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# BULLETIN

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

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### DIRECTORY

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# DOCKET

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**252-12-BZ**

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**253-12-BZ**

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**254-12-BZ**

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**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.**

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# CALENDAR

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**SEPTEMBER 25, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 25, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**724-56-BZ**

APPLICANT – Michael A. Cosentino for Anthony Nicovic, owner.

SUBJECT – Application June 19, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted automotive repair (UG 16B), which expires on November 19, 2012. C2-2/R3X & R3-2 zoning district.

PREMISES AFFECTED – 42-42 Francis Lewis Boulevard, Francis Lewis Boulevard from 42nd Road to Northern Boulevard. Block 5373. Lot 26, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**30-58-BZ**

APPLICANT – Vassalotti Associates Architects, LLP for Maximum Properties, Inc., owner; Joseph Macchia, lessee. SUBJECT – Application July 10, 2012 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B). C2-1/R3-1 zoning district.

PREMISES AFFECTED – 184-17 Horace Harding Expressway, north west corner of 185<sup>th</sup> Street. Block 7067, Lot 50, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**173-99-BZ**

APPLICANT – Gerald J. Caliendo, R.A., AIA, for LaGuardia Center, owner; LaGuardia Fitness Center LLC, Matrix Fitness Club, lessee.

SUBJECT – Application July 9, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (Matrix Fitness Club) which expired on March 6, 2011; Amendment for an increase in floor area (2,635.72 square feet) to the existing PCE at the cellar level; waiver of the rules. M-1 zoning district.

PREMISES AFFECTED – 43-60 Ditmars Boulevard, southeast side of Ditmars Boulevard on the corner formed by Ditmars Boulevard and 43<sup>rd</sup> Avenue, Block 782, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

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**134-06-BZ**

APPLICANT – Akerman Senterfill, LLP, for 241-15 Northern LLC, owner.

SUBJECT – Application August 13, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) which permitted the construction of a five story residential building containing 40 dwelling units and 63 accessory parking spaces which expires on September 9, 2012. R1-2 zoning district.

PREMISES AFFECTED – 241-15 Northern Boulevard, Northwest corner of the intersection between Northern Boulevard and Douglaston Parkway. Block 8092, Lot 39, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**APPEALS CALENDAR**

**45-03-A thru 62-03-A & 64-03-A**

APPLICANT – Joseph Loccisano, P.C., for Willowbrook Road Associates LLC, owner.

SUBJECT – Application October 3, 2011 – Proposed construction of single family homes not fronting on a legally mapped street contrary to Section 36 of the General City Law and also located within the bed of a mapped street contrary to Section 35 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – Hall Avenue, north side of Hall Avenue, 542.56' west of the corner formed by Willowbrook Road and Hall Avenue, Block 2091, Lot 60, 80, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**89-07-A**

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposed construction of three two family and one, one family homes located within the bed of mapped street (Thornycroft Avenue) contrary to General City law Section 35.

PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**92-07-A thru 94-07-A**

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposed construction of three two family and one, one family homes located within the bed of mapped street (Thornycroft Avenue) contrary to General City law Section 35.

PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester

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# CALENDAR

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Avenue, and Pacific Avenue, south of Saint Albans Place.  
Block 5238, Lots 13, 16, 17, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**95-07-A**

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposed construction of three two family and one, one family homes located within the bed of mapped street (Thornecroft Avenue) contrary to General City law Section 35.

PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**144-12-A**

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29<sup>th</sup> LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal pursuant to MDL§310 to allow for enlargement to a five-story building, contrary to MDL§171(2)(f).

PREMISES AFFECTED – 339 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #4M**  
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**145-12-A**

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29<sup>th</sup> LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal challenging the determination of the Department of Buildings requiring the owner to obtain approval from the Landmarks Preservation Commission (“LPC”), prior to reinstatement and amendments of the permits. R8B zoning district.

PREMISES AFFECTED – 339 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #4M**  
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**SEPTEMBER 25, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, September 25, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:  
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**ZONING CALENDAR**

**190-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for 1197 Bryant Avenue Corp., owner.

SUBJECT – Application December 15, 2011 – Variance (§72-21) to legalize Use Group 6 retail stores, contrary to use regulations ZR §22-10. R7-1 zoning district.

PREMISES AFFECTED – 1197 Bryant Avenue, northwest corner of the intersection formed by Bryant Avenue and Home Street. Block 2993, Lot 27, Borough of Bronx.

**COMMUNITY BOARD #3BX**  
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**137-12-BZ**

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for Haug Properties, LLC, owner; HSS Properties Corporation, lessee.

SUBJECT – Application April 27, 2012 – Variance (§72-21) to allow for an ambulatory diagnostic and treatment health care facility (*Hospital for Special Surgery*), contrary to rear-yard equivalent, use, height and setback, floor area, and parking spaces (§§42-12, 43-122, 43-23, 43-28, 43-44, and 13-133). M1-4/M3-2 zoning districts.

PREMISES AFFECTED – 515-523 East 73<sup>rd</sup> Street, Block 1485, Lot 11, 14, 40, Borough of Manhattan.

**COMMUNITY BOARD #8M**  
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**152-12-BZ**

APPLICANT–Rothkrug Rothkrug & Spector, LLP, for M.S.P. Realty Development, Inc., owner.

SUBJECT – Application May 9, 2012 – Variance (§72-21) to permit construction of a cellar and four-story mixed use building with commercial use on first floor and three dwelling units on upper floors on a vacant lot that does not provide a required side yard (3' proposed, 8' required). C2-4/R6A zoning district.

PREMISES AFFECTED – 146-61 105<sup>th</sup> Avenue, north side of 105<sup>th</sup> Avenue, 34.65' southwest of intersection of 105<sup>th</sup> Avenue and Sutphin Boulevard, Block 10055, Lot 19, Borough of Queens.

**COMMUNITY BOARD #12Q**  
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# CALENDAR

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## **193-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Vornado Realty Trust, owner; Soul Cycle 384 Lafayette Street, LLC, lessee.

SUBJECT – Application June 14, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Soul Cycle*) within a portion of an existing building in an M1-5B zoning district.

PREMISES AFFECTED – 384 Lafayette Street (a/k/a 692 Broadway, 2/20 East 4<sup>th</sup> Street) southwest corner of intersection of Lafayette Street and E. 4<sup>th</sup> Street, Block 531, Lot 7401, Borough of Manhattan.

**COMMUNITY BOARD #4BK**

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## **202-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1030 Southern Boulevard Realty Associates, owner; Blink Southern Boulevard, Inc., lessee.

SUBJECT – Application June 26, 2012 – Application for Special Permits (§73-36 and §73-52) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building and corresponding extension of the physical culture establishment use 25' into an R7-1 zoning district.

PREMISES AFFECTED – 1030 Southern Boulevard, east side of Southern Boulevard, 264' south of intersection of Westchester Avenue and Southern Boulevard, Block 2743, Lot 6, Borough of Bronx.

**COMMUNITY BOARD #4BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, AUGUST 21, 2012  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**718-56-BZ**

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

SUBJECT – Application April 10, 2012 – Extension of Term (§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: Zaheer Khanzada.

**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 extension of term for the continued use of a gasoline service station, which expired on July 2, 2012; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 7, 2012, and then to decision on August 21, 2012; and

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

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

WHEREAS, the site is located on the northwest corner of Forest Avenue and North Burgher Avenue, within a C2-1 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 2, 1957 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses for a term of 15 years; and

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

WHEREAS, most recently, on July 15, 2008, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire on July 2, 2012, an extension of time to obtain a certificate of occupancy, and an amendment to legalize the conversion of one restroom to office space and office/sales space to an accessory convenience store; and

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

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

WHEREAS, the applicant also seeks to legalize minor modifications to the site, including the installation of an above ground waste oil tank on a 6'-0" by 6'-0" concrete pad at the northwest corner of the site, and a reduction in the number of required parking spaces from eight to seven due to the placement of the above ground oil tank on the site; and

WHEREAS, at hearing, the Board raised concerns regarding the status of a disabled truck located at the northwest portion of the site and the outdoor storage of tires at the site; and

WHEREAS, in response, the applicant submitted photographs reflecting that the disabled truck has been removed from the site and the tires have been removed from the exterior of the building; the applicant states that tire storage will only take place inside the service building; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and modifications to the approved plans are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 2, 1957, so that as amended this portion of the resolution shall read: "to extend the term for ten years from July 2, 2012, to expire on July 2, 2022; and to permit certain site modifications; *on condition* that all use and operations shall substantially conform drawings filed with this application marked 'Received April 10, 2012'-(6) sheets; and *on further condition*:

THAT the term of the grant will expire on July 2, 2022;

THAT the above condition will be listed on the certificate of occupancy;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 520092499)

Adopted by the Board of Standards and Appeals, August 21, 2012.

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# MINUTES

## 69-91-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for The 61 West 62<sup>nd</sup> Street Condominium, owner; TSI Lincoln LLC dba New York Sports Club, lessee.

SUBJECT – Application April 11, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on November 26, 2012; an Amendment for a decrease in floor area; Waiver of the Rules. C4-7 (L) zoning district.

PREMISES AFFECTED – 49-61 West 62<sup>nd</sup> Street, northeasterly corner of West 62<sup>nd</sup> Street and Columbus Avenue, Block 1115, Lot 7502, Borough of Manhattan.

## COMMUNITY BOARD #7M

### APPEARANCES –

For Applicant: Fredrick A. Becker.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on November 26, 2011, and an amendment to reflect a decrease in the floor space occupied by the PCE; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in *The City Record*, and then to decision on August 21, 2012; and

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

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the PCE is located on the northeast corner of Columbus Avenue and West 62<sup>nd</sup> Street, within a C4-7 zoning district; and

WHEREAS, the site is occupied by a 26-story mixed-use building; and

WHEREAS, the PCE occupies 3,915 sq. ft. of floor area at portions of the first and second floor, with an additional 18,365 sq. ft. of floor space located at portions of the cellar and sub-cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 26, 1991 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on November 26, 2001; and

WHEREAS, most recently, on December 9, 2003, the Board granted a ten-year extension of time, to expire on November 26, 2011; and

WHEREAS, the applicant now seeks to extend the term

of the special permit for ten years; and

WHEREAS, the applicant also seeks an amendment to permit a reduction in the total amount of floor space occupied by the PCE; and

WHEREAS, specifically, the applicant seeks to eliminate the 2,582 sq. ft. of existing PCE use at the second floor, reduce the PCE's floor area at the first floor from 1,333 sq. ft. to 608 sq. ft., and increase the PCE's floor space at the cellar level from 8,843 sq. ft. to 10,469 sq. ft.; the PCE will continue to occupy the 9,522 sq. ft. of floor space at the sub-cellar level; and

WHEREAS, the applicant states that the proposed amendment will reduce the floor area occupied by the PCE from 3,915 sq. ft. to 608 sq. ft., and will reduce the total floor space occupied by the PCE from 22,280 sq. ft. to 20,599 sq. ft.; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the previous grant are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on November 26, 2001, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from November 26, 2011, to expire on November 26, 2021, and to permit the noted modifications to the previously-approved plans, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received April 11, 2012' - (5) sheets; and *on further condition*:

THAT the term of this grant will expire on November 26, 2021;

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 the above conditions will be listed on the certificate of occupancy;

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;

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." (DOB Application No. 120945317)

Adopted by the Board of Standards and Appeals, August 21, 2012.

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# MINUTES

## 71-93-BZ

APPLICANT – Paul F. Bonfilio, for Vincenzo Farruggio, owner.

SUBJECT – Application January 23, 2012 – Amendment of a variance (§72-21) to allow a 243 sq. ft. addition to an existing house, contrary to front yard (§23-45(a); floor area and lot coverage (§23-141(b)) requirements. R2A zoning district.

PREMISES AFFECTED – 153-01 Bayside Avenue, 308.25' west of 154<sup>th</sup> Street, between 29<sup>th</sup> Avenue and Bayside Avenue, Block 4835, Lot 25, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Paul F. Bonfilio.

**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 application is a request for a re-opening and an amendment to a previously granted variance, to permit the enlargement of a single-family home which does not comply with the underlying zoning requirements for floor area, lot coverage, and front yards, contrary to ZR §§ 23-141 and 23-45(b); and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, and then to decision on August 21, 2012; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, the subject site is an irregularly shaped corner though lot, with frontage on Bayside Avenue, 29<sup>th</sup> Avenue, and 154<sup>th</sup> Street, within an R2A zoning district; and

WHEREAS, the lot is trapezoidal-shaped, with four frontages, a length ranging from 299.59 feet to 308.25 feet, a depth ranging from 14.28 feet to 41.61 feet, and a total lot area of 7,459 sq. ft.; and

WHEREAS, on February 1, 1994, the Board granted a variance under ZR § 72-21, to permit the construction of a single-family home on the west side of the lot that did not provide the requisite two front yards; and

WHEREAS, subsequently, on August 19, 2005, the Board issued a letter of no objection for an amendment which allowed for the subdivision of the lot into two tax lots; and

WHEREAS, most recently, on July 11, 2006, the Board granted an amendment to permit the construction of a second two-story single-family home on the second tax lot, lot 27, which did not comply with the front yard requirement; the original two-story single-family home is located on tax lot 25; and

WHEREAS, the applicant now proposes to construct a 242.6 sq. ft. one-story horizontal enlargement on the eastern side of the original home on lot 25; and

WHEREAS, the applicant states that the proposed enlargement will result in the following non-complying parameters: a total floor area for the site of 3,872.6 sq. ft. (0.52 FAR) (the maximum permitted floor area is 3,729.5 sq. ft. (0.50 FAR)); lot coverage of 31.5 percent (the maximum permitted lot coverage is 30 percent); a front yard along the Bayside Avenue frontage of the enlargement ranging in depth from 7'-6" to 10'-0", and a front yard along the 29<sup>th</sup> Avenue frontage with a depth of 10'-0" (two front yards with a minimum depth of 15'-0" each are required); and

WHEREAS, the applicant states that the narrow, irregular shape of the lot compromises the construction of a complying enlargement; and

WHEREAS, specifically, the applicant states that an enlargement with complying front yards would be limited to a maximum width of five feet where the enlargement joins the existing house, and a maximum width of only two feet at the eastern end of the enlargement; and

WHEREAS, the applicant notes that the site was rezoned from an R2 district to an R2A district on April 1, 2009; and

WHEREAS, the applicant represents that the proposed enlargement would have complied with the floor area regulations under the prior R2 district; however, because attic space above a height of five feet and accessory parking above 300 sq. ft. is calculated as floor area under the R2A district regulations, the rezoning resulted in an approximately 144 sq. ft. increase in the floor area, leaving only 99.5 sq. ft. of floor area left on the site for a complying enlargement; and

WHEREAS, the applicant submitted an analysis of the homes within the surrounding area which reflects that at least 22 of the homes on the five surrounding blocks have FARs greater than 0.50; and

WHEREAS, the analysis submitted by the applicant further reflects that the five homes surveyed on the subject block have FARs ranging between 0.67 and 1.11; and

WHEREAS, the applicant represents that there is approximately 5,245 sq. ft. of City-owned land between the property line and the sidewalk, which creates a perimeter that enhances the perception of open space on the lot and results in a perceived depth of the front yards on Bayside Avenue of approximately 15 to 17 feet; and

WHEREAS, based upon the above, the Board concludes that the proposed enlargement does not affect the prior findings that the site is compatible with the neighborhood character and that the relief granted was the minimum necessary; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on February 1, 1994, so that as amended this portion of the resolution shall read: "to permit the enlargement of the existing home on lot 25, which does not comply with the zoning requirements for floor area, lot coverage, or front yards; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received January 23, 2012'-(2) sheets and 'July 2, 2012'-(2) sheets; and *on further condition*:

THAT the zoning lot will be limited to a total floor area

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of 3,872.6 sq. ft. (0.52 FAR), and a lot coverage of 31.5 percent, as illustrated on the BSA-approved plans;

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

THAT the Department of Buildings shall review compliance with all applicable light and air requirements;

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

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

(DOB Application No. 420328336)

Adopted by the Board of Standards and Appeals, August 21, 2012.

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## 128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagudayev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application December 21, 2011 – Amendment to previously approved variance (§72-21) for a synagogue. Amendment would allow increased non-compliance in building height (§24-521), floor area (§24-11) and lot coverage (§24-11) regulations. R4 zoning district.

PREMISES AFFECTED – 147-58 77<sup>th</sup> Road, 150<sup>th</sup> Street and 77<sup>th</sup> Road, Block 6688, Lot 31, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening, and an amendment to permit an increase in the proposed building height and floor area, and the addition of an elevator lift; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, with continued hearings on June 5, 2012, July 10, 2012, and August 7, 2012, and then to decision on August 21, 2012; and

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

WHEREAS, Community Board 8, Queens, recommended disapproval of the original iteration of this application, citing concerns with the proposed height of 53'-0"; and

WHEREAS, New York City Council Member James F. Gennaro recommends approval of this application; and

WHEREAS, the applicant is brought on behalf of the Jewish Center of Kew Gardens Hills (the “Jewish Center”), a non-profit religious entity; and

WHEREAS, the subject site is located on the southwest corner of 77<sup>th</sup> Road and 150<sup>th</sup> Street, within an R4 zoning district; and

WHEREAS, the subject lot has a width of 40 feet, a depth of 100 feet, and a lot area of 4,000 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 23, 2011 when, under the subject calendar number, the Board granted a variance to permit the construction of a three-story building to be occupied by a synagogue (Use Group 4), religious school, and Rabbi’s apartment which does not comply with the underlying zoning district regulations for lot coverage, height and setback, front yard, side yards, side setback, and parking for community facilities, contrary to ZR §§ 24-11, 24-521, 24-34 and 24-35, 24-551 and 25-31; and

WHEREAS, the applicant now seeks an amendment to permit an increase in the proposed building height and floor area, and the addition of an elevator lift; and

WHEREAS, specifically, the applicant proposes to increase the total floor area of the building from 7,998 sq. ft. (1.99 FAR) to 10,972 sq. ft. (2.74 FAR) (the maximum permitted total floor area is 11,000 sq. ft. (2.75 FAR), including a community facility floor area of 9,005 sq. ft. (2.25 FAR) (the maximum permitted community facility floor area is 8,000 sq. ft. (2.0 FAR)) and a residential floor area of 1,967 sq. ft. (0.49 FAR) (the maximum permitted residential floor area is 3,000 sq. ft. (0.75 FAR)); the applicant also proposes to increase the total building height from 40'-6" to 48'-0" (the maximum permitted building height is 35'-0"); and

WHEREAS, the applicant also proposes to install an elevator lift at the 77<sup>th</sup> Road side of the building in order to provide handicap access; and

WHEREAS, the applicant states that the proposed increase in FAR and height are necessary due to a high water table and poor soil conditions on the site which were discovered subsequent to the Board’s initial grant; and

WHEREAS, the applicant states that soil boring tests which were conducted after the previous approval revealed that the water table has depths ranging from 8'-6" to 10'-0" which is too high to allow for the previously proposed cellar space below grade; and

WHEREAS, in addition to the high water table, the applicant states that the soil is mostly composed of silt, sand, and other uncontrolled fill material which, combined with the high water table creates extensive difficulties for building below grade; and

WHEREAS, the applicant states that, as a result of the soil conditions the building must be raised in order to meet the programmatic needs of the Jewish Center, such that the overall building height increases and the approved cellar becomes a basement, which counts towards floor area; and

WHEREAS, the applicant originally proposed to increase the height of the proposed building to 53'-0"; however, at the direction of the Board and in response to concerns raised by the Community Board, the applicant submitted revised plans

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reflecting the reduction of the total height to 48'-0"; and

WHEREAS, the applicant notes that the Community Board previously approved an application to construct the subject building at a proposed height of 44'-0", only four feet lower than the current proposal; and

WHEREAS, the applicant states that the floor-to-ceiling heights have been reduced to the minimum height and therefore the total building height cannot be further reduced; and

WHEREAS, at hearing, the Board questioned why the total building height could not be further reduced by sinking the foundations of the building from approximately 4'-0" below grade to 8'-0" below grade; and

WHEREAS, in response, the applicant submitted a cost estimate from the contractor indicating that the incremental cost of lowering the foundations of the building to 8'-0" would be approximately \$245,000; and

WHEREAS, the applicant also submitted a letter from the engineer stating that the bottom of the elevator joist is approximately seven to eight feet below grade, and in order to keep the building's elevator pit protected against long term damage due to the water table which ranges from 8'-6" to 10'-0", the elevator pit should be constructed above the water table; and

WHEREAS, the applicant submitted a cost estimate from the contractor indicating that the cost of lowering and waterproofing the elevator pit is approximately \$490,000, and the applicant represents that there would still be a risk that the water would penetrate the elevator pit and damage the overall structure of the building even after undergoing such a significant cost; and

WHEREAS, the applicant states that the proposed amendments will not affect the footprint of the proposed building, which will be identical to that of the previous approval; and

WHEREAS, the applicant notes that raising the building will eliminate the cellar, instead creating a basement that will be able to hold 38 less people than the previously proposed cellar because the basement will match the footprint of the first floor, while the previously proposed cellar level was able to extend beyond the footprint of the first floor; accordingly, although the floor area of the building will increase from 7,998 sq. ft. to 10,972 sq. ft., the total amount of proposed floor space in the building will actually be decreased from 11,998 sq. ft. to 10,972 sq. ft.; and

WHEREAS, the applicant also submitted a building study which indicates that other buildings along 150<sup>th</sup> Street range from three stories to seven stories, and identifies at least five buildings along 150<sup>th</sup> Street which have a height of more than 50 feet; and

WHEREAS, accordingly, the applicant represents that the proposed four-story building with a height of 48'-0" will not alter the essential character of the surrounding neighborhood; and

WHEREAS, based upon the above, the Board finds that the requested amendments to the plans are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and

Appeals *reopens* and *amends* the resolution, dated August 23, 2011, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings filed with this application marked 'Received June 25, 2012'- (11) sheets and *on further condition*:

THAT the building parameters will be: a total floor area of 10,972 sq. ft. (2.74 FAR); a community facility floor area of 9,005 sq. ft. (2.25 FAR); a residential floor area of 1,967 sq. ft. (0.49 FAR); and a total height of 48'-0", as illustrated on the BSA-approved plans;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 402161247)

Adopted by the Board of Standards and Appeals, August 21, 2012.

## 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: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for adjourned hearing.

## 301-85-BZ

APPLICANT – Francis R. Angelino, Esq. for 58 East 86<sup>th</sup> Street, LLC, owner.

SUBJECT – Application May 8, 2012 – Amendment of a variance (§72-21) which permitted limited retail use in the ground floor and cellar retail within a five story and penthouse residential building. The amendment seeks to expand the uses conditioned by the Board to include other retail (UG 6) uses. R10 (PI) zoning district.

PREMISES AFFECTED – 58 East 86<sup>th</sup> Street, south side, 113' East of Madison Avenue and Park Avenues. Block 1497, Lot 49. Borough of Manhattan.

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## COMMUNITY BOARD #8M

### APPEARANCES –

For Applicant: Francis R. Angelino.

For Opposition: Robert Leighton, Jennifer Ryan and Lo Van der Valk.

### 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 October 16, 2012, at 10 A.M., for decision, hearing closed.

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## 336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Extension of Time to obtain a certification of occupancy for a special permit (§73-36) for a physical culture establishment (*Crunch Fitness*), which expired on June 8, 2011. C2-4 zoning district.

PREMISES AFFECTED – 312/18 & 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

## COMMUNITY BOARD #6BK

### 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 September 11, 2012, at 10 A.M., for decision, hearing closed.

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## 302-01-BZ

APPLICANT – Deirdre A. Carson, for Creston Avenue Realty, LLC, owner.

SUBJECT – Application April 30, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on April 23, 2012; Extension of Time to obtain a Certificate of Occupancy which expired on July 10, 2012. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, west side of Creston Avenue between East 190<sup>th</sup> and East 191<sup>st</sup> Streets, Block 3175, Lot 26, Borough of Bronx.

## COMMUNITY BOARD #3BX

### APPEARANCES –

For Applicant: Randall Minor.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for continued hearing.

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## 189-03-BZ

APPLICANT – Eric Palatnik, P.C., for 830 East 233<sup>rd</sup> Street Corp., owner.

SUBJECT – Application November 21, 2011 – Extension of Term of a previously granted special permit (§73-211) for the continued operation of an automotive service station (*Shell*) with an accessory convenience store (UG 16B) which expired on October 21, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on October 21, 2008; Waiver of the Rules. C2-2/R-5 zoning district.

PREMISES AFFECTED – 836 East 233<sup>rd</sup> Street, southeast corner of East 233<sup>rd</sup> Street and Bussing Avenue, Block 4857, Lot 44, 41, Borough of Bronx.

## COMMUNITY BOARD #12BX

### APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for continued hearing.

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## 72-04-BZ

APPLICANT – Eric Palatnik, P.C., for Bway-129 St. Gasoline Corp., owner.

SUBJECT – Application December 5, 2011 – Extension of Term (§11-411) of a previously granted variance which permitted the construction and maintenance of an automotive service station (UG 16B) with accessory uses which expired on June 3, 2010; Waiver of the Rules. R6/C1-2 zoning district.

PREMISES AFFECTED – 141-54 Northern Boulevard, southwest corner of Parsons Boulevard, Block 5012, Lot 45, Borough of Queens.

## COMMUNITY BOARD #7Q

### 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 September 25, 2012, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 155-11-A

APPLICANT – Sheldon Lobel, P.C., for 10 Stratford Associates, owners.

SUBJECT – Application October 3, 2011 – Appeal seeking a common law vested right to continue construction commenced under the prior R6 zoning district regulations. R3X zoning district.

PREMISES AFFECTED – 480 Stratford Road, west side of Stratford Road, through to Coney Island Avenue between Dorchester and Ditmas Avenue, Block 5174, Lot 16,

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Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

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

WHEREAS, a public hearing was held on this application on March 6, 2012, after due notice by publication in *The City Record*, with a continued hearing on April 3, 2012, and then to decision on August 21, 2012; and

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

WHEREAS, Community Board 14, Queens, recommends disapproval of this application, citing the following primary concerns: (1) the Department of Buildings (“DOB”) has not established that the permit is valid as the proposed plans do not comply with the prior zoning district parameters; (2) the applicant is a contract vendee and not the owner of the property and therefore lacks standing; (3) the proposed parking plan is not financially feasible; and (4) the proposed building is out of character with the surrounding neighborhood; and

WHEREAS, New York State Assembly Member James F. Brennan submitted written testimony requesting that DOB review the project to determine whether the plans comply with the prior zoning district regulations prior to any approval by the Board; and

WHEREAS, representatives of Ditmas Park West (the “Opposition”) provided oral and written testimony in opposition to this application, reiterating the concerns raised by the Community Board and raising the additional concern that the owner acted in bad faith by failing to provide a security fence while construction was stalled on the site; and

WHEREAS, the subject site is located on a through lot bounded by Stratford Road to the east and Coney Island Avenue to the west, between Dorchester Road and Ditmas Avenue, within an R3X zoning district; and

WHEREAS, the site has approximately 40 feet of frontage on Stratford Road and Coney Island Avenue, a depth ranging from 106 feet to 109 feet, and a total lot area of 4,302 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a seven-story mixed-use community facility/residential building with a floor area of 16,193 sq. ft. (3.76 FAR) (the “Building”); and

WHEREAS, the subject site is currently located within an R3X zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters, specifically with respect to floor area ratio (“FAR”) and density; and

WHEREAS, however, on July 29, 2009 (the “Rezoning Date”), the City Council voted to adopt the Flatbush Rezoning, which rezoned the site to R3X, as noted above; and

WHEREAS, the Building does not comply with the R3X zoning district parameters as to FAR and density; and

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

WHEREAS, the Board notes that New Building Permit No. 302228346-01-NB was issued on May 3, 2007 (the “New Building Permit”), authorizing the development of the proposed seven-story mixed-use community facility/residential building pursuant to R6 zoning district regulations; and

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

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

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

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

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

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

WHEREAS, by letters dated March 6, 2012 and July 10, 2012, DOB stated that it issued a letter of intent to revoke the permit after an audit revealed that the application documents propose an amount of floor area that exceeds the maximum FAR allowed in the district, but that it was a minor and curable error in a lawfully issued permit; and

WHEREAS, at the direction of the Board, and in response to concerns raised by the Community Board, State Assembly Member, and the Opposition, the applicant met with DOB to review the plans for compliance with the R6 district regulations; and

WHEREAS, by letter dated August 6, 2012, DOB stated that the floor area objection has been resolved; and

WHEREAS, the applicant cites to GRA V. LLC v. Srinivasan, 12 N.Y.3d 863 (2009), for the proposition that minor plan errors may be corrected in the vested rights context

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in accordance with the prior zoning; and

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

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

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

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

WHEREAS, as to substantial construction, the applicant states that the owner has completed the following: 100 percent of site preparation work; 100 percent of excavation; and 100 percent of the foundation; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: a construction schedule, a foundation plan; and photographs of the site; and

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

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

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

WHEREAS, the applicant states that prior to the two year anniversary of the Rezoning Date, the owner expended \$212,315.16, including hard and soft costs and irrevocable commitments, out of \$2,149,917.29 budgeted for the entire project; and

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

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$162,390.16 for the work performed at the site as of the two year anniversary of the Rezoning Date; and

WHEREAS, the applicant further states that the owner paid an additional \$49,925 in soft costs related to the work performed at the site; and

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

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

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

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

WHEREAS, the applicant states that if vesting were not permitted, the site's floor area would have to be reduced from the proposed 16,193 sq. ft. (3.76 FAR) to a maximum of 2,151 sq. ft. (0.50 FAR), and the density would have to be reduced from the proposed mixed-use building with 18 units to a single- or two-family home; and

WHEREAS, the applicant represents that compliance with the R3X zoning district parameters would result in a reduction of the annual rental income for the site from approximately \$405,900 for the proposed building to approximately \$42,000 for the complying building, resulting in an annual loss of rental income of approximately \$363,900; and

WHEREAS, the applicant states that the side yard foundation walls, the interior parking ramp, and the cellar foundations constructed for the proposed R6 building would all be completely unusable for an R3X compliant building; as a result, none of the foundation costs expended would be recoverable for an R3X compliant building; and

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

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete

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construction of the Building had accrued to the owner of the premises as of the two year anniversary of the Rezoning Date.

WHEREAS, as to the Opposition's concerns regarding the applicant's lack of standing as a contract vendee, the applicant states that standing is appropriate for contract vendees, that the Board has granted many applications on behalf of contract vendees (citing BSA Cal. Nos. 124-05-BZ, 342-03-BZ and 402-01-BZ), and that the economic injury at issue in a vested rights case is one sustained by the property as a result of the zoning change; and

WHEREAS, the Board notes that its Rules of Practice and Procedure specifically authorize contract vendees to bring applications before the Board; and

WHEREAS, the Board further notes that a site's ownership is not a relevant element in the vested rights analysis, as a property owner succeeds to all the right, title and interest in the property held by its predecessor-in-interest and transferred to it (see Caponi v. Walsh, 228 A.D. 86 (2d Dep't 1930); see also Elsinore Prop. Owners Ass'n v. Morwand Homes; 52 A.D. 1105 (2d Dep't 1955)); and

WHEREAS, as to the Opposition's argument that the proposed building is out of context with the surrounding neighborhood, the applicant states, and the Board agrees, that findings related to neighborhood character are not part of the vested rights analysis; and

WHEREAS, as to the Opposition's claim that the proposed parking plan is not financially feasible, the applicant states that the parking plan has been reviewed and approved by DOB; and

WHEREAS, the Board notes that findings related to the financial feasibility of the project are also not part of the vested rights analysis; and

WHEREAS, in response to the Opposition's concerns that the applicant acted in bad faith by not providing a security fence while construction was stalled on the site, the applicant states that construction stalled on the site due to extenuating financial circumstances, and not bad faith on the part of the applicant, and that the actions taken by the Department of Housing Preservation and Development of backfilling the site to prevent injury and the pooling of water was common for many incomplete buildings throughout the surrounding area; and

WHEREAS, while the Board was not swayed by any of the Opposition's arguments, it nevertheless understands that the community and the elected officials worked diligently on the Flatbush Rezoning and that the Building does not comply with the new zoning parameters; and

WHEREAS, however, the Board finds that the applicant has met the test for a common law vested rights determination, and therefore has the right to continue construction on the site pursuant to the zoning regulations in place prior to the Rezoning Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 302228346-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of

occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, August 21, 2012.

## 155-12-BZY

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 511 Property LLC, owner.

SUBJECT – Application May 11, 2012 – Extension of time (§11-332) to complete construction of a minor development commenced prior to a zoning text amendment related to parking. C1-7(A) Special Hudson Zoning District.

PREMISES AFFECTED – 511 Ninth Avenue, southwest corner of Ninth Avenue and West 39<sup>th</sup> Street (block bounded by West 38<sup>th</sup> Street and 10<sup>th</sup> Avenue), Block 736, Lot 33, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Lisa Lee.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, and then to decision on August 21, 2012; and

WHEREAS, the site was inspected by Chair Srinivasan; and

WHEREAS, the subject site is located on the southwest corner of Ninth Avenue and West 39<sup>th</sup> Street, in a C1-7A zoning district within Subarea D5 of the Hell's Kitchen Subdistrict of the Special Hudson Yards District; and

WHEREAS, the site has a total lot area of 22,732 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 12-story mixed-use residential/ commercial/community facility building (the "Building"); and

WHEREAS, the Building is proposed to have a floor area of 126,861 sq. ft. (5.58 FAR), with an accessory parking garage for 32 cars; and

WHEREAS, the Building complies with the former zoning parameters of the Special Hudson Yards District; and

WHEREAS, however, on April 14, 2010 (hereinafter, the "Enactment Date"), the City Council voted to enact the Hudson Yards Parking Text Amendment, which does not permit new parking spaces at the subject site unless there is a decrease in the number of parking spaces in Hudson Yards; and

WHEREAS, accordingly, the Building does not comply with the current zoning because the proposed accessory parking spaces are not permitted; and

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WHEREAS, on March 10, 2008, New Building Permit No. 104576246-01-NB (the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the proposed 12-story mixed-use building with an accessory parking garage for 32 cars; and

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

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

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a "minor development"; and

WHEREAS, for a "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such

requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated June 27, 2012, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of April 14, 2012 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the excavation, dewatering, concrete foundations, pits, basement walls and waterproofing, and construction of a portion of the required Con Edison vaults; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction tables; applications and certifications for payments; accounting tables; and an affidavit from the construction manager; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$8,879,855, or 18 percent, out of the approximately \$50,369,810 cost to complete; and

WHEREAS, as noted above, the applicant has submitted applications and certifications for payments, accounting tables; and an affidavit from the construction manager; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to

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satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the initial permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104576246-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on August 21, 2014

Adopted by the Board of Standards and Appeals, August 21, 2012.

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## 207-12-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Inc., owner; Christopher Fairbairn, lessee.

SUBJECT – Application July 2, 2012 – Legalization of the reconstruction of a single family home not fronting on a legally mapped street, contrary to General City Law Section 36, and the proposed upgrade of an existing private disposal system, contrary to the Department of Buildings policy. R4 zoning district.

PREMISES AFFECTED – 164 Reid Avenue, west of Reid Avenue, south of Janet Lane, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant:

**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 Queens Borough Commissioner, dated June 25, 2012, acting on Department of Buildings Application No. 420579653, reads in pertinent part:

A1- The street giving access to the existing building to be altered is not duly placed on the map of the City of New York.

a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law; and

b) Existing dwelling to be altered does not

have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

A2- The proposed upgrade of the private disposal system is contrary to Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on August 21, 2012, after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated July 19, 2012 the Fire Department states that Reid Avenue is a Fire Department access road of sub-standard width as per Fire Code Section 503.2.1, and therefore the installation of sprinklers is required throughout the entire building; and

WHEREAS, by letter dated July 25, 2012, the applicant states that sprinklers and interconnected smoke alarms hardwired to the existing electrical system will be installed at the site; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated June 25, 2012, acting on Department of Buildings Application No. 420579653, 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 July 25, 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 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, August 21, 2012.

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## 149-05-A

APPLICANT – Eric Palatnik, P.C., for Gregory Broutzas, owner.

SUBJECT – Application May 10, 2012 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested

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rights application which expired on May 12, 2007. R2A Zoning District.

PREMISES AFFECTED – 32-09 211<sup>th</sup> Street, east of the corner of 32<sup>nd</sup> Street and 211<sup>th</sup> Street, Block 6061, Lot 10, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for decision, hearing closed.

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## 232-10-A

APPLICANT – OTR Media Group, Incorporated, for 4<sup>th</sup> Avenue Loft Corporation, owner.

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings’ denial of a sign permit on the basis that the advertising sign had not been legally established and not discontinued as per ZR §52-83. C1-6 Zoning District.

PREMISES AFFECTED – 59 Fourth Avenue, 9<sup>th</sup> Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Caroline Harris.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 10 A.M., for adjourned hearing.

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## 125-11-A

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

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

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

## COMMUNITY BOARD #3M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for deferred decision.

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## 163-11-A

APPLICANT – FDNY, for Badem Buildings, owner.

SUBJECT – Application October 17, 2011 – Appeal to modify the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 469 West 57<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenue, Block 1067, Lot 4, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Anthony Scaduto.

For Opposition: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for continued hearing.

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## 151-12-A

APPLICANT – Christopher M. Slowik, Esq./Law Office of Stuart Klein, for Paul K. Isaacs, owner.

SUBJECT – Application May 9, 2012 – Appeal challenging the Department of Buildings’ determination that a roof antenna is not a permitted accessory use pursuant to ZR § 12-10. R8 zoning district

PREMISES AFFECTED – 231 East 11<sup>th</sup> Street, north side of E. 11<sup>th</sup> Street, 215’ west of the intersection of Second Avenue and E. 11<sup>th</sup> Street, Block 467, Lot 46, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Christopher Slowik, Fred Hopengarten and Paul Issacs.

For Administration: John Egnatios-Beene.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for continued hearing.

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## 164-12-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Inc., owner; Robert Hauck, lessee.

SUBJECT – Application June 11, 2012 – Proposed construction not fronting on a mapped street and within the bed of a mapped street, contrary to Sections 35 and 36 of the General City Law. R4 zoning district

PREMISES AFFECTED – 210 Oceanside Avenue, Block 16350, part of Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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**REGULAR MEETING  
TUESDAY AFTERNOON, AUGUST 21, 2012  
1:30 P.M.**

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

**ZONING CALENDAR**

**105-12-BZ**

**CEQR #12-BSA-118X**

APPLICANT – Zaskorski & Notaro Architects, for Alan Mucatel, owner.

SUBJECT – Application April 17, 2012 – Variance (§72-21) to permit the installation of a new elevator within an existing school (*Katharine Dodge Brownell Preschool*), contrary to front yard (§24-33) and lot coverage (§24-11) regulations. R5 zoning district.

PREMISES AFFECTED – 450 Castle Hill Avenue, southeast corner of Castle Hill and Lacombe Avenues, Block 3511, Lot 30, Borough of Bronx.

**COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Carlo Zaskorski.

**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 Queens Borough Superintendent, dated May 29, 2012, acting on Department of Buildings Application No. 220168618, reads, in pertinent part:

ZR 24-33 HPC elevator is not permitted obstruction in required front yard

ZR 24-11 Increase to non-compliant lot coverage not permitted; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R5 zoning district, the installation of an elevator in an existing building occupied by a school (UG 3), which does not comply with the zoning regulations for front yards or lot coverage, contrary to ZR §§ 24-33 and 24-11; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in the *City Record*, and then to decision on August 21, 2012; and

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

WHEREAS, this application is brought on behalf of Leake and Watts Services, Inc. (“Leake and Watts”), a not-for-profit organization which provides services in child welfare, early childhood and special education, and for people with developmental disabilities; and

WHEREAS, the applicant is the parent company of the Katherine Dodge Brownell Pre-School (the “School”), which occupies the basement and first floor of the building, and Development Disabilities at Leake & Watts, which occupies the second floor; and

WHEREAS, the site is located on the northeast corner of Lacombe Avenue and Castle Hill Avenue, within an R5 zoning district; and

WHEREAS, the site has a rectangular shape with 108 feet of frontage on Lacombe Avenue, 100 feet of frontage on Castle Hill Avenue, and a total lot area of 10,833 sq. ft.; and

WHEREAS, the site is occupied by a three-story community facility building with 21,340 sq. ft. of floor area (1.97 FAR) (the “Building”); and

WHEREAS, the Building does not contain an elevator; and

WHEREAS, the applicant proposes to install an elevator to provide ADA access from the basement to the first, second and roof levels of the Building; and

WHEREAS, the applicant represents that the School is a permitted use in the underlying district; however, the proposed expansion requires a bulk variance because it does not comply with the front yard requirements and increases the degree of non-compliance with the lot coverage requirements; and

WHEREAS, specifically, the addition of the proposed elevator results in the following non-compliances: an approximately 8’-0” by 11’-0” protrusion into the front yard along Lacombe Avenue, creating a front yard with a depth of approximately 2’-0” along that portion of Lacombe Avenue (a front yard with a minimum depth of 10’-0” is required); and an increase in the lot coverage on the site from 67 percent to 68 percent (the maximum permitted lot coverage is 60 percent); and

WHEREAS, because the addition of the proposed elevator does not comply with the underlying bulk regulations in the R5 district, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant states that the programs located within the Building are targeted to children and adults with mental and physical disabilities and that, as a result, an elevator for ADA access is required on all floors to fulfill their mission; and

WHEREAS, the applicant represents that the front yard waiver is necessary to provide an elevator which can be constructed without discontinuing the operation of the facility; and

WHEREAS, the applicant states that a complying development with an elevator would require additional vestibules at each level which would result in a loss of programmatic space, and require modification of the Building’s existing joists and framing; and

WHEREAS, by letter dated September 1, 2011, New York City Councilmember Annabel Palma states that \$895,000 has been secured to support the installation of the elevator and new classrooms at the School; and

WHEREAS, the applicant represents that the Brownell School currently serves 90 children with special education needs and the Development Disabilities at Leake & Watts

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program serves 107 individuals and children; and

WHEREAS, at project completion, the Brownell School will serve 140 children with special education needs; and

WHEREAS, the applicant represents that the School is a NYS Department of Education approved preschool special education program under contract with the NYC Department of Education to provide special education and universal prekindergarten services; and

WHEREAS, the Board acknowledges that the School, as an educational institution, 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 disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board finds that the School's programmatic need to provide services for children and adults with mental and physical disabilities is legitimate, and agrees that the proposed enlargement is necessary to address its needs; and

WHEREAS, accordingly, based upon the above, the Board finds that the programmatic needs of the School create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the School is a non-profit educational institution, and the development will be in furtherance of its not-for-profit mission; 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 notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant represents that the expansion of the School into the front yard will not have an adverse impact on the surrounding neighborhood; and

WHEREAS, the applicant provided a front yard diagram indicating that the front yard of the Building is compatible with the front yards of the homes in the surrounding neighborhood, which have yards ranging in depth between ten feet and 65 feet; and

WHEREAS, the applicant states that the elevator will encroach into the required 10'-0" front yard by 8'-0" feet, resulting in a front yard with a depth of 2'-0" for a distance of only 11'-0" out of the 208'-0" of street frontage on the site; and

WHEREAS, the Board asked for landscaping and planting to be provided in front of the Building; and

WHEREAS, the applicant submitted a plan to enhance the site's front yard with landscaping; 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 the school could occur given the existing conditions; 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 front yard and open space waiver is the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21 and grants a variance to permit, on a site within an R5 zoning district, on a site within an R5 zoning district, the installation of an elevator in an existing building occupied by a school (UG 3), which does not comply with the zoning regulations for front yards or lot coverage, contrary to ZR §§ 24-33 and 24-11, *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 August 6, 2012," twelve- (12) sheets; and *on further condition*:

THAT the parameters of the Building will be: a floor area of 21,198 sq. ft. (1.96 FAR); a lot coverage of 68 percent; and a front yard with a minimum depth of approximately 2'-0" along Lacombe Avenue, as illustrated on the approved plans;

THAT any change in the use, occupancy, or operator of the School requires review and approval by the Board;

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

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

THAT construction shall proceed in accordance with ZR § 72-23; and

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

Adopted by the Board of Standards and Appeals, August 21, 2012.

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## 107-12-BZ

### CEQR #12-BSA-120M

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Third Avenue Tower LLC, owner; Blink 600 Third Avenue Inc, lessee.

SUBJECT – Application April 17, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*). C5-3, C2.5 and R8B (MiD) zoning district.

PREMISES AFFECTED – 600/18 Third Avenue, aka 159/65 E. 39<sup>th</sup> Street, aka 150/2 East 40<sup>th</sup> Street, west side of 3<sup>rd</sup> Avenue between E. 39<sup>th</sup> Street and E. 40<sup>th</sup> Street, Block 895, Lot 45, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Hiram Rothkrug.

**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 April 11, 2012, acting on Department of Buildings Application No. 121026889, reads in pertinent part:

Proposed ‘Physical Culture Establishment’ in C5-3 zoning district is not permitted As-of-Right as per section ZR 32-10 and a special permit by the Board of Standards and Appeals is required to comply with ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-3 zoning district within the Special Midtown Zoning District, the operation of a physical culture establishment (PCE) on portions of the sub-cellar, cellar, and first floor of an existing 42-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, and then to decision on August 21, 2012; and

WHEREAS, Community 6, Manhattan, recommends approval of this application; and

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

WHEREAS, the subject PCE is located on the west side of Third Avenue between East 39<sup>th</sup> Street and East 40<sup>th</sup> Street, in a C5-3 zoning district within the Special Midtown Zoning District; and

WHEREAS, the site has approximately 197 feet of frontage on Third Avenue, 90 feet of frontage on East 39<sup>th</sup> Street, 158 feet of frontage on East 40<sup>th</sup> Street, and a total lot area of 24,673 sq. ft.; and

WHEREAS, the zoning lot is developed with a 42-story office building erected pursuant to a variance (790-68-BZ) and administrative appeal (595-69-A) granted by the

Board that waived certain tower coverage requirements under the Zoning Resolution and allowed lot line openings contrary to the Administrative Code; and

WHEREAS, the applicant represents that the previous approvals are not affected by the proposed PCE; and

WHEREAS, the proposed PCE will occupy a total of approximately 16,885 sq. ft. of floor space, including 735 sq. ft. of floor area at the first floor, 528 sq. ft. of floor space at the cellar level, and 15,622 sq. ft. of floor space at the sub-cellar level; and

WHEREAS, the PCE will be operated as Blink 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 9:00 a.m. to 5:00 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 applicant states that the proposed PCE will comply with the goals of the Special Midtown Zoning District; 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.12BSA120M, dated April 14, 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

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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, permit, on a site located in a C5-3 zoning district within the Special Midtown District, the operation of a physical culture establishment (PCE) on portions of the sub-cellar, cellar, and first floor of an existing 42-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 10, 2012" - Three (3) sheets, and *on further condition*:

THAT the term of this grant will expire on August 21, 2022;

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

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

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

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

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

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, August 21, 2012.

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**116-12-BZ**  
**CEQR #12-BSA-125M**

APPLICANT – Francis R. Angelino, Esq., for Spring Swinehart et al., owner; Exceed Fitness, LLC, lessee.

SUBJECT – Application April 24, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Exceed Fitness*). C1-9 zoning district.

PREMISES AFFECTED – 1477 Third Avenue, between E. 83<sup>rd</sup> and E. 84<sup>th</sup> Streets, Block 1529, Lot A, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Francis R. Angelino.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 17, 2012, acting on Department of Buildings Application No. 121013090, reads in pertinent part:

Proposed change of use to a physical culture establishment, as defined by ZR 12-10, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C1-9 zoning district, the operation of a physical culture establishment (PCE) on portions of the cellar and ground floors of an existing two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, and then to decision on August 21, 2012; and

WHEREAS, Community 8, Manhattan, recommends approval of this application; and

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

WHEREAS, the subject PCE is located on the east side of Third Avenue between East 83<sup>rd</sup> Street and East 84<sup>th</sup> Street, in a C1-9 zoning district; and

WHEREAS, the site has approximately 26 feet of frontage on Third Avenue, a depth of 100 feet, and a total lot area of approximately 2,595 sq. ft.; and

WHEREAS, the proposed PCE will occupy 2,075 sq. ft. of floor area on the first floor, with an additional 1,875 sq. ft. of floor space at the cellar level.; and

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

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, from 5:30 a.m. to 8:00 p.m.; and Saturday and Sunday, from 8:00 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

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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 April 21, 2012, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant will be reduced for the period of time between April 21, 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.12BSA125M, dated April 20, 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 C1-9 zoning district, the operation of a PCE on portions of the cellar and ground floors of an existing 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 July 3, 2012"-Two (2) sheets, and *on*

*further condition:*

THAT the term of this grant will expire on April 21, 2022;

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

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

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

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

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

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, August 21, 2012.

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## **42-10-BZ**

APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.

SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations. R3-1/C2-2 zoning district.

PREMISES AFFECTED – 2170 Mill Avenue, 116' west of intersection with Strickland Avenue, Block 8470, Lot 1150, Borough of Brooklyn.

## **COMMUNITY BOARD #18BK**

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Laid over to October 16, 2012 at 1:30 P.M., for adjourned hearing.

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## **5-11-BZ**

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

SUBJECT – Application January 14, 2011 – Variance (§72-21) to allow for a new five-story residential development, contrary to use regulations (§42-00). M2-1 zoning district. PREMISES AFFECTED – 9 Old Fulton Street, northeasterly side of Old Fulton Street, Block 35, Lot 10, Borough of Brooklyn.

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## COMMUNITY BOARD #2BK

### APPEARANCES –

For Applicant: Calvin Wong.

For Opposition: Carre Berilacqua.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

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## 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, Councilwoman Sara M. Gonzalez and Michael J. Schweinsburg.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for decision, hearing closed.

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## 157-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 1968 2<sup>nd</sup> Avenue Realty LLC., owner.

SUBJECT – Application October 5, 2011– Variance (§72-21) to allow for the legalization of an existing supermarket, contrary to rear yard (§33-261) and loading berth (§36-683) requirements. C1-5/R8A and R7A zoning districts.

PREMISES AFFECTED – 1968 Second Avenue, northeast corner of the intersection of Second Avenue and 101<sup>st</sup> Street, Block 1673, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #11M

### APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

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## 168-11-BZ

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

SUBJECT – Application October 27, 2011 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Bet Yaakob, Inc.*), contrary to floor area (§§113-11, 503, 51, 77-02, 23-141, 24-11), open space and lot coverage (§§23-141, 24-11, 77-02, 113-11), front, side and rear yard (§§113-11, 503, 543, 77-02, 23-464, 47, 471), height and setback (§§113-11, 503, 55, 77-02, 23-631,

633, 24-593), planting and landscaping (§§113-12, 23-45, 23-451, 113-30) and parking (§§113-58, 25-31) regulations.

R5, R6A, and R5 (Ocean Parkway Special District) zoning district.

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

## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Nora Martins, N. Lanza and John Field.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for decision, hearing closed.

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## 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 (§23-141(b)); side yard (§23-461) and rear yard (§23-47) requirements. 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

### APPEARANCES –

For Applicant: Eric Palatnik and Ibrahim Faks.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for decision, hearing closed.

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## 7-12-BZ

APPLICANT – Eric Palatnik, P.C., for 419 West 55<sup>th</sup> Street Corp., owner; Katsam Holding, LLC, lessee.

SUBJECT – Application January 17, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Revolutions 55*). C6-2/R8 zoning district.

PREMISES AFFECTED – 419 West 55<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenues, Block 1065, Lot 21, Borough of Manhattan.

## COMMUNITY BOARD #4BK

### APPEARANCES –

For Applicant: Eric Palatnik, John Paul Murray, Carla Murray and Jeff Fisch.

For Opposition: Dale Degenshein and Jann Leemino.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

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**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 (§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**

APPEARANCES –

For Applicant: Eric Palatnik and Igar Zaslisky.

**ACTION OF THE BOARD** – Laid over to October 25, 2012, at 1:30 P.M., for continued hearing.

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**16-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

**COMMUNITY BOARD #4BK**

APPEARANCES –

For Applicant: Eric Palatnik, Hiram Rothkrug and Ian Rasmussen.

For Opposition: Ricardo Strobert, Sandra Davis, Renee’ L. Branch and Fitz Murray.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

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**23-12-BZ**

APPLICANT – Simons & Wright LLC, for 949-951 Grand Street, LLC, owner.

SUBJECT – Application February 2, 2012 – Variance (§72-21) to allow for the development of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 951 Grand Street, between Morgan and Catherine Streets, Block 2924, Lot 48, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

APPEARANCES –

For Applicant: Chris Wright.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 1:30 P.M., for deferred decision.

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**30-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.

SUBJECT – Application February 8, 2012 – Special Permit (§73-49) to permit accessory parking on the roof of an existing one-story supermarket, contrary to §36-11. R6/C2-2 zoning district.

PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Eric Palatnik, Raymond Chen and Hiram Rothkrug.

For Opposition: Michelle Khuu and Yuka Yoneda.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for continued hearing.

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**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 a residential building, contrary to use regulations (§42-00). 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**

APPEARANCES –

For Applicant: Raymond Levin, Jack Freeman, Barbara K. and Zella Jones.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for decision, hearing closed.

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**48-12-BZ**

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

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

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

**COMMUNITY BOARD #4M**

APPEARANCES –

For Applicant: Marvin B. Mitzner.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to  
September 11, 2012, at 1:30 P.M., for decision, hearing  
closed.

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## **71-12-BZ**

APPLICANT – Akerman Senterfitt, LLP, for Archer  
Avenue Partners, LLC, owner; Neighborhood Housing  
Services of Jamaica, Inc., lessee.

SUBJECT – Application March 23, 2012 – Variance (§72-  
21) to allow for a new 14-story residential building with  
ground floor retail, contrary to floor area (§§115-211/23-  
942), height and setback (§115-233), and accessory off  
street parking (§115-51). C6-2/Downtown Jamaica Special  
Zoning District.

PREMISES AFFECTED – 165-10 Archer Avenue,  
southeast corner of 165<sup>th</sup> Street and Archer Avenue, Block  
10155, Lot 105, Borough of Queens.

### **COMMUNITY BOARD #12Q**

APPEARANCES –

For Applicant: Steven Sinacori, Kimberley McLean and  
Ariel Aufgang.

**ACTION OF THE BOARD** – Laid over to October  
16, 2012, at 1:30 P.M., for continued hearing.

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## **79-12-BZ**

APPLICANT – Jeri Fogel, for Impala Retail Owner LLC,  
owner; House of Jai, lessee.

SUBJECT – Application April 4, 2012 – Special Permit  
(§73-36) to permit the operation of a physical culture  
establishment (*House of Jai*). C1-9 zoning district.

PREMISES AFFECTED – 1456 First Avenue, east side of  
First Avenue, 50’ south of corner of 76<sup>th</sup> Street, Block 1470,  
Lot 1002, Borough of Manhattan.

### **COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Joshue Price and Jeri Fogel.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to  
September 11, 2012, at 1:30 P.M., for decision, hearing  
closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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## \*Correction

This resolution adopted on August 7, 2012, under Calendar No. 191-11-BZ and printed in Volume 97, Bulletin Nos. 32-33, is hereby corrected to read as follows:

### 191-11-BZ

#### CEQR #12-BSA-052K

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

SUBJECT – Application December 19, 2011 – Special Permit (§73-622) for the in-part legalization and enlargement of an existing single family home, contrary to maximum allowable floor area (§23-141(b)). R 4-1 zoning district.

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

#### COMMUNITY BOARD #10BK

#### APPEARANCES –

For Applicant: Richard Lobel.

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 17, 2011, acting on Department of Buildings Application No. 320356645, reads:

ZR 23-141(b) proposed floor area exceeds permitted one

Proposed enlargement is not permitted; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4-1 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirement for floor area ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on June 12, 2012 after due notice by publication in *The City Record*, with a continued hearing on July 17, 2012, and then to decision on August 7, 2012; and

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

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of 77<sup>th</sup> Street, between 12<sup>th</sup> Avenue and 13<sup>th</sup> Avenue, within an R4-1 zoning district; and

WHEREAS, the subject site has a total lot area of 1,300 sq. ft., and is occupied by a single-family home with a floor area of 1,694 sq. ft. (1.30 FAR); and

WHEREAS, the premises is within the boundaries of a

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

WHEREAS, the subject home initially had a floor area of approximately 1,534 sq. ft. (1.18 FAR), and was subsequently enlarged to its current floor area of 1,694 sq. ft. (1.30 FAR); and

WHEREAS, the applicant now seeks to legalize the prior enlargement and to permit a further 156 sq. ft. increase in the floor area to 1,851 sq. ft. (1.42 FAR); the maximum permitted floor area is 975 sq. ft. (0.75 FAR); and

WHEREAS, at hearing, the Board directed the applicant to remove the second kitchen shown in the plans; and

WHEREAS, in response, the applicant submitted revised plans reflecting the removal of the stove from the basement level of the home; and

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

WHEREAS, the applicant submitted a table and corresponding map identifying at least five other homes on the same block as the site with similarly converted garages and/or two-story rear enlargements; and

WHEREAS, the applicant notes that the site was zoned R4 until 2007, which permitted an FAR of 1.35, and submitted photographs and Department of Buildings documentation reflecting that the proposed home with an FAR of 1.42 is consistent with a number of recent enlargements in the surrounding area; and

WHEREAS, the applicant notes that it merely seeks to legalize the conversion of the basement level garage to residential floor area and to enclose the open porch above the existing first floor extension in the rear yard of the site, which is closed in on both sides by the immediately adjacent single-family homes, both of which have been extended in the rear on both the first and second story; 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 §

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73-622 and 73-03, to permit, within an R4-1 zoning district, the enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for floor area, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received May 25, 2012”-(5) sheets and “July 5, 2012”-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,851 sq. ft. (1.42 FAR), 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;

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

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

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

Adopted by the Board of Standards and Appeals, August 7, 2012.

**\*The resolution has been corrected to remove the portion of the conditions which read: “no approval has been given by the Board as to the use and layout of the cellar;”. Corrected in Bulletin No. 35, Vol. 97, dated August 29, 2012.**