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OF THE
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AND APPEALS

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June 29, 2011

DIRECTORY

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DOCKET

New Case Filed Up to June 21, 2011

87-11-BZ

159 Exeter Street, Between Hampton Street and Oriental Boulevard., Block 8737, Lot(s) 26, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an single family home, which will be non-compliance in Floor Area, open space, and lot coverage, contrary to (§23-141)(b) ZR Section. R3-1 zoning district. R3-1 district.

88-11-BZ

1279 Redfern Avenue, southeasterly side of Redfern Avenue, 755.36 easterly of Nameoke Avenue, Block 1552, Lot(s) 48, Borough of **Queens, Community Board: 14**. Special Permit for proposed day care facility (School) in an M1-1 District is contrary to ZR§ 42-10 M1-1 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

JULY 19, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 19, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1045-67-BZ

APPLICANT – Michael A. Cosentino, for Thomas Abruzzi, owner.

SUBJECT – Application June 14, 2011 – Extension of Time to obtain a Certificate of Occupancy for a previously approved Variance (§72-01 & 72-22) for an accessory parking lot to be used for adjoining commercial uses which expired on May 18, 2011. C2-2/R-2 zoning district.

PREMISES AFFECTED – 160-10 Crossbay, between 160th and 161st Avenue, Block 14030, Lots 6 & 20, Borough of Queens.

COMMUNITY BOARD #10Q

JULY 19, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 19, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

51-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Susan Sherer and Shimishon Sherer, owners.

SUBJECT – Application April 18, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space 23-141; yard less than the required rear yard 23-47. R2 zoning district.

PREMISES AFFECTED – 1226 East 26th Street, west side of 26th Street, between Avenue L and Avenue M, Block 7643, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

55-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Acadia 2914 Third Avenue LLC, owner; Third Avenue Bronx Fitness Group, LLC, lessee.

SUBJECT – Application April 25, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2914 Third Avenue, south of

East 152nd Street, Third Avenue and Bergen Avenue, Block 2362, Lot 13, Borough of Bronx.

COMMUNITY BOARD #1BX

56-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Adam Cohen, owner.

SUBJECT – Application April 25, 2011 – Variance (§72-21) for the enlargement of an existing one-family semi-detached residence contrary to (§ZR 22-11) and (§ZR 52-22) for non-conforming building; (§ZR 23-461(a)) side yard and (§ZR 23-141) exceeds maximum floor area. R2X zoning district.

PREMISES AFFECTED – 957 East 7th Street, East side of East 7th Street, approximately midblock between Avenue and Avenue I. Block 6510, Lot 68. Borough of Brooklyn.

COMMUNITY BOARD #12BK

57-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 208 West 125th Street Associates, LLC, owner; 208 West 125th Street Fitness Group, LLC, lessee.

SUBJECT – Application May 2, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C6-3/C4-4D.

PREMISES AFFECTED – 208 West 125th Street and West 124th Street, west of Adam Clayton Powell Boulevard, Block 1930, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #10M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JUNE 21, 2011
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

1069-27-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 6702 New Utrecht Avenue LLC by Frank Momando, owner.

SUBJECT – Application February 23, 2011 – Extension of Term (§11-411) of for the continued operation of an automatic automobile laundry, simonizing room and offices which expired on March 6, 201; Extension of Time to obtain a Certificate of Occupancy. C1-2/R5 zoning district.

PREMISES AFFECTED – 6702-6724 New Utrecht Avenue, bounded by New Utrecht Avenue, 15th Avenue and Ovington Avenue/68th Street, Block 5565, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Lyra Altman.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term for the continued operation of an automatic automobile laundry with accessory uses, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on April 12, 2011, after due notice by publication in *The City Record*, with continued hearings on May 10, 2011 and June 7, 2011, and then to decision on June 21, 2011; 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 11, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on a triangular-shaped lot bounded by New Utrecht Avenue to the east, Ovington Avenue to the south and 15th Avenue to the west, within a C1-2 (R5) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 6, 1956 when, under the subject calendar number, the Board granted a variance to permit the

construction of an automatic automobile laundry, simonizing room, boiler room and offices, for a term of 15 years; and

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

WHEREAS, most recently, on October 8, 2002, the Board amended the grant to permit changes in the layout of the premises, including the addition of an attendant's booth and the relocation of the canopy on the site, and granted a ten-year extension of term, which expired on March 6, 2011; a condition of the grant was that a certificate of occupancy be obtained; and

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

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

WHEREAS, at hearing, the Board directed the applicant to clarify the operation of the car wash and how queuing takes place on the site, and to remove excess signage from the site, including the five pole banner signs located in the public sidewalk; and

WHEREAS, in response, the applicant submitted a circulation plan reflecting the direction in which cars move on the site and clarifying where cars park on the site and where cars queue on the site; and

WHEREAS, the applicant also submitted photographs reflecting the removal of excess signage from the site, including the removal of the pole banner signs and the restoration of the sidewalk, and submitted a revised signage analysis reflecting that the site complies with C1 district signage regulations; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated March 6, 1956, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the expiration of the prior grant, to expire on March 6, 2021, and to grant an extension of time to obtain a certificate of occupancy to June 21, 2012; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked 'Received June 14, 2011-(3) sheets; and *on further condition*:

THAT the term of the grant shall expire on March 6, 2021;

THAT all signage at the site shall comply with C1 district regulations;

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

THAT a new certificate of occupancy shall be obtained by June 21, 2012;

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

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relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application. No. 301186017)

Adopted by the Board of Standards and Appeals, June 21, 2011.

739-76-BZ

APPLICANT – Eric Palatnik, P.C. for Cord Meyer Development, LLC, owner; Peter Pan Games of Bayside; lessee.

SUBJECT – Application April 19, 2011 – Extension of Term of a Special Permit (§73-35) for the continued operation of an Amusement arcade (*Peter Pan Games*) which expired on April 10, 2011. C4-1 zoning district.

PREMISES AFFECTED – 212-95 26th Avenue, 26th Avenue and Bell Boulevard. Block 5900, Lot 2. Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for decision, hearing closed.

982-83-BZ

APPLICANT – H Irving Sigman, for Barone Properties, Inc., owner.

SUBJECT – Application February 22, 2011 – Extension of Term (§11-411) of a previously approved variance permitting retail and office use (UG 6), which expired on March 6, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on May 25, 2006; Amendment (§11-412) to increase number of stores/offices from five to six; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of 192nd Street, Block 5513, Lot 27, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: H. Irving Sigman and Peter Takvorian.

For Opposition: Terri Pouymari.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 10 A.M., for decision, hearing closed.

49-06-BZ

APPLICANT – Sheldon Lobel, P.C., for JZB Holdings LLC, owner.

SUBJECT – Application June 7, 2011 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the construction of a two-story commercial building which expired on May 8, 2011. R3-2/C1-2 zoning district.

PREMISES AFFECTED – 2041 Flatbush Avenue, Southeastern corner of the intersection of Flatbush Avenue and Baughman Place. Block 7868, Lot 18. Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 10 A.M., for decision, hearing closed.

161-06-BZ

APPLICANT – Eric Palatnik, P.C., for Webster Affordable Solutions, owner.

SUBJECT – Application April 25, 2011 – Extension of Time to complete construction of a Variance (§72-21) for the construction of two eight-story mixed-use residential/commercial/community facility buildings which expires on September 11, 2011. C8-2 zoning district.

PREMISES AFFECTED – 3349 Webster Avenue, Webster Avenue, south of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for decision, hearing closed.

221-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Chris Xu, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the development of a transient hotel, contrary to district use regulations. M2-1 zoning district.

PREMISES AFFECTED – 34-08 Collins Place, north side of Collins Place, 34th Avenue, College Point and 35th Avenue, Block 4945, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Nora Martins.

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ACTION OF THE BOARD – Case removed from SOC Calendar and laid over to July 26, 2011, at 1:30 P.M., for BZ public hearing.

APPEALS CALENDAR

200-10-A, 203-10-A thru 205-10-A

APPLICANT – Sheldon Lobel, P.C., for Williams Davies, LLC, owner.

SUBJECT – Application October 29, 2010 – Appeal seeking a common law vested right to continue construction commenced under the prior R5 zoning district. R4-1 zoning district

PREMISES AFFECTED – 1359, 1361, 1365 & 1367 Davies Road, southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lots 15, 14, 13, 12, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Nora Matins.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez5
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 on four attached single-family homes under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on April 5, 2011, after due notice by publication in *The City Record*, with a continued hearing on June 7, 2011, and then to decision on June 21, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan; and

WHEREAS, Community Board 14, Queens, recommends disapproval of the application; and

WHEREAS, the subject site is located on the southwest corner of Davies Road and Caffrey Avenue, in an R4-1 zoning district; and

WHEREAS, the site consists of Tax Lots 12 and 14 (Tentative Lots 12, 13, 14 and 15) and has 100 feet of frontage on Davies Road, 75 feet of frontage on Caffrey Avenue, and a total lot area of 7,500 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with four attached single-family homes; the homes on Tentative Lots 12 and 15 (the end lots) each have a floor area of 2,329 sq. ft., and the homes on lots 13 and 14 (the middle lots) each have a floor area of 2,125 sq. ft. (the “Homes”); and

WHEREAS, the subject site is currently located within an R4-1 zoning district, but was formerly located within an R5 zoning district; and

WHEREAS, the Homes comply with the former R5 zoning district parameters, specifically with respect to floor

area ratio (“FAR”); and

WHEREAS, however, on August 14, 2008 (the “Enactment Date”), the City Council voted to adopt the Rockaway Neighborhoods Rezoning, which rezoned the site to R4-1, as noted above; and

WHEREAS, the Homes do not comply with the R4-1 zoning district parameters as to FAR, and attached homes are not permitted in R4-1 districts; and

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

WHEREAS, the Board notes that New Building Permit Nos. 402607345-01-NB, 402607390-01-NB and 402607407-01-NB were issued on August 30, 2007, and New Building Permit No. 402607504-01-NB was issued on September 13, 2007 (collectively, the “New Building Permits”), authorizing the development of four attached single-family homes pursuant to R5 zoning district regulations; and

WHEREAS, the New Building Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new R4-1 zoning district regulations and the Department of Buildings (“DOB”) determined that the Homes’ foundations were not complete; and

WHEREAS, by letter dated December 23, 2010, DOB stated that the New Building Permits were lawfully issued, authorizing construction of the Homes prior to the Enactment Date; and

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

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

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

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

WHEREAS, as to substantial construction, the applicant states that prior to the Enactment Date, the owner

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had completed the following: 100 percent of site preparation work; installation of 84 wooden timber piles, accounting for 100 percent of pile installation; 25 percent of excavation work; installation of 30 percent of the pile caps; and the pouring of ten cubic yards of concrete required for the foundation, accounting for 32 percent of footing installation; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site showing the amount of work completed as of the Enactment Date, concrete pour tickets, a foundation plan, an affidavit from the contractor, a TR5 Technical Report related to the installation of piles; vibration monitoring field inspection reports, a letter from the engineer, and concrete inspection and testing reports; and

WHEREAS, initially the applicant included an additional 46 cubic yards of concrete that were poured on the Enactment Date, however, due to a question as to the timeliness of the pour, the Board directed the applicant to remove the 46 cubic yards of concrete from its calculations; and

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

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

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

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$149,921.29, including hard and soft costs and irrevocable commitments, out of \$1,248,856.24 budgeted for the entire project; and

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

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$102,186.19 for the work performed at the site as of the Enactment Date, representing 47 percent of the foundation-related hard costs; and

WHEREAS, the applicant further states that the owner paid an additional \$47,735.10 in soft costs related to the work performed at the site as of the Enactment Date; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 12 percent of the projected total cost; and

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

WHEREAS, again, the Board's consideration is guided

by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

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

WHEREAS, the applicant states that if vesting were not permitted, the site's permissible FAR would be reduced from 1.25 to 0.90, and attached homes would not be permitted; therefore, if required to construct pursuant to R4-1 district regulations, the applicant would be required to eliminate one of the homes from the site and redesign the entire site plan for the development; and

WHEREAS, the applicant submitted a complying site plan for the R4-1 district reflecting that the development would be reduced to three detached single-family homes with 2,250 sq. ft. of floor area each; and

WHEREAS, the applicant represents that the complying scenario would reduce the project value by approximately \$540,000, resulting in a project loss of \$170,000 under the complying scenario; and

WHEREAS, the applicant states that only 28 of the 84 timber piles installed at the site could be utilized in a complying development, resulting in a loss of approximately \$42,175 in pile installation costs alone; and

WHEREAS, applicant further states that the existing southeastern foundation wall is unusable in the complying development because the first floor extends over the wall by approximately three feet; therefore, approximately 22 cubic yards of concrete would also be lost under the complying development; and

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

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of the New Building Permits associated with DOB Application Nos. 402607345-01-NB, 402607390-01-NB, 402607407-01-NB, and 402607504-01-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 21, 2011.

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32-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Margaret McLaughlin, lessee.

SUBJECT – Application March 29, 2011 – Proposed construction which does not fronting on a mapped street, contrary to General City Law Section 36, Article 3. R4 zoning district.

PREMISES AFFECTED – 6 Graham Place, south side, 230' west of mapped Beach 201st Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 22, 2011, acting on Department of Buildings Application No. 420292588, reads in pertinent part:

The site and building is not fronting on an official mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code of the City of New York; and

WHEREAS, a public hearing was held on this application on June 21, 2011, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated April 13, 2011, the Fire Department states that it has reviewed the subject proposal and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated March 22, 2011, acting on Department of Buildings Application No. 420292588, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received March 29, 2011"- one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

THAT the Department of Buildings must ensure 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 21, 2011.

137-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Richard & Jane O'Brien, lessees.

SUBJECT – Application August 3, 2010 – Reconstruction and enlargement of an existing single-family home not fronting on a mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 103 Beach 217th Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Opposition: Anthony Scaduto and James Ahrens, Fire Department.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

176-10-A

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

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

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

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 10 A.M., for adjourned hearing.

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185-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Raymond & Regina Walsh, lessees.

SUBJECT – Application September 24, 2010 – Reconstruction and enlargement of an existing single-family home not fronting on a mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 115 Beach 216th Street, east side Beach 216th south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Opposition: Anthony Scaduto and James Ahrens, Fire Department.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

229-10-BZY

APPLICANT – Akerman Senterfitt, for 163 Orchard Street, LLC, owner.

SUBJECT – Application December 17, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 163 Orchard Street, Orchard and Houston Streets, between Sytanton and Rivington Street, Block 416, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to July 19, 2011, at 10 A.M, for continued hearing.

14-11-A

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

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

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

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyrn J. Altman and Ronny Livian.

For Opposition: John Egnatos Beene.

ACTION OF THE BOARD – Laid over to August

16, 2011, at 10 A.M., for continued hearing.

29-11-A & 30-11-A

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

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

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

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Randy Mastro.

For Opposition: John Egnatos Beene.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for continued hearing.

62-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Richard & Jane O'Brien, lessees.

SUBJECT – Application May 10, 2011 – Appeal challenging the Fire Department's determination that a sprinkler system be provided, per Fire Code section 503.8.2. R4 zoning district.

PREMISES AFFECTED – 103 Beach 217th Street, east side of Beach 217th Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Opposition: Anthony Scaduto and James Ahrens, Fire Department.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

63-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Raymond & Raymond Walsh, lessees.

SUBJECT – Application May 10, 2011 – Appeal challenging the Fire Department's determination that a sprinkler system be provided, per Fire Code section 503.8.2. R4 zoning district.

PREMISES AFFECTED – 115 Beach 216th Street, east side of Beach 216th Street, 280' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

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For Applicant: Joseph A. Sherry.
For Opposition: Anthony Scaduto and James Ahrens, Fire Department.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

77-11-A

APPLICANT – Akerman Senterfitt LLP, for 3516 Development LLC, owner.

SUBJECT – Application May 27, 2011 – Appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior R6 zoning regulations. R6B zoning district.

PREMISES AFFECTED – 35-16 Astoria Boulevard, South side of Astoria Boulevard between 35th and 36th Streets. Block 633, Lots 39 & 140, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to July 19, 2011, at 10 A.M., for continued hearing.

REGULAR MEETING TUESDAY AFTERNOON, JUNE 21, 2011 1:30 P.M.

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

ZONING CALENDAR

197-10-BZ thru 199-10-BZ

CEQR #11-BSA-037R

APPLICANT – Antonio S. Valenziano, AIA, for John Merolo, owner.

SUBJECT – Application October 26, 2010 – Variance (§72-21) to allow three residential buildings in a manufacturing district, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 59, 63 & 67 Fillmore Street, 491.88' west of York Avenue, Block 61, Lot 27, 29, 31, 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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated December 1, 2010, acting on Department of Buildings Application Nos. 520036577, 520036586, and 520036595, reads, in pertinent part:

The proposed residential use is not permitted within an M1-1 zoning district contrary to section 42-00 of the NYC Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-1 zoning district, the proposed construction of three two-story single-family homes on three adjacent vacant lots, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on February 1, 2011, after due notice by publication in the *City Record*, with a continued hearing on March 1, 2011, and then to decision on June 21, 2011; and

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

WHEREAS, Community Board 1, Staten Island, recommends disapproval of this application based on concerns with the purported economic hardship and failure to provide alternatives which comply with R3A or R3X zoning district regulations; and

WHEREAS, the subject site comprises three through lots with frontage on Van Buren Street and Fillmore Street, between Franklin Avenue and York Avenue, within an M1-1 zoning district; and

WHEREAS, together, the three lots have a width of 75.5 feet, a depth of 111 feet, and a lot area of 8,380 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct three two-story one-family homes facing the Fillmore Street frontage, each home will have a proposed floor area of 1,662 sq. ft. (0.6 FAR), a total building height of 25'-2 13/16", a rear yard with a depth of 44.33 feet on Van Buren Street, and a front yard depth of 14 feet, with two parking spaces per dwelling unit; and

WHEREAS, because residential use is not permitted in the subject M1-1 zoning district, the applicant seeks a use variance to permit construction of the proposed building; and

WHEREAS, the applicant originally proposed three two-family homes with total building heights of 29'-11", and garages at the rear of the site at Van Buren Street; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: (1) the topography of the site; (2) the midblock location on a narrow street; and (3) the history of development of the site; and

WHEREAS, as to the topography, the applicant states that the site is encumbered with a steep slope of approximately 21 percent from Fillmore Street to Van Buren Street; and

WHEREAS, the applicant submitted a survey which

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reflects the site's slope; and

WHEREAS, the applicant states that the topography would require extensive grading of the entire site in order to accommodate a conforming commercial or manufacturing use with a marketable floor plate and parking; and

WHEREAS, the applicant states that although parking may be waived, the absence of street parking due to the narrowness of both streets would be infeasible for any conforming use and that a conforming use would be required to provide parking on site for customers and employees; and

WHEREAS, the applicant represents that there are premium costs associated with constructing on the rocky slope including transporting and disposing fill and rock and constructing a retaining wall; and

WHEREAS, as to the site's location midblock on a narrow street, the applicant states that Fillmore Street is mapped to a width of 40 feet and Van Buren Street is mapped to a width of 30 feet, and that the street beds are built to widths of 24.3 feet and 17.8 feet, respectively, which allows for one parking lane and one travel lane; and

WHEREAS, the applicant notes that nearby commercial streets such as Richmond Terrace have widths up to 80 feet; and

WHEREAS, the applicant states that there is insufficient onstreet parking since the single parking lane is occupied by cars associated with the surrounding residential uses, which were built prior to December 15, 1961 and do not provide offstreet parking; and

WHEREAS, the applicant asserts that the narrow streets which serve the area's residential traffic cannot support commercial traffic; and

WHEREAS, additionally, the applicant notes that the site is located in the midblock, which constrains maneuverability and would require traffic, including large trucks, to travel 475 feet from either Franklin Avenue or York Avenue, the nearest major cross streets; and

WHEREAS, as to the history of residential use at the site, the applicant provided a Sanborn map from 1937, which reflects that there were three homes fronting Fillmore Street at the site; and

WHEREAS, the applicant submitted DOB records, which reflect that the three homes were demolished in the past several decades; and

WHEREAS, the applicant represents, and the Sanborn map reflects that the site is now and has historically been surrounded on all sides by residential uses and that the subject block is occupied entirely by residential uses, except for one vacant site; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) an as-of-right two-story retail and office building; (2) the initial proposal of three two-family homes; and (3) an alternate proposal of two two-family homes; and

WHEREAS, the applicant explained that it did not

propose the maximum available floor area (1.0 FAR) in the as-of-right scenario since it was unable to accommodate multiple levels of parking for a commercial development due to the expense of excavating the rock at the site and the absence of a market for such use to compensate for construction premiums; and

WHEREAS, the study concluded that the as-of-right and two two-family home alternative scenarios would not result in a reasonable return; and

WHEREAS, at hearing, the Board directed the applicant to analyze an alternate proposal of three single-family homes; and

WHEREAS, the applicant submitted the analysis and concluded that the current proposal for three two-family homes would realize a reasonable return and revised the plans accordingly; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposal 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 represents that the character of the surrounding area is a mix of residential, manufacturing, and community facility uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the subject block is occupied entirely by residential uses; and

WHEREAS, the applicant's 400-ft. radius diagram reflects that the zoning district boundary line divides Fillmore Street between an R3X zoning district across the street from the site and the subject M1-1 zoning district, but that both zoning districts, are primarily occupied with residential uses within the 400-ft. radius of the site; the radius map reflects that there are also a significant number of residential uses within the block to the north across Fillmore Street, which is within an M3-1 zoning district; and

WHEREAS, the applicant represents that residential uses occupy all of the adjacent sites and the applicant states that the site was historically occupied by residential use; and

WHEREAS, as to bulk, the Board had concern regarding the originally proposed height of 29'-11", which was driven in part by the proposal for two-family homes; and

WHEREAS, the Board noted that the proposal is not consistent with the Lower Density Growth Management Area (LDGMA) regulations that apply to all R3A zoning districts in Staten Island; and

WHEREAS, at the Board's direction, the applicant analyzed an alternate proposal of three single-family homes, in consideration of R3A and LDGMA regulations and provided the current proposal for three single-family homes with heights of 25'-2 13/16"; and

WHEREAS, the applicant analyzed the R3X regulations (applicable across Fillmore Street) and determined that the

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existing built conditions are consistent with R3A zoning regulations, but not R3X since the size of the lots would be permitted under R3A regulations, but would be non-complying pursuant to R3X regulations; and

WHEREAS, the applicant states that it complies with all R3A zoning district regulations, including FAR and height, except front yard (a front yard with a depth of 20 feet is required to be aligned with the adjacent homes); and

WHEREAS, the applicant submitted a streetscape which reflects that there are a range of building heights visible at the Fillmore Street frontage, which reflects that the majority of homes provide primary access from Van Buren Street, but the proposal is consistent with the heights visible from Fillmore Street or from Van Buren Street; and

WHEREAS, the applicant proposes to provide primary access to the proposed homes from Fillmore Street, which is at the top of the slope and allows for access at grade and requires less excavation of the site; and

WHEREAS, the Board directed the applicant to analyze an alternative where primary access to the homes was provided from Van Buren Street, since that is the predominant site plan on the block; and

WHEREAS, in response, the applicant provided an alternative with the homes facing Van Buren Street, which required deeper foundations and less access to light, air, and views; and

WHEREAS, the applicant also noted that the 1937 Sanborn map reflects that the historic homes at the site had primary access from Fillmore Street; 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, as noted above, the applicant originally proposed three two-family homes; and

WHEREAS, at the Board's direction, the applicant revised the plans to reflect three single-family homes; 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 Unlisted pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11-BSA-037R, dated June 14, 2011; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources;

Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials and air quality impacts; and

WHEREAS, DEP reviewed the May 2010 Phase I Environmental Site Assessment Report and requested the submission of a Phase II Investigative Protocol (Work Plan) and Health and Safety Plan (HASP) to DEP for review and approval prior to the start of any field sampling; and

WHEREAS, DEP further requests that, after the Work Plan and HASP are approved by DEP, field sampling be delineated in the Phase II Site Investigation Report and be submitted to DEP for review and approval; and

WHEREAS, a Restrictive Declaration was executed on May 10, 2011 and filed for recording on June 15, 2011; and

WHEREAS, a site survey and permits search was conducted for the active industrial/manufacturing facilities for the area within a 400-ft. radius of the proposed project; and

WHEREAS, based on the air quality screening analysis conducted, DEP determined that significant adverse impacts from industrial/manufacturing uses on the proposed project are not anticipated; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a negative declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit, within an M1-1 zoning district, the proposed construction of three two-story single-family homes, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 17, 2011"- nine (9) sheets; and *on further condition*:

THAT the bulk parameters of the proposed buildings shall be as follows, for each home: maximum floor area of 1,662 sq. ft. (0.6 FAR); and maximum total height of 25'-2 13/16" at the Fillmore Street elevation, as illustrated on the BSA-approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed;

THAT prior to DOB's issuance of a temporary or permanent Certificate of Occupancy, the applicant or successor

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shall obtain from DEP a Notice of Satisfaction;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT all interior layouts and exits shall be as approved by the Department of Buildings;

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

THAT the 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 21, 2011.

26-11-BZ

CEQR #11-BSA-069M

APPLICANT – Francis R. Angelino, Esq., for West Gramercy Associates, LLC, owner; SoulCycle East 18th Street, LLC, owner.

SUBJECT – Application March 11, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*SoulCycle*). M1-5 zoning district.

PREMISES AFFECTED – 12 East 18th Street, south side of Fifth Avenue and Broadway, Block 846, Lot 67, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino.

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated May 18, 2011, acting on Department of Buildings Application No. 120584965, reads in pertinent part:

“Physical culture establishment is not permitted as of right in a M1-5M zoning district...and requires a BSA special permit per Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5M zoning district within the Ladies Mile Historic District, the legalization of a physical culture establishment (“PCE”) on the first floor, mezzanine, and a portion of the cellar of a five-story mixed-use commercial/residential building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 24, 2011 after due notice by publication in *The City Record*, and then to decision on June 21, 2011;

and

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

WHEREAS, the subject site is located on the south side of East 18th Street, between Fifth Avenue and Broadway, in an M1-5M zoning district within the Ladies Mile Historic District; and

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

WHEREAS, the PCE has a total of 2,059 sq. ft. of floor area on the first floor and mezzanine, with an additional 1,639 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as SoulCycle; and

WHEREAS, the proposed hours of operation are 5:30 a.m. to 9:30 p.m., seven days per week; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the applicant represents that the proposal will not effect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission approving work associated with the proposed PCE, dated April 4, 2011; and

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since February 5, 2011, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between February 5, 2011 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 11BSA069M, dated May 11, 2011; and

WHEREAS, the EAS documents that the operation of the

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5M zoning district within the Ladies Mile Historic District, the legalization of a physical culture establishment on the first floor, mezzanine, and a portion of the cellar of a five-story mixed-use commercial/residential building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 20, 2011"- One (1) sheet and "Received May 11, 2011"- Five (5) sheets and *on further condition*:

THAT the term of this grant shall expire on February 5, 2021;

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, June 21, 2011.

169-09-BZ

APPLICANT – Sheldon Lobel, for Saint Georges Crescent, LLC, owner.

SUBJECT – Application June 8, 2009 – Variance (§72-21) to allow a multi-family residential building, contrary to floor area (§23-145), rear yard (§23-47), height and setback (§23-633), rear setback (§23-663), minimum distance between windows and lot lines (§23-861), and maximum number of dwelling units (§23-22) regulations. R8 zoning district.

PREMISES AFFECTED – 186 Saint George’s Crescent, east side of St. George’s Crescent, 170’ southeast of the corner formed by the intersection of Van Cortland Avenue, and Grand Concourse, Block 3312, Lot 12, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for decision, hearing closed.

61-10-BZ

APPLICANT – James Chin & Associates, LLC, for Norman Wong, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-21) to legalize an existing building contrary to height (§23-692), lot coverage (§23-245), rear yard (§23-532) and floor area (§23-145) regulations. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 183 East Broadway, 43.5’ frontage on Henry Street and 26.1 frontage on East Broadway, Block 284, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Patrick Jones.

For Opposition: Ara Pehlivanian.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for decision, hearing closed.

3-11-BZ

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

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

PREMISES AFFECTED – 1221 East 22nd Street, between Avenue K and Avenue L, Block 7622, Lot 21, Borough of

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Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for adjourned hearing.

4-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1747 East 2nd Street, LLC, owner.

SUBJECT – Application January 10, 2011 – Variance (§72-21) to allow a three-story synagogue, contrary to lot coverage (§24-11), floor area (§113-51), wall height and total height (§113-55), front yard (§113-542), side yards (§113-543), encroachment into required setback and sky exposure plane (§113-55), and parking (§25-18, 25-31, and §113-561). R5 zoning district.

PREMISES AFFECTED – 1747-1751 East 2nd Street, aka 389 Quentin Road, northeast corner of East 2nd Street and Quentin Road, Block 6634, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for continued hearing.

10-11-BZ & 11-11-BZ

APPLICANT – Rampulla Associates Architects, for Charles Cannizaro, owner.

SUBJECT – Application February 3, 2011 – Variance (§72-21) to allow two, single family homes contrary to front yard (§23-45) and rear yard regulations (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 115, 121 Finely Avenue, north of Finely Avenue, 100' southwest of Marine Way, Block 4050, Lot 53, 56, 59, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip Rampulla.

For Opposition: Robert M. Fisher and John Ryan.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for decision, hearing closed.

22-11-BZ

APPLICANT – Simons & Wright, LLC, for Agama LLC, owner; Vorea Holdings LLC, lessee.

SUBJECT – Application March 1, 2011 – Variance (§72-21) to permit the conversion of a vacant warehouse to a physical culture establishment. R6B zoning district.

PREMISES AFFECTED – 184 North 8th Street, between

Driggs and Bedford Avenues, Block 2320, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Chris Wright.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for decision, hearing closed.

27-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 88 Franklin Street Group LLC, owner; Acqua Ancien Bath New York, LLC, lessee.

SUBJECT – Application March 22, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Acqua Ancien Bath*). C6-2A zoning district.

PREMISES AFFECTED – 86-88 Franklin Street, east of intersection of Church Street and Franklin Street, Block 175, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for continued hearing.

36-11-BZ

APPLICANT – Francis R. Angelino, Esq., for 270 Greenwich Street Associates LLC, owner; SoulCycle Tribeca, LLC, lessee.

SUBJECT – Application April 1, 2011 – Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (*SoulCycle*). C6-3 zoning district.

PREMISES AFFECTED – 270 Greenwich Street/103 Warren Street, west side of Joe DiMaggio Highway, Block 142, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Francis R. Angelino.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for decision, hearing closed.

37-11-BZ

APPLICANT – Moshe M. Friedman, for Eli Bauer, owner.

SUBJECT – Application April 4, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side

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yards (§23-461) and (§23-48) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1337 East 26th Street, east side, 300' of Avenue M and East 26th Street, Block 7662, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for decision, hearing closed.

59-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 156 South Avenue Corporation, owner; Community Health Center, lessee.

SUBJECT – Application May 5, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic facility building. C8-1 zoning district.

PREMISES AFFECTED – 439 Port Richmond Avenue, southwest corner of Port Richmond Avenue and Homestead Avenue, Block 1048, Lot 9, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Fredrick A. Becker and Henry Thompson.

For Opposition: John D. Poppe.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for decision, hearing closed.

Adjourned: P.M.

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*CORRECTION

This resolution adopted on June 7, 2011, under Calendar No. 101-05-BZ and printed in Volume 96, Bulletin Nos. 23-24, is hereby corrected to read as follows:

101-05-BZ

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 377 Greenwich LLC c/o Ira Drukler, owner.

SUBJECT – Application April 7, 2011 – Amendment to a Variance (§72-21) for a seven-story hotel with penthouse (*The Greenwich Hotel*). The amendment seeks to legalize the penthouse footprint and modify the penthouse façade. C6-2A/Tribeca Mixed Use (A-1) zoning district.

PREMISES AFFECTED – 377 Greenwich Street, east side of Greenwich Street on the corner formed by intersection of south of North Moore Street and east side of Greenwich Street, Block 187, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Elena Aristova.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, in a C6-2A zoning district within Area A-1 of the Special Tribeca Mixed Use District, an eight-story (including penthouse) hotel building, contrary to ZR §§ 35-24 and 111-104; and

WHEREAS, a public hearing was held on this application on May 17, 2011, after due notice by publication in *The City Record*, and then to decision on June 7, 2011; and

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

WHEREAS, the subject site is located on the southeast corner of Greenwich Street and North Moore Street; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 16, 2005 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted, in a C6-2A zoning district within Area A-1 of the Special Tribeca Mixed Use District, an eight-story (including penthouse) hotel building, contrary to floor area ratio and height and setback as set forth at ZR §§ 35-24 and 111-104; and

WHEREAS, the applicant now requests that the Board amend the grant to legalize certain conditions that do not conform to the Board-approved plans; and

WHEREAS, the applicant seeks to remedy its failure to obtain approval from the Landmarks Preservation Commission (LPC) for the proposal it presented to the Board within the

context of its 2005 application; and

WHEREAS, the Board notes that during the hearing process for the 2005 application, the applicant represented to the Board that its proposal had been approved by the LPC, but the iteration before the Board had not, in fact, been approved by the LPC; and

WHEREAS, subsequent to the Board's 2005 approval, the applicant constructed the hotel pursuant to the Board approved plans; and

WHEREAS, upon its discovery that the built conditions were inconsistent with an earlier LPC approval, which had not been before the Board, the LPC required the applicant to make changes to the penthouse and rooftop; and

WHEREAS, the applicant revised the penthouse and rooftop design in accordance with the LPC and the LPC issued a Certificate of Appropriateness, dated January 21, 2011; and

WHEREAS, the applicant states that the amendment is now necessary in order to reflect the LPC-approved revised penthouse and rooftop plan; and

WHEREAS, the applicant notes that the modifications include changes to the penthouse footprint; the removal of a mansard roof; and the addition of brick cladding to match the hotel's façade; and

WHEREAS, the applicant represents that the remainder of the building reflects the conditions of the 2005 Board-approved plans and the LPC did not require any additional modification; and

WHEREAS, the applicant represents that the revised plans do not trigger any new zoning non-compliance; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated August 16, 2005, so that as amended this portion of the resolution shall read: "to permit amendments to the penthouse and rooftop design; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received April 7, 2011'-(6) sheets; and *on further condition*:

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

THAT all construction shall be performed and maintained in accordance with the LPC Certificate of Appropriateness # 11-5961, dated January 21, 2011;

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. 103488735)

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Adopted by the Board of Standards and Appeals, June 7, 2011.

***The resolution has been revised to correct the DOB Application No. which read: "102666394" now reads: "103488735". Corrected in Bulletin No. 26, Vol. 96, dated June 29, 2011.**