

---

# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

---

Volume 97, No. 26

June 27, 2012

---

### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Becca Kelly, *Counsel***

---

<b>OFFICE -</b>	<b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>
<b>HEARINGS HELD -</b>	<b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>
<b>BSA WEBPAGE @</b>	<b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b>

<b>TELEPHONE - (212) 788-8500</b>
<b>FAX - (212) 788-8769</b>

### CONTENTS

DOCKET .....	436
<b>CALENDAR</b> of July 17, 2012	
Morning .....	437
Afternoon .....	437/438

---

# CONTENTS

---

**MINUTES of Regular Meetings,  
Tuesday, June 19, 2012**

Morning Calendar .....439

**Affecting Calendar Numbers:**

678-74-BZ            63 8<sup>th</sup> Avenue, Manhattan  
290-06-BZ            372 Lafayette Street, Manhattan  
319-53-BZ            1135 East 222<sup>nd</sup> Street, Bronx  
718-56-BZ            741 Forest Avenue, Staten Island  
311-71-BZ            1907 Crospey Avenue, Brooklyn  
120-02-BZ            42-46 Avenue A, Manhattan  
294-06-BZ            31-11 Broadway, Queens  
238-07-BZ            5-11 47<sup>th</sup> Avenue, Queens  
86-11-A                663-673 2<sup>nd</sup> Avenue, Manhattan  
38-12-A & 39-12-A    131 & 133 Aviston Street, Staten Island  
180-11-A &  
  181-11-A                34-57 & 34-59 107<sup>th</sup> Street, Queens  
47-12-A                22 Lewiston Street, Staten Island  
103-12-A                74-76 Adelphi Street, Brooklyn

Afternoon Calendar .....450

**Affecting Calendar Numbers:**

183-11-BZ            1133 York Avenue, Manhattan  
40-12-BZ            2385 Richmond Avenue, Staten Island  
42-12-BZ            158 West 27<sup>th</sup> Street, Manhattan  
49-12-BZ            34-09 Francis Lewis Boulevard, Queens  
21-11-BZ            1810 Voorhies Avenue, Brooklyn  
35-11-BZ            226-10 Francis Lewis Boulevard, Queens  
93-11-BZ            1536 62<sup>nd</sup> Street, aka 1535 63<sup>rd</sup> Street, Brooklyn  
104-11-BZ            1936 East 26<sup>th</sup> Street, Brooklyn  
165-11-BZ            1561 50<sup>th</sup> Street, Brooklyn  
192-11-BZ            2977 Hylan Boulevard, Staten Island  
5-12-BZ                812 Dahill Road, Brooklyn  
12-12-BZ &  
  110-12-A                100 Varick Street, Manhattan  
31-12-BZ            280 West 155<sup>th</sup> Street, Manhattan  
58-12-BZ            3960 Bedford Avenue, Brooklyn  
70-12-BZ            78 Franklin Street, Manhattan  
76-12-BZ            148 Norfolk Street, Brooklyn

Correction .....464

**Affecting Calendar Numbers:**

14-08-BZ            1958 East 13<sup>th</sup> Street, Brooklyn

---

# DOCKET

---

New Case Filed Up to June 19, 2012  
-----

**190-12-A**

42-45 12th Street, north of Northeast corner of 12th Street and 43rd Street, Block 458, Lot(s) 83, Borough of **Queens, Community Board: 2**. Appeal from Department of Buildings' determination that signs are not entitled to continued legal status as advertising sign. M1-4 district.  
-----

**191-12-A**

42-45 12th Street, north of northeast corner of 12th Street and 43rd Avenue, Block 458, Lot(s) 83, Borough of **Queens, Community Board: 2**. Appeal from Department of Buildings' determination that signs are not entitled to continued legal status as advertising sign. M1-4 district.  
-----

**193-12-BZ**

384 Lafayette Street, southwest corner of intersection of Lafayette Street and 4th Street, Block 531, Lot(s) 7501, Borough of **Manhattan, Community Board: 2**. Application to permit physical culture establishment within a portion of an existing building in an M1-5B zoning district. M1-5B district.  
-----

**194-12-A**

213-14 Union Turnpike, south side of Union Turnpike at corner of 214 Street, Block 7787, Lot(s) 44, Borough of **Queens, Community Board: 11**. R2A district.  
-----

**195-12-BZ**

108-15 Crossbay Boulevard, between 108th and 109th Avenues, Block 9165, Lot(s) 291, Borough of **Queens, Community Board: 10**. Re-instatement (§11-411) of a previously approved variance, permitting the construction of a two story office building (UG6) 64-59 with parking spaces for four cars in a residence use district, which expired on May 13, 2000. Waiver of the Rules of Practice and Procedure. R4 zoning district. R4 district.  
-----

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

---

# CALENDAR

---

**JULY 17, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 17, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**39-65-BZ**

APPLICANT – Eric Palatnik, P.C., for SunCo. Inc. (R & M), owners.

SUBJECT – Application March 13, 2012 – Amendment to a previously granted Variance (72-01) to convert the existing repair bays to an accessory convenience store at an existing gasoline service station (Sunoco); Extension of Time to obtain a Certificate of Occupancy which expired on January 11, 2000; and Waiver of the Rules. C-3 zoning district.

PREMISES AFFECTED – 2701-2711 Knapp Street and 3124-3146 Voohries Avenue, Block 8839, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**  
-----

**579-78-BZ**

APPLICANT – Alfonso Duarte, for LEM LEE 58 L.P c/o Mautner-Glick Management, owner.

SUBJECT – Application April 24, 2012 – Extension of Term of a previously approved variance (§72-21) which permitted within an existing six story and cellar multiple dwelling the conversion of the front portion of the first floor and cellar into retail stores, which expired on January 30, 2004; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 236-238 East 58<sup>th</sup> Street, south side 160' west of 2<sup>nd</sup> Avenue, Block 1331, Lot 31, Borough of Manhattan.

**COMMUNITY BOARD #6 M**  
-----

**406-82-BZ**

APPLICANT – Eric Palatnik, P.C., for Adolf Clause and Theodore Thomas, owners; Hendel Products, lessee.

SUBJECT – Application May 22, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Special Permit (73-243) for an eating and drinking establishment (McDonald's) with accessory drive-thru which expired on May 3, 2012. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86<sup>th</sup> Street, northeast corner of 24<sup>th</sup> Avenue and 86<sup>th</sup> Street, Block 6859, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**  
-----

**APPEALS CALENDAR**

**46-12-A**

APPLICANT – Eric Palatnik, P.C., for Tremont Three, LLC, owner.

SUBJECT – Application March 1, 2012 – Application to permit the proposed mixed use development which rests partially within the bed of the mapped but unbuilt portion of East Tremont Avenue contrary to General City Law Section 35. C4-5X(R7X) Zoning District

PREMISES AFFECTED – 4215 Park Avenue, north side of East Tremont Avenue, between Park and Webster Avenues, Block 3027, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #6BX**  
-----

**JULY 17, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 17, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**ZONING CALENDAR**

**113-11-BZ**

APPLICANT – Slater & Beckerman, LLP, for St. Patrick's Home for the Aged and Infirm, owners.

SUBJECT – Application August 10, 2011 – Variance (§72-21) to permit the proposed enlargement to an existing Use Group 3 nursing home which does not comply with the rear yard equivalent requirements of ZR 24-382. R7-1 zoning district.

PREMISES AFFECTED – 66 Van Cortlandt Park South, corner lot, south of Van Cortlandt Park S, east of Saxon Avenue, west of Dickinson Avenue, Block 3252, Lot 76, Borough of Bronx.

**COMMUNITY BOARD #8BX**  
-----

**178-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Elie Zeitoune, owner.

SUBJECT – Application November 29, 2011 – Special Permit (73-622) for the enlargement of an existing two story, semi-detached single family home contrary to floor area and open space (ZR 23-141(b)); side yard requirement (ZR 23-461) and less than the required rear yard (ZR 23-47). R5 zoning district.

PREMISES AFFECTED – 1944 East 12<sup>th</sup> Street, between Avenue S and T, Block 7290, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**  
-----

---

# CALENDAR

---

**9-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Mikhail Dadashev, owner.

SUBJECT – Application January 17, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (ZR 23-141). R3-1 zoning district.

PREMISES AFFECTED – 186 Girard Street, corner of Oriental Boulevard and Girard Street, Block 8749, Lot 278, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

-----

**43-12-BZ**

APPLICANT – Raymond H. Levin, Wachtel & Masyr, LLP, for SDS Great Jones, LLC, owner.

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit the construction of a residential development of approximately 30,792 square feet on a 25'8" x 200'2" through lot which does not comply with the use or bulk regulations for the M1-5B zoning district.

PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, Borough of Manhattan.

**COMMUNITY BOARD #2M**

-----

**87-12-BZ**

APPLICANT – Troutman Sanders, LLP, for A & J Properties, LLC, owner; Bally's Total Fitness of Greater New York, lessee.

SUBJECT – Application April 11, 2012 – Special Permit (§73-36) to permit the continued operation of the existing physical culture establishment (*Bally Total Fitness*). C2-2/R4 zoning district.

PREMISES AFFECTED – 1720-28 Sheepshead Bay Road, 123.21' south of the intersection of Vorhies Avenue, Block 8770, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

-----

*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 19, 2012  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**678-74-BZ**

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

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

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

**COMMUNITY BOARD #2M**

APPEARANCES – None.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for an automotive service station with accessory uses (Use Group 16); and

WHEREAS, a public hearing was held on this application on June 5, 2012 after due notice by publication in *The City Record*, and then to decision on June 19, 2012; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application, but notes concerns regarding traffic caused by the site; and

WHEREAS, the site is located on an irregularly-shaped corner lot bounded by West 13<sup>th</sup> Street to the north, Eighth Avenue to the east, and Horatio Street to the south, in a C1-6 zoning district within the Greenwich Village Landmark District; and

WHEREAS, the subject site is occupied by an automotive service station with accessory uses; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 8, 1975 when, under the subject

calendar number, the Board granted a variance to permit the enlargement in lot area and reconstruction of an automotive service station with accessory uses; and

WHEREAS, the applicant now requests an amendment to legalize a modification to the pump island layout and the size of the underground storage tanks (“USTs”) from the previously-approved plans; and

WHEREAS, specifically, the applicant seeks to legalize the southernmost pump island on the site which varies from the previously-approved plans in that it provides one dispenser instead of two and is orientated parallel to Eighth Avenue rather than perpendicular to Horatio Street, as approved; and

WHEREAS, the applicant also seeks to replace the three 4,000 gallon USTs with one 12,000 gallon UST and one 12,000 gallon compartment UST with a 8,000/4,000 product split; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the site complies with the landscaping reflected on the previously-approved plans; and

WHEREAS, in response, the applicant submitted photographs reflecting the existing trees located within the planted islands, in compliance with the previously-approved plans; and

WHEREAS, the Board also questioned whether the applicant had addressed the issues raised by the Fire Department regarding the proposed replacement of the existing USTs on the site; and

WHEREAS, in response, the applicant states that these issues will be addressed prior to obtaining a certificate of occupancy; and

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

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission (“LPC”) dated August 30, 2011, and letters from LPC dated October 11, 2011 and March 1, 2012, approving the proposed work at the site; 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 April 8, 1975, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the approved plans; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received March 30, 2012’–(2) sheets and ‘June 5, 2012’–(1) sheet; and *on further condition*:

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

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

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

THAT the Department of Buildings must ensure

# MINUTES

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. 120818669)

Adopted by the Board of Standards and Appeals June 19, 2012.

-----

## 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 –

For Applicant: Jim Power.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance permitting the construction of a six-story mixed-use commercial/residential building; and

WHEREAS, a public hearing was held on this application on April 24, 2012, after due notice by publication in *The City Record*, and then to decision on June 19, 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 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Lafayette Street, between Great Jones Street and Bond Street, in an M1-5B zoning district within the NoHo Historic District; and

WHEREAS, the Board has exercised jurisdiction over the site since April 17, 2007 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a six-story, eight-unit residential building with ground floor retail, contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, on May 24, 2011, the Board granted an extension of time to complete construction, to expire on May

24, 2015; and

WHEREAS, the applicant now requests an amendment to permit certain modifications to the previously-approved plans; and

WHEREAS, specifically, the applicant seeks to (1) reconfigure the ground floor of the building by moving the residential entrance and elevator toward the middle of the building and establishing two separate retail spaces to the north and south along Lafayette Street; (2) reconfigure the cellar level to include retail spaces connected to the ground floor retail spaces; and (3) remove the terrace on the fifth floor and reconfigure the terrace/roof deck on the sixth floor; and

WHEREAS, the applicant states that the proposed amendment would result in a slight increase in the height of the building, from 70’-10 ¾” to 72’-11 ¼”, and a slight decrease in the total floor area of the building, from 15,556 sq. ft. to 15,520 sq. ft.; and

WHEREAS, the applicant notes that the retail floor area would be increased from 1,530 sq. ft. to 2,143 sq. ft., with an additional increase of approximately 1,200 sq. ft. of floor space at the cellar, and the residential floor area would be reduced from 14,026 sq. ft. to 13,377 sq. ft.; and

WHEREAS, the applicant states that the proposed amendment would not have any significant impact on the reasonable return analysis that formed the basis of the Board’s original grant for the following reasons: (1) the total building area would be approximately the same; (2) the increase in the retail area is offset by the loss of approximately 650 sq. ft. of residential floor area above grade and the loss of accessory residential storage area in the cellar which would have contributed to the value of the residential units; (3) the retail in the subject proposal is less valuable than the retail in the previously-approved scheme because it is broken up into two smaller units which generate less rent on a square foot basis; and (4) most of the increase in retail area is cellar area, which is substantially less valuable than ground floor area; and

WHEREAS, the applicant represents that the proposed amendment will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission (“LPC”) approving the alterations to the proposed building, dated June 13, 2012; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment 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 April 17, 2007, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the previously-approved plans; *on condition* that all work substantially complies to drawings marked ‘Received February 2, 2012’ – eleven (11) sheets; and *on further condition*:

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

# MINUTES

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. 120933302)

Adopted by the Board of Standards and Appeals, June 19, 2012.

-----

## 319-53-BZ

APPLICANT – Ficara & Associates, P.C., by Majed El Jamal, for 22<sup>nd</sup> Street Realty LLC, owner.

SUBJECT – Application August 16, 2011 – Extension of Term (§11-411) for the continued operation of an automotive repair shop with no body work which expired on January 31, 2011; Waiver of the Rules. R5 zoning district. PREMISES AFFECTED – 1135 East 222<sup>nd</sup> Street, northwest corner of Eastchester Road, Block 4900, Lot 12, Borough of Bronx.

### COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: John Anzalone.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for decision, hearing closed.

-----

## 718-56-BZ

APPLICANT – Walter T. Gorman, P.E., for 741 Forest Service Corp., owner; Avi Diner, lessee.

SUBJECT – Application April 10, 2012 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) with accessory uses which will expire on July 2, 2012. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 741 Forest Avenue, northwest corner North Burgher Avenue, Block 183, Lot 52, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: William Krinsman.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 10 A.M., for continued hearing.

-----

## 311-71-BZ

APPLICANT – Eric Palatnik, P.C., for SunCo, Inc. (R&M), owner.

SUBJECT – Application March 13, 2012 – Amendment (§11-412) to permit the conversion of automotive service bays to an accessory convenience store of an existing automotive service station (Sunoco); Extension of Time to

obtain a Certificate of Occupancy which expired July 13, 2000; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 1907 Crospey Avenue, northeast corner of 19<sup>th</sup> Avenue. Block 6439, Lot 5, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Trevis Savage.

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for continued hearing.

-----

## 120-02-BZ

APPLICANT – Stuart Klein, Esq., for East Village Gardens Corp., owner; Muscles Metamorphosis, lessee.

SUBJECT – Application March 22, 2012 – Extension of Term of previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*Iron & Silk Fitness Center*) which expired on February 1, 2012; an Amendment for the change in ownership; waiver of the rules. R7A zoning district.

PREMISES AFFECTED – 42-46 Avenue A, corner of Avenue A and East 3<sup>rd</sup> Street, Block 399, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Jay Goldstein.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for decision, hearing closed.

-----

## 294-06-BZ

APPLICANT – Goldman Harris LLC, owner; Club Fitness NY, lessee.

SUBJECT – Application February 8, 2012 – Amendment of a previously approved special permit (§73-36) which permitted the operation of a physical culture establishment (*Club Fitness*) on the second and third floors in a three-story building. C2-2 zoning district.

PREMISES AFFECTED – 31-11 Broadway, between 31<sup>st</sup> and 32<sup>nd</sup> Streets, Block 613, Lots 1 & 4, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Vivian R. Krieger.

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

-----

## 238-07-BZ

APPLICANT – Goldman Harris, LLC, for OCA Long Island City, LLC; OCA Long Island City II, LLC, owner; OCA Long Island City III, LLC, lessee.

# MINUTES

SUBJECT – Application May 25, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a 13-story residential and community facility building which expires on September 28, 2012. M1-4/R6A(LIC) & M1-4 zoning district.

PREMISES AFFECTED – 5-11 47<sup>th</sup> Avenue, western half of block bounded by 46<sup>th</sup> Road, 47<sup>th</sup> Avenue, Vernon Boulevard and 5<sup>th</sup> Street. Block 28, Lots 12, 15, 17, 18, 21 & 121, Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eugene Travers.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for decision, hearing closed.

-----

## APPEALS CALENDAR

### 86-11-A

APPLICANT – Cozen O’Connor, for Perl binder Holdings, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeal of the Department of Buildings’ revocation of an approval to permit a non-conforming sign. C1-9 zoning district.

PREMISES AFFECTED – 663-673 2<sup>nd</sup> Avenue, northwest corner of East 36<sup>th</sup> Street and 2<sup>nd</sup> Avenue, Block 917, Lot 21, 24-31, Borough of Manhattan.

## COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Harold Hornstein.

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

THE VOTE TO GRANT –

Affirmative:.....0

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

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to the determination of the Borough Commissioner of the Department of Buildings (“DOB”), dated June 9, 2011 to revoke permits in connection with Application No. 110179912 for a ground sign structure, and Application No. 110301343 for a two-sided illuminated advertising sign (the “Permits”) at the subject site (the “Final Determination”); and

WHEREAS, the Final Determination reads, in pertinent part:

Request to allow advertising sign within C1-9 is hereby denied.

The zoning lot in question is subject to Board of Standards and Appeals (BSA) calendar number 280-01-BZ granted on 5/7/2002. By letter dated 12/17/2003, the then Chairman of the BSA

determined that the installation of a sign 54’-6” high by 14’ wide relocated to the corner of 2<sup>nd</sup> Avenue and East 37<sup>th</sup> Street, was found to be substantially in compliance with the above referenced BSA grant.

However, the location and size as approved per job number 110179912 does not conform to the BSA letter and the BSA-approved plans attached thereto. The BC-1 Reconsideration Form signed by former Borough Commissioner Santulli, PE, on 10/28/2008 is unclear in that the applicant did not specify on the form that the sign would be relocated from the corner of 2<sup>nd</sup> Avenue and East 37<sup>th</sup> Street to the corner of 2<sup>nd</sup> Avenue and East 36<sup>th</sup> Street. Nonetheless, to the extent that such BC-1 form purports to authorize the relocation of the sign contrary to the size and location approved by BSA, such determination was issued in error and is hereby rescinded because the Department of Buildings does not have the legal authority to modify the terms of the BSA grant.

Further, if the applicant chooses to construct a sign of the size and in the location approved by BSA (the corner of 2<sup>nd</sup> Avenue and East 37<sup>th</sup> Street), the applicant shall provide evidence to the borough office that the original grant has not lapsed or has not been extended pursuant to ZR 72-23.

In addition, the original nonconforming sign was attached to the side of a building on Second Avenue and this building and the sign have been demolished and removed. Therefore, the sign has been discontinued and is subject to ZR 52-00. Pursuant to ZR 52-83 (“Non-Conforming Advertising Signs”) the sign could have been reconstructed provided there was not a discontinuance of more than two years, notwithstanding ZR 52-22, provided, however, that the sign is located in the same location and position.

It should be noted that, with regard to measuring the length of discontinuance, the time during which the building was being demolished upon order of the City of New York could, in accordance with 149 Fifth Ave. Corp. v. Chin, 305 A.D.2d 194 (1<sup>st</sup> Dept. 2003) be seen to toll the two-year limitation. However, as it has already been more than two years since the completion of the demolition, and because the sign was not reconstructed within two years of the date of demolition, in the same location and position per ZR 52-83 (...same size, etc), the nonconforming use is determined to have been discontinued; and

WHEREAS a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, with a continued hearing on February 28, 2011, and then to decision on June 19, 2012; and

---

# MINUTES

---

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, Community Board 6, Manhattan, recommends disapproval of this appeal; and

WHEREAS, the site comprises a series of formerly independent tax lots located on the west side of Second Avenue, between East 36<sup>th</sup> Street and East 37<sup>th</sup> Street (Block 917, Lots 21 and 24-31) and is currently vacant except for a public parking lot and a double-sided advertising sign and sign structure (the "Current Double-Sided Sign"); and

WHEREAS, in 1980, the site was within a C6-4 zoning district and was occupied by a mixed-use residential/commercial building, at which time DOB authorized the installation of a sign along the north-facing wall of the building 35'-0" above curb level (the "Former Wall Sign"); and

WHEREAS, subsequently, the zoning map was amended to change the subject site to a C1-9 zoning district, which does not allow advertising signs as of right; and

WHEREAS, this appeal is brought on behalf of the owner of the subject sign (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's determination that the nonconforming use status of the subject sign has been discontinued for more than two years; and

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

## PROCEDURAL HISTORY

WHEREAS, on August 4, 1980, DOB issued permits for the Former Wall Sign - an existing illuminated advertising sign and sign structure with dimensions of 14'-0" high by 48'-0" wide on a building wall 35'-0" above curb level on the north wall of the building at 669 Second Avenue (Lot 28); and

WHEREAS, the 1980 permits were associated with DOB Application No. ES 42/80; and

WHEREAS, on May 7, 2002, pursuant to BSA Cal. No. 280-01-BZ, the Board granted a variance to allow for the construction of a new 34-story mixed-use building at the site, which was then occupied by three five-story multiple dwellings and a public parking lot on Block 917, Lots 21, 24, 30, 32, and 34; and

WHEREAS, on December 17, 2003, the Board issued a letter approving the relocation of the existing legal non-conforming sign with modified dimensions of 54'-6" high by 14'-0" wide (the "Variance Sign"); and

WHEREAS, the building approved under the variance has not yet been constructed; and

WHEREAS, on April 2, 2008, DOB issued a violation for failure to maintain the building at 669 Second Avenue (Lot 28), where the Former Wall Sign was permitted in 1980; and

WHEREAS, on June 3, 2008, pursuant to DOB Application No. 110179912, the Appellant filed to install a structure for a new sign (the "Current Sign Structure"); the application was professionally certified; and

WHEREAS, on June 20, 2008, DOB issued a permit for the Current Sign Structure on Lots 26 and 27 (the corner of Second Avenue and East 36<sup>th</sup> Street); and

WHEREAS, on July 8, 2008, the 669 Second Avenue building was demolished under Application No. 110135620, pursuant to a DOB order in an emergency declaration, dated April 3, 2008; and

WHEREAS, on July 24, 2008, the Appellant filed an application pursuant to Application No. 110301343 for the sign installation; and

WHEREAS, on August 13, 2008, DOB issued objections for Application No. 110301343, including an objection about the location of the sign; and

WHEREAS, on October 29, 2008, DOB approved a reconsideration request to change the size and location of the Variance Sign from a single-sided sign with dimensions of 54'-6" high by 14'-0" wide at the corner of Second Avenue and East 37<sup>th</sup> Street to a double-sided sign with dimensions of 14'-0" high by 48'-0" wide, ten feet above curb level at the corner of Second Avenue and East 36<sup>th</sup> Street, based on the following determination:

OK to accept prior sign as grandfathering of existing non-conforming sign. OK to accept lower sign as no increase in degree of non compliance; and

WHEREAS, on December 11, 2008, DOB issued a permit for the Current Double-Sided Sign, two back-to-back signs each with dimensions of 14'-0" by 48'-0"; in the DOB application, the Appellant described the Current Double-Sided Sign as "a direct replacement for sign filed under 42/80;" and

WHEREAS, the Appellant filed the permits for both the Current Sign Structure and the Current Double-Sided Sign under Block 917, Lot 28, and the plans for the Current Double-Sided Sign show the double-sided sign located on Lot 28, but the plans for the Current Sign Structure show a double-sided sign located on Lots 26 and 27; and

WHEREAS, the Appellant asserts that the Current Double-Sided Sign was fully completed and installed by the end of 2008, less than one year after the Former Wall Sign was removed as part of the demolition of the 669 Second Avenue building; and

WHEREAS, in 2010, DOB commenced an audit of approvals for the Current Double-Sided Sign; on April 30, 2010 DOB issued an Intent to Revoke Approvals and Permits for Application No. 110179912 and on August 25, 2010, DOB issued an Intent to Revoke Approvals and Permits for Application No. 110301343, citing the existing zoning regulations; and

WHEREAS, on July 26, 2010, DOB revoked the permit for the Current Sign Structure; and

WHEREAS, on May 5, 2011, DOB revoked the permit for the Current Double-Sided Sign; and

WHEREAS, on June 9, 2011, DOB issued the Final Determination concluding that "because the sign was not reconstructed within two years of the date of demolition, in the same location and position per ZR § 52-83 (. . . same size, etc.), the non-conforming use is determined to have

---

# MINUTES

---

been discontinued;” and

## RELEVANT STATUTORY PROVISIONS

### *ZR § 12-10 Definitions*

Surface area (of a sign) (4/8/98)

...When two #signs# of the same shape and dimensions are mounted or displayed back to back and parallel on a single free-standing structural frame, only one of such #signs# shall be included in computing the total #surface area# of the two #signs#...

\* \* \*

### *ZR § 52-11 – Continuation of Non-Conforming Uses/General Provisions*

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

\* \* \*

### *ZR § 52-61 – Discontinuance/General Provisions*

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . .

\* \* \*

### *ZR § 52-83 – Non-Conforming Advertising Signs*

In all #Manufacturing Districts#, or in C1, C2, C4, C5-4, C6, C7 or C8 Districts, except as otherwise provided in Sections 32-66 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) or 42-55, any #non-conforming advertising sign# except a #flashing sign# may be structurally altered, reconstructed or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

- (a) the creation of a new #non-conformity# or an increase in the degree of #non-conformity# of such #sign#;
- (b) an increase in the #surface area# of such #sign#; or
- (c) an increase in the degree of illumination of such #sign#...; and

## THE APPELLANT’S POSITION

### *Compliance with ZR § 52-83*

WHEREAS, the Appellant asserts that the Current Double-Sided Sign is in substantially the same location as the Former Wall Sign and should be permitted to remain; and

WHEREAS, the Appellant asserts that it and DOB agree that prior to the 2008 demolition of the building, the Former Wall Sign was a legal non-conforming use regulated by Article V, Chapter 2 of the Zoning Resolution; and

WHEREAS, specifically, pursuant to ZR § 52-11, a non-conforming use is permitted to continue except as provided in ZR § 52-61 and other related provisions; and

WHEREAS, the Appellant asserts that ZR § 52-61 provides the general rule that when “substantially all” of the non-conforming use is discontinued for a period of two years, the rights to the non-conforming use cease and only a conforming use may occupy the site; and

WHEREAS, the Appellant asserts that prior to the building’s demolition in April 2008, the Former Wall Sign was regulated by ZR §§ 52-11 and 52-61 but that after the demolition, ZR § 52-83 became relevant as the Former Wall Sign was removed; and

WHEREAS, the Appellant cites to the conditions set forth at ZR § 52-83, which include that a:

non-conforming advertising sign . . . may be structurally altered, reconstructed or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

- (a) the creation of a new *non-conformity* or an increase in the degree of *non-conformity* of such *sign*;
- (b) an increase in the *surface area* of such *sign*; or
- (c) an increase in the degree of illumination of such *sign*; and

WHEREAS, the Appellant asserts that that provision allows for the reconstruction or replacement of the Former Wall Sign, under certain conditions; and

WHEREAS, the Appellant asserts that first, the provision states that the replacement sign be in the same “location” and “position,” but that neither term is defined and, thus, there is not any basis for determining that the location and position of the Current Double-Sided Sign is inconsistent with the provision; and

WHEREAS, the Appellant asserts that paragraphs (a) through (c) express the intention of the Zoning Resolution to allow for the replacement sign to differ from the original sign; and

WHEREAS, the Appellant asserts that if the intent of the text were to mandate precise replacement of the sign, then the criteria in paragraphs (a) through (c) would be unnecessary; and

WHEREAS, the Appellant asserts that the Current Double-Sided Sign meets the criteria set forth at paragraphs (a) through (c) in that (a) there is no new non-compliance or increase in the degree of non-compliance, (b) there is no increase in the surface area of the sign, and (c) there is no increase in the degree of illumination; and

WHEREAS, the Appellant states that DOB’s interpretation of ZR § 52-83 is incorrect because when read with ZR § 12-10, a double-sided sign is permitted without increasing the surface area; and

### *Tolling of the Discontinuity Period*

WHEREAS, the Appellant asserts that DOB cannot now find a discontinuance based on compliance with its prior decision; and

WHEREAS, the Appellant asserts that even if the Borough Commissioner’s 2008 decision were erroneous, DOB does not have the authority to remove all non-conforming use rights; and

---

# MINUTES

---

WHEREAS, the Appellant asserts that the courts have recognized that the rights to a non-conforming advertising sign have been determined to be a “valuable property interest” such that its termination under suspect circumstances can give rise to an inference that such an action is an “unconstitutional taking,” 149 Fifth Ave. Corp. v. Chin, 305 A.D.2d 194, 759 N.Y.S.2d 455 (1<sup>st</sup> Dept. 2003); and

WHEREAS, the Appellant asserts that DOB’s action to revoke the permit is outside of the text of the Zoning Resolution and constitutes the removal of a property right since ZR § 52-61 provides that the relevant time period to find discontinuance is two years in which substantially all of the non-conforming use was discontinued; and

WHEREAS, the Appellant asserts that the period of actual discontinuance between the removal of the Former Wall Sign and the installation of the Current Double-Sided Sign was approximately seven to eight months; and

WHEREAS, the Appellant asserts that DOB is seeking to use an equitable argument that since the replacement of the sign was in a different location, there was not any replacement pursuant to ZR § 52-83; and

WHEREAS, the Appellant asserts that the Current Double-Sided Sign was installed after consultation with DOB and that DOB allowed the sign to be located other than in the precise location of the Former Wall Sign; and

WHEREAS, the Appellant asserts that the courts in 149 Fifth Ave. and Matter of Hoffman v. Board of Zoning & Appeals of the Vill. of Russell Gardens, 155 A.D.2d 600, 547 N.Y.S.2d 657 (2d Dept. 1989) have determined that the required continuity time period for non-conforming uses cannot be so strictly applied as to ignore the totality of the circumstances in which the use cessation occurred; and

WHEREAS, the Appellant relies on 149 Fifth Ave. and Hoffman to establish that courts have applied equity to non-conforming use scenarios; and

WHEREAS, the Appellant asserts that in 149 Fifth Ave., the sign was removed from a building for 27 months during which time the property owner performed legally required façade work and that DOB’s and the Board’s determinations to prohibit replacing the original sign were overturned because the court found that under the circumstances, a finding that the Zoning Resolution authorized termination of the sign rights during the façade repair would raise a possible issue of an unconstitutional taking; and

WHEREAS, in Hoffman, a fire destroyed portions of a non-conforming restaurant and during the reconstruction, the restaurant was closed for more than a year (which was the statutory maximum discontinuance in the Village of Russell Gardens), but the court held that, under the circumstances, there was not any discontinuance; and

WHEREAS, the Appellant finds that the decisions in 149 Fifth Ave. and Hoffman support the conclusion that New York State courts accept a concept of tolling the discontinuity period in certain circumstances; and

WHEREAS, as to the application of tolling, the Appellant asserts that DOB states that it would seek to limit

the period of tolling to the time during which the building was being demolished, but the Appellant finds that such a determination would not be consistent with 149 Fifth Ave. and Hoffman; and

WHEREAS, the Appellant asserts that DOB should also recognize tolling for the approximately nine months during which the permits were under DOB’s review; and

WHEREAS, additionally, the Appellant asserts that from December 2008 until the 2010 review, the Current Double-Sided Sign existed pursuant to DOB’s approval and thus that period should be tolled; and

WHEREAS, the Appellant asserts that the property owner did not have any reasonable expectation to know that the sign needed to be returned to its original location to preserve the non-conforming rights; and

WHEREAS, the Appellant asserts that DOB’s action to begin the period of discontinuance clock after it advised the property owner that the removal was appropriate is contrary to fairness and equity and is not supported by the Zoning Resolution or the common law; and

WHEREAS, finally, the Appellant states that if DOB had commenced its audit sooner, there may have been an opportunity to correct the condition within the two-year discontinuance period; and

WHEREAS, the Appellant concludes that the right to an advertising sign is a significant property interest and DOB did not have any basis to extinguish those rights; and

WHEREAS, further, the Appellant asserts that DOB acted in bad faith by revoking the permit beyond the two-year discontinuance period at which time the Appellant no longer had the opportunity to correct any non-compliance with ZR § 52-83 and still meet the conditions of ZR § 52-61; and

### *Good faith reliance*

WHEREAS, the Appellant asserts that based on the Borough Commissioner’s approval, it removed the Former Wall Sign and spent approximately \$188,000 to install the Current Double-Sided Sign; and

WHEREAS, the Appellant cites to Pantelidis v. New York City board of Standards and Appeals, 10 Misc.3d 1077(A), (N.Y. Sup., 2005), Jayne Estates v. Raynor, N.Y.2d 417 (1968), and Ellentuck v. Klein, 51 A.D.2d 964 (1976) for the principle that a property owner should not suffer for relying upon a municipal permitting authority; and

WHEREAS, the Appellant states that it replaced the Former Wall Sign based on the assurances of the Borough Commissioner since the issue of the sign replacement was specifically addressed by preconsideration and reconsideration and the owner expended money in reliance on DOB’s review and approval; and

WHEREAS, the Appellant states that it took all necessary measures to ensure compliance with the law and was given approval by a high level official, and accordingly its good faith reliance was reasonable, referencing Woods v. Srinivasan, 932 N.Y.S.2d 821 (N.Y. Sup. Ct., Bronx Cty. 2011); and

### DOB’S POSITION

*Contrary to ZR §§ 52-83 and 52-61*

---

# MINUTES

---

WHEREAS, DOB's position is that the permits for the Current Sign Structure and the Current Double-Sided Sign were properly revoked because the non-conforming Former Wall Sign was moved to a new location and position and its degree of non-compliance was increased contrary to ZR § 52-83; and

WHEREAS, DOB states that ZR § 52-83 allows a non-conforming sign to be structurally altered, reconstructed, or replaced but that sign must remain in the same position and location and must not increase its degree of non-compliance, among other restrictions; and

WHEREAS, DOB's position is that the Borough Commissioner did not have the authority to accept the Current Double-Sided Sign as a permissible reconstruction of a grandfathered sign because it does not meet the restrictions set forth at ZR § 52-83 and that having recognized its mistake, DOB properly revoked the permits; and

WHEREAS, DOB notes that the Appellant changed the Former Wall Sign from a single sign with dimensions of 14'-0" high by 48'-0" wide on a building wall at a height of 35'-0" above curb level (perpendicular to Second Avenue between East 36<sup>th</sup> Street and East 37<sup>th</sup> Street) to the Current Sign Structure and Current Double-Sided Sign, which is double-sided with each sign measuring 14'-0" high by 48'-0" wide at a height ten feet above curb level (oriented diagonally on the corner of Second Avenue and East 36<sup>th</sup> Street); and

WHEREAS, DOB states that the Current Sign Structure and Current Double-Sided Sign may also be viewed as the construction of a new sign with a permit contrary to the Zoning Resolution which prohibits advertising signs in the district; and

WHEREAS, DOB states that in 1980, the Appellant held a lawfully issued permit for a non-conforming wall sign; however it did not have a right to move that sign to a new location and position on the lot and to create a new non-compliance by adding a second sign contrary to ZR § 52-83; and

WHEREAS, DOB states that its reconsideration approval and the permits for the Current Sign Structure and Current Double-Sided Sign were issued in error because they exceeded the limitations on permissible modifications to a non-conforming sign as specified in ZR § 52-83 and amounted to the construction of a new sign structure and sign in the absence of lawfully-issued permits; and

WHEREAS, as to whether adding a back-to-back sign increases the surface area of a non-conforming sign, DOB notes that the ZR § 12-10 definition of "Surface area (of a sign)," provides that "when two signs of the same shape and dimensions are mounted or displayed back to back and parallel on a single free-standing structural frame, only one of such signs shall be included in computing the total surface area of the two signs;" and

WHEREAS, DOB notes that the Appellant is correct that ZR § 52-83(b) prohibits an increase in the surface area of a non-conforming advertising sign and that the surface area of two back-to-back and parallel signs on a single sign

structure is computed by measuring only one of the two signs; and

WHEREAS, however, DOB states that even though the new sign face is not a prohibited increase in the non-conforming wall sign's surface area, the addition of a second advertising sign violates ZR § 52-83(a) because it is a new non-conformity; and

WHEREAS, further, DOB states that the back-to-back advertising signs double the extent to which the single wall sign by itself failed to comply with the Zoning Resolution because the Zoning Resolution does not treat a double-sided sign as one sign; and

WHEREAS, instead, DOB notes that the "surface area" definition recognizes that a "double-sided sign" is actually two signs displayed back-to-back and the addition of the second sign, while not an increase in surface area per ZR § 12-10, constitutes a new non-conformity; and

WHEREAS, DOB concludes that the prohibitions in paragraphs (a), (b), and (c) of ZR § 52-83 are imposed in addition to the requirement that non-conforming signs must only be altered, reconstructed, or replaced in the same location and position, which is not the case for the new signs at different elevations and at a different orientation and location on the site; and

WHEREAS, DOB states that, contrary to ZR § 52-61, the Former Wall Sign was discontinued for a period greater than two years and, thus, has lost its legal non-conforming status; and

WHEREAS, DOB notes that ZR § 52-61 terminates the right to a non-conforming use if the use is discontinued for a period of two years; and

WHEREAS, DOB notes that the permits for the Current Sign Structure and Current Double-Sided Sign were erroneously issued on June 20, 2008 and December 11, 2008, respectively, and the Appellant did not resume active operation of the lawful non-conforming sign use following July 8, 2008 when the building was demolished; and

WHEREAS, accordingly, DOB concludes that the Appellant has lost the right to a non-conforming sign use under ZR § 52-61 since the Former Wall Sign has been discontinued for a period greater than two years; and

### *Interpretation of Case Law*

WHEREAS, DOB distinguishes 149 Fifth Avenue Corp. v. Chin, 305 A.D.2d 194, 195 (1<sup>st</sup> Dept. 2003) on the basis that in 149 Fifth Ave., the court noted that the interruption in the sign's use was "compelled by legally mandated, duly permitted and diligently completed repairs;" and

WHEREAS, specifically, DOB notes that the sign was removed to allow for legally required façade inspection and repairs; and

WHEREAS, DOB notes that although the Former Wall Sign was removed pursuant to the required demolition of the 669 Second Avenue building, it was the Appellant's failure to maintain the building that caused the building to become unstable and require demolition rather than required routine maintenance at issue in 149 Fifth Ave.; and

WHEREAS, further, DOB states that the Appellant did

---

# MINUTES

---

not attempt to restore the Former Wall Sign once the demolition was completed and that rather than obtaining a permit for a single-sided sign at the same location as the Former Wall Sign, five months after the demolition, the Appellant obtained a permit for a two-sided sign at a lower height in a different location; and

WHEREAS, DOB notes that, unlike in 149 Fifth Ave., the Former Wall Sign use did not stop due to the Appellant's temporary need to remove the sign to perform required repairs but rather the sign was removed indefinitely due to the Appellant's own failure to maintain the building and decision to impermissibly alter and relocate the Former Wall Sign; and

WHEREAS, DOB cites to Parkview Associates v. City of New York, 71 N.Y.2d 274, cert. denied, 488 U.S. 801 (1988) for the proposition that it is not estopped from enforcing the Zoning Resolution by the issuance of a permit or by laches, even where correction of the error leads to harsh results; accordingly, DOB states that the mistakenly approved reconsideration request approval, the erroneous issuance of permits, and DOB's enforcement of the law after rights to a non-conforming sign were lost by operation of ZR § 52-61 are not valid reasons to reinstate the permits; and

#### *Effect of the Variance*

WHEREAS, DOB states that the Appellant cannot claim that the Current Sign Structure and Current Double-Sided Sign are a conforming use authorized by the Board's modification of its variance for the mixed-use building under BSA Cal. No. 280-01-BZ; and

WHEREAS, DOB states that it is not clear that the variance granted conforming status to the sign as there is no mention of the sign in the Board's decision or on the Board-approved plans; and

WHEREAS, DOB further states that the Current Sign Structure and the Current Double-Sided Sign do not conform to the approval by the Board in its letter modifying the variance and DOB does not have authority to issue a permit for a sign that is different from the one approved by the Board; and

#### CONCLUSION

WHEREAS, the Board agrees with DOB and finds that the Current Double-Sided Sign does not meet the requirements of ZR §§ 52-83 and 52-61 and thus must be removed; and

WHEREAS, as to ZR § 52-83, the Board agrees with DOB that the Current Double-Sided Sign is not in the same position and location as the Former Wall Sign, contrary to ZR § 52-83 and that the addition of a second sign increases the degree of non-compliance, contrary to ZR § 52-83(a); and

WHEREAS, the Board notes that the Current Double-Sided Sign can be distinguished from the Former Wall Sign in several ways, including that (1) its location on Lots 26 and 27 (at the corner of Second Avenue and East 36<sup>th</sup> Street) is at least 27 feet to the south of the location of the Former Wall Sign on Lot 28 on the northern wall of the now-demolished 669 Second Avenue building (perpendicular to

Second Avenue between East 36<sup>th</sup> Street and East 37<sup>th</sup> Street); (2) its position is now a diagonal orientation with one sign facing northeast and one sign facing southwest as opposed to the Former Wall Sign which had one face, oriented to the north; (3) the Current Double-Sided Sign has two back-to-back signs as opposed to the Former Wall Sign with a single sign; and (4) the Current Double-Sided Sign is in a different position with relation to grade (ten feet above curb level versus 35 feet above curb level); and

WHEREAS, the Board is not persuaded by the Appellant's arguments that because position and location are not defined in the Zoning Resolution, that they have some broader meaning than is generally accepted; and

WHEREAS, further, the Board finds that by the plain meaning of the words, it is clear that a sign which was relocated to a different tax lot at least 27 feet away from its original setting cannot be considered to be in the "same location and position" as the previous non-conforming sign, as required by ZR § 52-83(c); and

WHEREAS, as to the question of whether adding a second side to an existing sign is permitted pursuant to ZR § 52-83, the Board agrees with DOB that, although the second sign does not increase the surface area per ZR § 12-10, it does increase the degree of non-conformance by adding a new second sign, which would not be permitted under the current zoning; and

WHEREAS, the Board finds that the ZR § 12-10 definition of surface area and the condition at ZR § 52-83(b) that surface area not be increased does not lead to the conclusion that the addition of a second sign meets the requirement at ZR § 52-83(a) that there not be a new *non-conformity* or an increase in the degree of *non-conformity* of such sign; and

WHEREAS, the Board does not find that there is a basis to ignore ZR § 52-83(a) and an increase in the degree of non-conformance just because ZR § 52-83(b) is met by the fact that there is no technical increase in surface area as provided by ZR § 12-10; and

WHEREAS, the Board does not find that reading ZR § 52-83 as DOB suggests renders any of the paragraphs meaningless; and

WHEREAS, in addition, the Board questions whether the Current Double-Sided Sign also increases the degree of illumination of the sign, contrary to ZR § 52-83(c); and

WHEREAS, specifically, the Board notes that the plans for the Current Double-Sided Sign indicate that the sign structure includes a row of four lights on each side of the structure (a total of eight lights) to illuminate the signs on both sides of the structure; and

WHEREAS, accordingly, the Board considers it likely that the Current Double-Sided Sign increases the degree of illumination contrary to ZR § 52-83(c), given that the plans reflect the illumination of two 14'-0" high by 48'-0" wide sign faces, while the Former Wall Sign only illuminated a single 14'-0" high by 48'-0" wide sign face; and

WHEREAS, as to ZR § 52-61, the Board agrees with DOB that the Former Wall Sign, which was removed on July 8, 2008 has been discontinued for a period greater than

# MINUTES

two years and thus its non-conforming status is not protected; and

WHEREAS, the Board distinguishes the discontinuance in the subject case from the facts in 149 Fifth Ave. and Hoffman; and

WHEREAS, first, as to 149 Fifth Ave., the Board does not find that the court's holding establishes a broad tolling provision and finds that, instead, the accepted tolling was limited to the facts in that case which involved the temporary removal of a longstanding sign during the course of "legally mandated, duly permitted and diligently completed repairs;" and

WHEREAS, the Board notes that in 149 Fifth Ave., the sign had to be removed in order to allow for the required façade repair but then was to be replaced after the completion of the repair work as distinguished from the subject case, where the Former Wall Sign had to be removed while the building was demolished, but was not replaced at the same location after the building's demolition; and

WHEREAS, the Board finds that a more narrow reading of 149 Fifth Ave. is warranted because the court specifically highlights the temporary removal of the sign during the period of the diligent completion of required maintenance; the Board does not find there to be a broad tolling principle or any application to the subject case, which did not include a temporary removal of the sign during a finite time period dictated by the amount of time required to perform legally mandated work; and

WHEREAS, in fact, the Board notes that even if the demolition work were parallel to the façade maintenance in 149 Fifth Ave., the time required to perform the legally-mandated building demolition was just a matter of months and, a reasonable reading of 149 Fifth Ave. would allow for the discontinuance only during the time of the demolition work and before the presumed reinstallation of the sign at the completion of the work; and

WHEREAS, the Board notes that there was no comparably finite period during which the subject sign was removed and after which it would be replaced pursuant to ZR § 52-83; and

WHEREAS, the Board finds that DOB's position that the two-year discontinuation applies in the subject case is consistent with the decision in 149 Fifth Ave.; and

WHEREAS, the Board notes that Hoffman arose outside of New York City and was not subject to the Zoning Resolution and the two-year discontinuance provision of ZR § 52-61 and that, further, that decision was in the context of a building with a non-conforming use, rather than the location of a sign and, thus, the analysis is not on point; and

WHEREAS, the Board finds that it is also worth noting that the in the Village of Russell Gardens, the discontinuance provision allowed for only a one-year period and that the governmental entities in Hoffman may have been persuaded that one year did not suffice to complete the reconstruction of a restaurant even as the work appears to have been performed diligently; and

WHEREAS, the Board finds the Appellant's invocation of the good faith reliance doctrine is misplaced as

the doctrine is limited to zoning variance applications and the courts have not extended the principle to interpretive appeal cases; and

WHEREAS, specifically, the Board notes that the limited precedent in case law for good faith reliance cases contemplate a zoning variance context and do not extend to a general appeal authority, such as that set forth at Charter Section 666(6); and

WHEREAS, the Board notes that the Appellant has indicated that it intends to file a variance application pursuant to ZR § 72-21 based on its assertion that it relied in good faith on DOB's approval and, thus, it will discuss the good faith reliance findings in the variance context; and

WHEREAS, the Board takes no position as to the merits of the proposed variance application; and

WHEREAS, as to the Appellant's assertion that DOB did not act in good faith when it revoked the permit beyond the two-year discontinuance period, the Board does not see any basis to conclude that DOB acted in bad faith; and

WHEREAS, the Board notes the principle that government agencies, like DOB, maintain the ability to correct mistakes, such as the issuance of building permits (see Charles Field Delivery v. Roberts, 66 N.Y.2d 516 (1985) in which the court states that agencies are permitted to correct mistakes as long as such changes are rational and are explained), and agrees that DOB is not estopped from correcting an erroneous approval of a building permit (see Parkview Assoc.); and

WHEREAS, therefore, the Board finds that DOB properly revoked the permits due to the Appellant's failure to comply with ZR §§ 52-61 and 52-83.

*Therefore it is resolved* that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated June 9, 2011 is hereby denied.

Adopted by the Board of Standards and Appeals, June 19, 2012.

-----

## 38-12-A & 39-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Birb Realty, owner.

SUBJECT – Application February 10, 2012 – Proposed construction of a single family home that does not front on a legally mapped street, contrary to General City Law Section 36. R3-1 Zoning District.

PREMISES AFFECTED – 131 & 133 Aviston Street, 80' northwest corner of intersection of Aviston Street and Riga Street, Block 4683, Lot 22, 23, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

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

THE VOTE TO GRANT –

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

Negative:.....0

# MINUTES

## THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated January 13, 2012, acting on Department of Buildings Application Nos. 520084649 and 520088146, read in pertinent part:

The proposed one family dwelling & two family dwelling which does not front on a legally mapped street is contrary to Article 3, Section 36 of the General City Law, and therefore referred to the Board of Standards and Appeals for approval; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in the *City Record*, and then to decision on June 19, 2012; and

WHEREAS, the applicant proposes to construct one single-family home and one two-family home which do not front on legally mapped streets, contrary to General City Law § 36; and

WHEREAS, by letter dated May 1, 2012, the Fire Department states that it has reviewed the plans and associated documents and has no objections; and

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

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated January 13, 2012, acting on Department of Buildings Application Nos. 520084649 and 520088146, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received June 5, 2012”-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

THAT proposed construction will comply with all requirements of the Lower Density Growth Management Area; and

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

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

Adopted by the Board of Standards and Appeals June 19, 2012.

-----

## 180-11-A & 181-11-A

APPLICANT – Eric Palatnik, P.C., for Eran Yousfan, owner.

SUBJECT – Application November 30, 2011 – An appeal seeking a common law vested right to continue development commenced under the prior R6B zoning district. R5 zoning district.

PREMISES AFFECTED – 34-57 & 34-59 107<sup>th</sup> Street, between 34<sup>th</sup> and 37<sup>th</sup> Avenues, Block 1749, Lot 60 (Tent. Lot #s 60 & 61), Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

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

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

-----

## 47-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for FHR Development, LLC, owner.

SUBJECT – Application March 2, 2012 – Appeal to Department of Building’ determination that the proposed two-family building did not qualify for rear yard reduction pursuant §23-52. R3-1 zoning district.

PREMISES AFFECTED – 22 Lewiston Street, west side of Lewiston Street, 530.86’ north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

For Administration: Lisa Orrantia, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 10 A.M., for continued hearing.

-----

## 103-12-A

APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.

SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Lisa Orrantia, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for continued hearing.

-----

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, JUNE 19, 2012  
1:30 P.M.**

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

**ZONING CALENDAR**

**183-11-BZ**

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

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

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

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Elena Aristova.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 2, 2012, acting on Department of Buildings Application No. 120801365, reads in pertinent part:

1. ZR Sec. 33-123: The proposal exceeds the maximum floor area ratio permitted for a community facility building in a C1-9 district as per this section.
2. ZR Sec. 33-261: The proposal does not provide a rear yard in the interior portion of the Zoning Lot in a C1-9 district as per this section.
3. ZR Sec. 33-432: The proposal does not comply with the maximum height of a front wall and the required front setback regulations applicable in a C1-9 district as per ZR Sec. 33-432 on both York Avenue and East 61st Street.
4. ZR Sec. 36-682: The proposal indicates two curb cuts for loading within 50' of an

intersection that do not comply with ZR Sec. 36-682; and

WHEREAS, this is an application under ZR § 72-21, to permit, partially within a C1-9 zoning district and partially within a C8-4 zoning district, the construction of a new community facility building that does not comply with zoning regulations for floor area, rear yard, height and setback, and curb cuts, contrary to ZR §§ 33-123, 33-261, 33-432 and 36-682; and

WHEREAS, a public hearing was held on this application on March 27, 2012, after due notice by publication in the *City Record*, with a continued hearing on May 8, 2012, and then to decision on June 19, 2012; and

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

WHEREAS, Community Board 8, Manhattan, made a motion to approve the application, which did not pass; and

WHEREAS, residents of the adjacent residential cooperative building located at 440 East 62<sup>nd</sup> Street presented testimony in opposition to this application, and were represented by counsel throughout the hearing process (the "Opposition"); and

WHEREAS, a neighborhood resident also provided testimony in opposition to this application; and

WHEREAS, the Opposition made the following primary arguments: (1) the applicant failed to justify the requested waivers based on the unique physical conditions on the site; (2) the alleged programmatic needs lack the required specificity and the applicant is not entitled to rely on its programmatic needs to satisfy the finding under ZR § 72-21(a); (3) the DOB objection erroneously cites ZR § 36-682 rather than ZR § 13-142 in relation to curb cuts; (4) the applicant is required to make the finding under ZR § 72-21(b) despite its non-profit status; (5) the proposed building has significant light and air impacts on the adjacent building at 440 East 62<sup>nd</sup> Street; (6) the proposed building will create adverse traffic and parking impacts; and (7) the scheduling of the initial hearing did not comply with the Board's Rules of Practice and Procedure; and

WHEREAS, the application is brought on behalf of the Memorial Hospital for Cancer and Allied Diseases ("Memorial Hospital"), a non-profit hospital, research, and educational facility; and

WHEREAS, the subject zoning lot is located on the northwest corner of the intersection of York Avenue and East 61st Street, with approximately 100'-0" of frontage on York Avenue and 115'-0" of frontage on East 61st Street; and

WHEREAS, the zoning lot has a total lot area of 11,547 sq. ft.; and

WHEREAS, approximately 87 percent of the zoning lot is located within a C1-9 zoning district and approximately 13 percent is located with a C8-4 zoning district; and

WHEREAS, the entire zoning lot is occupied by a four-story former automotive showroom building and is now used primarily for storage and accessory parking; and

WHEREAS, the applicant proposes to demolish the current building on the site and construct a 15-story community facility building with a floor area of 136,755 sq. ft. (11.84

---

# MINUTES

---

FAR), to be occupied by an outpatient surgical center for Memorial Hospital (the "Outpatient Surgical Center"); and

WHEREAS, the applicant notes that the main campus of Memorial Hospital and Sloan-Kettering Institute ("SKI"), known collectively as Memorial Sloan-Kettering Cancer Center ("MSK"), is centered around York Avenue and East 67<sup>th</sup> and 68<sup>th</sup> streets, with additional buildings located in Manhattan's East Side; and

WHEREAS, the applicant states that the proposed building will have the following non-compliances: (1) an FAR of 11.84 (the maximum permitted FAR for a community facility in the subject zoning districts is 10.0); (2) no rear yard (a rear yard with minimum dimensions of 20'-0" by 15'-0" is required); (3) a front wall height of approximately 203'-4" along East 61<sup>st</sup> Street and 217'-4" along York Avenue (a maximum front wall height of 85'-0" is permitted, with a setback of 20'-0" above a height of 85'-0" required along East 61<sup>st</sup> Street and a setback of 15'-0" above a height of 85'-0" required along York Avenue); and (4) two curb cuts located within 50'-0" of the intersection of York Avenue and East 61<sup>st</sup> Street (curb cuts are not permitted within 50'-0" of an intersection); and

WHEREAS, because the proposed building does not comply with the underlying zoning district regulations, the subject variance is requested; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the site's high water table; (2) the presence of existing gas storage tank foundations below grade; (3) the site's location within an "Impact Area" for Category 3 hurricanes; and (4) the programmatic needs of MSK; and

WHEREAS, the applicant states that, due to the site's subterranean shoreline of the East River and a historic stream channel, groundwater on the site will be encountered at approximately elevation +1; and

WHEREAS, the applicant states that for any structures that are installed below the groundwater table, extensive permanent waterproofing would be necessary; and

WHEREAS, the applicant represents that its original intention was to construct a 10.0 FAR building with three full subsurface levels; and

WHEREAS, the applicant states that in order to construct three subsurface levels, it would be necessary to completely excavate the site from 45'-0" to 50'-0" below the York Avenue grade; and

WHEREAS, the applicant further states that given the extent of overburdened soils, depth of groundwater, environmental groundwater concerns, and proximity to the East River, dewatering the site for a long duration would not be feasible and temporary earth support systems would need to be watertight and capable of withstanding hydrostatic pressures; accordingly, the conditions on the site necessitate a foundation system of either secant wall piling or ground freeze walls; and

WHEREAS, the applicant states that secant wall piling would require closely-spaced, drilled, cast-in-place concrete columns that overlap to form a wall of tangent columns with

every other column reinforced with a steel core beam to carry vertical and horizontal loads; and

WHEREAS, the applicant further states that as an alternative or in addition to secant pile construction along the East 61<sup>st</sup> Street and York Avenue site perimeters, ground freezing may be a viable option to provide groundwater cut-off, with a traditional soldier pile system then installed to form a hybrid earth support; and

WHEREAS, the applicant states that ground freezing requires the installation of closely-spaced drilled-in cooling loops and cycling refrigerant for several months until a curtain of frozen ground is made; and

WHEREAS, the applicant represents that in either case, bedrock excavation would be required for a complying building with three subgrade levels and may entail extensive mechanical excavation by chipping with hydraulic hoe-ram/breakers, ripping, and/or rock drilling/splitting/blasting; and

WHEREAS, as to the existing gas storage tank foundations, the applicant states that the subject site was part of the York Avenue Manufactured Gas Plant operated by the Consolidated Gas Company and that, until 1950, a gas holding tank was located at the site; and

WHEREAS, the applicant states that a foundation that supported the gas tank, surrounded by a 1'-0" to 5'-0" thick caisson ring wall, remains at the site, beneath the existing building; and

WHEREAS, the applicant further states that the existence of the gas storage tank foundations, in conjunction with the high water table at the site, creates practical difficulties in constructing a complying building with three subgrade floors, because the necessary excavation would require the removal of the existing gas storage tank foundations, and the foundation work would have to incorporate both large-scale temporary and permanent systems (the secant wall piling or ground freeze walls) for preventing groundwater from entering the site; and

WHEREAS, the applicant submitted a cost estimate analysis of the excavation and foundation work required for the proposed building, with one subgrade floor to a depth of 15 feet below York Avenue grade, as compared to a complying building with three subgrade floors built to a depth of 50 feet below York Avenue grade, which reflects a construction premium of \$13.34 million for the excavation and foundation work associated with the complying building; and

WHEREAS, the applicant notes that the property is located within an "Impact Area" for Category 3 hurricanes in which significant tidal and storm inundation can be expected, as determined by the Sea, Lake, Overland Surges from Hurricanes ("SLOSH" maps) generated by the National Oceanic and Atmospheric Administration; and

WHEREAS, the applicant further notes that this designation is unique to the area since the Impact Area extends farther upland between East 61<sup>st</sup> and East 62<sup>nd</sup> streets than any other block to the north or south; and

WHEREAS, Con Edison, in a letter dated June 29, 2011, states that the applicant cannot locate electrical

---

# MINUTES

---

transformers in sidewalk vaults along the building but rather must locate the transformers not less than 22'-0" above datum; and

WHEREAS, as a result of Con Edison's determination, the electrical services will be located on the second floor rather than below grade, and that, while the footprint for the transformers is not counted as floor area, the circulation areas of the floor around the equipment is counted as floor area; and

WHEREAS, the applicant further notes that the site's location in an Impact Area also requires that the surgical services, which would normally be located in the two lower sub-cellar levels, be located above grade; and

WHEREAS, the applicant states that, due to the unique subsurface conditions and the location of the entire site in the Impact Area, only one cellar level will be constructed rather than three cellar levels; and

WHEREAS, the Opposition argues that the site's location within an Impact Area for Category 3 hurricanes according to the SLOSH Maps does not prohibit the construction of sub-cellars and therefore does not create any hardship with regard to below grade construction, and that the applicant has ignored the Mayor's Office of Emergency Management ("OEM") Hurricane Impact Maps which show that the site is located in a zone which would require complete evacuation of the site in the event of a Category 3 Hurricane regardless of the number of sub-cellars; and

WHEREAS, in response, the applicant acknowledges that the City does not use SLOSH Maps to prohibit or restrict development, but states that the City, Con Edison, and other public utility providers use them to serve as a blueprint for promoting best practices with regard to new development, and accordingly Con Edison has advised the applicant that it will not provide its service connections and transformers in typical sidewalk vault locations adjacent to the site or in on-site subgrade locations; and

WHEREAS, the applicant further responds that the OEM Maps referenced by the Opposition are utilized for evacuation purposes, and are not relevant to Con Edison's determination that the electrical transformers for the building must be located at least 22 feet above grade; and

WHEREAS, the applicant represents that, as a result of constructing only one cellar level, the spaces must be relocated above grade, resulting in an increase in FAR from the permitted 10.0 to the proposed 11.84; and

WHEREAS, the applicant represents that the requested waivers are also necessary in order to meet the programmatic needs of MSK, which include: (1) creating a short stay recovery unit to allow for the recovery of patients who do not require inpatient stay, but cannot be discharged as quickly as routine outpatient surgery patients; (2) shifting the majority of outpatient operative cases from the main campus to the proposed building, thereby freeing up space on the main campus for higher-intensity cases and critical post-surgical care and recovery; (3) fostering a robotic and laparoscopic surgery program by creating 12 state-of-the-art, appropriately sized operating rooms for specialized equipment and advanced procedures, with supporting pre-

operative assessment and post-anesthesia recovery space; (4) optimizing the facility to serve as an academic center through which MSK can train its oncology students, fellows and residents in outpatient surgical procedures; (5) accommodating clinical lab and pathology departments; and (6) providing administrative office space, ancillary support spaces and central sterile processing space; and

WHEREAS, as to the programmatic needs, the applicant represents that MSK is both a non-profit medical facility and a non-profit educational institution, with a mission to provide exceptional patient care, leading-edge research, and superb educational programs; and

WHEREAS, the applicant states that in 2010, MSK, one of the nation's 26 officially designated cancer centers, had more than 11,000 employees, including approximately 800 Memorial Hospital attending staff and 140 SKI members; and

WHEREAS, the applicant also states that in 2010, more than 24,000 patients were admitted to Memorial Hospital, and MSK accommodated more than 500,000 outpatient visits at its Manhattan and regional sites combined; and

WHEREAS, the applicant states that MSK is pioneering cancer surgical procedures by performing more sophisticated and complex surgical procedures in an ambulatory setting, which will allow patients to leave a facility within 23 hours rather than spending several nights recovering in a hospital; and

WHEREAS, the applicant states that the proposed Outpatient Surgical Center will be located within close proximity to MSK's main campus and will be devoted to further the effectiveness of advances in ambulatory surgery for cancer patients; and

WHEREAS, the applicant states that the design of the proposed building requires specific square footage, floor plate size, floor-to-ceiling heights and program adjacencies and connectivity to accommodate the required spaces, including operating rooms, specialized recovery rooms, medical laboratories, and special facilities for surgeon training and education; and

WHEREAS, the applicant states that complying with the required 20'-0" and 15'-0" setback at a height of 85'-0" would result in floor plates that would be smaller on the building's upper floors, which is at odds with the large contiguous floor plates needed for health care programmatic functionality and staffing efficiencies; and

WHEREAS, the applicant provided an analysis of an as-of-right building consisting of a 20-story hospital building with 115,429 sq. ft. of floor area (10.0 FAR) and a total height of approximately 334 feet (the "Complying Building"); and

WHEREAS, in response to concerns raised by the Opposition, and at the direction of the Board, the applicant also submitted an analysis of a lesser variance building which consists of a 15-story hospital building with 132,914 sq. ft. of floor area (11.51 FAR) with a complying rear yard (the "Lesser Variance Building"); and

WHEREAS, the applicant states that, due to the rear yard and height and setback regulations, the Complying Building provides five floors above grade with floor plates of approximately 11,200 sq. ft., then above them two floors

---

# MINUTES

---

of approximately 7,500 sq. ft., then four floors of approximately 6,000 sq. ft., and then nine floors of approximately 5,500 sq. ft.; and

WHEREAS, the applicant represents that this staggered envelope is at odds with health care planning, which strives for large contiguous floor plates for programmatic functionality as well as staffing efficiencies; and

WHEREAS, specifically, the applicant states that the Complying Building does not provide a sufficient number of large floor plates for the operating rooms on the upper floors, as only the third, fourth and fifth floors have large enough floor plates to accommodate four operating rooms and their required adjacent program areas, which compromises the Complying Building's connectivity for both patients and staff and requires an additional patient elevator which further reduces the amount of program space; and

WHEREAS, the applicant further states that the upper floors of the Complying Building, which are smaller due to the height and setback and rear yard regulations, contain too little usable space due to the high proportion of floor area necessarily dedicated to elevators and shafts, resulting in a loss of approximately 14,000 sq. ft. of usable program space as compared to the proposed building; and

WHEREAS, the applicant states that the upper floors of the Complying Building are not large enough for the proper siting of the medical laboratories, which would have to be located on the second lowest level of the building, thereby requiring the dedicated laboratory exhaust ductwork to pass through 21 floors to exit through the roof; and

WHEREAS, the applicant states that the upper floors of the Complying Building are similarly not large enough for the proper siting and design of patient floors, as the prep, post-anesthesia care unit, and short stay floors would have to be spread over eight floors (as opposed to three in the proposed building), which creates extreme inefficiencies for staffing and equipment; and

WHEREAS, the applicant represents that providing the required rear yard for the Complying Building takes a 20'-0" by 15'-0" notch out of each floor above the first floor of the building, resulting in the loss of rectangular symmetry and restricting the core elements that can be located against the north and west walls of the building, thereby forcing infrastructure elements such as shafts and electrical and electronic services into the center of the building where they will interfere with the locational and spatial requirements of the surgical suites; and

WHEREAS, the applicant states that the Lesser Variance Building similarly fails to meet the programmatic needs of MSK, in that it results in a net loss of 6,702 sq. ft., or seven percent, of program area and yields a net loss of three operating rooms and four patient rooms, which equates to a 25 percent loss of operating room capacity; and

WHEREAS, the applicant represents that the Lesser Variance Building therefore defeats the primary purpose of the building as a 12-operating room surgical facility, and results in 15 fewer surgical procedures per day, or 3,750

procedures per year, which is a significant loss to MSK's teaching and research programs; and

WHEREAS, the applicant further represents that the floor plates of the Lesser Variance Building also impose compromises on the clinical and non-clinical support functions on all floors and create shortfalls and/or losses of critical functions and adjacencies throughout the building that disrupt essential medical support to patients; and

WHEREAS, accordingly, the applicant concludes that both the Complying Building and the Lesser Variance Building fail to satisfy MSK's programmatic needs, as compliance with height and setback and rear yard requirements would seriously undermine MSK's mission objectives as a provider of cancer treatment, research investigator and educator for future doctors; and

WHEREAS, the applicant represents that the proposed building corrects the many significant deficiencies and inefficiencies found in the Complying Building, including: suitably sized operating rooms on the upper floors; location of medical laboratories closer to the operating room floors and reduction of space devoted to exhaust ductwork; increase in the number of patient rooms and concentration of the patient rooms on three floors rather than eight; efficient location of support areas; and elimination of a mechanical floor and one elevator; and

WHEREAS, the Opposition argues that the fact that the plans for the Lesser Variance Building are self-serving in that MSK claims that the lesser variance reduces the number of desired operating rooms from 12 to nine while the Complying Building provides the required 12 operating rooms on the same number of floors (three) and with identical floor plates; and

WHEREAS, in response, the applicant states that providing four operating rooms per floor on floors seven through nine of the Lesser Variance Building would result in the loss of necessary surgical support functions, and therefore only three operating rooms were placed on each of those floors; and

WHEREAS, the applicant states that an additional program element for the Outpatient Surgical Center is to provide for the smooth flow of patients' arrivals and departures, and that in order to meet this programmatic need the proposed building includes a patient drop off area, with vehicles entering the drop off area via a curb cut on York Avenue and exiting via a curb cut on East 61<sup>st</sup> Street; and

WHEREAS, the applicant states that the one-way flow through the drive-through will provide for a more efficient flow of vehicles than the Complying Building, which would require cars, vans, and cabs to pull over along East 61<sup>st</sup> Street and York Avenue to drop off or pick up their passengers, and the patients would need to walk to the Outpatient Surgical Center's entrance and return to the vehicles by foot, which would adversely affect the scheduling and operation of the facility and impede traffic flow along both streets adjoining the site; and

WHEREAS, the applicant states that the proposed curb cuts must be located within 50'-0" of the intersection of York Avenue and East 61<sup>st</sup> Street because locating the curb

---

# MINUTES

---

cuts more than 50'-0" from the intersection presents significant practical difficulties, including eliminating frontage needed to accommodate the building's lobby, loading berth, oxygen farm, and building egress; and

WHEREAS, the applicant represents that the drop-off area will permit a greater number of vehicles approaching the building to avoid the intersection of York Avenue and East 61<sup>st</sup> Street, and the applicant submitted an analysis prepared by its environmental consultant, which showed that the drop off would reduce the vehicle hours of delay by 11 percent and the southbound travel times on York Avenue by four percent; and

WHEREAS, the Opposition asserts that the DOB objection citing ZR § 36-682 regarding the two curb cuts was written in error because the proposed drop-off area is not related to loading, and that ZR § 13-142, which was cited in the original DOB objection sheet, is the controlling provision; and

WHEREAS, in response, the applicant states that it consulted with DOB on the proper zoning section and that DOB considers passenger drop-off and pick-up areas qualify as "loading," and that therefore, ZR § 36-682 was identified as the proper section by DOB's executive zoning specialist; and

WHEREAS, the applicant further states that by the Opposition's logic that ZR § 36-682 does not apply because the drop-off area is not related to loading, then ZR § 13-142 would be equally inapplicable because it applies to curb cuts for accessory parking, and there is no accessory parking on the site; and

WHEREAS, the Board notes that it defers to DOB's judgment in identifying the appropriate zoning objections that form the basis of an application before the Board; and

WHEREAS, the Opposition argues that the applicant has failed to make the findings under ZR § 72-21(a) because: (1) the applicant has not established that there are unique physical conditions that create hardship on the site; (2) the alleged programmatic needs lack sufficient specificity; and (3) MSK is not entitled to deference as to its programmatic needs under the Court of Appeals decision in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986) to satisfy the (a) finding; and

WHEREAS, as to its lack of uniqueness, the Opposition contends that the applicant has not provided sufficient evidence to establish the need for the floor area waiver and has not provided any evidence of unique conditions that justify the rear yard, height and setback, and curb cut waivers, and therefore cannot satisfy the (a) finding under ZR § 72-21; and

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, engineer's reports, cost estimates, and other evidence, have sufficiently established that the subsurface conditions on the site, including the high water table and the existence of gas storage tank foundations, and the site's location in an "Impact Area" for Category 3 hurricanes create practical difficulties and unnecessary hardship in constructing sufficient below grade space to accommodate the necessary

floor area for the Outpatient Surgical Center in a complying building, thereby resulting in the need for the requested floor area waiver to provide such space above grade; and

WHEREAS, the Board notes that the applicant has made detailed submissions providing the required specificity about its program to establish that the requested waivers are necessary to satisfy its programmatic needs; and

WHEREAS, the Opposition argues that MSK is not entitled to the deference accorded educational institutions seeking variances to zoning requirements under Cornell; and

WHEREAS, in Cornell, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals of religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

WHEREAS, the Board notes that MSK is an accredited teaching hospital which offers numerous educational and training programs, including graduate medical education, postdoctoral training, PhD & MD/PhD Education, Continuing Medical Education, and Continuing Nursing Education; and

WHEREAS, the applicant states that the proposed Outpatient Surgical Center will provide an academic, research, and training platform, and that surgical residents and fellows will be trained as surgical oncologists at the Outpatient Surgical Center; and

WHEREAS, New York Courts broadly construe educational uses to be those uses which are found on the campuses of educational institutions and are reasonably associated with an education purpose (see N.Y. Botanic Gdn. v. Bd. of Stds. and Apps., 91 N.Y.2d 413 (1998)); and

WHEREAS, the Board notes that although the proposed Outpatient Surgical Center will not be located directly on MSK's main campus, the subject location was chosen for its close proximity approximately six blocks from the main campus, and the research, training, and treatments offered at the Outpatient Surgical Center will clearly further MSK's educational purpose; and

WHEREAS, the Board notes that the Opposition has not provided any basis for distinguishing accredited teaching hospitals with significant educational and training programs from other educational institutions; and

WHEREAS, the Board further notes that it has reviewed many applications for hospitals seeking variances and recognizing that modern teaching hospitals are affiliated with universities and have staffs that include a significant number of residents, fellows, and interns; and

WHEREAS, accordingly, the Board finds that MSK is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and

---

# MINUTES

---

disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, furthermore, the Board finds that notwithstanding MSK's ability to rely on programmatic needs to satisfy the findings under ZR Sec. 72-21(a), the applicant has provided sufficient evidence to establish that there are unique physical conditions on the site to justify the requested zoning relief; and

WHEREAS, accordingly, based upon the above, the Board finds that the unique physical conditions on the site, when considered in conjunction with the programmatic needs of MSK, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the applicant is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, specifically, the Board notes that ZR § 72-21(b) states: "this finding shall not be required for the granting of a variance to a non-profit organization," without exception; and

WHEREAS, accordingly, the Board does not agree with the Opposition's position that the applicant is subject to the (b) finding simply because the applicant submitted evidence of the site's unique subsurface conditions and a cost estimate relating to premium construction costs; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed building is consistent with the character of the surrounding neighborhood, which includes a mix of residential, commercial and institutional buildings, including, immediately to the west of the subject site, the Weill Cornell Medical College's Iris Cantor Women's Health Center and, along York Avenue from East 61<sup>st</sup> Street to the East 72<sup>nd</sup> Street, an institutional corridor of medical research and healthcare institutions; and

WHEREAS, as to the proposed floor area, the applicant states that the maximum permissible zoning floor area for residential and community facility uses may be increased by as much as 20 percent (to a maximum FAR of 12.0) through a qualifying plaza or arcade or through providing inclusionary housing; and

WHEREAS, the applicant notes that, pursuant to ZR §§ 37-80 and 33-14(b), it is entitled to a 2,502 sq. ft. floor area bonus (0.21 FAR) because it is providing an 834 sq. ft. arcade within the proposed building; therefore, the permitted FAR for the proposed building is 10.21; and

WHEREAS, the Board notes that the proposed building could have an as-of-right FAR of 12.0 under ZR §§ 37-80 and 33-14(b) if it provided a sufficient amount of arcade space to achieve the maximum 20 percent floor area bonus; accordingly, although the proposed building requires

a floor area waiver, the FAR of 11.84 is specifically contemplated by the Zoning Resolution as being compatible within the subject zoning district; and

WHEREAS, the applicant represents that the building's proposed height of 259'-6" will be consistent with the height of buildings in the surrounding neighborhood and shorter than a number of them, including, on the block to the south, a residential building with a height of 386'-0" and a proposed residential building of 328'-0"; and

WHEREAS, the Opposition submitted testimony which discussed the proposed building's impact on light and air on the adjacent residential cooperative located at 440 East 62<sup>nd</sup> Street; and

WHEREAS, the Board notes that 440 East 62<sup>nd</sup> Street contains lot line windows along its south façade, along the lot line of the subject property, and also has apartments with windows that only face the approximately 50-ft. by 50-ft. rear courtyard of 440 East 62<sup>nd</sup> Street; and

WHEREAS, the applicant notes that the Complying Building would rise to a total height of 336'-5", which is significantly higher than the proposed building; and

WHEREAS, the applicant states that the Complying Building would also be built along the lot line and would block the same lot line windows as the proposed building, and therefore providing a complying rear yard will not uncover any lot line windows affected by the proposed building and will not benefit the 440 East 62<sup>nd</sup> Street building's light in its rear yard; and

WHEREAS, the applicant represents that the purpose of the Zoning Resolution's various rear yard provisions are not to restrict adjoining zoning lots, but rather to assure that development on one's own zoning lot provides sufficient light and air to the residential occupants on that lot; and

WHEREAS, the applicant further represents that if the requested rear yard waiver is approved, the 440 East 62<sup>nd</sup> Street building's windows facing its rear yard will retain their status as providing legal light and air; and

WHEREAS, the applicant states that the Opposition has not submitted any evidence into the record to support its claim that the proposed building will have greater impacts on the light and air associated with the 440 East 62<sup>nd</sup> Street building's lot line windows, rear yard windows, and/or terraces and rooftops than the taller, similarly scaled Complying Building; and

WHEREAS, the applicant notes that the Weill Cornell Medical College building (the "Weill Cornell Building") immediately to the west of both the subject site and the rear yard of 440 East 62<sup>nd</sup> Street rises to a height of approximately 194 feet at the lot line; and

WHEREAS, the applicant provided diagrams showing that, because of the location and height of the Weill Cornell building to the west, a complying rear yard in the lesser variance scenario would have limited benefit in terms of light and air to the residents of 440 East 62<sup>nd</sup> Street; and

WHEREAS, specifically, the applicant states that the Weill Cornell Building is built on a through lot and has been positioned so as to occupy what could have been a rear yard

---

# MINUTES

---

providing daylight into adjacent properties' rear yards, including the site and the 440 East 62<sup>nd</sup> Street building;

WHEREAS, the applicant further states that, due to its location, the Weill Cornell Building presents an approximately 150-ft. tall blank wall for the entire boundaries of both the site and 440 East 62<sup>nd</sup> Street; and

WHEREAS, the applicant represents that as a result, any construction on the site, including the proposed building, the Complying Building, or the Lesser Variance Building, would block the lot line windows along the south façade of the 440 East 62<sup>nd</sup> Street building and significantly impact the light and air provided to the building's rear courtyard; and

WHEREAS, the Opposition contends that the proposed building will also result in adverse traffic and parking impacts; and

WHEREAS, in response, the applicant submitted a report from its traffic consultant stating that the number of vehicle trips generated by the proposed building is estimated to be less than the number of vehicle trips generated by the Complying Building because there will be fewer people (20 fewer employees) coming to the proposed building as a result of the inefficient layout of the Complying building which requires more staff; and

WHEREAS, the report further states that the curb cuts on York Avenue and East 61<sup>st</sup> Street will have minimal effect on traffic flow, and that the curb cut on York Avenue which serves as the entrance to the drop off area will help to maintain the curbside lane of York Avenue as a travel lane, thereby improving traffic flow as compared to the Complying Building; and

WHEREAS, the applicant notes that DOT reviewed the proposal and issued a memo dated June 7, 2012 stating that the proposed curb cuts would not create any significant adverse traffic and pedestrian impacts, subject to specific recommendations, including installing lane delineators on York Avenue to prevent left turns into the drop-off area, assigning MSK staff to monitor and ensure traffic flow, and working with the MTA to relocate a bus stop currently located at York Avenue between East 61<sup>st</sup> Street and East 62<sup>nd</sup> Street; and

WHEREAS, in response, the applicant revised its EAS to include these recommendations; and

WHEREAS, as to available parking in the area, the report submitted by the traffic consultant states that it conducted a survey for off-street parking facilities within a ¼-mile radius of the project site, and identified 21 public parking garages providing a total supply of 3,190 parking spaces with approximately 780 of these spaces remaining available during peak hours; 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, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of MSK could occur on the existing

site; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, as noted above, in addition to a complying scenario, the applicant submitted plans for a lesser variance scenario consisting of a 15-story hospital building with 132,914 sq. ft. of floor area (11.51 FAR), and with a complying rear yard; and

WHEREAS, the applicant concluded that the Lesser Variance Building results in a net loss of 6,702 sq. ft. of program area and the loss of three operating rooms and four patient rooms, and therefore fails to meet the programmatic needs of MSK; and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow MSK to fulfill its programmatic needs; 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, at the outset of the hearing process, the Opposition objected to the Board's scheduling of the initial hearing on March 27, 2012, because it was not in compliance with Section 1-06(g) of the Board's Rules of Practice and Procedure, which requires that:

After the examiner(s) have determined the application to be substantially complete, the applicant shall be notified by the Executive Director, on the appropriate form, of the date set for the public hearing, which shall be at least thirty (30) days after the mailing of said notice; and

WHEREAS, specifically, the Opposition argues that the Board sent the required hearing notice to the applicant on March 5, 2012, less than 30 days prior to the March 27, 2012 public hearing; and

WHEREAS, the Board notes that the purpose of the rule cited by the Opposition is to ensure that the applicant has sufficient notice that the application has been placed on the hearing calendar, as well as sufficient time to send the notification forms to the relevant entities and affected property owners at least 20 days prior to the hearing date; and

WHEREAS, because the applicant did not object to receiving the hearing notice less than 30 days prior to the hearing date, and because the applicant satisfied the requirement to send the notification forms to the relevant entities and affected property owners at least 20 days prior to the hearing date, the Board determined that there was no harm caused by not notifying the applicant 30 days prior to the hearing date, and accordingly exercised its authority under Section 1-14(g) of the Rules of Practice and Procedure to waive the requirement that the applicant be notified 30 days prior to the hearing date; and

WHEREAS, the project is classified as an Unlisted

---

# MINUTES

---

action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”); 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, a restrictive designation for Hazardous Materials was placed on the subject parcel by the Department of City Planning as part of the 1129-33 York Avenue Rezoning & Parking Garage action (CEQR# 04DCP056M); and

WHEREAS, the applicant has submitted a May 2012 Remedial Action Plan (“RAP”) and a site-specific Construction Health and Safety Plan (“CHASP”) to the NYC Office of Environmental Remediation (“OER”) under the restrictive declaration requirement; and

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

WHEREAS, accordingly, 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, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, partially within a C1-9 zoning district and partially within a C8-4 zoning district, the construction of a new community facility building that does not comply with zoning regulations for floor area, rear yard, height and setback, and curb cuts, contrary to ZR §§ 33-123, 33-261, 33-432 and 36-682, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received May 15, 2012’ – twenty-five (25) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum floor area of 136,755 sq. ft. (11.84 FAR); a maximum front wall height of approximately 203’-4” along East 61<sup>st</sup> Street and 217’-4” along York Avenue; a total height of approximately 258’-11” ; no rear yard; and two curb cuts located within 50’-0” of the intersection of York Avenue and East 61<sup>st</sup> Street, in accordance with the BSA-approved plans;

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

THAT the applicant will work with the MTA to ensure the existing nearside bus stop located on York Avenue at East 61<sup>st</sup> Street is moved to the far side and where it would not interfere with turning vehicles emanating from the FDR Drive;

THAT the applicant will ask permission from DOT to install lane delineators and/or rubber stanchions along the center line of York Avenue between East 61<sup>st</sup> and East 62<sup>nd</sup> Streets to prohibit left turns from northbound York Avenue into the internal patient drop-off/pick-up entrance, and the applicant will be responsible for the cost of such delineation, installation and maintenance;

THAT the applicant will provide dedicated staff to manage traffic flow and queuing within the patient drop-off/pick up area and monitor that no vehicle spillback should occur onto York Avenue and that no driveway would be blocked; the time limit to disembark and pick-up patients will not cause vehicles to queue in the drop-off area and effect its operation and impede pedestrian and vehicular traffic on York Avenue; idling/standing/parking/patient-related pick-ups/drop-offs on York Avenue should not be allowed; entry into the drop-off/pick-up area will always be via York Avenue and the exit via East 61<sup>st</sup> Street; mirrors and warning devices should be installed at the driveways to ensure pedestrians safety/visibility as vehicles exit; and the applicant will be responsible for costs associated with designing, installation and maintenance;

THAT one month prior to the hospital’s operation, the applicant will notify DOT’s Manhattan Borough Commissioner and Manhattan Borough Engineer offices and request a field investigation to determine the appropriate signage which would prohibit on-street deliveries on East 61<sup>st</sup> Street and on York Avenue and any other signage it deems fit to maintain safety and traffic flow on city streets;

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

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

Adopted by the Board of Standards and Appeals, June 19, 2012.

-----

## **40-12-BZ**

### **CEQR #12-BSA-078R**

APPLICANT – Francis R. Angelino, Esq., for Helm Equities Richmond Avenue, LLC, owner; Global Health Clubs, LLC, lessee.

SUBJECT – Application February 14, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Global Health Clubs*). C2-1 zoning district.

PREMISES AFFECTED – 2385 Richmond Avenue, Richmond Avenue and East Richmond Hill Road, Block 2402, Lot 1, Borough of Staten Island.

### **COMMUNITY BOARD #2SI**

APPEARANCES –

# MINUTES

For Applicant: Francis R. Angelino.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated January 23, 2012, acting on Department of Buildings Application No. 500630025, reads in pertinent part:

Proposed physical culture establishment is not permitted as-of-right in a C2-1 zoning district. This use is contrary to 32-10 of the New York City Zoning Resolution and requires a special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C2-1 zoning district, the operation of a physical culture establishment (PCE) on the first and second floors of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, with a continued hearing on June 5, 2012, and then to decision on June 19, 2012; and

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

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

WHEREAS, the subject site is located on the southeast corner of the intersection formed by Richmond Avenue and Nome Avenue, within a C2-1 zoning district; and

WHEREAS, the site is an irregular corner lot with 357.74 feet of frontage on Richmond Avenue, and 150 feet of frontage on Nome Avenue, and contains a total lot area of 160,865 sq. ft.; and

WHEREAS, the applicant proposes to occupy 10,559 sq. ft. of floor area on portions of the first and second floors of a two-story commercial building; and

WHEREAS, the PCE will be operated as Retro Fitness; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, from 5:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

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

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

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and

operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 12BSA078R, dated January 28, 2012; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 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 located in a C2-1 zoning district, the operation of a physical culture establishment on portions of the first and second floors of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 16, 2012”-(3) sheets, and *on further condition*:

THAT the term of this grant will expire on June 19, 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 site will be maintained free of graffiti;

# MINUTES

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, June 19, 2012.

-----

## 42-12-BZ

### CEQR #12-BSA-079M

APPLICANT – Sheldon Lobel, P.C., for 158 West 27<sup>th</sup> Street, LLC, owner; 158 West 27<sup>th</sup> Fitness Group, LLC, lessee.

SUBJECT – Application February 16, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Planet Fitness*) on a portion of the cellar, first and second floors of the existing twelve-story building at the premises. M1-6 zoning district.

PREMISES AFFECTED – 158 West 27<sup>th</sup> Street, located on the south side of 27<sup>th</sup> Street, between Avenue of the Americas and Seventh Avenue, Block 802, Lot 75, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Richard Lobel and Joshua Rinesmith.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 6, 2012, acting on Department of Buildings Application No. 120940296, reads in pertinent part:

Proposed change of use to a physical culture establishment, as defined by ZR 12-10 is contrary to ZR 42-10 and must be referred to the

Board of Standards and Appeals pursuant ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within M1-6 zoning district, the legalization of a physical culture establishment (PCE) in portions of the cellar, first, and second floors of a 12-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, with a continued hearing on June 5, 2012, and then to decision on June 19, 2012; and

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

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

WHEREAS, the subject site is located on the south side of 27<sup>th</sup> Street between Avenue of the Americas and Seventh Avenue, within an M1-6 zoning district;

WHEREAS, the site has a total lot area of 8,305 sq. ft. and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the PCE will occupy 11,788 sq. ft. of floor area on portions of the first and second floors, with an additional 2,804 sq. ft. of floor space located in a portion of the cellar; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant states that the hours of operation for the PCE will be 24 hours per day, seven days per week; and

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

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since February 18, 2012, without a special permit; and

# MINUTES

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between February 18, 2012 and the date of this grant; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA079M, dated January 31, 2012; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-6 zoning district, the operation of a physical culture establishment on portions of the cellar, first, and second floor of a 12-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 23, 2012" – Seven (7) sheets and *on further condition*:

THAT the term of this grant shall expire on February 18, 2022;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, June 19, 2012.

-----

## **49-12-BZ CEQR #12-BSA-084Q**

APPLICANT – Sheldon Lobel, P.C., for Lattera, 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 34<sup>th</sup> Avenue, Block 6077, Lot 1, Borough of Queens.

## **COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: Richard Lobel and Nora Martins.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 1, 2012, acting on Department of Buildings Application No. 42048597, reads in pertinent part:

"Physical Culture or Health Establishments: in C1-8X, C1-9, C2, C4, C5, C6, M1, M2. or M3 District, the Board of Standards and Appeals may permit physical culture or health establishments as Defined in Section 12-10." and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C2-2 (R5B) zoning district, the legalization of a physical culture establishment (PCE) in portions of the cellar and first floor of a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 15, 2012, after due notice by publication in *The City Record*, and then to decision on June 19, 2012; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application based on the condition that the applicant agree to a five year term; and

WHEREAS, the Queens Borough President

---

# MINUTES

---

recommends approval of this application based on the Community Board's condition that the applicant agree to a five year term; and

WHEREAS, a representative of the Auburndale Improvement Association provided oral testimony requesting a five-year term for the PCE; and

WHEREAS, the subject site is located on the northeast side of Francis Lewis Boulevard, within a C2-2 (R5B) zoning district; and

WHEREAS, the site is a corner lot with approximately 101 feet of frontage on Francis Lewis Boulevard and approximately 108 feet of frontage on 34<sup>th</sup> Avenue and has a total lot area of 10,156 sq. ft.; and

WHEREAS, the site is occupied by a one-story commercial building; and

WHEREAS, the PCE will occupy 6,239 sq. ft. of floor area on a portion of the first floor, with an additional 4,736 sq. ft. of floor space located in a portion of the cellar; and

WHEREAS, the PCE will be operated as Powerhouse Gym; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, from 5:00 a.m. to 12:00 a.m.; and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

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

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since December 1, 2006, without a special permit; and

WHEREAS, accordingly, the Board finds it appropriate to limit the term of the grant to five years; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA084Q, dated March 2, 2012; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-2 (R5B) zoning district, the operation of a physical culture establishment at portions of the cellar and first floor of a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 2, 2012" – Three (3) sheets and "Received June 12, 2012" – One (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 19, 2017;

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

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

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

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

THAT the site will be maintained free of graffiti;

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

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

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

Adopted by the Board of Standards and Appeals, June 19, 2012.

-----

# MINUTES

## 21-11-BZ

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.

SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19<sup>th</sup> Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 24, 2012 at 1:30 P.M., for decision, hearing closed.

-----

## 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.

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

-----

## 93-11-BZ

APPLICANT – Moshe M. Friedman, P.E., for Yeshiva Ore Mordechai, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-19) to allow the conversion of the third and fourth floors in an existing four-story factory and warehouse building to a Use Group 3 school (*Yeshiva Ore Mordechai*). M1-1 zoning district.

PREMISES AFFECTED – 1536 62<sup>nd</sup> Street, aka 1535 63<sup>rd</sup> Street, Block 5530, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

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

-----

## 104-11-BZ

APPLICANT – Eric Palatnik, P.C., for Leonard Gamss, owner.

SUBJECT – Application July 25, 2011 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1936 East 26<sup>th</sup> Street, between Avenues S and T, Block 7304, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

-----

## 165-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Agudath Israel Youth of Boro Park, owner.

SUBJECT – Application October 19, 2011 – Variance (§72-21) to enlarge an existing Use Group 4A house of worship (*Agudath Israel Youth of Boro Park*) for an educational center on proposed third and fourth floors and to legalize two interior balconies, contrary to rear yard (§24-36) and lot coverage (§24-11) regulations. R6 zoning district.

PREMISES AFFECTED – 1561 50<sup>th</sup> Street, near the corner of 16<sup>th</sup> Avenue, Block 5453, Lot 51, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to July 17, 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, Barbara Cohen, Beata Kozbusky, Alex Veksler and Jakov Saric.

For Opposition: Kim Zangrillo, John Zangrillo and John Lufemina.

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

-----

# MINUTES

## 5-12-BZ

APPLICANT – Moshe M. Friedman, P.E., for Aaron Herzog, owner.

SUBJECT – Application January 12, 2012 – Variance (§72-21) for the addition of a third floor to an existing two family residential building, contrary to front yard requirements (§23-146(c)), front yards and side yard requirement (§23-146(d)). R5 zoning district/Borough Park.

PREMISES AFFECTED – 812 Dahill road, northwest corner of Dahill Road and 19<sup>th</sup> Avenue, Block 5445, Lot 39, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

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

-----

## 12-12-BZ & 110-12-A

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.

SUBJECT – Application January 19, 2012 – Variance (§72-21) for a new residential building with ground floor retail, contrary to use (§42-10) and height and setback (§§43-43 & 44-43) regulations.

Variance to §§26(7) and 30 of the Multiple Dwelling Law (pursuant to §310) to facilitate the new building, contrary to court regulations. M1-6 zoning district.

PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre A. Carson, Robert Alperstein, Borys Hayda, John Sore and Daniel Lane.

For Opposition: David Gruber of CB 2, Marc Chalom, Dan Aquilante, Tobi Bergmay, Jay Goldstein and Carey Ascenzo.

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

-----

## 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 (§33-292) to permit the construction of commercial building. C8-3 zoning district.

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

### COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

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

-----

## 58-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Shlomo Dabah, owner.

SUBJECT – Application March 15, 2012 – Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, lot coverage and opens space (§23-141); side yards (§23-461); less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 3960 Bedford Avenue, west side of Bedford Avenue between Avenue R and Avenue S, block 6830, Lot 30, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 24, 2012 at 1:30 P.M., for decision, hearing closed.

-----

## 70-12-BZ

APPLICANT – Francis R. Angelino, Esq., for C.S. Edward Kang, owner; Aqua Studio NY LLC, lessee.

SUBJECT – Application March 23, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Aqua Studio NY LLC*). C6-2A zoning districts.

PREMISES AFFECTED – 78 Franklin Street, between Broadway and Church Street, Block 175, Lot 4, Borough of Manhattan.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Francis R. Angelino.

For Opposition: Patricia Mccobb, William Borr and Ingrid Wiegand.

**ACTION OF THE BOARD** – Laid over to July 24, 2012 at 1:30 P.M., for continued hearing.

-----

## 76-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owner.

SUBJECT – Application April 2, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area, open space and lot coverage (§23-141) and less than the minimum side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of

---

# MINUTES

---

Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

**COMMUNITY BOARD #15K**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to July 24, 2012 at 1:30 P.M., for continued hearing.

-----

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**\*CORRECTION**

This resolution adopted on June 3, 2008, under Calendar No. 14-08-BZ and printed in Volume 93, Bulletin Nos. 22-23, is hereby corrected to read as follows:

**14-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Elie Zeitoune, owner.

SUBJECT – Application January 8, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary side yards (§23-46) and rear yard (§23-47) in an R5 zoning district.

PREMISES AFFECTED – 1958 East 13<sup>th</sup> Street, west side of East 13<sup>th</sup> Street, between Avenue S and Avenue T, Block 7291, Lot 108, 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, Commissioner Hinkson, and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated December 24, 2007, acting on Department of Buildings Application No. 310051172, reads in pertinent part:

“The proposed enlargement to existing home is contrary to ZR Sections ZR 23-46 (side yard) and ZR 23-47 (rear yard) and therefore requires a special permit pursuant to ZR 73-622;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side and rear yards, contrary to ZR §§ 23-46 and 23-47; and

WHEREAS, a public hearing was held on this application on March 11, 2008, after due notice by publication in *The City Record*, with continued hearings on April 8, 2008 and May 13, 2008, and then to decision on June 3, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by 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 west side of East 13<sup>th</sup> Street, between Avenue S and Avenue T; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with floor area of 3,105.5 sq. ft. (0.80 FAR); and

WHEREAS, the premises is within the boundaries of a

---

# MINUTES

---

designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 3,105.5 sq. ft. (0.80 FAR), to 4,934.6 sq. ft. (1.24 FAR); the maximum floor area permitted is 5,000 sq. ft. (1.25 FAR); and

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

WHEREAS, the enlargement of the home is not located within 20'-0" of the rear lot line; and

WHEREAS, the proposed enlargement will (1) maintain the existing non-complying side yard with a width of 4'-0" (side yards with a total width of 13'-0" and a minimum width of 5'-0" each are required) and (2) provide a second side yard with a width of 9'-0"; and

WHEREAS, at hearing, the Board raised concerns about whether a sufficient portion of the existing home would be retained; and

WHEREAS, in response, the applicant identified which portions of the existing home would be retained; and

WHEREAS, at hearing, the Board also directed the applicant to (1) confirm that the proposed building complies with height and setback requirements and (2) re-design the light wells, which appear to encroach into the side yard; and

WHEREAS, in response, the applicant (1) provided an axiomatic diagram, which reflects that the height and setback of the proposed home fit within the permitted sky exposure plane envelope and (2) re-designed the light wells to reflect a maximum permitted width of 1'-6"; 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 R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side and rear yards, contrary to ZR §§ 23-46 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 April 29,

2008"--(11) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 1,190.6 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 4,943.6 sq. ft. (1.24 FAR), side yards with minimum widths of 4'-0" and 9'-0", 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; and

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

Adopted by the Board of Standards and Appeals, June 3, 2008.

**\*The resolution has been revised to correct the 12<sup>th</sup> WHEREAS, which read: ...side yard with a width of 13'-0"; now reads: ...side yard with a width of 9'-0". Corrected in Bulletin No. 26, Vol. 97, dated June 27, 2012.**