
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Affecting Calendar Numbers:

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DOCKET

New Case Filed Up to March 27, 2012

67-12-BZ

1442 First Avenue, southeast corner of the intersection formed by 1st Avenue and East 75th Street., Block 1469, Lot(s) 46, Borough of **Manhattan, Community Board: 08**. Proposed extension of eating and drinking establishment in Use Group 6 on the first floor to the second floor, and construction of a convenience stair between the first and second floors. C1-9 district.

68-12-BZ

89-15 Rockaway Boulevard, north west corner of the intersection of Rockaway Boulevard and 90th Street., Block 9093, Lot(s) 13, Borough of **Queens, Community Board: 09**. Application is the re-establishment of a variance and time to get a new Certificate of Occupancy for a gasoline service station and repair facility which has been in continuous operation at this location for over fifty (50) years. R5 district.

69-12-BZ

1 Maspeth Avenue, east side of Humboldt Street, between Maspeth Avenue and Conselyea Street, Block 2892, Lot(s) 1, Borough of **Brooklyn, Community Board: 01**. Variance application pursuant to ZR Section 72-21 to permit the proposed five story mixed use development, including cellar and first floor ambulatory diagnostic health care treatment facility use (Use Group 4), use group 6 local retail at the remainder of the first floor and use group 2 residential use at floors 2-5 is contrary to ZR Section 32-00 which does not permit the proposed residential usage in the underlying C8-2 zoning district. C8-2 district.

70-12-BZ

78 Franklin Street, between Broadway and Church Street., Block 175, Lot(s) 4, Borough of **Manhattan, Community Board: 1**. Application for a PCE on a portion of the first, cellar and sub-cellar floors. C6-2A district.

71-12-BZ

165-10 Archer Avenue, southeast corner of 165th Street and Archer Avenue, Block 10155, Lot(s) 105, Borough of **Queens, Community Board: 12**. Variance from requirements of the Zoning Resolution pertaining to height and setback, accessory off street parking, and floor area ratio. The requested variance will permit the construction of a 14 story building containing 89 residential work force housing units and commercial use within a C6-2 zoning district within the Downtown Jamaica Special District. C6-2 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

APRIL 24, 2012, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 24, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

196-49-BZ

APPLICANT – Walter T. Gorman, P.E., for 1280 Allerton Avenue Realty Corp., owner; Don-Glo Auto Service Center, lessee.

SUBJECT – Application February 14, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a gasoline service station (Sunoco) which expired on September 30, 2005; an Amendment for the addition of another lift in the service building and the addition of an air tower and car vacuum tower at the northwest corner of the site. R4 zoning district.

PREMISES AFFECTED – 1280 Allerton Avenue, south west corner of Wilson Avenue. Block 4468, Lot 43. Borough of Bronx.

COMMUNITY BOARD #2M

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 to prior approval allowing a six-story residential and commercial building pursuant to BSA Cal. No. 290-06-BZ.

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

248-08-BZ

APPLICANT – New York City Board of Standards
OWNER – Joseph Alexander/New Covenant Christian Church, Inc.

SUBJECT – Application October 6, 2008 – Dismissal for Lack of Prosecution – Variance (§72-21) to permit the development of a religious-based school and church, contrary to floor area and floor area ratio (§24-11), rear yard (§24-36), and parking (§25-31). R5 zoning district.

PREMISES AFFECTED – 3550 Eastchester Road, eastern side of Eastchester Road between Hicks Street and Needham Avenue, Block 4726, Lot 7, 36, 38, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEALS CALENDAR

154-11-A

APPLICANT – Eric Palatnik, for Atlantic Outdoor Advertising, Inc., owner.

SUBJECT – Application October 3, 2011 – This appeal seeks 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/R9 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

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

APRIL 24, 2012, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 24, 2012, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

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 in an R2A zoning district the development of a new two-story chapel (*The Church of Jesus Christ of Latter-day Saints*), contrary to floor area ratio (§24-111) and contrary to permitted obstructions in the side yards and rear yard (§24-33).

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

CALENDAR

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 the proposed physical culture establishment ("PCE") (Revolutions 55) in a 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

26-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Elmnic, LLC, owner.

SUBJECT – Application February 3, 2012 – Special Permit ZR §73-52 to allow for a commercial district boundary to be extended into a residential zone to allow for accessory commercial parking. C1-2/R6B & R4-1 zoning districts.

PREMISES AFFECTED – 73-49 Grand Avenue, northwest corner of the intersection formed by Grand Avenue and 74th Street, Block 2491, Lot 40, Borough of Queens.

COMMUNITY BOARD #5Q

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, MARCH 27, 2012 10:00 A.M.

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

SPECIAL ORDER CALENDAR

118-53-BZ

APPLICANT – Issa Khorasanchi, for Henry R. Jenet,
owner.

SUBJECT – Application October 24, 2011 – Extension of
Term (§11-411) for continued operation of UG6 retail stores
which expired on December 7, 2011. R4 zoning district.

PREMISES AFFECTED – 106-57/61 160th Street, east side
of 160th Street, 25' north of intersection of 107th Avenue and
160th Street, Block 10128, Lot 50, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Issa Khorasanchi.

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 extension of the term for a previously granted variance
for the operation of Use Group 6 retail stores; and

WHEREAS, a public hearing was held on this
application on January 10, 2012, after due notice by
publication in *The City Record*, with a continued hearing on
February 28, 2012, and then to decision on March 27, 2012;
and

WHEREAS, Community Board 12, Queens,
recommends approval of this application; 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 on the east side of
160th Street, between 107th Avenue and South Road, within an
R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over
the site since June 19, 1953 when, under the subject calendar
number, the Board granted a variance to permit the
construction and maintenance of a building occupied by retail
stores (Use Group 6) with a loading and unloading area and a
curb cut at the rear of the building, within a residence use
district, for a term of 20 years; and

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

WHEREAS, most recently, on August 6, 2002, the Board
granted a ten-year extension of term, which expired on
December 7, 2011; and

WHEREAS, the applicant now seeks an additional ten-
year extension of the term; 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 repair the damaged fence at the rear of the site, to clarify
whether the advertisements in the windows of the building are
permitted and whether the parking in the rear of the site
obstructs loading and unloading operations, and to confirm that
the site is in compliance with the condition from the prior grant
that a sign be posted at the rear of the building regarding Fire
Department access; and

WHEREAS, in response, the applicant submitted
photographs reflecting that the fence at the rear of the site has
been repaired and the advertisements have been removed from
the windows, and submitted an affidavit from the owner stating
that the parking area in the rear of the building is only used for
the parking of four cars on a daily basis; and

WHEREAS, the applicant also submitted a photograph
reflecting that a sign is posted at the rear of the building
alerting the Fire Department that the building is accessed
through two steel plate doors approximately ten feet apart, in
compliance with the conditions from the previous grant; and

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

Therefore it is Resolved that the Board of Standards and
Appeals *reopens* and *amends* the resolution, dated June 19,
1953, so that as amended this portion of the resolution shall
read: “to extend the term for ten years from December 7,
2011, to expire on December 7, 2021; *on condition* that all
use and operations shall substantially conform to plans filed
with this application marked ‘Received November 28,
2011’-(1) sheet and ‘March 26, 2012’-(1) sheet; and *on
further condition*:

THAT the term of the grant will expire on December 7,
2021;

THAT parking at the rear of the site be limited to a
maximum of four cars;

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

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

THAT all conditions from prior resolution 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 App. No. 420375347)

Adopted by the Board of Standards and Appeals March
27, 2012.

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389-37-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Rosemarie Fiore and George Fiore.

SUBJECT – Application February 22, 2012 – Extension of Time to obtain a Certificate of Occupancy of previously granted variance for the operation of a UG8 parking lot which expired on May 11, 2011; waiver of the Rules. R5/C1-2 zoning district.

PREMISES AFFECTED – 31-08 to 31-12 45th Street, southwest corner of 45th Street and 31st Avenue, Block 710, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

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 April 24, 2012, at 10 A.M., for decision, hearing closed.

636-70-BZ

APPLICANT – Walter T. Gorman, P.E., for East River Petroleum Realty LLC, owner; Kings 108 Car Care, Inc. (Mobile S/S), lessee.

SUBJECT – Application January 24, 2012 – Amendment to an approved Special Permit (§73-211) for the operation of an automotive service station (UG 16B) with accessory uses. C2-2/R6 zoning district.

PREMISES AFFECTED – 105-45 to 105-55 Horace Harding Expressway, northwest corner 108th Street, Block 1694, Lot 23. Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: John Ronan.

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 April 24, 2012, at 10 A.M., for decision, hearing closed.

172-86-BZ

APPLICANT – Sheldon Lobel, P.C., for Clearview Mortgage Bank Corporation, owner.

SUBJECT – Application November 4, 2011 – Extension of Term of an approved Variance (§72-21) which permitted the construction of a two-story UG6 professional office building which expires on March 31, 2012. R2 zoning district.

PREMISES AFFECTED – 256-10 Union Turnpike, south side of Union Turnpike between 256th and 257th Streets, Block 8693, Lot 14, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Jordan Most.

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 April 24, 2012, at 10 A.M., for decision, hearing closed.

162-95-BZ & 163-95-BZ

APPLICANT – Sheldon Lobel, P.C., for Salvatore Bonavita, owner; Pelham Bay Fitness Group, LLC, lessee.

SUBJECT – Application April 3, 2011 – Extension of Term to permit the continued operation of a Physical Cultural Establishment (*Planet Fitness*) which expired on July 30, 2006; Amendment to increase the floor area of the establishment. Waiver of the rules. C2-4/R6 and R7-1 zoning district.

PREMISES AFFECTED – 3060 & 3074 Westchester Avenue, Southern side of Westchester Avenue between Mahan Avenue and Hobart Avenue. Block 4196, Lots 9, 11 & 13, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Kenneth Kearns of Community Board 10.

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 April 24, 2012, at 10 A.M., for decision, hearing closed.

21-01-BZ

APPLICANT – Troutman Sanders, LLP, for Mattone Group Jamaica Co., LLC, owner; Bally's Total Fitness of Greater New York, lessee.

SUBJECT – Application January 23, 2012 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Bally Total Fitness*) which expired on May 22, 2011. C6-3 (DJ) zoning district.

PREMISES AFFECTED – 159-02 Jamaica Avenue, 160th Street, Block 10100, Lot 1, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Jeremiah H. Candreva.

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 May 1, 2012, at 10 A.M., for decision, hearing closed.

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77-05-BZ

APPLICANT – Wachtel & Masyr, LLP, for Jack Ancona, owner.

SUBJECT – Application February 21, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the construction of a 12-story mixed use building, containing residential (UG2) and retail uses (UG6) which expired on February 28, 2010; waiver of the Rules. M1-6 zoning district.

PREMISES AFFECTED – 132 West 26th Street, between Avenue of the Americas and Seventh Avenue, Block 801, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Jerry Johnson.

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 May 1, 2012, at 10 A.M., for decision, hearing closed.

187-10-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER – Ranjit S. Atwal

SUBJECT – Application October 5, 2010 – Dismissal for lack of Prosecution – Variance (§72-21) to permit the legalization of a three-family building, contrary to side yard regulations (§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 –

For Applicant: Khalid M. Azam.

ACTION OF THE BOARD – Withdrawn from Dismissal Calendar and laid over to May 1, 2012, at 1:30 P.M., for BZ public hearing.

APPEALS CALENDAR

15-11-A

APPLICANT – Slater & Beckerman, LLP, for 1239 Operating Corporation, owner.

SUBJECT – Application February 10, 2011 – Appeal challenging the Department of Building's determination that a non-illuminated advertising sign and structure is not a legal non-conforming advertising sign pursuant to ZR §52-00. C6 zoning district.

PREMISES AFFECTED – 860 Sixth Avenue, through lot on the north side of West 30th Street, between Broadway and Avenue of the Americas, Block 832, Lot 1. Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Neil Weisbard.

ACTION OF THE BOARD – Appeal granted

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 appeal of a final determination, issued by the Manhattan Borough Commissioner of the Department of Buildings (“DOB”) on January 12, 2011 (the “Final Determination”), brought by the property owner (the “Appellant”); and

WHEREAS, the Final Determination states, in pertinent part:

Request to legalize non-conforming flex faced advertising sign is denied. The evidence submitted as outlined in the attached request letter does not support the legal existence of the proposed advertising sign use when such signs became prohibited with the change of the zoning district to C6; and

WHEREAS, a public hearing was held on this appeal on August 23, 2011 after due notice by publication in *The City Record*, with a continued hearing on February 14, 2012, and then to decision on March 27, 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, the subject site is located on a lot bounded by Sixth Avenue to the west, West 30th Street to the south, and Broadway to the east, within a C6-4X zoning district; and

WHEREAS, the site is occupied by three buildings, including a 16-story building fronting on both Broadway and Sixth Avenue (the “Building”) with four non-illuminated advertising signs, including one located on the western portion of the south wall (the “Sign”), which is the subject of this appeal; and

WHEREAS, the Sign consists of a replaceable non-illuminated fabric wall sign hanging from a sign structure made up of two approximately two-inch wide galvanized steel angle irons (the “Sign Structure”), with an area of approximately 2,660 sq. ft. and; the Sign is hung from the Sign Structure using “J” hooks and thin steel cables; and

WHEREAS, prior to October 25, 1995, the site was located entirely within an M1-6 zoning district, in which the Sign would be permitted as-of-right; and

WHEREAS, however, the site was rezoned from an M1-6 zoning district to a C6-4X zoning district on October 25, 1995 (or the “Rezoning Date”), in which the Sign is not permitted as-of-right; and

PROCEDURAL HISTORY

WHEREAS, on March 20, 2007, DOB performed an inspection of the site and issued several Environmental Control Board (“ECB”) violations to the operator of the Sign, including

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a violation for an impermissible advertising sign in a C6-4X zoning district pursuant to ZR § 32-63 and a violation for a sign on display without a permit pursuant to Administrative Code § 27-147;

WHEREAS, following the issuance of the ECB violations, a hearing was held on February 7, 2008, and on April 8, 2008 an Administrative Law Judge found the Appellant in violation (the “ECB Decision”); and

WHEREAS, the Appellant states that since the date of the ECB Decision it has been working to obtain a determination from DOB that the Sign is legally non-conforming; and

WHEREAS, specifically, following the ECB Decision, the Appellant submitted several letters to DOB seeking a determination that the Sign is permitted to remain at the site as a legal, non-conforming sign, and on June 24, 2010 submitted a Zoning Resolution Determination Form (“ZRD1”) to the Manhattan Borough Office requesting a determination that (1) the Sign was lawfully established in, or prior to, September 1961, (2) the Sign constituted a conforming use from the date of its establishment to 1995, when the zoning changed from an M1-6 to a C6-4X zoning district, and (3) that since the Sign’s use has not been discontinued for a continuous period of two or more years it is legally non-conforming and, therefore, may be maintained or altered, pursuant to the Zoning Resolution; and

WHEREAS, on August 12, 2010, the Manhattan Borough Commissioner issued a determination denying the ZRD1 request; and

WHEREAS, on November 12, 2010, the Appellant submitted a similar ZRD1 request to DOB’s Technical Affairs Unit, which resulted in DOB’s issuance of the Final Determination; and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 (Definitions)

Non-conforming, or non-conformity

A “non-conforming” #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .

* * *

ZR § 52-11 (Continuation of Non-Conforming Uses)

General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter; and

* * *

ZR § 52-61 (Discontinuance)

General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a

conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

THE APPLICABLE STANDARD FOR NON-CONFORMING USES

WHEREAS, DOB and the Appellant agree that the site is currently within a C6-4X zoning district and that the Sign is not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming signs are permitted to remain, the Appellant must meet the Zoning Resolution’s criteria for a “non-conforming use” as defined at ZR § 12-10; and

WHEREAS, ZR § 12-10 defines “non-conforming” use as “any lawful use, whether of a *building or other structure* or of a tract of land, which does not conform to any one or more of the applicable use regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto”; and

WHEREAS, additionally, the Appellant must comply with ZR § 52-61 (*Discontinuance, General Provisions*) which states that: “[i]f, for a continuous period of two years, either the *non-conforming use of land with minor improvements* is discontinued, or the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such land . . . shall thereafter be used only for a conforming use”; and

WHEREAS, accordingly, DOB asserts that as per the Zoning Resolution, the Appellant must establish that the use was lawfully established before it became unlawful, by zoning, on October 25, 1995 and it must have continued without any two-year period of discontinuance since then; and

WHEREAS, thus, the Board notes that the standard to apply to the subject sign is (1) the sign existed lawfully as of October 25, 1995, and (2) that the use did not change or cease for a two-year period since then. See ZR §§ 12-10, 52-61; and

APPELLANT’S POSITION

- Lawful Establishment

WHEREAS, the Appellant states that a sign has existed on the western portion of the south wall of the site since at least August 1930, originally as a painted advertising sign; and

WHEREAS, the Appellant further states that in, or prior to, September 1961, the painted sign was converted to an approximately 2,660 sq. ft. replaceable non-illuminated fabric wall sign, at which time the Sign Structure was installed to support the Sign; and

WHEREAS, the Appellant represents that at the time the Sign Structure was installed and the Sign was converted from a painted sign to a replaceable fabric sign, the Zoning Resolution allowed non-illuminated advertising wall signs at the site, with no restrictions on size or height, and the Building Code did not require a permit for the installation of the Sign and Sign Structure; and

WHEREAS, the Appellant notes that Article 2 of the 1938 Building Code, which was in effect in September 1961, regulated the use of signs and contained no provision requiring a permit for the installation of a non-illuminated wall sign; and

WHEREAS, specifically, the Appellant states that the

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only provisions which referenced the issuance of permits were those relating to ground and roof signs (Section 26-9.0 of the 1938 Building Code) and illuminated signs (Section 26-13.0 of the 1938 Building Code), which specifically stated “permits required” and “issue of permits,” respectively; however, the provision relating to “signs on walls” (Section 26-12.0 of the 1938 Building Code), which would have regulated the Sign and Sign Structure, contained no mention of permits; and

WHEREAS, the Appellant notes that DOB initially argued that a permit was required for the installation of the Sign since the 1938 Building Code; however, DOB subsequently amended its position to concede that the 1938 Building Code did not require permits for non-illuminated wall signs or sign structures, and that permits were not required for a non-illuminated wall sign the size of the Sign until the enactment of the 1968 Building Code; and

WHEREAS, in support of its assertion that the Sign and Sign Structure were lawfully established as of September 1961, the Appellant submitted (1) a September 1961 photograph of the Sign, (2) a letter from the President of Skyviews Survey Inc, a professional photographer, concluding that the September 1961 photograph shows that the Sign cast a shadow which could only result from a physical structure, and that the Sign consisted of a canvas material hung from a physical structure, rather than a painted sign; (3) an affidavit from the Vice President of Service Sign Erectors stating that the company installed advertising copy on the Sign Structure from 1961 to 2008 (the “Service Sign Erectors Affidavit”); and (4) an affidavit from the President of Allied Outdoor Advertising, stating that the company owned and controlled the Sign and Sign Structure prior to 1961, when the Seagrams advertising copy (pictured in the September 1961 photograph) was located on the Sign Structure, until 1993; and

WHEREAS, accordingly, the Appellant states that it has established that the Sign and Sign Structure were installed as of September 1961, prior to the enactment of the 1968 Building Code, when a permit first would have been required for such installation; and

WHEREAS, the Appellant submitted the following evidence in support of the existence of the Sign and Sign Structure as of the October 25, 1995 rezoning date: (1) a June 1995 aerial photograph of the Sign and accompanying letter of authentication; (2) a November 25, 2009 letter from the president of Skyviews Survey Inc., a professional photographer, in support of the June 1995 aerial photograph depicting the existence of the Sign; (3) a February 2, 1995 invoice from Service Sign Erectors (the “Service Sign Erectors Invoice”) which states “[i]nstalled Cellular One ad copy”; (4) the Service Sign Erectors Affidavit, which states that the company installed a “Cellular One” flexface vinyl sign onto the Sign Structure on February 2, 1995; and (4) an affidavit from a nearby retailer, stating that he personally witnessed the Sign on September 7, 1995; and

WHEREAS, the Appellant also submitted evidence of the continuous existence of the Sign between September 1961 and October 25, 1995, but states that because the sign was lawfully established before a permit was required in 1968, and because the Sign did not become non-conforming until October

25, 1995, the ZR § 52-61 requirement that there be no two-year discontinuance of the use of the Sign did not apply until October 25, 1995; and

WHEREAS, therefore, the Appellant concludes that the Sign and Sign Structure were lawfully established prior to the enactment of the 1968 Building Code and were in existence as of the October 25, 1995 rezoning date; and

- Continuity of the Sign

WHEREAS, the Appellant submitted photographs, leases, invoices, accounting statements, tax documents, copies of checks, certificates of liability insurance, and letters as primary evidence to establish the continuity of use of the Sign and Sign Structure since at least October 25, 1995; and

WHEREAS, the Appellant also submitted 11 affidavits from local retailers and the owner of the site, in support of the continuous use and existence of the Sign and Sign Structure, each attesting to personally witnessing the continued existence of the Sign since the Rezoning Date, with occasional changes in the subject matter being advertised (the “Affidavits”); and

WHEREAS, as noted above, in support of the existence of the Sign as of the Rezoning Date, the Appellant submitted: (1) the June 1995 aerial photograph of the Sign and accompanying letter of authentication; (2) the November 25, 2009 letter in support of the June 1995 aerial photograph depicting the existence of the Sign; (3) the Service Sign Erectors Invoice; (4) the Service Sign Erectors Affidavit; (5) an affidavit from a nearby retailer, stating that he personally witnessed the Sign on September 7, 1995, and from such date continuously until 2008 with occasional changes in the subject matter being advertised; and (6) the remaining Affidavits; and

WHEREAS, in support of the existence of the Sign in 1996, the Appellant submitted: (1) a letter dated September 9, 1996 from Continental Outdoor, Inc., (“Continental Outdoor”), then-lessee of the Sign and Sign Structure, regarding the payment of monthly rent for September 1996 and stating that “our installers will need roof access to install ad copy during the first week of October”; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1997, the Appellant submitted: (1) an August 3, 1997 aerial photograph of the Sign and an accompanying letter of authentication; (2) a lease for the Sign and Sign Structure, dated July 16, 1997, between the owner and Continental Outdoor, for a term of five years (the “1997 Lease”); (3) a copy of a check, dated September 15, 1997, for the monthly rent for the Sign and Sign Structure for September 15, 1997 to October 14, 1997; and (4) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1998, the Appellant submitted: (1) the 1997 Lease; (2) a letter from Eller Media Company, dated May 19, 2000, stating that it had been assigned the 1997 Lease on or about June 1998; and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1999, the Appellant submitted: (1) an October 1999 photograph of the Sign and an accompanying letter of authentication; (2) an invoice from the owner’s management company, indicating the payment of rents from April 1999 to October 1999; (3) the 1997 Lease; and (4) the Affidavits; and

WHEREAS, in support of the existence of the Sign in

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2000, the Appellant submitted: (1) a photograph of the Sign dated between January 1, 2000 and February 29, 2000 and an accompanying letter of authentication; (2) a photograph of the Sign dated between March 1, 2000 and April 30, 2000 and an accompanying letter of authentication; (3) a sublease for the Sign and Sign Structure dated June 23, 2000, between the owner and Eller Media Co., for a term of ten years (the "2000 Sublease"); (4) an addendum to the 1997 Lease, dated June 23, 2000; (5) copies of a check, dated June 21, 2000, for the monthly rent of the Sign and Sign Structure; (6) a letter from the owner's management company, dated June 22, 2000, acknowledging receipt of the June 21, 2000 rent check; and (7) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2001, the Appellant submitted: (1) copies of checks and accounting statements for the monthly rent of the Sign and Sign Structure; (2) a letter from Eller Media Co., the tenant in possession of the sign space, stating that it changed its name to Clear Channel Outdoor, Inc., ("Clear Channel"); (3) a certificate of liability insurance, dated March 30, 2001, for the Sign and Sign Structure; (4) a letter from Clear Channel, dated September 4, 2001, regarding the payment of monthly rent of the Sign and Sign Structure for September 2001; (5) the 2000 Sublease; and (6) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2002, the Appellant submitted: (1) a 1099 – Miscellaneous Income Statement reflecting income received for the Sign and Sign Structure; (2) a letter from Clear Channel, dated May 15, 2002, amending the terms of the 1997 Lease; (3) a letter from Clear Channel, dated November 15, 2002, regarding the payment of monthly rent of the Sign and Sign Structure for October 2002; (4) the 2000 Sublease; and (5) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2003, the Appellant submitted: (1) copies of checks from Clear Channel for monthly rent of the Sign and Sign Structure; (2) accounting statements from Clear Channel, indicating monthly rent payments; (3) a certificate of liability insurance dated April 2, 2003 for the Sign and Sign Structure; (4) the 2000 Sublease; and (5) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2004, the Appellant submitted: (1) copies of checks from Clear Channel for monthly rent of the Sign and Sign Structure; (2) accounting statements from Clear Channel, indicating monthly rent payments; (3) a certificate of liability insurance dated October 26, 2004 for the Sign and Sign Structure; (4) the 2000 Sublease; and (5) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2005, the Appellant submitted: (1) copies of checks from Clear Channel for monthly rent of the Sign and Sign Structure; (2) accounting statements from Clear Channel, indicating monthly rent payments; (3) a 1099 – Miscellaneous Income Statement reflecting income received for the Sign and Sign Structure; (4) the 2000 Sublease; and (5) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2006, the Appellant submitted: (1) accounting statements from Clear Channel, indicating monthly rent payments; (2) the 2000 Sublease; and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2007, the Appellant submitted: (1) accounting statements from Clear Channel, indicating monthly rent payments; (2) ECB violations issued by DOB on March 20, 2007, relating to the use of the Sign and Sign Structure; (3) a certificate of liability insurance dated October 29, 2007 for the Sign and Sign Structure; (4) the 2000 Sublease; and (5) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2008, the Appellant submitted: (1) accounting statements from Clear Channel, indicating monthly rent payments; (2) the 2000 Sublease; and (3) the Affidavits; and

WHEREAS, as noted above, the Appellant also submitted evidence of the continuous existence of the Sign dating back to 1961, but states that because the sign was lawfully established before a permit was required in 1968, and because the Sign did not become non-conforming until the Rezoning Date, the ZR § 52-61 requirement that there be no two-year discontinuance of the use of the Sign did not apply until the October 25, 1995; and

WHEREAS, based on the above, the Appellant contends that it has established that the Sign has been continuously in existence since at least October 25, 1995; and

THE DEPARTMENT OF BUILDINGS' ARGUMENTS

WHEREAS, DOB asserts that (1) the Appellant failed to show that the Sign was established as a lawful, non-conforming use prior to the October 25, 1995 change in zoning, which prohibited the sign and (2) even if the Appellant could establish that the Sign was established as a lawful, non-conforming use, the Appellant failed to establish that such use continued without an impermissible change or interruption of that use for a period of two years or more; and

WHEREAS, DOB cites to ZR § 52-11 for the requirement that non-conforming uses are permitted to continue except as otherwise provided in Article V, Chapter 2 and that ZR § 52-61 requires that "[I]f for a continuous period of two years . . . the active operation of substantially all the non-conforming uses in any building or other structure is discontinued, such land or building or other structure shall thereafter be used only for a conforming use;" and

WHEREAS, DOB also cites to ZR § 51-00 for the legislative intent and purpose of regulations governing non-conforming uses and to support its position that non-conforming uses are disfavored under the Zoning Resolution and public policy demands strict control and the elimination of such uses; ZR § 51-00 states that "the regulations governing non-conforming uses set forth [in this Chapter] are therefore adopted in order to provide a gradual remedy for existing undesirable conditions resulting from such incompatible non-conforming uses..." and

- Lawful Establishment

WHEREAS, as to the lawful establishment, DOB notes that, per ZR § 12-10, the Appellant must first establish that the Sign existed lawfully on October 25, 1995, the date the zoning district changed from M1-6 to C6-4X; and

WHEREAS, DOB notes that if a use is not established lawfully, it is not a non-conforming use and must be discontinued; and

WHEREAS, as noted above, DOB initially asserted that

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the Appellant failed to establish that the Sign was lawfully established prior to the Rezoning Date because a permit has been required to install an advertising sign since 1938; and

WHEREAS, however, DOB subsequently revised its position to note that the Appellant correctly states that the 1938 Building Code did not require permits for non-illuminated wall signs and that a permit for a non-illuminated wall sign of the Sign's size only required a permit as of the enactment of the 1968 Building Code; and

WHEREAS, DOB stated that the evidence indicates that sometime between December 15, 1961 and October 25, 1995, the Sign and Sign Structure were removed and therefore, any installation of a sign after the removal (if post-1968) would have required a lawfully issued permit in order to establish the lawful, non-conforming use of the Sign as required by the Zoning Resolution; and

WHEREAS, DOB based its assertion on the fact that the Appellant failed to produce a permit for the Sign prior to October 25, 1995; DOB states that it has searched its records and could not find evidence of a permit, but that the burden remains on the Appellant to provide evidence that the Sign was lawfully constructed in order to be considered a non-conforming use; and

WHEREAS, DOB asserts that the evidence established that neither the Sign nor a Sign Structure existed at the site on August 30, 1994, based on a photograph dated August 30, 1994 (the "1994 Photograph") that it concludes reflects the absence of the Sign and Sign Structure; further, DOB cites to a September 16, 2009 letter from the Appellant's prior counsel which states that a Marlboro sign at the site was removed in 1991, and the next evidence to reflect its replacement was a lease dated July 16, 1997 between the owner and a sign company; and

WHEREAS, DOB asserts that the Appellant fails to establish that the sign was lawfully established prior to August 30, 1994 since once the Sign Structure was removed as early as 1991 and as late as August 30, 1994, a permit was required for any sign structure constructed after the August 30, 1994 photograph was taken; and

WHEREAS, on the lawfulness of the sign, DOB concludes that any sign structure installed at the site after August 30, 1994 (when there was admittedly an absence of a Sign) could only be lawfully established with a DOB-issued sign permit; and

WHEREAS, DOB states that evidence of a sign structure prior to December 15, 1961 is not relevant in this case because a sign could have lawfully existed at the site up until October 25, 1995, but a permit would be required to lawfully establish such a use since the enactment of the 1968 Building Code if the sign was removed after 1968 and work was commenced to install a new sign structure; and

WHEREAS, DOB also states that the evidence to prove that the Sign was lawfully established after August 30, 1994 is irrelevant since once the Sign was removed, it could only be lawfully established with a valid permit and, thus, an affidavit indicating that a Cellular One sign was installed at the site on February 2, 1995 is irrelevant particularly since the invoice does not indicate where at the site the sign was installed and an

associated aerial photograph with a letter from a photographer is not relevant or persuasive as it is not clear enough to indicate whether or not a sign exists at the location in question; and

WHEREAS, DOB concludes that based on the evidence indicating that sometime between December 15, 1961 and October 25, 1995, the Sign and Sign Structure were removed and a permit was never obtained for installation of a new sign structure, DOB determines that the Sign was not lawfully established and therefore cannot be considered a lawful non-conforming use; and

- Continuity of the Sign

WHEREAS, DOB states that even if the Appellant established the Sign was a lawful non-conforming use, its evidence of continuity fails to satisfy the Technical Policy and Procedure Notice 14/1988 (the "TPPN"), which sets forth the guidelines for DOB's review of whether a non-conforming use has been continuous; and

WHEREAS, DOB states that if the Board were to accept that the Sign was lawfully established, it still became non-conforming on October 25, 1995 and cannot have been subject to any discontinuance of a period of two years or longer since that time; and

WHEREAS, DOB cites to the TPPN guidelines which include the following types of evidence: (1) Item (a): City agency records; (2) Item (b): records, bills, documentation from public utilities; (3) Item (c): other documentation of occupancy including ads and invoices; and (4) Item (d): affidavits; and

WHEREAS, DOB notes other forms of evidence including sign permits, which are given substantial weight; other government records, recorded documents and utility bills, generally considered high value evidence; and photographic evidence, which is also given substantial weight; and

WHEREAS, in contrast, DOB states that uncorroborated testimonial evidence that a sign was lawfully established or has existed continuously is not considered sufficient because testimony may be tainted by memory lapses, bias, and misperception; similarly, it states that leases and other contracts that are not corroborated by independently verifiable evidence may not be sufficient because they can be fabricated or materially altered and because they do not demonstrate the actual existence of a sign; and

WHEREAS, DOB finds that the Appellant failed to satisfy the guidelines of the TPPN for acceptable documentation in support of proof of continuous non-conforming use as it did not provide any records issued by a city agency, public utility bills or other TPPN Item (b) records; and

WHEREAS, DOB concludes that the only evidence that the Appellant has provided can be categorized as TPPN Item (c) and (d) evidence –photographs, leases, and affidavits - and that it is insufficient to establish that the Sign has continued without an impermissible change or interruption of that use for a period of two years or more; and

APPELLANT'S RESPONSE TO DEPARTMENT OF BUILDINGS' ARGUMENTS

WHEREAS, in response to DOB's position that the Sign and Sign Structure were removed sometime between the enactment of the 1968 Building Code and the Rezoning Date,

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and therefore a lawfully issued permit would be required to establish the non-conforming use of the Sign, the Appellant states that the Sign Structure has never been replaced with a new structure¹ and therefore a permit is not required to establish the non-conforming use of the Sign; and

WHEREAS, the Appellant states that between 1961 and 2008, the replaceable advertising copy of the Sign was changed numerous times by installing the new advertising copy directly on the Sign Structure, which was specifically designed for the use of replaceable advertising copy; and

WHEREAS, the Appellant notes that Section 27-177 of the 1968 Building Code provided, in relevant part, that “the changing of copy on an existing permitted sign, specifically designed for the use of replaceable copy, and repair of an existing permitted sign, not involving structural changes, shall not require a new permit;” and

WHEREAS, accordingly, the Appellant contends that the changing of the Sign’s replaceable copy on the Sign Structure, which would not require structural changes to the Sign Structure, did not require a permit; and

WHEREAS, in support of its claim that the Sign Structure has never been replaced, the Appellant submitted the February 2, 1995 Service Sign Erectors Invoice, from a licensed sign erector, which states “[i]nstalled Cellular One ad copy;” and

WHEREAS, the Appellant asserts that the invoice reflects that an advertising sign copy was installed on the existing Sign Structure on February 2, 1995, and that if structural work were to be performed, the invoice would have indicated such work; and

WHEREAS, the Appellant submitted an affidavit from the Vice President of Service Sign Erectors stating that the company installed signs on the subject building from about 1961 through 2008, that any and all changes to the advertising copy were installed on the Sign Structure, and that the Sign Structure, as shown in the photograph from April 8, 2010, appears to be the same Sign Structure that the replaceable advertising copy was installed on from 1961 through 2008; and

WHEREAS, the Appellant also submitted an affidavit from the President of Allied Outdoor Advertising, the owner of the Sign Structure from prior to 1961 through 1993, stating that during the time Allied owned and controlled the Sign and Sign Structure, any and all changes to the advertising copy of the Sign were installed on the existing Sign Structure; and

WHEREAS, in response to the Board’s request to provide evidence of standard industry practice related to the replacement of a sign structure, the Appellant submitted an affidavit from the Vice President of Lamar Advertising Company, which has more than 100 years of corporate history and more than 155,000 outdoor advertising sign structures nationwide, which states:

¹ As described infra, the appellant notes that the bottom angle-iron of the Sign Structure was removed when the Sign was enlarged after the Rezoning Date, because it would have caused damage to the vinyl sign copy, but that pursuant to New York State case law the use of the Sign, as it existed on the Rezoning Date, may be continued.

It is not industry standard to remove an angle-iron designed for replaceable advertising copy, for the following reasons:

- (1) the physical attributes of an angle-iron make it unlikely that it was replaced with a new angle-iron;
- (2) an angle-iron is extremely durable and resistant to the elements, and is designed to maintain its structural stability;
- (3) there have been no advancements in the technology of angle-irons which would encourage their replacement;
- (4) the cost of removal of an angle-iron and to restore the exterior wall, approximately \$5,000, would far outweigh the salvage value of the angle-iron, less than \$50;
- (5) building owners want to continue to generate advertising revenue from the sign structure and therefore not motivated to remove it; and

WHEREAS, in response to DOB’s argument that the 1994 Photograph indicates the absence of a sign or sign structure as of August 30, 1994, the Appellant contends that the 1994 Photograph is insufficient to establish that the Sign Structure was replaced with a new structure; and

WHEREAS, the Appellant argues that while the 1994 Photograph may show the absence of an advertising copy at that time, the aerial photograph was shot at great distance, is of low resolution, and is too grainy to clearly indicate the absence of sign structure; and

WHEREAS, the Appellant states that the Sign Structure’s galvanized steel angle irons are approximately two inches thick, while the wall of the subject building is 216 feet in height; thus, the ratio of thickness of the angle-iron to the height of the wall is 1:1,300, and therefore an extremely high resolution camera with a powerful zoom lens would be required to clearly indicate the absence of a sign structure; and

WHEREAS, the Appellant notes that it submitted a June 1995 photograph reflecting that the Sign and Sign Structure existed as of that date, as well as the Service Sign Erectors Invoice, indicating that the advertising copy was replaced on the Sign Structure in February 1995; therefore the Sign and Sign Structure existed on the site after the 1994 Photograph and prior to the Rezoning Date, and DOB has submitted no evidence in support of its contention that the Sign Structure was ever removed; and

WHEREAS, the Appellant argues that, even if the Sign Structure had been replaced with a new structure after 1968, such work would not have required a permit; and

WHEREAS, specifically, the Appellant contends that the replacement of the angle-iron would have constituted a “minor alteration” or an “ordinary repair” pursuant to the 1968 Building Code, and such work would not have required a permit prior to the enactment of Local Law 14 of 2001, which created an exception to the permit exemption of “ordinary repairs,” which arguably would apply to the replacement of an angle-iron; and

WHEREAS, the Appellant contends that even if the Sign Structure was replaced with a new structure after 1968, and

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even if the replacement had required a permit, the legal non-conforming status of the Sign would have been unaffected, pursuant to the prevailing New York State case law; and

WHEREAS, the Appellant cites to Matter of Cinelli Family Ltd. Partnership v. Scheyer, 50 A.D.3d 1136 (2d Dept. 2008) and City of New York v. Victory Van Lines, 69 A.D.2d 605 (2d Dept. 1979) for the proposition that the courts of the State of New York have recognized the right to maintain a legal non-conforming use established in full conformance with zoning, despite a failure to obtain a required permit; and

WHEREAS, accordingly, the Appellant contends that because the Sign was initially established in full conformance with zoning, the holdings in Matter of Cinelli Family Ltd. Partnership and Victory Van Lines indicate that the use of the Sign may be continued even if the angle-iron was replaced without a permit; and

WHEREAS, the Appellant notes that the size of the Sign prior to the Rezoning Date was approximately 2,660 sq. ft. and it was located on the upper half of the western portion of the south wall; and

WHEREAS, the Appellant states that after the Rezoning Date an enlarged sign was installed on the top angle-iron of the Sign Structure, and the bottom angle-iron of the Sign Structure was removed when the Sign was enlarged because it would have caused damage to the vinyl sign copy; and

WHEREAS, the Appellant argues that although the Sign was enlarged after the Rezoning Date without a permit, pursuant to New York State case law the use of the Sign, as it existed on the Rezoning Date, may be continued; and

WHEREAS, specifically, the Appellant cites to Costa v. Callahan, 41 A.D.3d 1114 (3d Dept. 2007), in which the Appellate Division determined that a junkyard, which was established when the use was conforming, could be continued despite an "impermissible extension of use," and held that a lawfully established non-conforming use is permitted to continue at its "levels" as of the effective date of the zoning map amendment; and

WHEREAS, accordingly, the Appellant argues that based on the prevailing case law, the Sign is permitted to continue at the site as it existed prior to the Rezoning Date, such that the Appellant is authorized to restore the Sign to its size on the Rezoning Date, and to obtain permits to reconstruct the lower structure to accommodate such sign; and

CONCLUSION

WHEREAS, the Board agrees that the Appellant has met its burden of establishing that the Sign was lawfully established prior to October 25, 1995 and has been in continuous use, without any two-year interruption since that date; and

WHEREAS, specifically, the Board finds the evidence submitted by the Appellant sufficient to establish that: (1) the Sign was lawfully established in, or prior to, September 1961, before a permit was required pursuant to the 1968 Building Code; (2) the Sign Structure has not been removed or replaced since the enactment of the 1968 Building Code; (3) replacing advertising copy on the existing Sign Structure did not require a permit pursuant to the 1968 Building Code; and (4) the use of the Sign has been continuous since October 25, 1995, without any two-year interruption since that date; and

WHEREAS, as to the evidence submitted by the Appellant to establish the continuous use of the Sign since the Rezoning Date, the Board notes that the Appellant provided evidence in the form of photographs, leases, invoices, accounting statements, tax documents, copies of checks, certificates of liability insurance, and letters, and that some combination of this evidence was provided for each year beginning from 1995 (when the Sign became non-conforming) until 2008 (when the ECB Decision was issued) without any gaps; and

WHEREAS, the Board notes that, in addition to the evidence noted above, covering each year from the Rezoning Date until the date of the ECB Decision, the Appellant also submitted 11 affidavits from individuals stating that they personally witnessed the continued existence of the Sign from prior to the Rezoning Date until 2008; and

WHEREAS, the Board agrees with the Appellant that the 1994 Photograph does not establish that the Sign Structure was removed at that time, as the aerial photograph is shot from a great distance away and at a low resolution, such that the presence or absence of a sign structure is not discernable, and therefore the 1994 Photograph is insufficient to rebut the evidence submitted by the Appellant in support of the continued existence of the Sign Structure; and

WHEREAS, the Board notes that while the 1994 Photograph indicates that there was no advertising copy installed at the time the photograph was taken, it finds that the Appellant established that advertising copy could be replaced on the Sign Structure without a permit pursuant to 1968 Building Code Section 27-177, and that the other evidence submitted by the Appellant, including the Service Sign Erectors Invoice indicating that the advertising copy was replaced on February 2, 1995 and the June 1995 photograph reflecting that the Sign and Sign Structure were installed as of that date, is sufficient to establish that the Sign and Sign Structure existed on the site after the 1994 Photograph and prior to the Rezoning Date; and

WHEREAS, as to the enlargement of the Sign after the Rezoning Date, the Board agrees that, despite the impermissible extension of the use, the Appellant is permitted to restore the Sign to its lawfully established dimensions as they existed prior to the Rezoning Date; and

WHEREAS, in sum, the Board concludes as follows: the Appellant has established that the Sign was lawfully established prior to October 25, 1995, and that the Sign has been in continuous use from October 25, 1995 until the ECB Decision.

Therefore it is Resolved that this appeal, challenging a Final Determination issued on January 12, 2011, is granted.

Adopted by the Board of Standards and Appeals, March 27, 2012.

149-11-A thru 151-11-A

APPLICANT – Sheldon Lobel, P.C., for Eastern 7 Inc., owner.

SUBJECT – Application September 16, 2011 – Appeal pursuant to NYC Charter §666.7 to permit construction of

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three, two-family homes within 30'-0" of the street line of Eastern Parkway, contrary to Administrative Code §18-112 and New York City Building Code §3201.3.1. R6 zoning district.

PREMISES AFFECTED – 1789, 1793 & 1797 St. John's Place, northeast corner of intersection formed by St. John's Place and Eastern Parkway, Block 1471, Lot 65, 67, 68, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Jordan Most.

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 Brooklyn Borough Commissioner, dated August 17, 2011, acting on Department of Buildings Application Nos. 320153114, 320153472, and 320153481 read, in pertinent part:

New York City Administrative Code Title 18. It is unlawful for buildings or other erections except porches, plazas, fountains and statuary to remain or at any time to be placed upon any of the lots fronting upon Eastern Parkway, from Washington Avenue easterly to the extension of Eastern Parkway to Bushwick Avenue, within 30 feet from the lines or sides of such streets respectively; and

WHEREAS, this is an application pursuant to New York City Charter §§ 666(6) and 666(7), to vary the prohibition against construction within 30 feet of the street line of Eastern Parkway as set forth in Administrative Code § 18-112 and cited at New York City Building Code § 3201.3.1, to allow for the construction of three three-story two-family residential buildings, within an R6 zoning district, contrary to the Administrative Code and Building Code; and

WHEREAS, a public hearing was held on this application on February 7, 2012, after due notice by publication in *The City Record*, with a continued hearing on March 6, 2012, and then to decision on March 27, 2012; and

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

WHEREAS, the site is an irregular triangular-shaped lot located on the northeast corner of the intersection formed by St. John's Place and the Eastern Parkway Extension, within an R6 zoning district; and

WHEREAS, the site comprises three tentative tax lots (lots 65, 67, and 68), with a total of 89 feet of frontage to the north on the Eastern Parkway Extension, 105 feet of frontage to the south on St. John's Place, and a lot area of 2,522 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct three

three-story two-family residential buildings on the site with a total floor area of 5,865 sq. ft.; the building on tentative tax lot 65 is proposed to have a floor area of 1,642 sq. ft., the building on tentative tax lot 67 is proposed to have a floor area of 1,702 sq. ft., and the building on tentative tax lot 68 is proposed to have a floor area of 2,521 sq. ft.; and

WHEREAS, the Administrative Code § 18-112 – Restrictions on Eastern Parkway - (the "Eastern Parkway Restriction") prohibits construction within 30 feet of the street line of Eastern Parkway, and Building Code § 3201.3.1 – Restrictions on Construction and Projections on Certain Streets, Parkways, Boardwalks, and Beaches – references and requires the enforcement of the Eastern Parkway Restriction of Administrative Code § 18-112; and

WHEREAS, the applicant states that because the proposal reflects construction within 30 feet of the street line on the Eastern Parkway Extension, which is specifically included in the Eastern Parkway Restriction, the subject relief is required; and

WHEREAS, the applicant represents that the proposed buildings comply with all zoning and Building Code regulations, except for the Eastern Parkway Restriction; and

WHEREAS, the Board notes that it has authority to hear appeals of final determinations of the Department of Buildings, as set forth in Charter § 666(6) and that the basis for the subject application is a final determination from the Department of Buildings, with objections that cite to the Administrative Code and the Building Code; and

WHEREAS, the applicant does not contest the Department of Buildings' interpretation of the cited Administrative Code and Building Code provisions, or assert that the objections are unwarranted or contrary to law; and

WHEREAS, instead, the subject application seeks a modification of the Administrative Code's Eastern Parkway Restriction and the related Building Code provision, pursuant to the Board's authority under Charter § 666(7); and

WHEREAS, if all other requirements of Charter § 666 are met, including the subject matter and source of the final determination, the Board may grant a modification pursuant to Charter § 666(7), if it finds that (1) there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law; (2) the spirit of the law shall be observed; (3) public safety shall be secured; (4) substantial justice is done; and (5) if the Housing Maintenance Code is varied it shall be limited to the extent permitted by the code and only in the manner provided for in it; and

WHEREAS, as to the practical difficulties and hardship, the applicant represents that the site's irregular shape and shallow depth constrain development of the premises; and

WHEREAS, specifically, the applicant states that the site is triangularly shaped with a maximum through lot depth of only 56 feet, and that the application of the 30-ft. setback requirement precludes any realistic development on the site; and

WHEREAS, the applicant submitted drawings reflecting that the 30-ft. setback area required by the Eastern Parkway Restriction would leave behind a buildable portion of the site that consists of a triangular shaped area approximately 43 feet

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by 26 feet by 50 feet, with a total area of only 555 sq. ft.; and

WHEREAS, the applicant states that the small size and irregular shape of the buildable portion of the site makes any development of the site in compliance with the Eastern Parkway Restriction infeasible; and

WHEREAS, the Board agrees that due to the irregular shape and shallow depth of the lot the applicant has established that there are practical difficulties in constructing a building that complies with the Eastern Parkway Restriction and the Building Code; and

WHEREAS, as to the spirit of the law, the applicant represents that the purpose of the Eastern Parkway Restriction, which the City adopted in 1888, and the Building Code, which reinforces it, was to create a park-like setting over the several miles of the western portion of Eastern Parkway; and

WHEREAS, the applicant notes that the portions of Eastern Parkway, west of Ralph Avenue, were built in compliance with the Eastern Parkway Restriction; and

WHEREAS, in contrast, the applicant represents that the area surrounding the site along the Eastern Parkway Extension does not have an established context of Eastern Parkway Restriction compliance; and

WHEREAS, specifically, the applicant notes that the entire Eastern Parkway Extension, beginning at Ralph Avenue and spanning west to Bushwick Avenue, reflects that a majority of the lots are occupied by buildings constructed within 30 feet of the Eastern Parkway Extension, contrary to the Eastern Parkway Restriction; and

WHEREAS, the applicant submitted a study which analyzed the compliance of the lots along the Eastern Parkway Extension from Ralph Avenue to St. Marks Place with the 30-ft. setback requirement of the Eastern Parkway Restriction; and

WHEREAS, the study reflected that 84 of the 94 developed lots in the study area, or 89 percent, do not comply with the 30-ft. setback requirement; and

WHEREAS, the applicant also submitted a Department of Finance tax map which reflects that there are five blocks along the Eastern Parkway Extension in the vicinity of the site with building footprints that are either built to the lot line or nearly to it; and

WHEREAS, the applicant notes that the proposed construction would also continue the existing streetwall along the Eastern Parkway Extension on the subject block; and

WHEREAS, the applicant submitted a streetscape and survey reflecting that the proposed buildings will line up with the adjacent buildings on the subject block; and

WHEREAS, the Board agrees with the applicant that although the Eastern Parkway Restriction includes the Eastern Parkway Extension, that the Extension, with a number of lots with shallow depths in the 40-ft. range, and a distance from the western park blocks, was not the focus for the Eastern Parkway Restriction; and

WHEREAS, additionally, the Board notes the existing condition along the Eastern Parkway Extension, which is occupied by a stock of buildings that date back 100 years or more lacks any context for a 30-ft. setback; and

WHEREAS, accordingly, the Board finds that the proposed construction within the 30-ft. setback does not

conflict with the spirit of the law; and

WHEREAS, as to public safety, the applicant states that the proposed construction, but for the Eastern Parkway Restriction, is completely as-of-right, and will comply with all procedures and requirements of the Department of Buildings ("DOB"), thereby ensuring that public safety will be secured; and

WHEREAS, the Board agrees that the proposed project will not interfere with public safety; and

WHEREAS, as to substantial justice, the applicant notes that the majority of the sites along the Eastern Parkway Extension have been developed without 30-ft. setbacks and, thus, the requirement of compliance with the Eastern Parkway Restriction would make development on the site infeasible and would create a serious economic loss; and

WHEREAS, accordingly, the Board concurs that substantial justice is maintained; and

WHEREAS, the Board notes that the applicant does not seek a variance of the Housing Maintenance Code and, thus, that finding is not relevant to the subject application; and

WHEREAS, additionally, the Board notes that, according to the applicant, the proposal will be in full compliance with all other provisions of the Administrative Code and the Building Code, as well as the Multiple Dwelling Law, and the Zoning Resolution; and

WHEREAS, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under Charter § 666(7) and varies Administrative Code § 18-112; the Board notes that the variance of the Eastern Parkway Restriction addresses the non-compliance with Building Code § 3201.3.1, by reference; and

WHEREAS, in reaching this determination, the Board notes that its finding is based on the unique facts related to the physical conditions of the site as presented in the instant application, and that this decision does not have general applicability to any pending or future Board application.

Therefore it is Resolved, that the decisions of the Brooklyn Borough Commissioner, dated August 17, 2011, are modified and that this application is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received December 30, 2011" - nine (9) sheets; and on further condition:

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

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

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

Adopted by the Board of Standards and Appeals, March 27, 2012.

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45-07-A

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application July 20, 2011 – Extension of time to complete construction, which expired on July 10, 2011, in accordance with a previously approved common law vested rights application for a two-story and attic mixed-use residential and community facility building. R4-1 zoning district.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue O and Avenue N, Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

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 May 1, 2012, at 10 A.M., for decision, hearing closed.

206-10-A thru 210-10-A

APPLICANT – Philip L. Rampulla, for Island Realty Associate, LLC, owner.

SUBJECT – Application November 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street, contrary to General City Law Section 35 and §72-01-(g). R1-2 zoning district.

PREMISES AFFECTED – 3399, 3403, Richmond Road and 14, 15, 17 Tupelo Court, Block 2260, Lot 24, 26, 64, 66, 68, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

For Opposition: Carol Donovan and Richard Habib.

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 April 24, 2012, at 10 A.M., for decision, hearing closed.

122-11-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Mitchell Pacifico, owner.

SUBJECT – Application August 23, 2011 – Proposed construction of a one family dwelling located partially within the bed of a mapped street, contrary to General City Law Section 35. R3-1 Zoning District.

PREMISES AFFECTED – 5 Bement Avenue, southeast corner of Bement Avenue and Richmond Terrace, Block 150, Lot 4, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Anthony Scaduto of Fire Department.

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 May 1, 2012, at 10 A.M., for decision, hearing closed.

125-11-A

APPLICANT – Law Offices of Marvin B. Mitzner for 514-516 E. 6th Street, LLC, owner.

SUBJECT – Application August 25, 2011 – Appeal challenging the Department of Buildings’ determination to deny the reinstatement of permits that allowed an enlargement to an existing residential building. R7B zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of East 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Peter Geis.

For Opposition: Alice Baldwin.

For Administration: Mark Davis of Department of Buildings.

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 May 15, 2012, at 10 A.M., for decision, hearing closed.

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 and James MacDonald.

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 5, 2012, at 10 A.M., for decision, hearing closed.

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**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 27, 2012
1:30 P.M.**

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

ZONING CALENDAR

4-12-BZ

CEQR #12-BSA-064M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 56th and Park (NY) Owner, LLC.

SUBJECT – Application January 11, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*The Wright Fit*). C5-3/C5-2.5 (MID) zoning district.

PREMISES AFFECTED – 432-440 Park Avenue, northwest corner of Park Avenue and East 56th Street, Block 1292, Lot 33, 43, 45, 46, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Gary R. Tarnoff.

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 Commissioner, dated December 21, 2011, acting on Department of Buildings Application No. 120628776, reads in pertinent part:

“Proposed physical culture establishment is not permitted as of right in a C5-2.5 & C5-3 district as per ZR 32-10;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within the Special Midtown District (MID), partially within a C5-2.5 and partially within a C5-3 zoning district, the operation of a physical culture establishment (PCE) on portions of the first and fourth floors and the entire sixth and seventh floors of a proposed 82-story mixed-use residential/commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 6, 2012, after due notice by publication in *The City Record*, and then to decision on March 27, 2012; and

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

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

WHEREAS, the subject site is an irregularly shaped lot located on the northwest corner of Park Avenue and East 56th Street, with a mid-block portion that fronts on both East 56th Street and East 57th Street, in the Special Midtown District (MID), partially within a C5-2.5 and partially within a C5-3 zoning district; and

WHEREAS, the applicant proposes to construct an 82-story mixed-use residential/ commercial building at the site; and

WHEREAS, the PCE will occupy a total of approximately 20,660 sq. ft. of floor area on portions of the first and fourth floors, and the entire sixth and seventh floors; and

WHEREAS, the PCE will be operated by the Wright Fit; and

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

WHEREAS, the hours of operation for the proposed PCE will be 6:00 a.m. to 10:00 p.m., daily; and

WHEREAS, the applicant represents that the proposed PCE meets the requirements in ZR § 81-13 for a special permit use in the Special Midtown District (MID); and

WHEREAS, specifically, the applicant states that the proposed PCE use is consistent with other retail uses within the Special Midtown District (MID) and will provide a desirable amenity to the neighborhood; and

WHEREAS, as a result, the applicant states that the subject PCE use will strengthen the business core of Midtown Manhattan by improving working and living environments and will promote a desirable use of land and building development in accordance with the District Plan for Midtown wherein the value of land is conserved and tax revenue is protected; and

WHEREAS, accordingly, the Board finds that the proposed special permit use is consistent with the purposes and provisions of ZR § 81-00; and

WHEREAS, at hearing, the Board directed the applicant to address the sound attenuation measures that will be provided in the proposed PCE; and

WHEREAS, in response, the applicant states that residential occupancy of the proposed building will begin at the 14th floor, and therefore there will be significant separation between the proposed PCE and any residential uses in the building; and

WHEREAS, the applicant also submitted revised plans reflecting that the seventh floor will provide a six-inch floating concrete floor above the ten-inch structural concrete slab, in order to provide sound attenuation for the PCE equipment located on that floor; 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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 12BSA064M, dated January 11, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and 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 located within the Special Midtown District (MID), partially within a C5-2.5 and partially within a C5-3 zoning district, the operation of a physical culture establishment on portions of the first and fourth floors and the entire sixth and seventh floors of a proposed 82-story mixed-use residential/commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 13, 2012"- (7) sheets, and *on further condition*:

THAT the term of this grant will expire on March 27, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

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

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

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

THAT sound attenuation measures will be provided as shown on the BSA-approved plans;

THAT the proposed building will be reviewed by DOB for compliance with all bulk regulations of the Zoning Resolution;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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, March 27, 2012.

71-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Masjid Al-Taufiq, Inc., owner.

SUBJECT – Application May 23, 2011 – Variance (§72-21) to legalize the conversion of a mosque (*Masjid Al-Taufiq*), contrary to lot coverage (§24-11), front yard (§24-34), and side yard (§24-35) regulations. R4 zoning district.

PREMISES AFFECTED – 41-02 Forley Street, northeast corner of the intersection formed by Forley Street and Britton Avenue, Block 1513, Lot 6, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Jordan Most.

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

96-11-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for 514-516 East 6th Street, owners.

SUBJECT – Application June 30, 2011 – Variance (§72-21) to legalize enlargements to an existing residential building, contrary to floor area (§23-145) and dwelling units (§23-22). R7B zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of east 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 15, 2012, at 1:30 P.M., for adjourned hearing.

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120-11-BZ

APPLICANT – Goldman Harris LLC. for Borden LIC Properties, LLC, owner.

SUBJECT – Application August 17, 2011 – Special Permit (§73-44) to reduce the parking requirement for office use and catering use (parking requirement category B1) in a new commercial building. M1-3 zoning district.

PREMISES AFFECTED – 52-11 29th Street, corner of 29th Street and Review Avenue. Block 295, Lot 1. Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Vivien R. Krieger.

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 April 24, 2012, at 1:30 P.M., for decision, hearing closed.

167-11-BZ

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application October 20, 2011 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) with an accessory drive-through facility. C1-2/R5 zoning district.

PREMISES AFFECTED – 1677 Bruckner Boulevard, Fiely Avenue through to Metcalf Avenue, Block 3721, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik.

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 April 24, 2012, at 1:30 P.M., for decision, hearing closed.

183-11-BZ

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for S.K.I. Realty, Inc., owner; Memorial Hospital for cancer and Allied Diseases, lessee.

SUBJECT – Application December 5, 2011 – Variance (§72-21) to allow the construction of a new outpatient surgical center (*Memorial Hospital for Cancer and Allied Diseases*), contrary to floor area ratio (§33-123); rear yard (§33-261) height and setback (§33-432); and curb cut (§13-142) regulations. C1-9/C8-4 zoning districts.

PREMISES AFFECTED – 1133 York Avenue, north side of east 61st Street, westerly from the corner formed by the intersection of the northerly side of East 61st Street and the westerly side of York Avenue, Block 1456, Lot 21, Borough

of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Shelly Friedman, Peter Scardino, Carol Brown, Jeff Brand, Doug Roy, Elena Aristove and Chi Chan.

For Opposition: Chris Wright, Cabot Marks, Nicole Detko, Chris Kossifos, Pina Sanelli, Rhoda Keller, Sandra Bachrach, Ross Mallon, Curtis M. Sawyer, Howard Brumer, Adam Zeliger, R. Evans H. Dorfman, Valerie Lee, Danielle Leader, Delia Hammock, Paul Stoler and Lenny Dukhon.

ACTION OF THE BOARD – Laid over to May 8, 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.

Additional (neither for or against): Milton Berger.

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

Jeff Mulligan, Executive Director

Adjourned: P.M.