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AND APPEALS

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DOCKET

New Case Filed Up to May 15, 2012

149-12-BZ

154 Girard Street, between Hampton Avenue and Oriental Boulevard., Block 8749, Lot(s) 265, Borough of **Brooklyn, Community Board: 15**. The premises is improved with an existing residential structure (single family home) which is a two story dwelling with a cellar. The requested approval seeks permission to enlarge the existing single family residential structure in accordance with the provisions of Zoning Resolution 73-622. R3-1 district.

150-12-BZ

39 West 21st Street, north side of West 21st Street, between 5th and 6th Avenues., Block 823, Lot(s) 17, Borough of **Manhattan, Community Board: 5**. Special Permit to allow a physical culture establishment in a C6-4A zoning district. C6-4A district.

151-12-A

231 East 11th Street, north side of E. 11th Street, 215' west of the intersection of Second Avenue and E. 11th Street., Block 467, Lot(s) 46, Borough of **Manhattan, Community Board: 3**. Appeal from a DOB determination which denied owner's request to lift a stop work order and thereby legalize an amateur radio antenna on the roof of the premises (previously legalized by the owner under ApplicationNo. 12021381). DOB's denial is contrary to the Zoning Resolution and to federal laws and regulations which strongly favor the maintenance of amateu radio equipment and which preempt local ordinances to the contrary. R8B district.

152-12-BZ

146-61 105th Avenue, north side of 105th Avenue, 34.65 southwest of intersection of 105th Avenue and Sutphin Boulevard., Block 10055, Lot(s) 19, Borough of **Queens, Community Board: 12**. Application filed to permit construction of a cellar and four-story mixed use building with commercial use on first floor and three dwelling units on upper floors on a vacant lot that does not provide a required side yard (3' proposed,8' required). C2-4 in R6A district.

153-12-BZ

24/34 Cobek Court, south side, 182.0' west of Shell Road, between Shell Road and West 3rd Street., Block 7212, Lot(s) 59, Borough of **Brooklyn, Community Board: 13**. Special Permit (§73-36) to legalize the space for a physical culture establishment (Fight Factory Gym). M1-1 in OP zoning district. M1-1inOP district.

154-12-BZ

1202 East 22nd Street, West side of East 22nd Street, between Avenue K and Avenue L, Block 7621, Lot(s) 59, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single family residence located in a residential (R2) zoning district. R2 district.

155-12-BZY

511 Ninth Avenue, southwest corner of Ninth Avenue and West 39th Street (block bounded by West 38th Street and 10th Avenue)., Block 736, Lot(s) 33, Borough of **Manhattan, Community Board: 4**. Extension of time (§11-332) to complete construction of a minor development commenced under the previous zoning. C1-7A district.

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

CALENDAR

JUNE 12, 2012, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 12, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

313-77-BZ

APPLICANT – Goldman Harris LLC, for Gilsey House, owner.

SUBJECT – Application April 13, 2012 – Amendment to a previously granted Variance (§72-21) for the conversion of a manufacturing building to residential occupancy with a duplex penthouse structure which was never built. The proposal is to construct a substantially smaller, one-story penthouse with a roof top deck enlargement that is entirely within the approved envelope. M1-6 zoning district.

PREMISES AFFECTED – 1200 Broadway, southeast corner of West 29th Street and Broadway, Block 831, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #5M

292-55-BZ

APPLICANT – Alfonso Duarte, for Narkeet Property Inc., owner.

SUBJECT – Application April 2, 2012 – Application to extend term of variance and to waive the Rules of Practice and Procedure. R3-2 zoning district.

PREMISES AFFECTED – 239-15 Jamaica Avenue, northwest corner of 240th Street, Block 8001, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

163-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee.

SUBJECT – Application April 30, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously approved Special Permit (73-63) for the operation of a Physical Culture Establishment (*Crunch Fitness*) which expired on April 24, 2011; Waiver of the Rules. R7A (C2-4) zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, northwest corner of intersection of Fulton Street and St. Felix Street, Block 2096, Lot 66, 69, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEALS CALENDAR

15-12-A & 158-12-A

APPLICANT – Richard G. Leland, Esq./Fried Frank, for 29-01 Borden Realty Co., LLC, owner; Van Wagner Communications, LLC, lessee.

SUBJECT – Application January 23, 2012 – Appeal challenging the Department of Buildings' determination that an outdoor accessory sign and structure is not a legal non-conforming accessory use pursuant to ZR §52-00. M3-1 Zoning District.

PREMISES AFFECTED – 29-01 Borden Avenue, bounded by Newton Creek, Borden Avenue, Hunters Point Avenue and 30th Avenue, Block 292, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

24-12-A & 147-12-A

APPLICANT – Richard G. Leland, Esq./Fried Frank, for 12th Avenue Realty Holding Corp., owner; Mizey Realty Co., Inc., lessee.

SUBJECT – Application February 2, 2012 & May 8, 2012 – Appeal challenging the Department of Buildings determination that an outdoor accessory sign and structure is not a legal non-conforming use pursuant to ZR §52-00. M1-2 Zoning district.

PREMISES AFFECTED – 2368 12th Avenue, bounded by Henry Hudson Parkway, West 134th Street, 12th Avenue and 135th Street, Block 2005, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #9M

JUNE 12, 2012, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 12, 2012, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

168-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.

SUBJECT – Application October 27, 2011 – Pursuant to Z.R. §72-21, as amended, to request a variance of floor area, open space ratio, lot coverage, side yards, rear yard, height, setback, planting, landscaping and parking regulations in order to permit the construction of a Use Group 4A house of worship (*Congregation Bet Yaakob, Inc.*). 5(OP),R6A(OP) and R5(OP subdistrict) zoning district.

PREMISES AFFECTED – 2085 Ocean Parkway, L-shaped lot on the corner of Ocean Parkway and Avenue U, Block 7109, Lot 50 (tentative), Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

191-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Zerillo Family Trust, owner.

SUBJECT – Application December 19, 2011 – Special Permit (§73-622) for the In-Part Legalization and an Enlargement to an existing single family home contrary to ZR §23-141(b) for maximum allowable floor area. R 4-1 zoning district.

PREMISES AFFECTED – 1246 77th Street, between 12th and 13th Avenues, Block 6243, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #10BK

48-12-BZ

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for IGS Realty Co., owner.

SUBJECT – Application March 5, 2012 – Variance (§72-21) to permit the legalization of an existing 14-story commercial building for use as offices, contrary to Special Garment Center regulations ZR §121-11. C6-4 (GC, P2) zoning district.

PREMISES AFFECTED – 336 West 37th Street, between Eighth and Ninth Avenues, Block 760, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #4M

78-12-BZ

APPLICANT – Francis R. Angelino, Esq., for Jonathan P. Rosen, owner; End 2 End Game Training LLC, lessee.

SUBJECT – Application April 4, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*End 2 End*). C6-4A zoning district.

PREMISES AFFECTED – 443 Park Avenue South, northeast corner of East 30th Street, Block 886, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

91-12-BZ

APPLICANT – Jorge Lee, for Juan Noboa, owner.

SUBJECT – Application April 11, 2012 – Re-instatement (§11-411) of a previously approved variance granted under BSA Cal. No. 1003-48-BZ permitting commercial retail (UG 6) in a residential district, which expired on March 29, 1998. R8 zoning district.

PREMISES AFFECTED – 846 Gerard Avenue, east side of Gerard Avenue, 132.37' south of East 161st Street, Block 2474, Lot 35, Borough of Bronx.

COMMUNITY BOARD #4BX

111-12-BZ

APPLICANT – Eric Palatnik, P.C., for Wells 60 Broad Street, LLC, owner; Bree and Oliver NYC Inc., lessee.

SUBJECT – Application April 19, 2012 – Special Permit application pursuant to Z.R.§73-36 to permit the proposed physical culture establishment (*Cross Fit Wall Street*) at a portion of the ground floor of the premises which is located within a C5-5(LM) zoning district.

PREMISES AFFECTED – 60 New Street, 54-68 Broad Street; 52-66 New Street, north of Beaver Street, Block 24, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 15, 2012
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

808-55-BZ

APPLICANT – Sheldon Lobel, P.C., for 35 Bell Realty Inc., owner; Cumberland Farms, Inc., lessee.

SUBJECT – Application February 14, 2012 – Extension of Term (§11-411) for the continued operation of a gasoline service station (*Gulf*) with accessory convenience store which expired on March 27, 2012; Waiver of the Rules. C2-2/R4 zoning district.

PREMISES AFFECTED – 35-04 Bell Boulevard, southwest corner of the intersection formed by Bell Boulevard and 35th Avenue, Block 6169, Lot 6, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Lisa Lee.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Absent: Commissioner Montanez.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term of a previously granted variance to permit the operation of a gasoline service station with accessory uses, which expired on March 27, 2011; and

WHEREAS, a public hearing was held on this application on April 3, 2012, after due notice by publication in *The City Record*, with a continued hearing on May 1, 2012, and then to decision on May 15, 2012; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application, but requests that measures be taken to improve the on-site traffic circulation; and

WHEREAS, the subject site is located on the southwest corner of Bell Boulevard and 35th Avenue, within a C2-2 (R4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 3, 1956 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of 15 years; and

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

WHEREAS, most recently, on March 27, 2001, the Board granted a ten-year extension of term, which expired on March 27, 2011; and

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

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

WHEREAS, at hearing, the Board raised concerns about the metal shed located at the rear of the site; and

WHEREAS, in response, the applicant states that the shed has been located behind the service station building for approximately 14 years, and that it is used for the storage of miscellaneous items related to the upkeep of the site; and

WHEREAS, the applicant submitted a photograph reflecting that the shed is the same height as the masonry wall on the site and therefore cannot be seen by the adjacent property owner; and

WHEREAS, the applicant also submitted revised plans in response to the Community Board’s concerns about on-site traffic circulation, which reflect (1) the installation of “No Parking” signs along the southeast lot line, and (2) the re-stripping of the parking area to increase the number of parking spaces from two to three; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated April 3, 1956, so that as amended this portion of the resolution shall read: “to extend the term for ten years from March 27, 2011, to expire on March 27, 2021; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘Received April 17, 2012’- (5) sheets; and *on further condition*:

THAT the term of the grant will expire on March 27, 2021;

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

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

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

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

Adopted by the Board of Standards and Appeals May 15, 2012.

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188-78-BZ

APPLICANT – Eric Palatnik, P.C., for Anthony Berardi, owner.

SUBJECT – Application August 4, 2011 – Amendment (§11-413) to a previously granted Variance (§72-21) to add (UG16) automobile body with spray painting booth and automobile sales to an existing (UG16) automobile repair and auto laundry. R5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81st Street, Block 6313, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for an automobile repair shop and auto laundry (Use Group 16), pursuant to ZR § 11-413; and

WHEREAS, a public hearing was held on this application on January 24, 2012 after due notice by publication in *The City Record*, with continued hearings on February 28, 2012 and April 24, 2012, and then to decision on May 15, 2012; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application with the conditions that (1) there be no double parked vehicles, and (2) all bodywork be conducted inside of the building; and

WHEREAS, the applicant submitted letters from New York City Council Member Vincent J. Gentile and New York State Assembly Member Peter J. Abate, Jr. in support of this application; and

WHEREAS, the site is located on the southwest corner of New Utrecht Avenue and 81st Street, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1929 when, under BSA Cal. No. 280-29-BZ, the Board granted a variance to permit the construction of a gasoline station repair shop and automobile laundry at the site; and

WHEREAS, on July 18, 1978, under the subject calendar number, the Board permitted the construction of a one-story enlargement to the accessory structure on the site and the change of use to an automobile repair shop, pursuant to ZR §§ 11-412 and 11-413; and

WHEREAS, most recently, on February 27, 1979, the Board granted an amendment to permit a change in the

dimensions of the previously-approved one-story enlargement; and

WHEREAS, the applicant now seeks an amendment to permit the site to be used for car sales and auto body work (Use Group 16), in addition to its existing use as an automobile repair shop (Use Group 16); and

WHEREAS, specifically, the applicant states that the addition of auto body work will allow the owner to repair dents, scratches, and other external damages, as well as add a spray paint booth for the spray painting of cars; and

WHEREAS, the applicant notes that it withdrew a prior application for the subject amendment submitted on April 1, 2010, in order to comply with the conditions of the Board's previous resolution and in response to the Board's request that the owner cleanup the site; and

WHEREAS, the applicant states that following the withdrawal of the prior application, the owner has undertaken the following measures to clean and upgrade the site: (1) the interior and exterior of the entire facility has been repainted; (2) the chain-link fence has been removed; (3) all garbage and debris has been cleared; (4) the graffiti has been removed; (5) curb bumpers have been provided on the lot; and (6) flower pots have been placed around the site; and

WHEREAS, the applicant initially proposed to maintain the existing automobile laundry use and to use all five parking spaces on the site for used car sales; and

WHEREAS, in response to concerns raised by the Board regarding the lack of space on the site for both a spray paint booth and used car sales in addition to the existing automobile repair shop and automobile laundry use, the applicant revised its proposal to remove the automobile laundry use at the site and to reduce the number of parking spaces for used car sales to two, with the other three spaces reserved for cars awaiting repair; and

WHEREAS, the applicant also submitted revised plans reflecting the elimination of the curb cut on 81st Street and the replacement of the curb, and submitted a circulation plan reflecting the anticipated circulation pattern at the site; and

WHEREAS, at hearing, the Board raised concerns about the proposed location of the spray paint booth in the southeast corner of the building, adjacent to residential uses; and

WHEREAS, in response, the applicant submitted revised plans reflecting the relocation of the spray paint booth to the southwest corner of the site and the corresponding relocation of the proposed exhaust for the spray paint booth, which will be oriented to vent away from the adjacent residential uses; and

WHEREAS, the applicant notes that the spray paint booth will only use water-based paints, and submitted the specifications for the proposed spray paint booth, which will comply with all Federal Occupational Safety and Health Administration and National Fire Protection Association regulations and be installed to comply with all Fire and Building Code requirements; and

WHEREAS, the applicant states that the hours of operation will be reduced to Monday through Friday, from

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8:00 a.m. to 5:00 p.m., Saturday, from 8:00 a.m. to 1:00 p.m., and closed on Sunday; the previously-approved hours of operation were Monday through Saturday, from 8:00 a.m. to 6:00 p.m.; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant states that all auto body work will be conducted inside the enclosed building; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a change in use; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 18, 1978, so that as amended this portion of the resolution shall read: “to permit the conversion of the existing automobile repair shop and automobile laundry to an automobile repair shop with automobile body work and used car sales pursuant to ZR § 11-413; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received May 2, 2012’ –(6) sheets; and *on further condition*:

THAT the term of this grant will expire on May 15, 2017;

THAT there will be no double-parked vehicles at the site;

THAT all body work will take place inside the enclosed building;

THAT a maximum of two parking spaces be utilized for the sale of used cars;

THAT the site be maintained free of debris and graffiti;

THAT the hours of operation will be Monday through Friday, from 8:00 a.m. to 5:00 p.m., Saturday, from 8:00 a.m. to 1:00 p.m., and closed on Sunday;

THAT all signage will comply with C1 district regulations;

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

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 310092020)

Adopted by the Board of Standards and Appeals May 15, 2012.

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 an approved variance for the continued operation of a gasoline service station (*Sunoco*) which expired on September 30, 2005; Amendment for the addition of a lift in the service building and an air tower and car vacuum on 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

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

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

Absent: Commissioner Montanez.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to June 12, 2012, at 10 A.M., for decision, hearing closed.

849-49-BZ

APPLICANT – Greenberg Traurig, LLP, by Jay A. Segal, Esq., for Directors of Guild of America, Inc., owner.

SUBJECT – Application February 29, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued use of a motion picture theater which expired on January 31, 2012. C5-3(MID) zoning district.

PREMISES AFFECTED – 110 West 57th Street, southside of 57th Street, between 6th and 7th Avenues, Block 1009, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Randall Minor.

THE VOTE TO CLOSE HEARING –

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

Absent: Commissioner Montanez.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to June 12, 2012, at 10 A.M., for decision, hearing closed.

12-91-BZ

APPLICANT – Rampulla Associates Architects, for Miggy’s Too Delicatessen Corp., owner.

SUBJECT – Application March 12, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG6 food store (*Bayer’s Market*) which expired on April 21, 2012; Amendment to eliminate landscaping, legalize an outdoor refrigeration unit, eliminate hours for garbage pickup, and request to eliminate the term of the variance. R3-2 zoning district.

PREMISES AFFECTED – 2241 Victory Boulevard, north

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south corner of Victory Boulevard and O'Connor Avenue, Block 463, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Phillip L. Rampulla.

ACTION OF THE BOARD – Laid over to June 12, 2012, at 10 A.M., for continued hearing.

136-01-BZ

APPLICANT – Eric Palatnik, P.C., for Cel Net Holdings Corp., owner.

SUBJECT – Application April 20, 2012 – Extension of Time to complete Construction and obtain a Certificate of Occupancy for a previously granted Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements which expired on March 21, 2012. M1-4/R-7A zoning district.

PREMISES AFFECTED – 11-11 44th Drive, north side of 44th Drive between 11th Street and 21st Street, Block 447, Lot 13, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Absent: Commissioner Montanez.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to June 12, 2012, at 10 A.M., for decision, hearing closed.

290-06-BZ

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

SUBJECT – Application February 2, 2012 – Amendment of an approved variance (§72-21) for a new residential building with ground floor commercial, contrary to use regulations. The amendment requests an increase in commercial floor area and a decrease in the residential floor area. M1-5B zoning district

PREMISES AFFECTED – 372 Lafayette Street, block bounded by Lafayette, Great Jones and Bond Streets, Shinbone Alley, Block 530, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 5, 2012, at 10 A.M., for deferred decision.

APPEALS CALENDAR

25-12-A

APPLICANT – Slater & Beckerman, LLP for F.B Capital Inc., owners

SUBJECT – Application February 2, 2012 – Appeal challenging a determination by the Department of Buildings not to revoke the permit associated with the reconstruction of a building, which includes construction in the required rear yard and does not comply with the requirements of ZR §54-41. R8B (LH-1A) Zoning District.

PREMISES AFFECTED – 110 East 70th Street, south side of East 70th Street, between Park Avenue and Lexington Avenue, block 1404, Lot 67, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Stefanie Marazzi

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

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

Absent: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to the determination of the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated January 6, 2012 (the “Final Determination”), to uphold its Intent to Revoke Approval and Permit Letter associated with Permit No. 110169406 (the “Permit”), for the construction of a building at the subject site (the “Building”); and

WHEREAS, the Final Determination reads, in pertinent part:

The Department has reviewed the information you provided and, as further described below, has determined that you have not sufficiently demonstrated that Objection 1, 2, and 4 should be removed.

The Department has determined that Objection Nos. 1, 2, and 4 should not be removed because the plans filed with the Job Application are not in compliance with Section 54-41 of the Zoning Resolution (the “ZR”). Certificate of Occupancy No. 110596 states that the building contained a Use Group 2 one-family residence and a Use Group 4 community facility medical office. The building was non-complying because the medical office and a portion of the residence were located in the required rear yard of the Premises and exceeded lot coverage limitation. The building

1 (Footnote from the original) In your December 19, 2011 letter you also indicate that Objection No. 3 has been resolved with a filing of a Post Approval Amendment (“PAA”). As of the date of this letter, this Objection has not been resolved because the Department has not reviewed the PAA and an appointment has not yet been made with the Department to address the Objection.

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contained a one family “residence” and therefore, only the residential portion of the building may be reconstructed per Section 54-41 of the ZR, given that more than 75% of the building was demolished.

Per Section 54-41 of the ZR, a one family “residence” may be reconstructed provided that the reconstruction does not create a new non-compliance or increase the pre-existing degree of non-compliance with the applicable bulk regulations. Per Section 12-10 of the ZR, a “residence” is one or more dwelling units including common spaces. Therefore, the portion of the building containing the Use Group 2 “residence” may be reconstructed but the portion of the building containing the Use Group 4 medical office cannot be reconstructed pursuant to Section 54-41 of the ZR. However, such space may be constructed to the extent permitted by the underlying district regulations and used for any use permitted in the zoning district.

Although the objections cannot be removed, in compliance with a Temporary Restraining Order entered on December 22, 2011 by the Honorable Eileen A. Rakower in *FB Capital, Inc. V. NYC Department of Buildings and Robert L. LiMandri*, Index No. 1114312/11, the Department is not, at this time, revoking the Permit; and

WHEREAS a public hearing was held on this application on April 3, 2012, after due notice by publication in *The City Record*, and then to decision on May 15, 2012; and

WHEREAS, the appeal was filed on behalf of the owners of 112 East 70th Street (the “Appellant”) who are neighbors to the subject site; and

WHEREAS, a separate appeal application was filed by the owners of the subject building (the “Owners”) and was heard concurrently and decided on the same day, pursuant to BSA Cal. No. 27-12-A; and

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

WHEREAS, the subject site is located on the south side of East 70th Street, between Park Avenue and Lexington Avenue, within an R8B zoning district within Limited Height District 1A; and

WHEREAS, the subject site has a width of 19’-10”, a depth of 100’-5”, and a total lot area of approximately 1,991.6 sq. ft.; and

WHEREAS, the site is occupied by a five-story (including penthouse) building with a basement, a cellar, and a sub-cellar; and

WHEREAS, the Building has the following parameters: a total floor area of 7,536 sq. ft. (3.78 FAR), with 6,406 sq. ft. of residential floor area and 1,130 sq. ft. of community facility (doctor’s office) floor area, a lot coverage of 84 percent, and a total height of 60’-0”; and

WHEREAS, a three-story portion of the Building

(portions of the basement, first floor, and second floor) encroaches into the required 30’-0” rear yard to varying degrees; an L-shaped portion of the basement designated for doctor’s office use encroaches a total of approximately 395.6 sq. ft. into the rear yard, including a 110 sq. ft. one-story portion at the northeast corner of the basement; an approximately 9’-2” by 30’-0” portion of the first floor encroaches into the rear yard; and an approximately 9’-2” by 21’-7” portion of the second floor encroaches into the rear yard; and

WHEREAS, the Building was issued a Certificate of Occupancy No. 110596 on December 3, 1996, which states:

Cellar – Boiler Room, Storage
Basement – Comm. – Doctor’s Office, Res. –
Entry Hall to Dwelling Above
1st Floor – Res. – ¼ Dwelling Unit
2nd Floor – Res. – ¼ Dwelling Unit
3rd Floor – Res. – ¼ Dwelling Unit
4th Floor – Res. – ¼ Dwelling Unit
One (1) Family Dwelling; and

WHEREAS, at the time of the issuance of the Certificate of Occupancy, the doctor’s office and a portion of the residential use were located within the 30-ft. rear yard; at that time, a doctor’s office was a permitted encroachment into the required rear yard, but zoning text changes have rendered the encroachment non-complying; and

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

WHEREAS, the Owners of the subject building provided testimony in opposition to this appeal; and

PROCEDURAL HISTORY

WHEREAS, in May 2008, the Owners filed an Alteration Type 1 application (No. 110169406) to renovate the Building and to change the doctor’s office use on the basement floor to residential use; and

WHEREAS, on April 20, 2009, DOB approved the Alteration Type 1 application and on May 8, 2009 issued the Permit; and

WHEREAS, subsequently, the Owners filed and DOB approved post approval amendments and other construction requirements; and

WHEREAS, during the following months and years, DOB received several complaints from the Appellant stating that the project did not comply with zoning regulations, which led DOB to audit the plans and at various times revoke the permits, issue stop work orders, and rescind same; and

WHEREAS, on December 6, 2011, DOB issued a notice of intent to revoke with a final version of audit objections, which state that (1) only the residential portion of the building may be reconstructed given that 75 percent of the building was demolished (ZR § 54-41), (2) construction of a community facility in the rear yard is not a permitted obstruction, (3) demonstrate that a change of use from doctor’s office to residential use complies with ZR regulations for change of use and bulk (ZR § 24-33), and (4) the proposed lot coverage exceeds 70 percent, contrary to

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ZR § 24-11; and

WHEREAS, the Owners demolished the majority of the Building and reconstructed it with the same non-complying conditions that existed prior to the demolition, which include the one- and three-story encroachments into the required 30-ft. rear yard and lot coverage in excess of what is permitted by zoning district regulations; and

WHEREAS, the Owners seek to maintain the entire Building with all non-complying conditions, which it asserts are legally non-complying and were reconstructed pursuant to the provisions set forth at ZR § 54-41; and

WHEREAS, the Owners state that it would have preferred residential use on the basement level but that DOB only identified the issue of the increase in the degree of non-compliance of the Building's court after the extension was demolished, and required the return to a doctor's office use so that the Appellant could retain the envelope of the building already approved and permitted; and

WHEREAS, after DOB issued audit objections which form the basis of the Final Determination, the Owners brought a proceeding in New York State Supreme Court entitled Matter of FB Capital v. New York City Department of Buildings, Index No. 114312/11 to prevent DOB from revoking the building permits for the portion of the application related to the residence and requiring it to continue inspections and issue a Temporary Certificate of Occupancy; and

WHEREAS, the court issued a temporary restraining order preventing DOB from revoking the permits pending decision on the merits of the petition; and

WHEREAS, the Owners assert that the Building has been constructed as follows: the 395.6 sq. ft. of basement level encroaching in the rear yard includes approximately 285.6 sq. ft. beneath the residential portion of the Building constructed in 1922 and 110 sq. ft. in a separate one-story portion constructed in 1996 (when zoning allowed for doctor's office use to encroach into the rear yard and such encroachment would have been complying); and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR Section 12-10

Residence, or residential (italicized text adopted on 9/9/04, subsequently amended as reflected in the non-italicized text below)

A "residence" is a #building# or part of a #building# containing #dwelling units# or #rooming units#, including one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels#. However, #residences# do not include:

- (a) such transient accommodations as #transient hotels#, #motels# or #tourist cabins#, or #trailer camps#;
- (b) #non-profit hospital staff dwellings#; or
- (c) student dormitories, fraternity or sorority student houses, monasteries or convents, sanitariums, nursing homes, or other living or sleeping accommodations in #community facility buildings# or portions of #buildings#

used for #community facility uses#.

- (d) in a #mixed building#, that part of the #building# used for any non-#residential uses#, except #accessory# to #residential uses#.

"Residential" means pertaining to a #residence#.

* * *

Residence, or residential (2/2/11)

A "residence" is one or more #dwelling units# or #rooming units#, including common spaces such as hallways, lobbies, stairways, laundry facilities, recreation areas or storage areas. A #residence# may, for example, consist of one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels#. However, #residences# do not include:

- (a) such transient accommodations as #transient hotels#, #motels# or #tourist cabins#, or #trailer camps#;
- (b) #non-profit hospital staff dwellings#; or
- (c) student dormitories, fraternity or sorority student houses, monasteries or convents, sanitariums, nursing homes, or other living or sleeping accommodations in #community facility buildings# or portions of #buildings# used for #community facility uses#.

"Residential" means pertaining to a #residence#.

* * *

Single-family residence (2/2/11)

A "single-family residence" is a #building# containing only one #dwelling unit#, and occupied by only one #family#.

* * *

ZR Section 54-41

Permitted Reconstruction

If a #non-complying building or other structure# is damaged or destroyed by any means, including any demolition as set forth in this Section, to the extent of 75 percent or more of its total #floor area#, such #building# may be reconstructed only in accordance with the applicable district #bulk# regulations, except in the case of a one- or #two-family residence#, such #residence# may be reconstructed provided that such reconstruction shall not create a new #non-compliance# nor increase the pre-existing degree of #non-compliance# with the applicable #bulk# regulations. If the extent of such damage or destruction is less than 75 percent, a #non-complying building# may be reconstructed provided that such reconstruction shall not create a new #non-compliance# nor increase the pre-existing degree of #non-compliance# with the applicable #bulk# regulations; and

THE ISSUES ON APPEAL

WHEREAS, the Appellant seeks a determination that the encroachment of the Building located in the required

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rear yard must be removed and may not be reconstructed pursuant to ZR § 54-41 and that DOB has failed to properly enforce the provisions of ZR § 54-41 by allowing such reconstruction; and

WHEREAS, the Appellant requests that the Board revoke the Permit and determine that the portions of the Building located in the rear yard must be removed and may not be reconstructed pursuant to ZR § 54-41; and

WHEREAS, the Appellant states that it disagrees with the portion of the Final Determination stating that the “residential portion of the building may be reconstructed” in the required rear yard, for the following reasons: (1) the Building is a mixed-use residential and community facility building which may not benefit from the reconstruction exception of ZR § 54-41 which allows for reconstruction after 75 percent of the floor area has been demolished, (2) the Building is not a single-family home and, thus, its non-complying conditions cannot be reconstructed nor can conditions that increase the degree of non-compliance, and (3) the Building was illegally enlarged in the 1960s or 1970s and therefore is not a lawful “non-complying building” as defined in ZR § 12-10 and therefore may not take advantage of the reconstruction provisions of ZR § 54-41; and

I. THE CLASSIFICATION OF THE BUILDING

WHEREAS, the Appellant asserts that the Building is a mixed-use residence and community facility building which may not benefit from the reconstruction exception of ZR § 54-41 which allows for a “one- or two-family residence” to be reconstructed provided it does not create a new non-compliance or increase the degree of non-compliance with bulk regulations; and

WHEREAS, the Appellant asserts that because it does not fit within the exemption for one- or two-family residences, it can only be constructed pursuant to current zoning district regulations; and

WHEREAS, the Appellant asserts that once 75 percent of a non-complying mixed-use residential building (and not a single-family home) is demolished, it is not covered by ZR § 54-41; and

WHEREAS, the Appellant asserts that because the Building contains a doctor’s office in the basement, per the 1996 Certificate of Occupancy, and a dwelling unit on the first through fourth floors it may not be classified as a “single-family residence” as defined at ZR § 12-10; and

WHEREAS, the Appellant asserts that a “single-family residence” contains only one dwelling unit and is occupied by only one family; and

WHEREAS, the Appellant asserts that any other interpretation of a “single-family residence” would result in an absurd outcome such as a mixed commercial and residential building with only one dwelling unit being characterized as a “single-family residence;” and

WHEREAS, DOB contends that the Appellant incorrectly interprets the ZR § 12-10 definition of “single-family residence” (“a building containing only one dwelling unit, and occupied by only one family”) for the proposition that ZR § 54-41 should not apply to the reconstruction of the Building; and

WHEREAS, DOB asserts that, contrary to the Appellant’s claim, the Building does meet the definition of a “single-family residence,” as a “single-family residence” is a building that contains one dwelling unit and may contain other non-residential uses; and

WHEREAS, DOB adds that the 1996 Certificate of Occupancy reflects that the building contained a “Res.” single-family residence and a “Comm.” doctor’s office, and although the 1996 Certificate of Occupancy did not indicate the use groups associated with the particular uses, DOB interprets the permissible uses in the Building to be a Use Group 2 residential single-family residence and a Use Group 4 community facility medical office; and

WHEREAS, however, DOB disagrees with the Appellant that the inclusion of the community facility use prohibits the classification of the Building as a single-family residence; and

WHEREAS, DOB disagrees with the Owner that the entire Building is a residence which may be reconstructed after more than 75 percent of its floor area has been demolished, pursuant to ZR § 54-41; and

WHEREAS, DOB notes that ZR § 54-41 uses the term “one-family residence”¹ rather than “single-family residence,” and because the definition of “residence” specifically uses the term “dwelling units” and specifically excludes the word “building,” only that portion of the Building containing the one-family residence (i.e., the dwelling unit), including the non-complying residence located in the rear yard, may be reconstructed pursuant to ZR § 54-41; and

WHEREAS, the Owner cites to and agrees with DOB’s statement that “a ‘single-family residence’ is a building that contains one ‘dwelling unit’ and may contain other non-residential uses;” however, the Owner disagrees with DOB’s assertion that there is a distinction between “single-family residence” and “one-family residence,” the term used in ZR § 54-41; and

WHEREAS, the Owner states that if the Building is a “single-family residence” as DOB agrees, then it is also a “one-family residence,” because, contrary to DOB’s position, the two terms have the same meaning; and

WHEREAS, the Owner states that the use of the two terms within the ZR and the meaning attributed to them does not support the conclusion that there is any distinction between them; and

WHEREAS, accordingly, the Owner asserts that if DOB has admitted that a single-family residence may contain uses other than a dwelling unit and there is no basis to distinguish between a “single-family residence” and a “one-family residence,” DOB must conclude that the Owner’s construction of ZR § 54-41 is correct and the entire Building may be reconstructed; and

II. THE PORTION OF THE BUILDING TO BE RECONSTRUCTED

WHEREAS, regardless of the classification of the

¹ “One-family residence” is not a defined term under ZR § 12-10.

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Building, the Appellant challenges DOB's assertion that any part of the basement encroachment in the rear yard may be reconstructed for residential use because it finds that such construction increases the degree of non-compliance; and

WHEREAS, the Appellant questions DOB's statement on the record that the portion of the Building occupied by residential use may be reconstructed but that the portion of the Building occupied by community facility use can only be constructed to the extent permitted by the underlying district regulations; and

WHEREAS, the Appellant notes that the underlying district regulations do not allow residential buildings as permitted obstructions in the rear yard and that once the community facility portion of the Building is removed, the Building is residential and governed by residential bulk regulations which prohibit virtually any enclosed use in the rear yard; and

WHEREAS, the Appellant asserts that any reconstruction of the community facility portion would be contrary to ZR § 54-41 and would increase the degree of non-compliance of the rear yard; and

WHEREAS, the Appellant asserts that the reconstruction of the basement level community facility would reflect an increase in the degree to which the yard is obstructed, contrary to ZR § 23-44, which does not allow residential buildings as a permitted obstruction in required rear yards; and

WHEREAS, the Appellant cites to the ZR § 12-10 definition of "yard" as part of a zoning lot "extending open and unobstructed from the lowest level to the sky along the entire length of a lot line. . ."; and

WHEREAS, the Appellant contends that if the community facility space in the basement were demolished, the yard would be "obstructed" above the basement level but unobstructed at the basement level which is a lesser degree of non-compliance thus, allowing reconstruction of the lowest level would allow for a new obstruction and increase the degree of non-compliance contrary to ZR § 54-41; and

WHEREAS, DOB asserts that the non-complying residential portion of the Building located in the rear yard may be reconstructed because ZR § 54-41 permits reconstruction of the residential portion of a one-family residence that has been demolished in excess of 75 percent; and

WHEREAS, based on the language of ZR § 54-41 and the ZR § 12-10 definitions of "residence" and "dwelling unit" from the February 2, 2011 Key Terms Clarification Text Amendment, DOB determined that only the portion of the Building containing the Use Group 2 residence (the dwelling unit including common spaces) may be reconstructed, while the portion of the Building containing the Use Group 4 doctor's office cannot be reconstructed because it is a community facility, not a "dwelling unit," and therefore not a "residence;" and

WHEREAS, however, DOB finds that the space formerly occupied by the doctor's office below the residence may be constructed since construction in that space would not increase the existing degree of non-compliance or create

a new non-compliance; and

WHEREAS, by letter dated April 26, 2012, the Department of City Planning (DCP) states that it supports DOB's response to the Appellant and agrees with DOB's interpretation of the meaning of ZR § 54-41's reference to "residence;" and

WHEREAS, specifically, DCP states that "such 'residence'" as used in ZR § 54-41 refers to the residential portion of a building that contains one or more dwelling units; and

WHEREAS, DCP states that prior to the Key Terms Text Amendment, the definition of "residence" referred to dwelling units or rooming units and following the amendment, the definition of "residence" was modified to include common spaces such as hallways and lobbies; and

WHEREAS, DCP asserts that the purpose of the change was to clarify that the common areas of a residential building are considered residential and that the change was not substantive as it was consistent with DOB's prior interpretations and practices; and

WHEREAS, DCP states that its reading is consistent with the intent of ZR § 54-41 to grant individual home owners a special exception to the general prohibition upon reconstruction of non-complying buildings which have been damaged or destroyed in excess of 75 percent of the floor area; and

WHEREAS, DCP asserts that a public policy goal is served by allowing owners of one- and two-family homes to reconstruct their dwelling space and that such public policy does not logically extend to the reconstruction of non-complying non-residential space; and

WHEREAS, accordingly, DCP concludes that ZR § 54-41 only allows for the reconstruction of non-complying portions of one and two family residences occupied by dwelling units and not non-residential uses; and

WHEREAS, in response, the Appellant wrote a letter to DCP requesting it clarify whether the reconstruction of the portion of the Building formerly occupied by the doctor's office beneath the residential use may be reconstructed or whether it reflects an increase in the degree of noncompliance and may not; and

WHEREAS, the Appellant's position is that allowing the reconstruction of the non-complying portion of the Building formerly occupied by the doctor's office to be occupied by any use will increase the degree of non-compliance in the rear yard, contrary to ZR §§ 54-41 and 23-44; and

WHEREAS, the Appellant asserts that allowing for reconstruction of the basement would allow for an obstruction at the basement level in addition to the obstructions on the residential first and second floors, which reflects an increased degree of non-compliance over just rebuilding the first and second floors and leaving the basement level open; and

WHEREAS, the Owner disagrees with DOB and DCP that the reference to "such 'residence'" in ZR § 54-41 refers only to the dwelling units in the one- or two-family residence since "residence" is a defined term and not

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synonymous with “dwelling unit;” and

WHEREAS, the Owner asserts that the definition of residence is intended to reference entire buildings rather than just the dwelling unit components as evidenced by the inclusion of the language “including one-family and two-family houses, multiple dwellings, boarding or rooming houses, or apartment hotels,” all of which are “buildings” that may contain not only residences but other uses; and

WHEREAS, the Owner maintains its position that the Building is a single-family residence and, accordingly, can be reconstructed in full pursuant to ZR § 54-41; and

III. THE LEGALITY OF THE CONSTRUCTION

WHEREAS, the Appellant asserts that ZR § 54-41 only permits reconstruction of lawfully non-complying buildings and the Building is not a lawful “non-complying” building and may not benefit from the reconstruction provisions of ZR § 54-41; and

WHEREAS, the Appellant cites to the ZR § 12-10 definition of a non-complying building as “any lawful building which does not comply with any one or more of the applicable district bulk regulations either on December 15, 1961 or as a result of a subsequent amendment thereto;” and

WHEREAS, the Appellant asserts that to be “lawful,” the non-complying bulk must have complied with zoning when constructed; and

WHEREAS, the Appellant asserts that the extension in the rear yard was enlarged illegally when such enlargement would not have been permitted by zoning except for a one-story portion not exceeding 23 feet in height used for community facility use in the rear yard; and

WHEREAS, the Appellant asserts that the extension in the rear yard was enlarged to a two-story and basement brick extension sometime between 1967 and 1979 and, thus, is an illegal enlargement; and

WHEREAS, the Appellant asserts that no plans were filed with DOB for approval of the enlargement, which would not have been permitted pursuant to zoning regulations in effect at that time; and

WHEREAS, the Appellant asserts that the 1916 Zoning Resolution required a rear yard at the lowest level with a depth of at least ten percent of the depth of the lot, but not more than ten feet in depth and that 40 percent of the rear yard could be occupied by a building 18 feet above curb level; and

WHEREAS, the Appellant notes that since 1961, the Zoning Resolution has required a 30-ft. rear yard in residential zoning districts and therefore any residential enlargement within such rear yard would have been prohibited (ZR § 23-47); and

WHEREAS, however, the Appellant notes that the 1961 Zoning Resolution permitted a one-story community facility use not exceeding 23 feet in height as a permitted obstruction in the rear yard (ZR § 24-33 (b)) until 2009 when the ZR was amended to prohibit such obstruction beyond 100 feet of a wide street, any portion of a community facility building in a rear yard unless it is used for a “school, house of worship, college or university, or hospital and related facilities” (ZR § 24-33(b)(3)); and

WHEREAS, the Appellant relies on an Amendment K to the survey dated May 14, 1979 as evidence that the encroachment in the rear yard was constructed after the 1963 Certificate of Occupancy was issued; and

WHEREAS, the Appellant asserts that the second-story enlargement at the rear yard is not rendered legal by the fact that it was shown on the plans underlying the 1996 Certificate of Occupancy; and

WHEREAS, the Appellant cites to DOB job applications from 1905, 1922, 1948, a 1955 Sanborn Map, and a survey as amended from 1947-2007 as evidence that the Building’s rear enlargement occurred after 1961 when the zoning prohibited residential construction in the rear yard; and

WHEREAS, the Appellant asserts that historic documents reflect that there was only a two-story addition in the rear yard prior to 1961 and that after 1961, the zoning was amended to prohibit any further enlargements in the rear yard, and therefore the construction of the third story was illegal; and

WHEREAS, the Appellant makes the following assertions: (1) in 1905, the Building was enlarged with a one-story and basement extension in the rear yard, to a depth of 59 feet per a 1905 DOB job application; (2) in 1922, the two-story extension was extended horizontally toward the rear lot line resulting in a depth of 99 feet at the basement and first story, per a 1922 DOB job application; (3) the 1947 survey (the “Survey”) reflects a one-story and basement brick extension in the rear yard; (4) in 1948, there was “no change” to the size of the Building, as reflected on the 1948 Certificate of Occupancy; (5) the 1955 Sanborn Map shows a rear yard extension of only two stories; and (6) the 1979 survey amendment shows that between 1967 and 1979, a third story was added to the rear yard extension; and

WHEREAS, as to the authoritative weight to be given to the survey, the Appellant asserts that the Survey was prepared by a licensed surveyor and is the type upon which government agencies, licensed architects, and engineers rely; and

WHEREAS, the Appellant asserts that the Survey’s Amendment K reflects that between June 15, 1967 and May 15, 1979 the one-story and basement brick extension was enlarged to a two-story and basement brick extension and the building increased in height; and

WHEREAS, the Appellant asserts that such an increase in volume and height was prohibited by ZR §§ 23-44 and 23-47 after 1961; and

WHEREAS, on the point of legality, the Appellant concludes that the third story in the rear yard is illegal and thus the Building is not a non-complying building permitted to be demolished and reconstructed pursuant to ZR § 54-41; and

WHEREAS, the Appellant asserts that the 1996 Certificate of Occupancy is not dispositive as to the legality of the third story in part because since the Building was demolished, the Certificate of Occupancy issued in 1996 is no longer in effect and should have no relevance to DOB’s application of ZR § 54-41; and

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WHEREAS, the Appellant asserts that the rear ten feet of the third story of the building reflected in the plans underlying the 1996 Certificate of Occupancy was illegal under both the 1916 and 1961 zoning and could never have been lawfully built; and

WHEREAS, the Appellant finds that the Owners removal of that portion of the third story in its 2008 plans is an admission to its illegality; and

WHEREAS, as to the Appellant's claim that an illegal rear yard enlargement was constructed in violation of ZR § 24-33 sometime between 1963 and 1979, and is therefore not a lawful non-compliance, DOB finds that there is insufficient evidence to demonstrate the illegality of the rear yard enlargement; and

WHEREAS, DOB notes that the demolition and construction plans approved by DOB for the 1996 Certificate of Occupancy indicate the existence of a doctor's office and residential space in the required rear yard prior to the issuance of the 1996 Certificate of Occupancy; and

WHEREAS, DOB cites to New York City Charter Section 645(b)(3)(e), which requires that "every certificate of occupancy shall, unless and until set aside, vacated or modified by the board of standards and appeals or a court of competent jurisdiction, be and remain binding and conclusive on all agencies and officers of the city....;" and

WHEREAS, DOB contends that, since the 1996 Certificate of Occupancy has not been vacated or modified by the Board or a court of competent jurisdiction, DOB is unable to deem that the 1996 Certificate of Occupancy, which included plans indicating the existence of the rear yard enlargement, was issued in error; and

WHEREAS, DOB states that the Appellant's sole evidence that the rear yard enlargement is not a lawful non-compliance is the Survey containing notations from 1947 through 2007, including a visual examination dated May 14, 1979 labeled as "K," and based on DOB's review of the Survey, as well as the following records for the Building: a 1905 Job Application, a 1922 Job Application, a 1948 Job Application, a 1954 Building Notice, a 1955 Sanborn Map, a 1963 Alteration Job Application, the 1963 Certificate of Occupancy, the 1996 Certificate of Occupancy, and a 2005 Sanborn Map, it is unable to conclude that the rear yard enlargement was not constructed lawfully; and

WHEREAS, DOB states that it is also unable to conclude that the rear yard enlargement was not constructed lawfully because the Department records and additional information submitted by the Appellant do not contain enough information to sufficiently demonstrate when and at what heights the rear yard enlargement was constructed; and

WHEREAS, specifically, DOB states that the measurements and information included in the 1905 Job Application, the 1922 Job Application, the 1948 Job Application, the 1955 Sanborn Map, the 1963 Job Application, the 2005 Sanborn Map, and the Survey containing numerous notations from 1947 through 2007 do not provide the Department with sufficient evidence to reasonably and conclusively determine that the 1996 Certificate of Occupancy was issued in error; therefore,

pursuant to New York City Charter Section 645(b)(3)(e), the Department must abide by the lawfulness of the 1996 Certificate of Occupancy, which included the then-existing enlargement in the rear yard; and

WHEREAS, the Owner asserts that the Appellant has misread the requirements of the 1916 Zoning Resolution; specifically, the Owner asserts that as of the time of the 1948 Certificate of Occupancy, the Building was within a zoning district that required a rear yard at its lowest level that was not more than ten feet in depth and up to 40 percent of the yard could be occupied by a building 18 feet above curb level; and

WHEREAS, additionally, the Owner asserts that because the lot was back to back with another lot with a rear yard with insufficient depth, the depth of the rear yard was not required to be greater at any given level than the average depth of the rear yards directly back to back with it at such level; and

WHEREAS, the Owner asserts that the Union Club is directly behind the Building and is built to the lot line at its entire ground story which is as tall as the ceiling of the Building's second-story extension; and

WHEREAS, accordingly, the Owner asserts that there is not any merit to the contention that the extensions illegally encroached into a required rear yard; and

WHEREAS, the Owner rejects the Appellant's assertion that the Survey shows that the Building was illegally enlarged sometime after the enactment of the 1961 Zoning Resolution by the addition of a second story since the Appellant has no personal knowledge of these facts and rely solely upon a notation on an update of a survey of the Building from 1979; and

WHEREAS, the Owner asserts that there are certain conditions on the Survey known not to be accurate and that such discrepancies suggest that the various parties conducting the surveys may not have confirmed complete accuracy; and

WHEREAS, the Owner stated on record that the Survey itself is hearsay as the individuals who observed the site and made notations on the Survey are not present to speak to their contents, but acknowledges that the Board is not required to follow the Rules of Evidence and may consider such evidence; and

WHEREAS, the Owner asserts that there was physical evidence, documented in photographs, that the extension had existed in its current configuration prior to 1961 including the remainder of the fire escape system running from the roof of the second story; and

THE QUESTION OF STANDING

WHEREAS, the Owner asserts that the Appellant lacks standing to appear in opposition to the Owner's appeal or to pursue their own appeal since they cannot claim to have suffered any diminution in the value of their property as a result of the rebuilding; and

WHEREAS, the Owner cites to the Court of Appeals in Sun-Brite Car Wash, Inc. v. Board of Zoning and Appeals of the Town of North Hempstead, 69 N.Y.2d 406, 414 (1978) for the principle that "it is reasonable to assume that,

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when the use changes, a person with property located in the immediate vicinity of the subject property will be adversely affected in a way different from the community at large” and that an allegation of close proximity “may give rise to an inference of damage or injury;” and

WHEREAS, the Owner asserts that the Appellant cannot assert any such harm and that the status of neighbor does not in and of itself warrant standing, when there is not injury; and

WHEREAS, the Owner also asserts that the Appellant cannot attack the certificates of occupancy which are under the jurisdiction of DOB who possesses the sole authority to issue and seek revocation of certificates of occupancy; and

WHEREAS, the Owner asserts that members of the public, purchasers of property, and lenders may rely on the conditions of a building embodied in a certificate of occupancy as complying with law; and

WHEREAS, the Appellant contends that as the adjacent neighbor, it is aggrieved by non-complying and illegal construction at the site; and

WHEREAS, the Appellant cites to Sun-Brite Car Wash for the proposition that it is “affected in a way different from the community at large” due to its proximity to the construction which does not comply with zoning district regulations; and

CONCLUSION

WHEREAS, the Board is not persuaded by the Appellant’s assertions that (1) the Building is not a single-family home; (2) the reconstruction of the basement beneath the residential use increases the degree of non-compliance contrary to ZR § 54-41; and (3) the Building was illegally enlarged; and

WHEREAS, as to the classification of the Building, the Board agrees with the Owner and DOB that the Building is a single-family residence notwithstanding its former occupancy by a community facility use as well as a residence; and

WHEREAS, the Board agrees with the Owner that single-family residence and one-family residence have the same meaning; and

WHEREAS, the Board disagrees with DOB and does not find that there is a meaningful distinction between a “single-family residence” as defined at ZR § 12-10 and a “one-family residence” (as referenced at ZR § 54-41); and

WHEREAS, however, the Board agrees with DOB that the Building may be a single-family residence and also restricted by the provisions of ZR § 54-41 that only allow for the reconstruction of the Building’s “residence” (and not the entire Building) after the demolition of more than 75 percent of the Building’s floor area; and

WHEREAS, accordingly, the Board finds that ZR § 54-41’s allowance for the reconstruction of a residence within a one-family residence is warranted by the text and the intent of the Zoning Resolution with regard to single-family/one-family residences; and

WHEREAS, as to the portion of the Building to be reconstructed, the Board agrees with DOB’s position that the reconstruction of the area below the residential space

may be reconstructed as it does not increase the degree of non-compliance since the non-complying rear yard encroachment on the first and second stories establishes the extent of non-compliance and the rear yard is obstructed by the legal residential space both by footprint and by height; and

WHEREAS, as to the legality of the enlargement in the rear yard, the Board agrees with DOB and the Owner that there is not sufficient evidence to establish the illegality of the encroachment in the rear yard; and

WHEREAS, specifically, the Board finds the Appellant’s reference to historic DOB records to be inconclusive at best and finds that the 1955 Sanborn map is so imprecise that any clear understanding of what existed at that time based on it is illusory; and

WHEREAS, the Board agrees that the 1996 Certificate of Occupancy must be relied on until disturbed by DOB and that DOB appropriately asserts that it does not have any basis to question or seek to overturn it; and

WHEREAS, as to the Survey, the Board finds that it too is unclear and that it cannot form the basis to overturn the Certificate of Occupancy particularly in light of the fact that its drafters are not available to decipher the 60 years’ worth of notations and speak to what was actually observed at the site; and

WHEREAS, the Board accepts the Survey as an appropriate form of evidence but does not find that it alone can support the Appellant’s assertions as to illegality; and

WHEREAS, as to standing, the Board disagrees with the Owner and finds that the Appellant satisfies the requirements of an aggrieved party and does have standing to prosecute the appeal; however, the Board agrees with the Owner that the Appellant does not have standing to seek the revocation of the Certificate of Occupancy; and

WHEREAS, accordingly, the Board is not persuaded by the Appellant’s assertions that no portion of the enlargement in the rear yard can be reconstructed; and

Therefore it is resolved that, based upon the conclusions stated above, the Board denies the appeal seeking a reversal of the Final Determination of the Department of Buildings, dated January 6, 2012.

Adopted by the Board of Standards and Appeals, May 15, 2012.

27-12-A

APPLICANT – Greenberg Traurig, LLP, for F.B. Capital, LLC, owner.

SUBJECT – Application February 6, 2012 – Appeal challenging a determination by the Department of Buildings that more than 75 percent of the floor area was demolished and the building was not a single-family home so that reconstruction of the non-complying building was not permitted pursuant to ZR §54-41. R8B (LH-1A) Zoning District.

PREMISES AFFECTED – 110 East 70th Street, north side of East 70th Street, 125’ east of Park Avenue and 260’ west of Lexington Avenue, Block 1404, Lot 67, Borough of

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Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Deirdre Carson.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

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

Absent: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to the determination of the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated January 6, 2012 (the “Final Determination”), to uphold its Intent to Revoke Approval and Permit Letter associated with Permit No. 110169406 (the “Permit”), for the construction of a building at the subject site (the “Building”); and

WHEREAS, the Final Determination reads, in pertinent part:

The Department has reviewed the information you provided and, as further described below, has determined that you have not sufficiently demonstrated that Objection 1, 2, and 4 should be removed.

The Department has determined that Objection Nos. 1, 2, and 4 should not be removed because the plans filed with the Job Application are not in compliance with Section 54-41 of the Zoning Resolution (the “ZR”). Certificate of Occupancy No. 110596 states that the building contained a Use Group 2 one-family residence and a Use Group 4 community facility medical office. The building was non-complying because the medical office and a portion of the residence were located in the required rear yard of the Premises and exceeded lot coverage limitation. The building contained a one family “residence” and therefore, only the residential portion of the building may be reconstructed per Section 54-41 of the ZR, given that more than 75% of the building was demolished.

Per Section 54-41 of the ZR, a one family “residence” may be reconstructed provided that the reconstruction does not create a new non-compliance or increase the pre-existing degree of non-compliance with the applicable bulk regulations. Per Section 12-10 of the ZR, a “residence” is one or more dwelling units including common spaces. Therefore, the portion

of the building containing the Use Group 2 “residence” may be reconstructed but the portion of the building containing the Use Group 4 medical office cannot be reconstructed pursuant to Section 54-41 of the ZR. However, such space may be constructed to the extent permitted by the underlying district regulations and used for any use permitted in the zoning district.

Although the objections cannot be removed, in compliance with a Temporary Restraining Order entered on December 22, 2011 by the Honorable Eileen A. Rakower in *FB Capital, Inc. v. NYC Department of Buildings and Robert L. LiMandri*, Index No. 1114312/11, the Department is not, at this time, revoking the Permit; and

WHEREAS a public hearing was held on this application on April 3, 2012, after due notice by publication in *The City Record*, and then to decision on May 15, 2012; and

WHEREAS, this appeal is brought on behalf of the owners of the subject property (the “Appellant”); and

WHEREAS, a separate appeal application was filed by the owners of 112 East 70th Street (the “Adjacent Neighbor”) and was heard concurrently and decided on the same day, pursuant to BSA Cal. No. 25-12-A; and

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

WHEREAS, the subject site is located on the south side of East 70th Street, between Park Avenue and Lexington Avenue, within an R8B zoning district within Limited Height District 1A; and

WHEREAS, the subject site has a width of 19’-10”, a depth of 100’-5”, and a total lot area of approximately 1,991.6 sq. ft.; and

WHEREAS, the site is occupied by a five-story (including penthouse) building with a basement, a cellar, and a sub-cellar; and

WHEREAS, the Building has the following parameters: a total floor area of 7,536 sq. ft. (3.78 FAR), with 6,406 sq. ft. of residential floor area and 1,130 sq. ft. of community facility (doctor’s office) floor area, a lot coverage of 84 percent, and a total height of 60’-0”; and

WHEREAS, a three-story portion of the Building (portions of the basement, first floor, and second floor) encroaches into the required 30’-0” rear yard to varying degrees; an L-shaped portion of the basement designated for doctor’s office use encroaches a total of approximately 395.6 sq. ft. into the rear yard, including a 110 sq. ft. one-story portion at the northeast corner of the basement; an approximately 9’-2” by 30’-0” portion of the first floor encroaches into the rear yard; and an approximately 9’-2” by 21’-7” portion of the second floor encroaches into the rear yard; and

WHEREAS, the Building was issued Certificate of Occupancy No. 110596 on December 3, 1996, which states:

Cellar – Boiler Room, Storage

Basement – Comm. – Doctor’s Office, Res. – Entry

1 (Footnote from the original) In your December 19, 2011 letter you also indicate that Objection No. 3 has been resolved with a filing of a Post Approval Amendment (“PAA”). As of the date of this letter, this Objection has not been resolved because the Department has not reviewed the PAA and an appointment has not yet been made with the Department to address the Objection.

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Hall to Dwelling Above

1st Floor – Res. – ¼ Dwelling Unit

2nd Floor – Res. – ¼ Dwelling Unit

3rd Floor – Res. – ¼ Dwelling Unit

4th Floor – Res. – ¼ Dwelling Unit

One (1) Family Dwelling; and

WHEREAS, at the time of the issuance of the Certificate of Occupancy, the doctor's office and a portion of the residential use were located within the 30-ft. rear yard; at that time, a doctor's office was a permitted encroachment into the required rear yard, but zoning text changes have rendered the encroachment non-complying; and

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

WHEREAS, the Adjacent Neighbor provided testimony in opposition to this appeal; and

PROCEDURAL HISTORY

WHEREAS, in May 2008, the Appellant filed an Alteration Type 1 application (No. 110169406) to renovate the Building and to change the doctor's office use on the basement floor to residential use; and

WHEREAS, on April 20, 2009, DOB approved the Alteration Type 1 application and on May 8, 2009 issued the Permit; and

WHEREAS, subsequently, the Appellant filed and DOB approved post approval amendments and other construction requirements; and

WHEREAS, during the following months and years, DOB received several complaints from the Adjacent Neighbor stating that the project did not comply with zoning regulations, which led DOB to audit the plans and at various times revoke the permits, issue stop work orders, and rescind same; and

WHEREAS, on December 6, 2011, DOB issued a notice of intent to revoke with a final version of audit objections, which state that (1) only the residential portion of the building may be reconstructed given that 75 percent of the building was demolished (ZR § 54-41), (2) construction of a community facility in the rear yard is not a permitted obstruction, (3) demonstrate that a change of use from doctor's office to residential use complies with ZR regulations for change of use and bulk (ZR § 24-33), and (4) the proposed lot coverage exceeds 70 percent, contrary to ZR § 24-11; and

WHEREAS, the Appellant demolished the majority of the Building and reconstructed it with the same non-complying conditions that existed prior to the demolition, which include the one- and three-story encroachments into the required 30-ft. rear yard and lot coverage in excess of what is permitted by zoning district regulations; and

WHEREAS, the Appellant seeks to maintain the entire Building with all non-complying conditions, which it asserts are legally non-complying and were reconstructed pursuant to the provisions set forth at ZR § 54-41; and

WHEREAS, the Appellant states that it would have preferred residential use on the basement level but that DOB only identified the issue of the increase in the degree of non-

compliance of the Building's court after the extension was demolished, and required the return to a doctor's office use so that the Appellant could retain the envelope of the building already approved and permitted; and

WHEREAS, after DOB issued audit objections which form the basis of the Final Determination, the Appellant brought a proceeding in New York State Supreme Court entitled Matter of FB Capital v. New York City Department of Buildings, Index No. 114312/11 to prevent DOB from revoking the building permits for the portion of the application related to the residence and requiring it to continue inspections and issue a Temporary Certificate of Occupancy; and

WHEREAS, the court issued a temporary restraining order preventing DOB from revoking the permits pending decision on the merits of the petition; and

WHEREAS, the Appellant asserts that the Building has been constructed as follows: the 395.6 sq. ft. of basement level includes approximately 285.6 sq. ft. beneath the residential portion of the Building constructed in 1922 and 110 sq. ft. in a separate one-story portion constructed in 1996 (when zoning allowed for doctor's office use to encroach into the rear yard and such encroachment would have been complying); and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR Section 11-338

Building permits issued before February 2, 2011
If a building permit has been lawfully issued on or before February 2, 2011, authorizing "other construction" as set forth in paragraph (c)(3) of Section 11-31 (General Provisions), construction pursuant to such permit may continue pursuant to the regulations governing such construction prior to the adoption of N110090(A) ZRY (Key Terms Clarification zoning text amendment) until February 2, 2012.

However, this Section shall not apply to "other construction" subject to Sections 23-692 (Height limitations for narrow buildings or enlargements) or 109-124 (Height and setback regulations).

* * *

ZR Section 12-10

Residence, or residential (italicized text adopted on 9/9/04, subsequently amended as reflected in the non-italicized text below)

A "residence" is a #building# or part of a #building# containing #dwelling units# or #rooming units#, including one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels#. However, #residences# do not include:

(a) such transient accommodations as #transient hotels#, #motels# or #tourist cabins#, or #trailer camps#;

(b) #non-profit hospital staff dwellings#; or

(c) student dormitories, fraternity or sorority student houses, monasteries or convents, sanitariums, nursing homes, or other living

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or sleeping accommodations in #community facility buildings# or portions of #buildings# used for #community facility uses#.

- (d) in a #mixed building#, that part of the #building# used for any non-#residential uses#, except #accessory# to #residential uses#.

"Residential" means pertaining to a #residence#.

* * *

Residence, or residential (as amended on 2/2/11) A "residence" is one or more #dwelling units# or #rooming units#, including common spaces such as hallways, lobbies, stairways, laundry facilities, recreation areas or storage areas. A #residence# may, for example, consist of one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels#. However, #residences# do not include:

- (a) such transient accommodations as #transient hotels#, #motels# or #tourist cabins#, or #trailer camps#;
- (b) #non-profit hospital staff dwellings#; or
- (c) student dormitories, fraternity or sorority student houses, monasteries or convents, sanitariums, nursing homes, or other living or sleeping accommodations in #community facility buildings# or portions of #buildings# used for #community facility uses#.

"Residential" means pertaining to a #residence#.

* * *

Single-family residence (2/2/11)

A "single-family residence" is a #building# containing only one #dwelling unit#, and occupied by only one #family#.

* * *

ZR Section 54-41

Permitted Reconstruction

If a #non-complying building or other structure# is damaged or destroyed by any means, including any demolition as set forth in this Section, to the extent of 75 percent or more of its total #floor area#, such #building# may be reconstructed only in accordance with the applicable district #bulk# regulations, except in the case of a one- or #two-family residence#, such #residence# may be reconstructed provided that such reconstruction shall not create a new #non-compliance# nor increase the pre-existing degree of #non-compliance# with the applicable #bulk# regulations. If the extent of such damage or destruction is less than 75 percent, a #non-complying building# may be reconstructed provided that such reconstruction shall not create a new #non-compliance# nor increase the pre-existing degree of #non-compliance# with the applicable #bulk# regulations; and

THE ISSUES ON APPEAL

WHEREAS, the Appellant seeks for the Board to

review the DOB interpretations which form the basis for its Final Determination and have led to the revocation of the Permit and DOB's refusal to issue a certificate of occupancy for the Building; and

WHEREAS, the Appellant's primary challenges are to DOB's conclusion that (1) the Building cannot be reconstructed in its entirety and only the portion of the Building formerly occupied by residential use or beneath residential use can be reconstructed within the meaning of ZR § 54-41 because the Building included a non-residential use, (2) the definition of residence limits the portions of the Building that can be reconstructed, and (3) more than 75 percent of the Building's floor area was demolished as contemplated by ZR § 54-41 and, thus, the Building in its entirety cannot be reconstructed; and

I. THE CLASSIFICATION OF THE BUILDING

WHEREAS, the Appellant's position is that the entire Building is a one-family residence and may be demolished to the extent of 75 percent or more of its total floor area and reconstructed under the provisions of ZR § 54-41; and

WHEREAS, the Appellant asserts that ZR § 54-41 allows for one- and two-family homes to be entirely demolished and rebuilt; and

WHEREAS, the Appellant asserts that the Building in its entirety is a one-family residence within the meaning of ZR § 54-41 and, thus, both the portions that are identified as residential on the 1996 Certificate of Occupancy and the portions identified as community facility on the 1996 Certificate of Occupancy can be rebuilt in full; and

WHEREAS, the Appellant asserts that a one-family residence (the term used at ZR § 54-41) and a single-family residence (a term defined at ZR § 12-10) have the same meaning and include the entire Building; and

WHEREAS, the Appellant asserts that multiple City agencies have characterized the Building as a one-family residence; it was built as and occupied as a one- or two-family residence until 1963; and the relevant ZR definitions in effect at the time of the 2009 application approval support the conclusion that the entire Building is a one-family residence, with a doctor's office; and

WHEREAS, the Appellant asserts that the doctor's office in the basement represents less than 15 percent of the floor area in the Building and the portion of the doctor's office in the rear yard represents 395.6 sq. ft. of floor area; and

WHEREAS, the Appellant relies on the 1996 Certificate of Occupancy and the text of the ZR, both as it existed at the time of the Permit issuance and since the Key Terms Clarification Text Amendments were adopted on February 2, 2011; and

WHEREAS, as to the 1996 Certificate of Occupancy, the Appellant states that it notes that the Building is a "ONE (1) FAMILY DWELLING;" and

WHEREAS, the Appellant asserts that the Certificate of Occupancy characterization is binding on DOB pursuant to New York City Charter § 645(b)(3)(e) and that buildings in the vicinity of the site with a similar mix of uses are identified as one- or two-family dwellings; and

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WHEREAS, the Appellant states that the ZR does not define the term “one-family residence” used in ZR § 54-41; and

WHEREAS, instead, the Appellant refers to the Zoning Resolution definition of “residence, single-family” in effect at the time of the Permit’s issuance as “a ‘building’ containing only one ‘dwelling unit,’ and occupied by only one ‘family;’” and

WHEREAS, the Appellant asserts that the word “only” modifies the adjective “one” rather than the verbs “containing” and “occupied” such that a single-family residence may contain uses other than a dwelling unit occupied by one family as only the number of dwelling units and families is limited by the word “only;” and

WHEREAS, the Appellant asserts that there is ambiguity associated with the term “one-family residence” and that the ambiguity must be resolved in favor of the property owner; and

WHEREAS, the Appellant asserts that there is a clear legislative intention of favoring homeowners evident in ZR § 54-41 as well as the principle that the ZR be construed in favor of the property owner. See, e.g. Matter of Toys “R” Us v. Silva, 89 N.Y.2d 411, 421 (1996); and Matter of Allen v. Adami, 39 N.Y.2d 275, 277 (1976); and

WHEREAS, accordingly, the Appellant asserts that it proposes to occupy the Building as a one-family residence within the meaning of ZR § 54-41, the Building was appropriately reconstructed after demolition, and the Board should thus grant the appeal and vacate the Final Determination; and

WHEREAS, DOB’s position is that although the Building meets the ZR § 12-10 definition of “single-family residence” (unchanged by the Key Terms Text Amendments), it does not meet the definition of one-family residence within the context of ZR § 54-41 to the extent that the whole Building is not permitted to be reconstructed, but only the portion containing the “residence;” and

WHEREAS, DOB asserts that based on the language of ZR § 54-41, and the definitions of “residence” and “dwelling unit,” only the portion of the building containing the “residence” that is the “dwelling unit” including common spaces may be reconstructed; and

WHEREAS, DOB asserts that the one-story non-complying portion of the Building formerly occupied by the doctor’s office and located in the required rear yard may not be reconstructed because ZR § 54-41 only permits reconstruction of the residential portion of the one-family residence and because it is a community facility, not a “dwelling unit,” and therefore, not a “residence”; and

WHEREAS, DOB notes that the one-story portion of the Building formerly occupied by the doctor’s office and within the required rear yard is non-compliant because pursuant to ZR § 24-33, the doctor’s office is not a permitted obstruction in the required rear yard and the portion of the Building occupied by residential use within the required rear yard became non-compliant because a “residence” is not a permitted obstruction pursuant to ZR § 23-44; and

WHEREAS, DOB states that the space formerly

occupied by the doctor’s office below the “residence” may be reconstructed since the construction in that space would not increase the existing degree of non-compliance; and

WHEREAS, DOB asserts that the residential exception in ZR § 54-41 does not apply to the building containing “such ‘residence’” but rather to the “residence” (dwelling units) within the building; and

WHEREAS, DOB asserts that if the intent were for the whole building to be covered by the exception, the text would state that such *building* may be reconstructed rather than that such *residence* may be reconstructed; and

WHEREAS, DOB states that to allow for reconstruction of an entire non-complying building just because it contained one dwelling unit is contrary to the intent and could lead to absurd results; and

WHEREAS, DOB asserts that it has always applied the ZR § 12-10 definition of residence to refer only to the residential use within a building and not to include residential use and other uses such as community facility uses, commercial uses, or manufacturing uses; and

WHEREAS, DOB states that the words “or part of a ‘building’” in the pre-Key Terms definition of residence are used to describe a building with multiple uses and used to identify that only those “part(s) of a building” with dwelling units should be considered a “residence”; and

WHEREAS, DOB asserts that there would not be any purpose to include the term “part of a ‘building’” in the definition of “residence” if, as the Appellant argues, the term “residence” were to refer to the entire building no matter which additional uses were located in the building; and

WHEREAS, DOB concludes that the Appellant must amend its plans to remove the basement level portion of the community facility in the required rear yard that consists of the one-story doctor’s office which is not located beneath the non-complying residential portion of the Building (approximately 110 sq. ft.) and the plans must be amended to either replace the community facility portion of the Building beneath the non-complying residential space with residential use or reconstruct that portion of the building to the extent permitted by district bulk regulations; and

WHEREAS, DOB states that to the extent the residential space at the first and second floors may be reconstructed as non-complying residential space in the rear yard, residential space may also be located beneath such non-complying space without creating a new non-compliance or increasing the degree of non-compliance; and

WHEREAS, DOB states that if the Appellant removes the one-story portion of the Building and amends its plans to indicate that the portion of the Building in the required rear yard at basement level beneath the non-complying residential space would be constructed as residential space, it could approve the plans and lift the zoning objections; and

WHEREAS, the Adjacent Neighbor’s position is that the reconstruction provisions of ZR § 54-41 do not apply since the Building is a mixed residence and community facility building, rather than a single-family residence, and it was demolished in excess of 75 percent; and

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WHEREAS, the Adjacent Neighbor contends that because the Building was occupied by two uses – residential and community facility – it is not a single-family residence and cannot benefit from the more permissive reconstruction provisions of ZR § 54-41 applicable to single-family residences and, thus, can only be constructed in full compliance with current zoning regulations; and

WHEREAS, the Adjacent Neighbor asserts that the Building does not meet a clear and unambiguous definition of “single-family residence” because it includes a community facility; and

WHEREAS, accordingly, the Adjacent Neighbor asserts that the Building can only be reconstructed in accordance with the bulk regulations for a new building in the underlying R8B zoning district; and

WHEREAS, the Adjacent Neighbor asserts that ZR § 12-10 defines “single-family residence” as a building that contains *only* one dwelling unit (to the exclusion of other uses) and *only* one family (to the exclusion of other occupants) and that the “only” modifies “containing” and “occupied”; and

WHEREAS, the Adjacent Neighbor states that the Appellant’s interpretation of “single-family residence” to include buildings with multiple uses would lead to absurd results such as the identification of a largely commercial building with a single dwelling unit as constituting a “single-family residence” eligible for the favorable reconstruction exception set forth at ZR § 54-41; and

WHEREAS, the Adjacent Neighbor’s position is that allowing the reconstruction of the non-complying portion of the Building formerly occupied by the doctor’s office to be occupied by any use will increase the degree of non-compliance in the rear yard, contrary to ZR §§ 54-41 and 23-44; and

WHEREAS, the Adjacent Neighbor asserts that allowing for reconstruction of the basement would allow for an obstruction at the basement level in addition to the obstructions on the residential second and third floors, which reflects an increased degree of non-compliance over just rebuilding the second and third floors and leaving the basement level open; and

II. DEFINITION OF RESIDENCE

WHEREAS, the Appellant cites to the ZR § 54-41 text that states “except in the case of a one- or ‘two-family residence’ such ‘residence’ may be reconstructed” and asserts that the “such ‘residence’” refers back to the whole one- (or two-) family residence which may, accordingly, be reconstructed in its entirety; and

WHEREAS, the Appellant asserts that not only does “such ‘residence’” mean the entire building but that “residence,” as defined at ZR § 12-10 also is interpreted to include the entire building; and

WHEREAS, the Appellant asserts that the definition in effect at the time the Permit was issued supports its more inclusive reading of “residence;” and

WHEREAS, the Appellant notes that on February 2, 2011, the ZR was amended through the Key Terms Clarification Text Amendment and the definition of

residence at ZR § 12-10 was amended to state that a residence is “one or more dwelling units”; and

WHEREAS, the Appellant asserts that DOB acted inappropriately by applying the February 2, 2011 definition of residence to its interpretation of “such ‘residence’” in ZR § 54-41; and

WHEREAS, the Appellant asserts that the meaning of the old definition and the new definition are different as the new definition isolates the dwelling unit component of the building from the rest of the building where the prior definition does not; and

WHEREAS, the Appellant cites to ZR § 11-338 which states that if a building permit was issued on or before February 2, 2011 authorizing “other construction,” the construction may continue under the old regulations until February 2, 2012 and, thus DOB should not use a provision of law not yet applicable to characterize the alteration of the Building as illegal; and

WHEREAS, the Appellant maintains that ZR § 11-338 grandfathers construction that was permitted under the pre-amendment regulations and disagrees with DOB’s assertion that because the definition of “residence” is identified as a “modification” on City Planning’s table associated with the amendments, rather than a “clarification,” the Appellant may not rely on the pre-existing ZR text where it was inconsistent with DOB “interpretation and practice;” and

WHEREAS, the Appellant asserts that the pre-amendment text is relevant because: (1) DOB approved the plans which were clear on their face and there is no evidence of DOB interpretation or practice that is inconsistent with the prior text; (2) ZR § 11-338 does not distinguish among the amendments and does not say that applicants may only rely on the regulations that are clarifications and not modifications; and (3) DOB’s assertion that the change was a modification, rather than a clarification suggests that there was formerly a different meaning; and

WHEREAS, the Appellant also asserts that the need to modify or clarify the definition of “residence,” suggests that there was a recognition that the definition was unclear and ambiguous; and

WHEREAS, the Appellant represents that it filed for a certificate of occupancy on December 20, 2011 and that DOB rejected its application, in part based on the current definitions, on January 6, 2012; and

WHEREAS, the Appellant asserts that the definition of “single-family residence” remains unchanged but that “residential building” has been changed to include that a “residential building is a building used only for a residential use;” and

WHEREAS, the Appellant asserts that if it had been intended that the definition of “single-family residence” be limited to buildings containing only residential uses, then the Key Terms Text would have included an amendment of the single family residence definition to state that a single family residence is a “residential building” only containing one dwelling unit and only occupied by one family; and

WHEREAS, DOB cites to the definitions of “residence” and “dwelling unit” in effect as of February 2,

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2011; and

WHEREAS, DOB asserts that it properly invokes the Key Terms Text Amendment definitions since the purpose of the amendment was to clarify the intent of the ZR in relation to the terms “development” and “building” and its purpose includes that “the definition of ‘residence, or residential,’ will be modified to specify that it is one or more dwelling units, and includes ‘common spaces such as hallways, lobbies, stairways, laundry facilities, recreation areas or storage areas.’ Paragraph (d) will be deleted as redundant;” and

WHEREAS, accordingly, DOB asserts that the amendment was not a substantive change to the definition but rather a clarification and modification to make the wording of the definition of “residence,” among others, consistent with DOB’s interpretation and practice; and

WHEREAS, however, DOB asserts that the use of the Key Terms definition of “residence” is proper because it does not reflect a substantive change to the meaning that DOB has always used for “residence;” and

WHEREAS, DOB asserts that the Key Terms definition clarifies how DOB has always interpreted the definition of “residence” to mean dwelling units and common spaces; and

WHEREAS, in the alternate, DOB asserts that the pre-amendment definition of “residence” does not support the Appellant’s claim that the entire Building should be classified as a one-family “residence;” and

WHEREAS, by letter dated April 26, 2012, the Department of City Planning (DCP) states that it supports DOB’s response to the Appellant and agrees with DOB’s interpretation of the meaning of ZR § 54-41’s reference to “residence;” and

WHEREAS, specifically, DCP states that “such ‘residence’” as used in ZR § 54-41 refers to the residential portion of a building that contains one or more dwelling units; and

WHEREAS, DCP states that prior to the Key Terms Text Amendment, the definition of “residence” referred to dwelling units or rooming units and following the amendment, the definition of “residence” was modified to include common spaces such as hallways and lobbies; and

WHEREAS, DCP asserts that the purpose of the change was to clarify that the common areas of a residential building are considered residential and that the change was not substantive as it was consistent with DOB’s prior interpretations and practices; and

WHEREAS, DCP states that its reading is consistent with the intent of ZR § 54-41 to grant individual home owners a special exception to the general prohibition upon reconstruction of non-complying buildings which have been damaged or destroyed in excess of 75 percent of the floor area; and

WHEREAS, DCP asserts that a public policy goal is served by allowing owners of one- and two-family homes to reconstruct their dwelling space and that such public policy does not logically extend to the reconstruction of non-complying non-residential space; and

WHEREAS, accordingly, DCP concludes that ZR § 54-41 only allows for the reconstruction of non-complying portions of one- and two-family residences occupied by dwelling units and not non-residential uses; and

WHEREAS, the Appellant disagrees with DOB and DCP that the reference to “such ‘residence’” in ZR § 54-41 refers only to the dwelling units in the one- or two-family residence since “residence” is a defined term and not synonymous with “dwelling unit;” and

WHEREAS, the Appellant asserts that the definition of residence is intended to reference entire buildings rather than just the dwelling unit components as evidenced by the inclusion of the language “including one-family and two-family houses, multiple dwellings, boarding or rooming houses, or apartment hotels,” all of which are “buildings” that may contain not only residences but other uses; and

WHEREAS, the Appellant disagrees with DOB and DCP and asserts that the new definition of residence reflects a material change from the old definition because the original definition requires the consideration of a building and the new definition does not address buildings, but rather dwelling units; and

WHEREAS, the Appellant compares the beginning of the original definition:

A “residence” is a *building* or a part of a *building* containing *dwelling units* or *rooming units*, including one-family or two-family houses, multiple dwellings, boarding or rooming houses or *apartment hotels*

With the beginning of the new definition:

A “residence” is one or more *dwelling units* or *rooming units*, including common spaces such as hallways, lobbies, stairways, laundry facilities, recreation or storage areas; and

WHEREAS, the Appellant asserts that the purpose of the amendment was to remove the reference to “buildings” in the definition of “residence” and to redirect the focus to dwelling units and that reflects a material change of language and meaning; and

WHEREAS, the Appellant asserts that the fact that DOB did not raise the issue with the Appellant earlier including through the plan audit process, reflects its position that the text is not clear or self-evident and DOB has not had a consistent approach to the question of what constitutes a residence for the purposes of the exception set forth at ZR § 54-41; and

WHEREAS, the Appellant concludes that since zoning regulations are in derogation of common law property rights, they must be interpreted in the light most favorable to the property owner particularly since the fact that the modification to the text confirms that the text was ambiguous and subject to misapplication in its pre-2011 form; and

III. THE EXTENT OF DEMOLITION

WHEREAS, the Appellant’s position is that the Building was not demolished to an extent of 75 percent or more at any one time and, thus, can be reconstructed in its entirety pursuant to ZR § 54-41; and

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WHEREAS, as to the extent of demolition, the Appellant asserts that at no time during demolition was more than 75 percent of the Building's floor area removed and that all floor area that was removed was replaced in its original location; and

WHEREAS, the Appellant asserts that the language of ZR § 54-41 is vague and imprecise as to what constitutes "damage or destruction" and over what period of time the owner's right to rebuild will be divested; and

WHEREAS, the Appellant asserts that all of its construction was performed within the historic building envelope and involved replacement of historic building materials with modern equivalents and that at no time was the aggregate floor area demolished to more than 72.5 percent of the Building's total floor area; and

WHEREAS, the Appellant asserts that the absence of direction on the timing parameters of demolition allows for a demolition sequencing like what was performed; and

WHEREAS, the Appellant asserts that an interpretation of ZR § 54-41 which does not allow for phased demolition leads to a harsh result; and

WHEREAS, the Appellant asserts that DOB has interpreted ZR § 54-41 to allow for phased demolition and has provided examples to support the assertion that DOB has allowed greater than 75 percent demolition at other sites; and

WHEREAS, the Appellant asserts that it relied on DOB's examination and approval of the plans that detailed the scope of the demolition and its sequence and asserts that DOB concluded that the proposal was consistent with ZR § 54-41; and

WHEREAS, the Appellant asserts that ZR § 54-41 is vague as to whether demolition is cumulative over time or has some other meaning and that such vagueness is potentially unconstitutional; and

WHEREAS, accordingly, the Appellant asserts that, because less than 75 percent of the Building was demolished at any one time, the whole non-complying Building may be reconstructed; and

WHEREAS, DOB's position is that the Building was demolished to an extent of 75 percent or more; and

WHEREAS, DOB asserts that the limitation set forth in ZR § 54-41 that demolition can not exceed 75 percent or more of the floor area of a non-complying building would be rendered meaningless if property owners could avoid it simply by phasing development as the Appellant suggests; and

WHEREAS, DOB states that the plans filed with the job application indicate that approximately 90 percent of the total floor area of the Building would be demolished and, thus, the Appellant's assertion that the requirements of ZR § 54-41 are not applicable because only 72.5 percent of the Building's total floor area was demolished at any one moment is without merit since the plans filed indicate almost a complete demolition of the total floor area of the non-complying Building; and

WHEREAS, DOB rejects the Appellant's assertion that the type of damage or destruction contemplated by ZR §

54-41 is not tied to the reconstruction in-kind of the Building but rather to the rearrangement of floor area in an altered building; DOB relies on the plain meaning of ZR § 54-41 which specifically includes demolition work as a type of "destruction" and specifically uses the ZR term "floor area" to measure what must be demolished to trigger the limits; and

WHEREAS, DOB asserts that the ZR does not make any distinction between demolition and replacement in-kind and demolition that involves the rearrangement of floor area; and

WHEREAS, the Adjacent Neighbor asserts that more than 75 percent of floor area was demolished pursuant to a single DOB job application and therefore the Building may be reconstructed only in accordance with the current bulk regulations, regardless of whether demolition was phased; and

WHEREAS, the Adjacent Neighbor asserts that the Appellant demolished 92 percent of the Building's floor area pursuant to a single DOB job application and therefore "may be reconstructed only in accordance with the applicable district bulk regulations" pursuant to ZR § 54-41; and

THE BOARD'S ANALYSES

WHEREAS, the Board has carefully considered all arguments provided into the record; and

WHEREAS, as to the first issue regarding the classification of the Building, the Board agrees with the Appellant's and DOB's position that the Building is a single-family residence which is a building in its entirety that contains only one dwelling unit or is occupied by only one family but may contain or be occupied by other uses; and

WHEREAS, the Board agrees with the Appellant's position that the reference to a one-family residence in ZR § 54-41, has no material difference from a single-family residence and that while a one-family residence is not a defined term, it is interchangeable with the definition of a single-family residence; and

WHEREAS, the Board notes that throughout the ZR, there are several references to "one- or two-family residences" and/or "single- or two-family residences"; further that two-family residence (unlike one-family residence) is a defined term that parallels the definition of single-family residence; and

WHEREAS, the Board further notes that there is no rational basis to distinguish between single-family residence and a one-family residence under ZR § 54-41, particularly since the provisions also apply to a two-family residence; and

WHEREAS, the Board concludes that the Building in its entirety is both a single-family residence and one-family residence under the meaning of ZR § 54-41; and

WHEREAS, as to the second issue regarding the definition of residence, as a threshold matter, the Board is not persuaded by DCP and DOB's assertion that the applicable definition of "residence" is the current post-Key Terms Text Amendment definition; and

WHEREAS, the Board agrees with the Appellant that

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ZR § 11-338 does not make a distinction between clarifications and modifications and simply sets forth that if the permit was issued prior to February 2, 2011 and construction was completed prior to February 2, 2012, the permit may continue pursuant to the prior regulations; and

WHEREAS, accordingly, the Board finds that since the Permit was issued prior to February 3, 2011 and construction was completed prior to February 2, 2012, it is appropriate to apply the pre-Key Terms Text Amendment definition of “residence;” and

WHEREAS, however, the Board agrees with DOB that neither the 2004 nor 2011 definition of “residence” supports the Appellant’s conclusion that ZR § 54-41 allows for the entire Building, rather than just the residence, to be reconstructed; and

WHEREAS, as to the ZR § 12-10 definition of “residence,” the Board recognizes the Department of City Planning (DCP) as the drafters of and authority on the Zoning Resolution and agrees with DCP and DOB that the text is appropriately read to give distinct meanings to “a building” or “part of a building” and that statutory interpretation principles require that there be meaning to all words in the statute; and

WHEREAS, the Board finds that if it were to accept the Appellant’s assertion that a building only partially occupied by a residential use is a residence then there is no meaning for “or part of a building containing dwelling units” within the definition; and

WHEREAS, the Board concludes that the portion of the definition that more closely fits the Building is “part of a building containing dwelling units” rather than that it is a building (which partially contains dwelling units and partially contains community facility use); and

WHEREAS, the Board notes that within the definition of residence, there are two other references to portions/parts of the building: at paragraphs (c) and (d) and those both have meaning as well; for example at paragraph (c) a distinction is made between community facility buildings and portions of buildings used for community facility uses such that a building with only a portion of it occupied by community facility uses is not a community facility building or there would be no reason to identify the two kinds of buildings (community facility buildings and buildings with portions that contain community facility use); and

WHEREAS, similarly, the Board notes that in paragraph (d), mixed buildings are divided into sections that include the part used for residential purposes and the part used for non-residential purposes; and

WHEREAS, the Board notes that the definition has three references to portions/parts of buildings, so it seems clear that there is meaning to the distinct uses that occupy portions of a building and that the building and the portion of the building used for a particular use are not interchangeable; and

WHEREAS, because the Board finds that only the portion of the Building occupied by residential use is a “residence” for the purposes of applying ZR § 54-41, only those portions of the Building may be reconstructed once

more than 75 percent of the Building has been demolished; and

WHEREAS, as to the third issue regarding whether 75 percent or more was demolished: the Board agrees with DOB that ZR § 54-41 does not contemplate phased construction as the Appellant suggests and that because more than 75 percent of the Building was demolished, only the residence can be reconstructed; and

WHEREAS, the Board is not persuaded that the Appellant’s two examples of DOB construction approvals reflect a practice of interpreting ZR § 54-41 to allow phased construction; and

WHEREAS, the Board agrees with DOB that the 75 percent limit would not have any meaning if property owners, particularly within a single job application and pursuant to a single permit, were able to avoid the restriction simply by phasing construction; and

WHEREAS, further, the Board notes that it is difficult to communicate such phased development on building plans or to enforce it out in the field; and

CONCLUSION

WHEREAS, the Board notes that, in the end, the only element of the Building upon which the Appellant and DOB disagree is whether the 110 sq. ft. one-story encroachment in the rear yard is permitted pursuant to the terms of ZR § 54-41 and can remain; and

WHEREAS, the Board notes that although there are several other matters that the Appellant and DOB dispute, those matters do not affect the outcome of the Building except with regards to the one-story encroachment; and

WHEREAS, the Board agrees with DOB that a modification of the Building to reflect (1) the removal of the 110 sq. ft. one-story encroachment in the rear yard formerly occupied by community facility use and (2) a residential use within the portion of the basement beneath the two-story encroachment in the rear yard reflects construction that is consistent with the restrictions of ZR § 54-41; and

WHEREAS, the Board agrees with DOB that the one-story portion of the Building formerly occupied only by the doctor’s office should not have been reconstructed since: (1) it is not a residence and (2) its construction increases the degree of non-compliance as to encroachment in the rear yard and lot coverage; and

WHEREAS, the Board concludes that the portion of the basement below the first- and second-story residential use can be reconstructed since it does not increase the degree of non-compliance because the first and second story establish a greater degree of non-compliance, given their height above grade, than the basement (which is within the footprint of the first story); and

WHEREAS, the Board accepts DOB’s position that the re-built basement portion of the Building can only be occupied by residential use since the residence is the only use to be reconstructed; and

WHEREAS, the Board is not persuaded by the Appellant’s assertions that (1) the text is ambiguous and (2) DOB’s interpretation is contrary to the intent of the Zoning Resolution; and

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WHEREAS, therefore, the Board finds that DOB properly objects to the current construction plans and agrees that the Appellant should modify the proposal to reflect (1) the removal of the one-story (approximately 110 sq. ft.) encroachment into the rear yard and (2) the inclusion of residential use within the entire three-story encroachment into the rear yard; and

Therefore it is resolved that, based upon the conclusions stated above, the Board denies the appeal seeking a reversal of the Final Determination of the Department of Buildings, dated January 6, 2012.

Adopted by the Board of Standards and Appeals, May 15, 2012.

99-11-A

APPLICANT – Eric Palatnik, P.C., for Naila Aatif, owner.
SUBJECT – Application July 8, 2011 – Legalization of changes to a two-family residence which does not front upon a legally mapped street, contrary to General City Law Section 36. R6 Zoning District.

PREMISES AFFECTED – 16 Brighton 7th Walk, between Brighton 7th Street and Brighton 8th Street. Block 8667, Lot 774, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik and James Bullock.

For Administration: Lt. Simon Ressler and Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

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

Absent: Commissioner Montanez.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to June 12, 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 – None.

ACTION OF THE BOARD – Laid over to June 12, 2012, at 10 A.M., for deferred decision.

154-11-A

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

SUBJECT – Application October 3, 2011 – Appeal seeking reversal of a Department of Buildings’ determination that the non-illuminated sign located on top the building of the site is not a legal non-conforming advertising sign that may be maintained and altered. M1-9 zoning district.

PREMISES AFFECTED – 23-10 Queens Plaza South, between 23rd Street and 24th Street, Block 425, Lot 5, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik and Matt Perline.

For Administration: John Egnatios-Beene.

THE VOTE TO CLOSE HEARING –

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

Absent: Commissioner Montanez.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to June 5, 2012, at 10 A.M., for decision, hearing closed.

196-11-A

APPLICANT – Bryan Cave, LLP, for Jamaica Estates Design Group LLC, owner.

SUBJECT – Application December 27, 2011 – An appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district regulations. R4-1 zoning district.

PREMISES AFFECTED – 178-06 90th Avenue, southeast corner of the intersection of 90th Avenue and 178th Street, Block 9894, Lot 47, 48, 51, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Frank Chaney and Judith Gallent.

THE VOTE TO CLOSE HEARING –

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

Absent: Commissioner Montanez.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to June 12, 2012, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MAY 15, 2012
1:30 P.M.**

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

ZONING CALENDAR

102-11-BZ

CEQR #12-BSA-003Q

APPLICANT – H. Irving Sigman, for S & I Property Management, LLC, owner.

SUBJECT – Application July 20, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*New York Spa*). M1-1 (CP) zoning district.

PREMISES AFFECTED – 131-23 31st Avenue, northwest corner of the intersection of 31st Avenue & Whitestone Expressway (West Service Road). Block 4361, Lot 27. Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel and Barney Sigman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Absent: Commissioner Montanez.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 13, 2011, acting on Department of Buildings Application No. 420287870, reads in pertinent part:

The proposed physical culture establishment, in the M1 zoning district, is not a permitted as-of-right use, as per Sec. 42-10 ZR, and is referred to the Board of Standards and Appeals for a special permit, pursuant to Sec. 73-36 ZR; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-1 zoning district within the Special College Point District, the operation of a physical culture establishment (“PCE”) in eight of the existing 12 two-story attached commercial buildings on the site, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on March 20, 2012 after due notice by publication in *The City Record*, with a continued hearing on April 24, 2012, and then to decision on May 15, 2012; and

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

WHEREAS, Community Board 7, Queens,

recommends disapproval of this application, citing concerns about (1) the vacancy of some of the buildings on the site, (2) the need for additional foundation work including extensive piling, and (3) the difficulty of obtaining a reasonable return on the site; and

WHEREAS, Queens Borough President Helen Marshall recommended disapproval of this application, citing concerns regarding: (1) the ability of the proposed number of parking spaces to accommodate the increased parking demand generated by the proposed PCE; and (2) the inadequacy of the attended parking plan; and

WHEREAS, New York State Senator Tony Avella provided written testimony in support of the application; and

WHEREAS, the subject site is located on the northwest corner of the Whitestone Expressway service road and 31st Avenue, in an M1-1 zoning district within the Special College Point District; and

WHEREAS, the site has approximately 265 feet of frontage on 31st Avenue, 200 feet of frontage on the Whitestone Expressway, and a lot area of 107,284 sq. ft.; and

WHEREAS, the site is occupied by 12 two-story attached commercial buildings (each with a current certificate of occupancy for Use Group 16 warehouse use on the first floor and Use Group 6 office use on the second floor) with a total floor area of approximately 75,560 sq. ft., and an accessory parking lot located to the rear of the existing buildings; and

WHEREAS, the applicant proposes to consolidate and alter the seven westernmost buildings and the second floor of the eighth westernmost building (the first floor of that building will remain as warehouse use) to accommodate the proposed PCE; and

WHEREAS, the applicant also proposes to make alterations to the existing buildings to convert them to the proposed PCE use, and to construct a new first story mezzanine for a lounge area, roof deck, and spa pool; and

WHEREAS, the applicant states that the proposed alterations and enlargements will increase the total floor area at the site from approximately 75,560 sq. ft. to 78,266 sq. ft.; and

WHEREAS, the PCE will be operated as New York Spa; and

WHEREAS, the proposed hours of operation are: 6:00 a.m. to 12:00 a.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement, as well as facilities for the practice of massage by New York State licensed masseurs and masseuses; 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

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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, the applicant states that the Special College Point District regulations do not restrict the use of the site for the proposed PCE; and

WHEREAS, in response to the concerns raised by the Borough President, and at the direction of the Board, the applicant filed a Zoning Resolution Determination Form (“ZRD1”) with the Department of Buildings (“DOB”) for review of the proposed attended parking scheme; and

WHEREAS, the applicant submitted the ZRD1 which reflects that DOB reviewed the attendant parking arrangement and approved the layout without conditions; and

WHEREAS, in response to the Borough President’s concern regarding a lack of parking spaces, the applicant states that the proposed PCE use and the existing warehouse and office uses on the site require a total of 148 parking spaces, and that in addition to the proposed 140 open accessory attended parking spaces located in the accessory parking lot at the rear of the site, the proposal provides for eight new enclosed parking spaces in the remaining warehouse buildings, and one parking space in the PCE; thus, there will be a total of 149 on-site parking spaces for the site; and

WHEREAS, the Board acknowledges the concerns raised by the Community Board, but notes that such considerations are not relevant to the required findings under ZR § 73-36; and

WHEREAS, at hearing, the Board questioned whether landscaping was required for the site; and

WHEREAS, in response, the applicant states that landscaping is not required pursuant to the Zoning Resolution, but that it will provide a 3’-0” wide landscaped buffer and a metal fence with a height of 6’-0” around the perimeter of the site; 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 17.2; 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. 12BSA003Q, dated July 6, 2011; 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 § 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 M1-1 zoning district within the Special College Point District, the operation of a physical culture establishment (“PCE”) in eight of the existing 12 two-story attached commercial buildings on the site, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 19, 2012” - Nine (9) sheets; and *on further condition*:

THAT the term of this grant will expire on May 15, 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 fire safety measures must 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, May 15, 2012.

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176-11-BZ

CEQR #12-BSA-040K

APPLICANT – Eric Palatnik, P.C., for Alla Lubimor, owner.

SUBJECT – Application November 14, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage and floor area (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 150 Norfolk Street, between Oriental and Shore Boulevard, Block 8756, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Absent: Commissioner Montanez.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 25, 2011, acting on Department of Buildings Application No. 320398636, reads in pertinent part:

The proposed horizontal and vertical enlargement of the existing one-family residence in an R3-1 zoning district:

1. Creates a new non-compliance with respect to lot coverage and is contrary to Section 23-141(b) of the Zoning Resolution (ZR).
2. Creates a new non-compliance with respect to floor area and is contrary to Section 23-141(b) ZR.
3. Creates a new non-compliance with respect to rear yard and is contrary to Section 23-47 ZR.
4. Increases the degree of non-compliance with respect to the side yard(s) and is contrary to Sections 23-461(a) ZR and 54-31(ZR); and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 54-31; and

WHEREAS, a public hearing was held on this application on February 14, 2012 after due notice by publication in *The City Record*, with continued hearings on March 20, 2012 and April 24, 2012, and then to decision on May 15, 2012; and

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

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

WHEREAS, a representative of the Madison-Marine-Homecrest Civic Association testified in opposition to this application, citing concerns with the effect of the proposed enlargement on the character of the surrounding neighborhood; and

WHEREAS, the subject site is located on the west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 3,074 sq. ft., and is occupied by a single-family home with a floor area of 783 sq. ft. (0.26 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 783 sq. ft. (0.26 FAR) to 3,003 sq. ft. (0.98 FAR); the maximum permitted floor area is 1,537 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 49 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 0'-11", and to maintain the existing side yard along the southern lot line with a width of 4'-10" (two side yards with a minimum width of 5'-0" and 8'-0", respectively, are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 24'-3" (a minimum rear yard depth of 30'-0" is required); and

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

WHEREAS, the applicant submitted a study of FARs in the area which reflects that there are numerous homes in the vicinity of the site with FARs that exceed 1.0; and

WHEREAS, the applicant also submitted a streetscape of the homes immediately surrounding the site; and

WHEREAS, at hearing, the Board directed the applicant to provide an extended streetscape and revise the analysis of the homes included in the streetscape to only reflect the legal conditions of the homes; and

WHEREAS, in response, the applicant provided a revised streetscape and analysis, which reflects that the street on which the site is located consists of detached single-family homes that range in height from one to three stories, and that the proposed enlargement (which complies with the underlying zoning district regulations related to height) is consistent with the character of the surrounding homes; and

WHEREAS, the applicant also submitted an analysis indicating that at least eight homes along Norfolk Street between Oriental Boulevard and Shore Boulevard have been granted special permits pursuant to ZR § 73-622 in the past ten years, and that the subject homes were all granted FARs ranging from 0.94 to 1.0; and

WHEREAS, the Board notes that the evidence submitted by the applicant included some erroneous information which

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the Board has not relied on; rather, the Board relies on its own review of its prior grants pursuant to ZR § 73-622 as well as the site visits conducted by the members of the Board; and

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

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

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

WHEREAS, at hearing, the Board questioned how the cellar will be constructed without disturbing the existing exterior walls; and

WHEREAS, in response, the applicant submitted a letter and drawings from its engineering consultant detailing how the proposed cellar will be constructed while retaining the existing exterior walls; and

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 26, 2012"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,003 sq. ft. (0.98 FAR); lot coverage of 49 percent; a side yard with a minimum width 0'-11" along the northern lot line; a side yard with a minimum width of 4'-10" along the southern lot line; and a rear yard with a minimum depth of 24'-3", as illustrated on the BSA-approved plans;

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

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

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

THAT the Department of Buildings must ensure

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

Adopted by the Board of Standards and Appeals, May 15, 2012.

3-12-BZ

CEQR #12-BSA-059K

APPLICANT – Sheldon Lobel, P.C., for Mr. Michael Weissman, owner.

SUBJECT – Application January 4, 2012 – Special Permit (§73-622) for the enlargement an existing single family home, contrary to floor area (§23-141(b)) and side yard (§23-461(b)) requirements. R4 zoning district.

PREMISES AFFECTED – 1913 East 28th Street, east side of East 28th Street, 100' south of Avenue S. Block 7307, Lot 88. Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Absent: Commissioner Montanez.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 28, 2011, acting on Department of Buildings Application No. 320405931, reads in pertinent part:

1. Proposed plans are contrary to ZR § 23-141(b) in that the proposed floor area ratio (FAR) exceeds the maximum permitted.
2. Proposed plans are contrary to ZR § 23-461(b) in that the proposed side yard is less than the minimum required; and

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

WHEREAS, a public hearing was held on this application on March 20, 2012, after due notice by publication in *The City Record*, with a continued hearing on April 24, 2012, and then to decision on May 15, 2012; and

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

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

WHEREAS, the subject site is located on the east side

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of East 28th Street, between Avenue S and Avenue T, within an R4 zoning district; and

WHEREAS, the subject site has a total lot area of 2,000 sq. ft., and is occupied by a single-family home with a floor area of 2,063 sq. ft. (1.03 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,063 sq. ft. (1.03 FAR) to 2,458 sq. ft. (1.23 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.75 FAR); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a width of 4'-6" (a minimum width of 8'-0" is required); and

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

WHEREAS, the applicant notes that the adjacent home to the south of the site, at 1915 East 28th Street, is a three-story single-family home with a floor area of 4,591 sq. ft. (2.3 FAR); and

WHEREAS, the applicant further notes that at least three other homes in the vicinity of the site were enlarged pursuant to the special permit under ZR §73-622, and that the subject homes had FARs of 1.22, 1.30, and 1.34, respectively, and therefore the proposed FAR of 1.23 is consistent with the nature of residential development in the surrounding area; and

WHEREAS, the applicant notes that a block like the subject block entirely within an R4 zoning district may be eligible for the predominantly built-up regulations, which include an increased floor area of 1.35 FAR as-of-right, but because the existing front yard of 4'-6" does not satisfy the minimum depth of 10'-0", the predominantly built-up area regulations cannot be applied to the subject site, thus the floor area request is necessary; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR

§§ 73-622 and 73-03, to permit, within an R4 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR and side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 9, 2012"- (9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,458 sq. ft. (1.23 FAR); a front yard with a depth of 4'-6"; a side yard with a minimum width of 4'-6" along the southern lot line; no side yard along the northern lot line; and a rear yard with a depth of 31'-9", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, May 15, 2012.

35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Othel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Joseph Goldbloom of Council Member Leroy Comrie, Bryan Block of Community Board 13Q, Kelli M. Singleton, Jeanne Richardson, Dorothy Miller, Euclid C. Jordan and Henry Euler.

For Administration: Anthony Scaduto, Fire Department.

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

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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 June 12, 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 June 12, 2012, at 1:30 P.M., for adjourned hearing.

107-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Yeshiva Bais Yitzchok, owners.

SUBJECT – Application August 3, 2011 – Variance (§72-21) to permit the enlargement of a synagogue (Congregation Yeshiva Bais Yitzchok) contrary to the bulk requirements for community facility buildings. R4-1 zoning district.

PREMISES AFFECTED – 1643 East 21st Street, east side of 21st Street between Avenue O and P, Block 6768, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to June 12, 2012, at 1:30 P.M., for continued hearing.

192-11-BZ

APPLICANT – Eric Palatnik, P.C., for Alex Veksler, owner.

SUBJECT – Application December 21, 2011 – Variance (§72-21) to allow for the development of a Use Group 3 child care center, contrary to minimum lot width/area (§23-35), and required parking (§25-624). R2/LDGMA zoning district.

PREMISES AFFECTED – 2977 Hylan Boulevard between Isabella Avenue and Guyon Avenue, Block 4301, Lot 36 & 39, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik, Larry Rampulla, Barbara J. Cohen, Beata Kozlorsky, Alex Veksler and Deborah Bisconti.

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

20-12-BZ

APPLICANT – Herrick, Feinstein LLP, for LNA Realty Holdings, LLC, owner; Brookfit Ventures LLC, lessee.

SUBJECT – Application January 31, 2012 – Special Permit (§73-36) to allow the legalization of the operation of a physical culture establishment (*Retro Fitness*) in an under construction mixed residential/commercial building. M1-2/R6B zoning district.

PREMISES AFFECTED – 203 Berry Street, aka 195-205 Berry Street; 121-127 N. 3rd Street, northeast corner of Berry and N. 3rd Streets, Block 2351, Lot 1087, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Eldud Gothelf.

ACTION OF THE BOARD – Laid over to June 12, 2012, at 1:30 P.M., for continued hearing.

26-12-BZ

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

SUBJECT – Application February 3, 2012 – Special Permit (§73-52) to allow the extension of accessory commercial parking in a residential zoning district. 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

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to June 12, 2012, at 1:30 P.M., for decision, hearing closed.

31-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Cactus of Harlem, LLC, owner.

SUBJECT – Application February 8, 2012 – Special Permit (§73-50) to seek a waiver of rear yard requirements (§33-

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292) to permit the construction of commercial building. C8-3 zoning district.

Jeff Mulligan, Executive Director

PREMISES AFFECTED – 280 West 155th Street, corner of Frederick Douglas Boulevard and West 155th Street, Block 2040, Lot 48, 61 & 62, Borough of Manhattan.

Adjourned: P.M.

COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Richard Lobel.

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

49-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Laterra, Inc., owner; Powerhouse Gym “FLB”, Inc., lessee.

SUBJECT – Application March 2, 2012 – Special Permit (§73-36) to allow the legalization of the operation of a physical culture establishment (*Powerhouse Gym*) in a portion of an existing one-story commercial building. C2-2\R5B zoning district.

PREMISES AFFECTED – 34-09 Francis Lewis Boulevard, northeast corner of Francis Lewis Boulevard and 34th Avenue, Block 6077, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Richard Lobel and Henry Euler.

THE VOTE TO CLOSE HEARING –

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

Absent: Commissioner Montanez.....1

Negative:.....0

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

53-12-BZ

APPLICANT – Law Office of Frederick A. Becker, for Linda Laitz and Robert Laitz, owners.

SUBJECT – Application March 8, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); less than the minimum required side yard (§23-461 & §23-48) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1232 East 27th Street, west side of East 27th Street, between Avenue L and Avenue M, Block 7644, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

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

Absent: Commissioner Montanez.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to June 12, 2012, at 1:30 P.M., for decision, hearing closed.

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*CORRECTION

This resolution adopted on September 13, 2011, under Calendar No. 259-06-BZ and printed in Volume 96, Bulletin Nos. 36-38, is hereby corrected to read as follows:

259-06-BZ

APPLICANT – Fredrick A. Becker, for Ahi Ezer Congregation, owner.

SUBJECT – Application July 11, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the enlargement of an existing one and two-story synagogue which expired on June 12, 2011. R-5 (OP) zoning district.

PREMISES AFFECTED – 1885-1891 Ocean Parkway, northeast corner of Ocean Parkway and Avenue S, Block 6682, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

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 Montanez.....5

Negative:.....0

RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, in an R5 zoning district within the Special Ocean Parkway District, the enlargement of an existing one- and two-story synagogue, which expired on June 12, 2011; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in *The City Record*, and then to decision on September 13, 2011; and

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

WHEREAS, the subject site is located on the northeast corner of Ocean Parkway and Avenue S, in an R5 zoning district within the Special Ocean Parkway District; and

WHEREAS, the Board has exercised jurisdiction over the site since June 12, 2007 when, under the subject calendar number, the Board granted a variance to permit the proposed enlargement of an existing one- and two-story synagogue, which does not comply with applicable zoning requirements for floor area ratio, open space, lot coverage, side yards, front yards, wall height, setback, sky exposure plane, parking and landscaping, contrary to ZR §§ 23-141(b), 23-464, 23-662, 113-12, 23-45, 23-631, 25-18, 25-31 and 113-30; and

WHEREAS, substantial construction was to be completed by June 12, 2011, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing

delays, construction has not yet commenced on the site and additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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 12, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on June 12, 2015; *on condition*:

THAT substantial construction shall be completed by June 12, 2015;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 302146997)

Adopted by the Board of Standards and Appeals, September 13, 2011.

***The resolution has been revised to correct the Block No. which read: “Block 682”... now reads: Block 6682”. Corrected in Bulletin No. 21, Vol. 97, dated May 23, 2012.**

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*CORRECTION

This resolution adopted on May 18, 2010, under Calendar No. 220-08-BZ and printed in Volume 95, Bulletin No. 21, is hereby corrected to read as follows:

220-08-BZ

CEQR #09-BSA-056K

APPLICANT – Moshe M. Friedman, for Samuel Jacobowitz, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the enlargement of a non-conforming one-family dwelling, contrary to §42-10. M1-1 zoning district. PREMISES AFFECTED – 95 Taaffe Place, east side, 123'-3.5" south of intersection of Taaffe Place and Park Avenue, Block 1897, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #3BK

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 Brooklyn Borough Superintendent, dated August 30, 2007, acting on Department of Buildings Application No. 310020410 reads, in pertinent part:

“Proposed...one (1) family dwelling (UG 2) in the subject M1-1 district is contrary to ZR 42-10, and must be referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR § 72-21 to permit, within an M1-1 zoning district, the construction of a three-story and basement single-family home, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 18, 2009, after due notice by publication in the *City Record*, with continued hearings on December 15, 2009, March 23, 2010 and April 27, 2010, and then to decision on May 18, 2010; 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, Council Member Letitia James provided testimony in support of this application; and

WHEREAS, the site is located on the east side of Taaffe Place between Park Avenue and Myrtle Avenue, within an M1-1 zoning district; and

WHEREAS, the subject site has a width of 25 feet, a depth of 87 feet, and a total lot area of 2,129 sq. ft.; and

WHEREAS, the site is occupied by a non-conforming two-story single-family home located at the rear of the property with a floor area of 1,534 sq. ft. (0.72 FAR) (the “Existing Home”), which is proposed to be demolished; and

WHEREAS, the applicant represents that the current residential use has existed without interruption since approximately 1887, and is therefore a legal non-conforming use; and

WHEREAS, the applicant proposes to build a three-story and basement single-family home with a floor area of 4,678 sq. ft. (2.19 FAR); and

WHEREAS, the applicant initially proposed a two-story and basement home which covered nearly the entire lot, with a floor area of approximately 5,236 sq. ft. (2.46 FAR), a total height of 48'-0", and a rear yard with a depth of 1'-2"; and

WHEREAS, the Board notes that the applicant's original proposal did not include the square footage located in the basement towards the floor area calculations, and listed the floor area as 3,462 sq. ft. (1.63 FAR), but that when the basement is included the proposal had a floor area of 5,236 sq. ft. (2.46 FAR); and

WHEREAS, at hearing, the Board directed the applicant to reduce the size of the proposed home and to include the basement in the floor area calculations; and

WHEREAS, in response, the applicant revised its plans to the current proposal for a three-story and basement home with a floor area of 4,678 sq. ft. (2.19 FAR) including the basement, a total height of 39'-2 1/2", and a rear yard with a depth of 34'-9 3/4"; and

WHEREAS, residential use is not permitted in the M1-1 district; therefore, the applicant seeks a variance to permit the non-conforming use; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the small size of the lot; and (2) the obsolescence of the existing building; and

WHEREAS, as to the lot's size, the applicant states that the lot has a width of 25 feet and a depth of 87 feet; and

WHEREAS, the applicant represents that the 25-ft. width of the subject site is too narrow to accommodate a building with a loading dock or adequately sized floor plates to support a commercial or manufacturing use; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a land use map indicating that all conforming developments in the surrounding area are located on lots with widths exceeding that of the subject site; and

WHEREAS, the applicant represents that many lots in the area also have a greater depth than the subject site, and that any conforming development on the site would be undersized due to the site's shallow depth in conjunction with its narrow width; and

WHEREAS, the Board notes that while the surrounding area includes several lots of similar size, such lots are primarily occupied by residential uses; and

WHEREAS, however, unlike other such lots occupied by residential buildings, the applicant represents that the Existing Home is obsolete for its intended purpose and therefore must be demolished; and

WHEREAS, as to the functional obsolescence of the Existing Home, the applicant represents that it is no longer suitable for residential use due to its age, construction, floor

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plate, floor-to-ceiling heights, size, and structural condition; and

WHEREAS, the applicant further represents that the above-mentioned features of the Existing Home make it similarly unsuitable for any conforming use; and

WHEREAS, the applicant states that the Existing Home was built prior to 1887; and

WHEREAS, the applicant submitted a certificate of occupancy which reflects that the subject site was occupied by a single-family home on July 7, 1961, and states that the single-family home was also recorded on an 1887 Sanborn map; and

WHEREAS, the applicant submitted a report by a consulting engineer (the "Engineer's Report"), which stated that the existing building cannot be renovated or rehabilitated for residential use due to its poor structural condition; and

WHEREAS, specifically, the Engineer's Report found that the Existing Home has the following structural problems: (1) substandard floor-to-ceiling heights, as the second floor of the building has a floor-to-ceiling height of only 7'-3"; and (2) lot line windows which are incapable of providing legal light and ventilation; and

WHEREAS, the Engineer's Report also noted conditions reflecting the general deterioration of the Existing Home, such as damage to the walls and ceiling, portions of the flooring have buckled, the roofing membrane is unsatisfactory, and the wood studs are deteriorated; and

WHEREAS, the Engineer's Report concluded that the Existing Home was built to obsolete standards which are inconsistent with modern building requirements and would necessitate demolition to meet current Building Code requirements; and

WHEREAS, the applicant notes that the existing home is also set back on the lot such that there is an oversized front yard and no rear yard, which is out of context with the other buildings on the subject block, all of which are situated closer to the street line; and

WHEREAS, the Board agrees that the home is obsolete to be re-used, and notes that demolition of the building results in a clear site that nevertheless is unique due to its narrowness and shallow depth; and

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

WHEREAS, the applicant submitted a feasibility study that analyzed a conforming manufacturing building with a total floor area of 2,129 sq. ft.; and

WHEREAS, the feasibility study concluded that the conforming scenario would not realize a reasonable return, and that the requested variance is necessary to develop the site with a habitable home; 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 conformance with zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed

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

WHEREAS, the applicant represents that the surrounding area is a mix of residential, commercial, and manufacturing uses; and

WHEREAS, the applicant states that the proposed residential use is consistent with the character of the area, which includes many residential buildings; and

WHEREAS, in support of the above statements, the applicant submitted a 400-ft. radius diagram showing the various uses in the vicinity of the site, which indicates that a number of residential buildings are located in the area surrounding the subject site; and

WHEREAS, specifically, the radius diagram reflected that residential buildings are located directly adjacent to the site on both the north and south sides and to the rear of the site; and

WHEREAS, the Board agrees that there is a context for residential use in the area and finds that the introduction of a single-family home will not impact nearby conforming uses; and

WHEREAS, as to bulk, the applicant notes that the proposed 2.19 FAR is within the zoning district parameters of the adjacent R6 district and that no bulk waivers are requested; and

WHEREAS, the applicant submitted a neighborhood study indicating that a number of the smaller residential buildings on the subject block have floor areas larger than the proposed home and FARs ranging between 2.2 and 2.36; and

WHEREAS, the neighborhood study also reflected that at least seven residential buildings on the subject block have heights of 44'-0" or greater; and

WHEREAS, the applicant notes that the proposal also provides a 34'-9 3/4" rear yard, which is consistent with the adjacent R6 zoning district, which requires a rear yard with a minimum depth of 30'-0"; and

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

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique conditions of the site; and

WHEREAS, as noted above, the applicant initially proposed a two-story and basement home with a floor area of approximately 5,236 sq. ft. (2.46 FAR), a total height of 48'-0", and a rear yard with a depth of 1'-2"; and

WHEREAS, during the course of the hearing process, and at the Board's direction, the applicant revised its plans to provide the current proposal for a three-story and basement home with a floor area of 4,678 sq. ft. (2.19 FAR), a total height of 39'-2 1/2", and a rear yard with a depth of 34'-9 3/4"; and

WHEREAS, at hearing, the Board questioned the amount of relief being requested, specifically with regards to the size of the home; and

WHEREAS, in response, the applicant noted that the size

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of the home is similar to the size of two-family or multiple dwellings that would be economically feasible; and

WHEREAS, in support of this assertion, the applicant provided additional analysis related to the feasibility of a similarly sized two-family home; and

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

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

WHEREAS, the project is classified as an Unlisted 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 (“EAS”) 09BSA056K, dated June 25, 2008; 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 Assessment has reviewed the project for potential hazardous materials; and

WHEREAS, DEP has reviewed the April 2008 Phase I Environmental Site Assessment report and May 2009 Construction Health and Safety Plan and finds them acceptable and has concluded that the construction and use of the site will not result in significant adverse hazardous materials impacts; and

WHEREAS, DEP concluded that the proposed project will not result in a significant adverse hazardous materials impact provided that a Remedial Closure Report certified by a professional engineer is submitted to DEP for approval and issuance of a Notice of Satisfaction; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-1 zoning district, the construction of a

three story and basement single-family home, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received April 15, 2010”– (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: three stories and basement, a maximum floor area of 4,678 sq. ft. (2.19 FAR); a total height of 39’-2 ½”; and a rear yard with a depth of 34’-9 ¾”, as shown on the BSA-approved plans;

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

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

THAT construction shall proceed in accordance with ZR § 72-23; 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, May 18, 2010.

***The resolution has been Amended. Corrected in Bulletin No. 21 Vol. 97, dated May 23, 2012.**

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*CORRECTION

This resolution adopted on January 24, 2012, under Calendar No. 128-11-BZ and printed in Volume 97, Bulletin Nos. 4-5, is hereby corrected to read as follows:

128-11-BZ

CEQR #12-BSA-010K

APPLICANT – Law Office of Fredrick A. Becker, for Levana Pinhas and David Pinhas, owners.

SUBJECT – Application August 31, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1860 East 23rd Street, west side of East 23rd Street, between Avenue R and Avenue S, Block 6828, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

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, the decision of the Brooklyn Borough Commissioner, dated August 8, 2011, acting on Department of Buildings Application No. 320325028, reads in pertinent part:

Proposed plans are contrary to ZR 23-141 in that the proposed floor area exceeds the maximum permitted.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required.

Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard is less than the minimum required.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, and then to decision on January 24, 2012; and

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

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

WHEREAS, the subject site is located on the west side of East 23rd Street, between Avenue R and Avenue S, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,127 sq. ft. (0.53 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,127 sq. ft. (0.53 FAR) to 3,964 sq. ft. (0.99 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 57 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 43 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 4'-3 5/16", and to maintain the existing side yard along the southern lot line with a width of 8'-10 1/2" (two side yards with minimum widths of 5'-0" each are required); and

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

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

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning

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district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received November 16, 2011”-(7) sheets and “January 11, 2012”-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,964 sq. ft. (0.99 FAR); a minimum open space ratio of 57 percent; a maximum lot coverage of 43 percent; a side yard with a minimum width of 4’-3 5/16” along the northern lot line; a side yard with a minimum width of 8’-10 ½” along the southern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

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

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

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

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

***The resolution has been revised to correct the open space ratio and lot coverage, which read in part: “...open space ratio of 61 percent and lot coverage of 42 percent...” now reads: “...open space ratio of 57 percent and lot coverage of 43 percent...”. Corrected in Bulletin No. 21, Vol. 97, dated May 23, 2012.**

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SPECIAL NOTICE

**Please be advised that Cal. No. 129-11-BZ has been moved
from JUNE 19, 2012 to JUNE 12, 2012 for DECISION.**

129-11-BZ

APPLICANT – Jeffrey Chester, Esq. GSHLLP, for Carroll Street One LLC, owner.

SUBJECT – Application September 2, 2011 – Variance (§72-21) to allow for the construction of a residential building, contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 465 Carroll Street, north side of Carroll Street, 100' from the corner of 3rd Avenue. Block 447, Lot 43. Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to *June 12, 2012*, at 1:30 P.M., for deferred decision.
