot will result in the use of any additional equipment on the site or the creation of any additional noise, vibrations or other disturbances on the site; and

WHEREAS, the applicant notes that the secluded location of former Lot 8900 will help ensure that the enlargement of the zoning lot will not result in any visual impact on the community; and

WHEREAS, at hearing, the Board directed the applicant to (1) provide an operational plan for the scrap metal yard; (2) remove the graffiti from the site; (3) demonstrate compliance with the condition from the prior grant that scrap piles be kept below the height of the fence; (4) repair the damaged portions of the fencing; and (5) provide landscaping along the western lot line; and

WHEREAS, in response, the applicant submitted an operational plan which states that: (1) the hours of operation will be Monday through Friday, from 7:00 a.m. to 5:00 p.m., Saturday, from 7:00 a.m. to 3:00 p.m., and closed on Sunday; (2) the hours of crane operation will be Monday through Friday, from 8:00 a.m. to 4:30 p.m. and Saturday, from 8:00 a.m. to 3:00 p.m., and the crane will be operated in conformance with Reference Standard RS 19-2; (3) an estimated 30 to 50 trucks travel through the site each day; (4) a rodent control plan certified by a registered New York State exterminator is in effect at the site; (5) all vehicles are parked within the fenced-in portion of the site; (6) all vibrations and sounds emitted from the site comply with M-1 district regulations; (7) all graffiti on the external walls of the site will be promptly painted over; (8) the scrap metal pile will be maintained so as not to exceed the height of the fence; and (9) weekly inspections will be conducted at the site to ensure compliance with the operational plan, specifically with regards to graffiti removal, maintenance of the scrap metal pile, and maintenance of the fence and surrounding sidewalk area; and

WHEREAS, the applicant also submitted photographs reflecting that the existing graffiti has been removed from the site, the scrap metal piles have been reduced so that they do not exceed the height of the fence, and the damaged portions of the fence have been repaired; and

WHEREAS, as to the landscaping on the site, the applicant states that the area along the western lot line where the Board directed the applicant to provide evergreen trees is owned by Home Depot, and not the applicant; and

WHEREAS, the applicant states that it has contacted Home Depot for their approval to provide the proposed plantings, but have not received any response; and

WHEREAS, the applicant submitted an affidavit from the owner stating that it will use its best efforts in pursuing the requested landscaping with Home Depot; and

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

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

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

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

WHEREAS, the project is classified as an unlisted action pursuant to pursuant to 6 NYCRR, Part 617.12 and 617.4; 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 Type II determination under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a

variance to permit, on a site located in a C8-1 zoning district, the enlargement of the zoning lot for a scrap metal yard (Use Group 18) and the legalization of the enlargement to the existing one-story warehouse building on the site, which does not conform to district use regulations, contrary to ZR § 32-10; *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 April 12, 2012"- (5) sheets and *on further condition*:

THAT the term of this grant shall expire on June 5, 2022;

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

THAT the scrap metal piles will be maintained so as not to exceed the height of the fence;

THAT the hours of operation will be Monday through Friday, from 7:00 a.m. to 5:00 p.m., Saturday, from 7:00 a.m. to 3:00 p.m., and closed on Sunday;

THAT the hours of crane operation will be Monday through Friday, from 8:00 a.m. to 4:30 p.m. and Saturday, from 8:00 a.m. to 3:00 p.m.;

THAT the crane will be operated in conformance with Reference Standard RS 19-2;

THAT a rodent control plan certified by a registered New York State exterminator will be kept in effect at the site;

THAT all vehicles will be parked within the fenced-in portion of the site;

THAT all vibrations and sounds emitted from the site comply with M-1 district regulations;

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

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

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

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

Adopted by the Board of Standards and Appeals, June 5, 2012.

169-11-BZ
CEQR #12-BSA-038K

APPLICANT – Eric Palatnik, P.C., for Shlomo Vizgan, owner.

SUBJECT – Application October 27, 2011– Special Permit (§73-622) to allow the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R-4 zoning district.

PREMISES AFFECTED – 2257 East 14th Street, between Avenue V and Gravesend Neck Road, Block 7375, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 19, 2011, acting on Department of Buildings Application No. 320379602, reads in pertinent part:

1. Proposed enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio, which is contrary to ZR Section 23-141.
2. Proposed enlargement increases the degree of non-compliance of an existing building with respect to open space and lot coverage which is contrary to ZR Section 23-141.
3. Proposed enlargement results in two side yards less than 5 feet and the total of both side yards less than 13 feet, which is contrary to ZR Section 23-461(a).
4. Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on February 28, 2012, after due notice by publication in *The City Record*, with continued hearings on April 3, 2012 and May 1, 2012, and then to decision on June 5, 2012; and

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

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

WHEREAS, the subject site is located on the east side of East 14th Street, between Avenue V and Gravesend Neck Road, within an R4 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 1,098.5 sq. ft. (0.44 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,098.5 sq. ft. (0.44 FAR) to 3,406 sq. ft. (1.36 FAR); the maximum permitted floor area is 2,250 sq. ft. (0.75 FAR); and

WHEREAS, the applicant proposes to provide an open space of 46.5 percent (55 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 53.5 percent (45 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a width of 3'-10 ¾", and to maintain the existing side yard along the northern lot line with a width of 2'-7 ½" (a minimum width of 5'-0" is required for each side yard, with a minimum total width of 13'-0"); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted a survey of 44 homes with FARs greater than 0.8 within 400 feet of the site, of which 36 had FARs exceeding 1.0; and

WHEREAS, the applicant notes that the homes with the greatest FARs in the study area are those located within 100 feet of the site, which includes at least ten homes with FARs ranging from 1.59 to 1.80, all of which are greater than the FAR of the proposed home; and

WHEREAS, at hearing, the Board directed the applicant to remove the dormers from the proposed home, as they are not permitted in the subject R4 zoning district pursuant to ZR § 23-621; and

WHEREAS, in response, the applicant submitted revised plans which removed the dormers from the proposed home; and

WHEREAS, at hearing, the Board also questioned whether the front steps to the porch were permitted to encroach onto the sidewalk, whether the proposed landscaping complied with ZR § 23-451, and whether the proposed accessory off-street parking space is permitted in the front yard; and

WHEREAS, in response, the applicant states that the front steps to the porch are permitted to encroach 18 inches onto City property pursuant to Building Code § 27-31, that the landscaping complies with ZR § 23-451, and that the proposed accessory off-street parking space is permitted in the front yard; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 21, 2012"-(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,406 sq. ft. (1.36 FAR); a minimum open space of 46.5 percent; a maximum lot coverage of 53.5 percent; a front yard with a depth of 10'-0"; a side yard with a minimum width of 3'-10¾" along the southern lot line; a side yard with a minimum width of 2'-7½" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, June 5, 2012.

97-11-BZ

APPLICANT – Eric Palatnik, P.C., for Cross Bronx Food Center, Inc., owner.

SUBJECT – Application July 1, 2011 – Variance (§72-21) to permit the expansion of an auto service station (UG 16B) and enlargement of an accessory convenience store use on a new zoning lot, contrary to use regulations. The existing use was permitted on a smaller zoning lot under a previous variance. R5 zoning district.

PREMISES AFFECTED – 1730 Cross Bronx Expressway, northwest corner of Rosedale Avenue and Cross Bronx Expressway, Block 3894, Lot 28 (28,29), Borough of Bronx.

COMMUNITY BOARD #9BX
APPEARANCES –
For Applicant: Eric Palatnik, Ian Rasmussen and Barbara Cohen.
For Opposition: R. Jamwanot.

ACTION OF THE BOARD – Laid over to August 7, 2012, at 1:30 P.M., for continued hearing.

174-11-BZ
APPLICANT – Daniel H. Braff, Esq., for The Church of Jesus Christ of Latter-day Saints, owner.
SUBJECT – Application November 9, 2011 – Variance (§72-21) to permit the development of a two-story chapel (*The Church of Jesus Christ of Latter-day Saints*), contrary to floor area ratio (§24-111) and permitted obstructions in the side yards and rear yard (§24-33). R2A zoning district.
PREMISES AFFECTED – 145-15 33rd Avenue, north side of 33rd Avenue approximately 400' east of Parsons Boulevard, Block 4789, Lot 81, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Daniel Braff.
For Opposition: Bessie Schachter for Senator Tony Avella, Dominic Ponakal for Assembly Member Rory Lancman, Charles Apelian for CB 7, Tyler Cassell, Peter J. Brancazio, Janet McCreesh, Paul Graziano, Janet McEneaney, Phil Konigsberg, Mike Mullew.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 17, 2012, at 1:30 P.M., for decision, hearing closed.

187-11-BZ
APPLICANT – Davidoff Malito & Hutcher, LLP, for Sandford Realty, LLC, owner.
SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the enlargement and conversion of existing manufacturing building to mixed-use residential and commercial, contrary to use regulations, (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 118 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 32, Borough of Brooklyn.
COMMUNITY BOARD #3BK
APPEARANCES –
For Applicant: Ron Mandel and Jack Freeman.
For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to July 10, 2012, at 1:30 P.M., for continued hearing.

193-11-BZ
APPLICANT – Eric Palatnik, P.C., for Aleksandr Falikman, owner.
SUBJECT – Application December 21, 2011 – Special Permit (§73-622) for an enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(b)); less than the minimum side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.
PREMISES AFFECTED – 215 Exeter Street, Oriental Boulevard and Esplanade, Block 8743, Lot 42, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik, Isaa Schwartz and Ian Rasmussen.

ACTION OF THE BOARD – Laid over to July 10, 2012, at 1:30 P.M., for continued hearing.

7-12-BZ
APPLICANT – Eric Palatnik, P.C., for 419 West 55th Street Corp., owner; Katsam Holding, LLC, lessee.
SUBJECT – Application January 17, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Revolutions 55*). C6-2/R8 zoning district.
PREMISES AFFECTED – 419 West 55th Street, between 9th and 10th Avenues, Block 1065, Lot 21, Borough of Manhattan.
COMMUNITY BOARD #4BK
APPEARANCES –
For Applicant: Eric Palatnik and Kenneth Sutin.
For Opposition: Arthur Little and Jann Leeming.

ACTION OF THE BOARD – Laid over to July 10, 2012, at 1:30 P.M., for continued hearing.

23-12-BZ
APPLICANT – Simons & Wright LLC, for 949-951 Grand Street, LLC, owner.
SUBJECT – Application February 2, 2012 – Variance (§72-21) to allow for the development of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 951 Grand Street, between Morgan and Catherine Streets, Block 2924, Lot 48, Borough of Brooklyn.
COMMUNITY BOARD #1BK
APPEARANCES –
For Applicant: Emily Simons.

ACTION OF THE BOARD – Laid over to July 17, 2012, at 1:30 P.M., for continued hearing.

30-12-BZ
APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.
SUBJECT – Application February 8, 2012 – Special Permit (§73-49) to permit accessory parking on the roof of an

existing one-story supermarket, contrary to §36-11. R6/C2-2 zoning district
PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Eric Palatnik.
For Opposition: George Wang.

ACTION OF THE BOARD – Laid over to August 21, 2012, at 1:30 P.M., for continued hearing.

40-12-BZ
APPLICANT – Francis R. Angelino, Esq., for Helm Equities Richmond Avenue, LLC, owner; Global Health Clubs, LLC, lessee.
SUBJECT – Application February 14, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Global Health Clubs*). C2-1 zoning district.
PREMISES AFFECTED – 2385 Richmond Avenue, Richmond Avenue and East Richmond Hill Road, Block 2402, Lot 1, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Francis R. Angelino.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 19, 2012, at 1:30 P.M., for decision, hearing closed.

42-12-BZ
APPLICANT – Sheldon Lobel, P.C., for 158 West 27th Street, LLC, owner; 158 West 27th Fitness Group, LLC, lessee.
SUBJECT – Application February 16, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Planet Fitness*) on a portion of the cellar, first and second floors of the existing twelve-story building at the premises. M1-6 zoning district.
PREMISES AFFECTED – 158 West 27th Street, located on the south side of 27th Street, between Avenue of the Americas and Seventh Avenue, Block 802, Lot 75, Borough of Manhattan.
COMMUNITY BOARD #5M
APPEARANCES –
For Applicant: Josh Rinesmith.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 19, 2012, at 1:30 P.M., for decision, hearing closed.

64-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 16302 Jamaica LLC, owner; Blink Jamaica Avenue, Inc., lessee.
SUBJECT – Application March 20, 2012 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink Finess*) within portions of an existing building. C6-3(DP) zoning district.
PREMISES AFFECTED – 163-02 Jamaica Avenue, southeast corner of intersection of Jamaica and Guy R. Brewer Boulevard, block 10151, Lot 1, Borough of Queens.
COMMUNITY BOARD #12Q
APPEARANCES –
For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Laid over to July 10, 2012, at 1:30 P.M., for continued hearing.

68-12-BZ
APPLICANT – Vassalotti Associates Architects, LLP, for Rockaway Boulevard Associates, LLC, owner.
SUBJECT – Application March 21, 2012 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on December 22, 1999; Waiver of the Rules. R5 zoning district.
PREMISES AFFECTED – 89-15 Rockaway Boulevard, northwest corner of the intersection of Rockaway Boulevard and 90th Street, Block 9093, Lot 13, Borough of Queens.
COMMUNITY BOARD #9Q
APPEARANCES –
For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Laid over to July 10, 2012, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on April 24, 2012, under Calendar No. 764-56-BZ and printed in Volume 97, Bulletin Nos. 16-18, is hereby corrected to read as follows:

764-56-BZ
APPLICANT – Alfonso Duarte, P.E., for Anthony Panvini, owner.
SUBJECT – Application December 2, 2011 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) with accessory uses and the sale of used cars (UG 16B), which expires on October 22, 2012. C1-2/R3-2 zoning district.
PREMISES AFFECTED – 200-05 Horace Harding Expressway, north side between Hollis Ct., Boulevard and 201st Street, Block 741, Lot 325,000.00, Borough of Queens.
COMMUNITY BOARD #11Q
APPEARANCES –
For Applicant: Alfonso Duarte.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an extension of term of a previously granted variance to permit the operation of a gasoline service station with accessory uses and the sale of cars, which will expire on October 22, 2012; and

WHEREAS, a public hearing was held on this application on February 14, 2012, after due notice by publication in *The City Record*, with a continued hearing on March 20, 2012, and then to decision on April 24, 2012; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) there be no parking on the sidewalk; (2) the site be maintained free of debris and graffiti; (3) all graffiti be removed within 48 hours; (4) all signs be maintained in accordance with the BSA-approved plans; (5) the sale of only five used cars be permitted; (6) all conditions appear on the certificate of occupancy; and (7) a new certificate of occupancy be obtained within one year from the date of the grant; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application, subject to the conditions stipulated by the Community Board; and

WHEREAS, the subject site is located on a corner through lot bounded by 201st Street to the east, the Horace Harding Expressway to the south, and Hollis Court Boulevard to the west, within a C1-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 22, 1957 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of 15 years; and

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

WHEREAS, most recently, on December 17, 2002, the Board granted a ten-year extension of term, which expires on October 22, 2012, and an amendment to permit the sale of used cars; and

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

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

WHEREAS, at hearing, the Board raised concerns about the site's compliance with C1 district signage regulations; and

WHEREAS, in response, the applicant submitted revised plans and a signage analysis reflecting that the site complies with C1 district signage regulations; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 22, 1957, so that as amended this portion of the resolution shall read: "to extend the term for ten years from October 22, 2012, to expire on October 22, 2022; *on condition* that all use and operations shall substantially conform to plans filed with this application marked 'Received January 31, 2012'-(2) sheets and 'April 2, 2012'-(1) sheet; and *on further condition*:

THAT the term of the grant will expire on October 22, 2022;

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

THAT any graffiti identified on the site will be removed within 48 hours;

THAT all signage on the site will comply with C1 district regulations;

THAT a maximum of five parking spaces on the site be utilized for the sale of used cars;

THAT the above conditions will be reflected on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by April 24, 2013;

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

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

Adopted by the Board of Standards and Appeals April 24, 2012.

***The resolution has been revised to correct the Plans**

date, which read: *…'April 3, 2012'-(1) sheet.* **now reads:** *…'April 2, 2012'-(1) sheet.* **Corrected in Bulletin Nos. 22-24, Vol. 97, dated June 14, 2012.**

***CORRECTION**

This resolution adopted on May 8, 2012, under Calendar No. 203-07-BZ and printed in Volume 97, Bulletin No. 20, is hereby corrected to read as follows:

203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar Inc., owner.
SUBJECT – Application December 30, 2011 – Amendment to a previous variance (§72-21) which allowed for the construction of a mixed use building, contrary to floor area an open space regulations. The amendment requests changes to the interior layout which would decrease medical office space, increase the number of dwelling units from 28 to 36, and increase parking from 58 to 61 spaces. R6/C2-2 zoning district.
PREMISES AFFECTED – 137-35 Elder Avenue, northwest corner of Main Street and Elder Avenue. Block 5140, Lot 40. Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Nora Martins.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for a 12-story mixed-use commercial/community facility/residential building; and

WHEREAS, a public hearing was held on this application on March 20, 2012 after due notice by publication in *The City Record*, with a continued hearing on April 24, 2012, and then to decision on May 8, 2012; and

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

WHEREAS, Community Board 7, Queens, recommends approval of this application, with the following conditions: (1) the owner ensures that the existing underground oil/gas tanks are legally removed and the soil is remediated; and (2) the parking plan be reviewed for compliance with zoning, height, and width; and

WHEREAS, the site is located on the northeast corner of Main Street and Elder Avenue; and

WHEREAS, the site is partially within an R6 zoning district and partially within an R6/C2-2 zoning district and has a total lot area of 9,632 sq. ft.; and

WHEREAS, on August 25, 2009, under the subject calendar number, the Board granted a variance to permit the construction of a 12-story mixed-use commercial/community facility/residential building which did not comply with the underlying zoning regulations for

floor area ratio ("FAR") and open space, contrary to ZR § 23-142; and

WHEREAS, the applicant now requests an amendment to permit changes to the interior layout of the proposed building, including an increase in the number of dwelling units and parking spaces, an increase in the commercial floor area, a decrease in the community facility floor area, and modifications to the floor-to-ceiling heights that result in a slight increase in the building height; and

WHEREAS, specifically, the applicant seeks to increase the number of dwelling units from 26 units to 36 units and to provide a corresponding increase in the number of accessory parking spaces, from 58 spaces to 61 spaces; and

WHEREAS, the applicant states that the additional ten dwelling units are created by rearranging the interior layout on the fourth through tenth floors to create four dwelling units on each floor instead of three, and converting the two approved 11th and 12th floor duplexes into four single-floor units; the proposed residential floor area remains the same as the floor area approved by the Board pursuant to the original variance (33,292 sq. ft.); and

WHEREAS, the applicant further states that the additional number of parking spaces required by the proposed increase in dwelling units will be accommodated by installing stackers in the cellar and second floor parking garages; and

WHEREAS, the applicant notes that the proposed 61 parking spaces includes the required 55 parking spaces and six required queuing spaces; and

WHEREAS, the applicant states that the floor-to-ceiling heights of the cellar, first, and second floors have been adjusted to accommodate the stackers (which require overhead clearance of 10'-0"), resulting in a 1'-0" increase in the total building height, from 137'-6" to 138'-6"; and

WHEREAS, the applicant notes that the proposed height remains within the building envelope that is permitted as-of-right; and

WHEREAS, the applicant also seeks a slight increase in the commercial floor area on the ground floor from 6,820 sq. ft. to 7,040 sq. ft., due to a redesigned elevator core which was relocated to reduce the distance from the street entrance to the elevators, and a slight decrease in the community facility floor area from 4,850 sq. ft. to 4,149 sq. ft., due to the enlargement of the second floor parking garage to accommodate the additional parking spaces; and

WHEREAS, the applicant states that the proposed amendments will not adversely affect the surrounding neighborhood, as only ten additional dwelling units are proposed and required parking will be provided within the building; and

WHEREAS, the applicant further states that no increase in the approved residential floor area or decrease in the approved residential open space is requested; and

WHEREAS, in response to the Community Board's concerns regarding environmental remediation, the applicant states that its environmental consultant is working with the New York State Department of Environmental Conservation ("DEC") to determine the extent and scope of work necessary to remediate the soil at the site, that DEC requested the submission of a Remedial Action Work Plan ("RAWP"), and that upon approval of the RAWP it will undertake the necessary soil remediation measures simultaneously with the commencement of construction at the site; and

WHEREAS, as to the Community Board's concerns regarding the proposed parking plan, the applicant submitted revised plans which reflect the proposed parking stackers at the second and cellar floors, and the adjusted floor-to-ceiling heights of the cellar, first, and second floors to accommodate the stackers; and

WHEREAS, the Board notes that the proposed parking plan is subject to DOB review and approval for compliance with the Zoning Resolution and Building Code, and any other applicable requirements; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated August 25, 2009, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 26, 2012"– eleven (11) sheets; and *on further condition:*

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 402635403)

Adopted by the Board of Standards and Appeals May 8, 2012.

***The resolution has been revised to correct part of the SUBJECT which read:** …*"dwellings units from 28 to 36,.."* **now reads:** …*"dwelling units from 26 to 36", to remove the 7th WHEREAS;* **and the part of the building height which read**: "from 137'-11" to 138'-11"… **now reads**: *"from 137'-6" to 138'-6"*. **Corrected in Bulletin Nos. 22-24, Vol. 97, dated June 14, 2012.**