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# BULLETIN

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

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August 15, 2012

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### DIRECTORY

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337-90-BZ            1415-17 East 92<sup>nd</sup> Street, Brooklyn  
37-93-BZ             2040 Forest Avenue, Staten Island  
112-07-BZ            1089-1093 East 21<sup>st</sup> Street, Brooklyn  
718-56-BZ            741 Forest Avenue, Staten Island  
548-69-BZ            107-10 Astoria Boulevard, Queens  
271-90-BZ            68-01/5 Queens Boulevard, Queens  
69-91-BZ             49-61 West 62<sup>nd</sup> Street, Manhattan  
93-97-BZ             136-21 Roosevelt Avenue, Queens  
72-04-BZ             141-54 Northern Boulevard, Queens  
98-06-BZ/284-06-A   1045 Beach 9<sup>th</sup> Street, Queens  
128-10-BZ            147-58 77<sup>th</sup> Road, Queens  
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**Affecting Calendar Numbers:**

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97-11-BZ             1730 Cross Bronx Expressway, Bronx  
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192-11-BZ            2977 Hylan Boulevard, Staten Island  
2-12-BZ              95-36 115<sup>th</sup> Street, Queens  
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**Affecting Calendar Numbers:**

359-01-BZ            5002 14<sup>th</sup> Avenue, aka 5000-5014 14<sup>th</sup> Avenue, aka 1374-1385 50<sup>th</sup> Street, Brooklyn  
58-12-BZ            3960 Bedford Avenue, Brooklyn

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# DOCKET

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New Case Filed Up to August 7, 2012

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**211-12-BZ**

164 Coffey Street, east side of Coffey Street, 100' northeast of intersection of Coffey Street and Conover Street., Block 585, Lot(s) 39, Borough of **Brooklyn, Community Board: 6**. Application filed to permit proposed reestablishment of a cellar and three-story, two-family residential building in an M1-1 zoning district. M1-1 district.

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**235-12-BZ**

2771 Knapp Street, East side of Knapp Street, between Harkness Avenue to the south and Plumb Beach Channel to the north., Block 8839, Lot(s) 33,38, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-242) to permit a one-story building to be used as four(4) Use Grop 6 easting and drinking establishments. C3 zoning district. C3 district.

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**236-12-BZ**

1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street., Block 869, Lot(s) 372, Borough of **Staten Island, Community Board: 02**. Variance (§72-21) to permit the extension of an existing medical office and variance of side yard requirement to permit one side yard of 4.97' (8' required) contrary §23-45. R2 zoning district. R2 district.

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**237-12-BZ**

220 West 19th Street, southside West 19th Street, between 7th and 8th Avenues., Block 768, Lot(s) 50, Borough of **Manhattan, Community Board: 04**. Special Permit (§73-36) to permit a physical culture establishment. C6-4A zoning district. C6-2A zoning district. C6-2A district.

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**238-12-BZ**

1713 East 23rd Street, between Quentin Road and Avenue R, Block 6806, Lot(s) 86, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargements of single and two family detached and semi-detached residences. R3-2 zoning district. R3-2 district.

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**239-12-A**

38 Irving Walk, west side of Irving Walk, 45' north of the mapped Breezy Point Boulevard., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. The proposed reconstruction and enlargement of the existing single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law. The proposed upgrade of the existing non-conforming

private disposal system partially in the bed of the Service Road is contrary to Building Department policy. R4 zoning district R4 district.

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**240-12-A**

217 Oceanside Avenue, north side Oceanside Avenue west of Mapped Beach 201st Street., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. The proposed reconstruction and enlargement of the existing single family dwelling partially in the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law. The proposed upgrade of the existing non-conforming private disposal system in the bed of the mapped street is contrary to Article 3 of the General City Law. R4 zoning district . R4 district.

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**241-12-BZ**

8-12 Bond Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot(s) 62, Borough of **Manhattan, Community Board: 02**. Variance (§72-21) to permit the construction of a new 32,235.1 SF (4.98FAR) residential building with residential and retail use below the level of the second story contrary to §42-10 and 42-14D(2)(b), respectively. M1-5B zoning district. M1-5B district.

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**242-12-BZ**

1621-1629 61st Street, northeast side of 61st Street, 170' southeast from the intersection of 16th Avenue and 61st Street., Block 5517, Lot(s) 85, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to permit the construction of a Use Group 4A House of Worship, contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district. M1-1 district.

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**243-12-BZ**

236 Richmond Valley Road, southern side of Richmond Valley Road between Page Avenue and Arthur Kill Road., Block 7971, Lot(s) 200, Borough of **Staten Island, Community Board: 3**. Special Permit (§73-36) to permit the legalization of a physical culture establishment. M3-1 zoning district. M3-1 district.

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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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**AUGUST 21, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, August 21, 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**

**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. R-8 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**

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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 of Practice and Procedure. 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**

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**APPEALS CALENDAR**

**151-12-A**

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

SUBJECT – Application May 9, 2012 – Appeal from a DOB determination which denied owner's request to lift a stop work order and thereby legalize an amateur radio antenna on the roof of the premises (previously legalized by the owner under Application No. 12021381). R8B 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**

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**207-12-A**

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

SUBJECT – Application July 2, 2012 – The legalization of a reconstruction of a single family not fronting on a legally mapped street contrary to General City Law Section 36 and the proposed upgrade of an existing private disposal system is 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**

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**AUGUST 21, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, August 21, 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**

**5-11-BZ**

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

SUBJECT – Application January 14, 2011 – Variance (§72-21) to allow for a 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.

**COMMUNITY BOARD #2BK**

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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 ZR §33-261 and loading berth ZR §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**

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# CALENDAR

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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 residential building contrary to ZR §115-233 height and setback, ZR §115-51 accessory off street parking, and ZR §115-211/§23-942 floor area ratio.

C6-2 Zoning District/Downtown Jamaica Special 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**

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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**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, AUGUST 7, 2012 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 433-61-BZ

APPLICANT – Harold Weinberg, for Shin J. Yoo, owner.  
SUBJECT – Application November 28, 2012 – Extension of  
Term (§11-411) of a variance which permitted a one story  
and mezzanine retail building, contrary to use regulations;  
Waiver of the Rules. R7A zoning district.

PREMISES AFFECTED – 1702-12 East 16<sup>th</sup> Street,  
between Quentin Road and Avenue R. Block 6798, Lot 13,  
Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

##### APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

**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, and an  
extension of the term for a previously granted variance for  
the construction of a one-story commercial building (Use  
Group 6) currently occupied by six stores, which expired on  
July 18, 2011; and

WHEREAS, a public hearing was held on this  
application on March 6, 2012, after due notice by  
publication in *The City Record*, with continued hearings on  
May 8, 2012, June 5, 2012, and July 10 2012, and then to  
decision on August 7, 2012; and

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

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

WHEREAS, the subject site is located on the west side of  
East 16<sup>th</sup> Street, between Quentin Road and Avenue R, within  
an R7A zoning district; and

WHEREAS, the Board has exercised jurisdiction over  
the site since July 18, 1961 when, under the subject calendar  
number, the Board granted a variance to permit the  
construction of a one-story and mezzanine retail store building,  
within a residence use district, for a term of 30 years; and

WHEREAS, subsequently, the grant was amended and

the term extended at various times; and

WHEREAS, most recently, on December 11, 2001, the  
Board granted a ten-year extension of term, which expired on  
July 18, 2011; and

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

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

WHEREAS, at hearing, the Board questioned whether  
the signage at the site complied with C1 district regulations;  
and

WHEREAS, in response, the applicant submitted a  
signage analysis reflecting that the existing signage is not in  
compliance, but submitted revised plans reflecting  
complying signage on the site; and

WHEREAS, the Board questioned how long it would  
take the applicant to bring the signage into compliance at the  
site; and

WHEREAS, in response, the applicant states that  
because there are six individual tenants at the site, each  
tenant will have to go through the process of bringing their  
signage into compliance separately, which will take  
approximately one year; and

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

*Therefore it is Resolved* that the Board of Standards and  
Appeals *waives* the Rules of Practice and Procedure, *reopens*,  
and *amends* the resolution, dated July 18, 1961, so that as  
amended this portion of the resolution shall read: “to extend  
the term for ten years from July 18, 2011, to expire on July  
18, 2021; *on condition* that all use and operations shall  
substantially conform to drawings filed with this application  
marked “Received July 5, 2012”-(2) sheets; and *on further  
condition*:

THAT the term of the grant will expire on July 18, 2021;

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

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

THAT a new certificate of occupancy or temporary  
certificate of occupancy will be obtained by August 7, 2013;

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

THAT the Department of Buildings must ensure  
compliance with all other applicable provisions of the  
Zoning Resolution, the Administrative Code and any other  
relevant laws under its jurisdiction irrespective of plan(s)  
and/or configuration(s) not related to the relief granted.”  
(DOB Application No. 247/61)

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

# MINUTES

## 337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.

SUBJECT – Application April 26, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted an automotive repair establishment (UG 16B) and a two-story mixed-use building with retail (UG 6) and residential (UG 2), which will expire on June 2, 2012. C1-3/R5D zoning district.

PREMISES AFFECTED – 1415-17 East 92<sup>nd</sup> Street, northeast corner of the intersection formed by East 92<sup>nd</sup> Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Elizabeth Bennett.

**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 an extension of term for the continued operation of a one-story automotive repair shop (Use Group 16); and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in *The City Record*, and then to decision on August 7, 2012; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application, with the condition that the applicant comply with the conditions listed in the Board's prior grant; and

WHEREAS, the site is located on the northeast corner of the intersection at 92<sup>nd</sup> Street and Avenue L, within a C1-3 (R5D) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 19, 1950 when, under BSA Cal. No. 337-50-BZ, the Board granted a variance to permit the reconstruction of an existing gasoline service station and the construction of a lubritorium 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, on June 2, 1992, under the subject calendar number, the Board granted a special permit to permit the re-establishment of an expired variance for an automotive service station (Use Group 16) and the legalization of a change of use to an automotive repair establishment (Use Group 16) for a term of ten years, to expire on June 2, 2002; and

WHEREAS, most recently, on April 21, 2009, the Board granted a ten-year extension of term from the expiration of the prior grant, to expire on June 2, 2012, and a six-month extension of time to obtain a certificate of occupancy; and

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

WHEREAS, at hearing, the Board directed the applicant to correct its signage analysis to include the banners that are hung on the façade of the building that fronts East 92<sup>nd</sup> Street in its signage analysis; and

WHEREAS, in response, the applicant submitted a revised signage analysis including the banners on the East 92<sup>nd</sup> Street frontage, which reflects that the signage complies with C1 district regulations; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 2, 1992, so that as amended this portion of the resolution shall read: "to extend the term for ten years from June 2, 2012, to expire on June 2, 2022; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked 'Received April 26, 2012'-(4) sheets and 'July 23, 2012'-(1) sheet; and *on further condition*:

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

THAT there will be no parking on the sidewalk;

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

THAT all automobile repairs will be conducted inside the building and there will be no automobile body repairs at the premises;

THAT all lighting will be directed downward and away from adjacent residential uses;

THAT the hours of operation for the automotive repair establishment will be Monday through Friday from 8:00 a.m. to 6:00 p.m., and Saturday from 8:00 a.m. to 2:00 p.m. to minimize noise and vehicular impacts on the adjacent residential uses;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 1017/49)

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

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## 37-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Vornado Forest Plaza, LLC, owner; 2040 Forest Avenue Fitness Group LLC, lessee.

SUBJECT – Application February 14, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*Planet Fitness*) which expired on November 9, 2003; Waiver of the Rules. C8-1 zoning district.

# MINUTES

PREMISES AFFECTED – 2040 Forest Avenue, south side of Forest Avenue between Heaney Avenue and Van Name Avenue, Block 1696, Lot 8, Borough of Staten Island.

## COMMUNITY BOARD #1SI

### APPEARANCES –

For Applicant: Elizabeth Bennett.

**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 expires on November 9, 2013, and an amendment to reflect a change in the ownership and operation of the PCE; and

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

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

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

WHEREAS, the PCE is located on an irregularly shaped lot on the south side of Forest Avenue, between Heaney Avenue and Van Name Avenue, within a C8-1 zoning district; and

WHEREAS, the site is occupied by two one-story shopping center buildings; and

WHEREAS, the PCE occupies approximately 24,649 sq. ft. of floor area located in the southeast corner of the shopping center; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 9, 1993 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 9, 2003; and

WHEREAS, on October 25, 2005, the Board granted a ten-year extension of the term, which expires on November 9, 2013; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, the applicant also seeks an amendment to reflect the change of ownership and operation of the PCE since the prior grant; and

WHEREAS, the PCE is now operated as Planet Fitness; and

WHEREAS, the Board notes that the Department of Investigation has approved the change of ownership and operation of the PCE; and

WHEREAS, at hearing, the Board directed the applicant

to remove the graffiti from the exterior of the building and the retaining wall located along rear of the site; and

WHEREAS, in response, the applicant submitted photographs reflecting that the building’s exterior wall and the retaining wall have been repainted to remove the graffiti; 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 9, 1993, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from November 9, 2013, to expire on November 9, 2023, and to permit the noted change in the ownership and operation of the PCE, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received February 14, 2012’-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 9, 2023;

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

THAT the above conditions shall 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. 500751876)

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

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## 112-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Bnai Shloima Zalman by Eugene Langsam, owners.

SUBJECT – Application October 12, 2011 – Amendment for the increase in floor area and Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a two story and cellar (UG4) synagogue (*Bnai Shloima Zalman*) which expired on September 11, 2011. R-2 zoning district.

PREMISES AFFECTED – 1089-1093 East 21<sup>st</sup> Street, between Avenue I and Avenue J, Block 7585, Lot 21 & 22, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### APPEARANCES –

For Applicant: Lyra J. Altman.

# MINUTES

**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, an extension of time to complete construction and obtain a certificate of occupancy for a previously approved variance, and an amendment to permit certain modifications to the previously-approved plans; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with a continued hearing on July 10, 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 Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the applicant is brought on behalf of Congregation Bnai Schloima Zalman, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject site is located on the east side of East 21<sup>st</sup> Street, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the site has a total lot area of 5,500 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 1994 when, under BSA Cal. No. 160-93-BZ, the Board granted a variance to permit the legalization of an enlargement to an existing synagogue at the site; and

WHEREAS, on September 11, 2007, under the subject calendar number, the Board granted a variance to permit the demolition of the existing synagogue and the construction of a new two-story and cellar synagogue building, contrary to floor area, FAR, lot coverage, front yard, side yards, rear yard, wall height, and parking requirements; and

WHEREAS, on September 9, 2009, the Board issued a letter of substantial compliance approving certain modifications to the proposal to reflect an enlargement of the existing building rather than the construction of a new building; and

WHEREAS, substantial construction was to be completed by September 11, 2011 in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed due to financing concerns; and

WHEREAS, accordingly, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant also seeks an amendment to permit certain modifications to the previously-approved plans in order to better meet the programmatic needs of the Synagogue; and

WHEREAS, specifically, the applicant proposes: (1) an increase in the proposed floor area of the building from 7,236

sq. ft. (1.32 FAR) to 7,316 sq. ft. 1.33 FAR); (2) modifications to the front porch including the addition of two ramps; (3) shifting of the location of the side stairs; (4) elimination of a chimney; (5) modification of the exterior appearance and the interior layout including the addition of a refuse room in the cellar; (6) extension of the foundation below the porch for the the addition of a men’s mikvah; (7) extension of the existing chimney; (8) addition of an elevator and elevator overrun; (9) revision of the stair bulkhead layout; and (10) an increase of the perimeter wall height; and

WHEREAS, the applicant states that the floor area increase for the building is due to the addition of a new 6’-0” by 7’-0” area on the north side of the first and second floors to be used to store the moveable partitions, which will be used in such a way that the partitions will not be visible from the prayer area when they are not in use; and

WHEREAS, in response to concerns raised by the Board during the hearing process, the applicant submitted revised plans reflecting a roof height of 23’-0” for the rear 30’-0” of the property, an increase in the height of the parapet wall from 2’-9” to 3’-6” to comply with the Building Code, and the removal of the covered porch in the front yard; and

WHEREAS, based upon the above, the Board finds that the requested extension of time and amendment 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 September 11, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction and obtain a certificate of occupancy, to expire on August 7, 2016, and 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 August 1, 2012’- (11) sheets and *on further condition*:

THAT substantial construction shall be completed and a new certificate of occupancy obtained by August 7, 2016;

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. 320021301)

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

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## 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

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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: Qasim Murtaza.

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 August 21, 2012, at 10 A.M., for decision, hearing closed.

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## 548-69-BZ

APPLICANT – Eric Palatnik, P.C., for BP North America, owner.

SUBJECT – Application March 27, 2012 – Extension of Term for a previously granted variance for the continued operation of a gasoline service station (*BP North America*) which expired on May 25, 2011; Waiver of the Rules. R3-2 zoning district

PREMISES AFFECTED – 107-10 Astoria Boulevard, southeast corner of 107<sup>th</sup> Street, Block 1694, Lot 1, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

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

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## 271-90-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for EPT Realty Corp., owner.

SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED – 68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68<sup>th</sup> Street, Block 1348, Lot 53, Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Todd Dale.

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

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## 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.

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 August 21, 2012, at 10 A.M., for decision, hearing closed.

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## 93-97-BZ

APPLICANT – Eric Palatnik, P.C., for Pi Associates, LLC, owner.

SUBJECT – Application March 13, 2012 – Amendment to a previously granted variance (§72-21) to permit the change in use of a portion of the second floor (5,902 sf) from accessory parking spaces to UG 6 office use. C4-3 zoning district Amendment to a previously granted Variance (§72-21) to permit the change in use of a portion of the existing second floor (5902sf) which is currently occupied by 13 off street accessory parking spaces to UG 6 office use. C4-3 zoning district.

PREMISES AFFECTED – 136-21 Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 11, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

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

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**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for continued hearing.

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**98-06-BZ/284-06-A**

APPLICANT – Eric Palatnik, P.C., for Yeshiva Slach Yitzchok, owner.

SUBJECT – Application November 29, 2011 – Amendment to a previously granted waiver to Section 35 of the General City Law and a variance (§72-21) for a Yeshiva (*Yeshiva Siach Yitzchok*), contrary to height and setbacks (§24-551 and §24-521), floor area (§24-11), lot coverage (§24-11), front yards (§24-34), and side yards (§24-35) regulations. The amendment includes an increase in floor area and building height; Extension of Time to complete construction. R4A Zoning District.

PREMISES AFFECTED – 1045 Beach 9<sup>th</sup> Street, southwest corner of Beach 9<sup>th</sup> Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of Queens.

**COMMUNITY BOARD #14Q**

APPEARANCES –

For Applicant: Eric Palatnik and Rabbi Goodman.

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

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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.

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 August 21, 2012, at 10 A.M., for decision, hearing closed.

## APPEALS CALENDAR

**24-12-A & 147-12-A**

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

SUBJECT – Application February 2, 2012 and May 8, 2012 – Appeal challenging the Department of Buildings’ determination that outdoor accessory signs and structures are not a legal non-conforming use pursuant to §52-00. M1-2 zoning district.

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

**COMMUNITY BOARD #9M**

APPEARANCES –

For Applicant: Richard G. Leland.

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

THE VOTE TO GRANT –

Affirmative: .....0

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

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to Notice of Sign Registration Rejection letters from the Borough Commissioner of the Department of Buildings (“DOB”), dated January 3, 2012, denying Application Nos. 1005504 and 1005605 from registration for signs at the subject site (the “Final Determinations”), which read, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

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

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

WHEREAS, the subject site is located on the block bounded by the Henry Hudson Parkway to the west, West 134<sup>th</sup> Street to the south, 12<sup>th</sup> Avenue to the east, and West 135<sup>th</sup> Street to the north, in an M1-2 zoning district within the Special Manhattanville Mixed Use District; and

WHEREAS, the site has a lot area of approximately 15,670 sq. ft. and is occupied by a one-story building with a floor area of 3,000 sq. ft. and an illuminated double-faced ground sign with each face measuring 20 feet by 60 feet (1,200 sq. ft.) beginning at a height of approximately 85 feet

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above grade and rising to a height of approximately 105 feet above grade (the "Signs"); one sign faces to the north and one sign faces to the south; and

WHEREAS, the Signs are located within 200 feet of the Henry Hudson Parkway, a designated arterial highway pursuant to Zoning Resolution Appendix H, and within 200 feet of Riverbank State Park, a "public park" pursuant to ZR § 12-10; and

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

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the Appellant's registration of the signs based on DOB's determination that the Signs are not permitted to be used as non-conforming accessory business signs; and

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

## PROCEDURAL HISTORY

WHEREAS, the Appellant asserts that the Signs were constructed in 1999 pursuant to three permits that were approved by DOB on February 19, 1999 (collectively, the "Permits"): (1) Permit 102051823-01-AL, which approved the sign structure; (2) Permit 102051805-01-SG, which approved an "illuminated accessory business sign"; and (3) Permit 102051814-01-AL, which also approved an "illuminated accessory business sign"; and

WHEREAS, the Appellant represents that beginning on April 1, 1999, the Signs were put into use to display copy in connection with the use of the building on the site for storage and staging of display fixtures used by Tommy Hilfiger U.S.A., Inc. ("Tommy Hilfiger") in its product showrooms and in department stores carrying Tommy Hilfiger licensed clothing and products; and

WHEREAS, the Appellant asserts that the Signs were used exclusively and continuously to display copy in connection with Tommy Hilfiger's use of the site through the end of May 2008, and the Tommy Hilfiger copy was removed from the Signs between May 31 and June 5, 2008; and

WHEREAS, the Appellant represents that Wodka, LLC ("Wodka") has leased the subject site beginning May 1, 2010 through the present, using the subject building for the storage of promotional materials and staging of Wodka promotional activities, and using the Signs for display of copy connected with its use of the site; and

WHEREAS, on or about September 1, 2009, pursuant to the 2008 Building Code and Chapter 49 of Title 1 of the Rules of the City of New York ("RCNY"), the Appellant filed to register the Signs as non-conforming accessory signs; and

WHEREAS, by letter dated June 2, 2011, DOB informed the Appellant that its filing failed to establish that the accessory sign was: (1) legally created before February 27, 2001 (the effective date of the applicable amendment to the Zoning Resolution); and (2) not used to display advertising; and

WHEREAS, by letter dated August 11, 2011, the Appellant submitted additional photographs and contracts regarding the Signs; and

WHEREAS, DOB determined that the additional materials failed to establish the existence of a non-conforming accessory sign eligible for registration, and issued the Final Determinations on January 3, 2012; and

## RELEVANT STATUTORY PROVISIONS

### ZR § 12-10 *Definitions*

Accessory use, or accessory (2/2/11)

An "accessory use":

- (a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an #accessory building or other structure#, or as an #accessory use# of land), except that, where specifically provided in the applicable district regulations or elsewhere in this Resolution, #accessory# docks, off-street parking or off-street loading need not be located on the same #zoning lot#; and
- (b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and
- (c) is either in the same ownership as such principal #use#, or is operated and maintained on the same #zoning lot# substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal #use#.

When "accessory" is used in the text, it shall have the same meaning as #accessory use#.

\* \* \*

### Sign, advertising (4/8/98)

An "advertising sign" is a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a #use# located on the #zoning lot#.

\* \* \*

### ZR § 42-55 *Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways (2/27/01)*

...(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:

- (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
- (2) no #advertising sign# shall be allowed nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed;

\* \* \*

### ZR § 52-11 – *Continuation of Non-Conforming Uses/General Provisions (12/15/61)*

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

\* \* \*

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

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(10/7/76)

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

\* \* \*

## Building Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:

- (1) The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more. . .

\* \* \*

## RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

... (d)(5) Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

\* \* \*

## RCNY § 49-16 – Non-conforming Signs

(a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming. . .

\* \* \*

## RCNY § 49-43 – Advertising Signs

Absent evidence that revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention, the following signs are deemed to be advertising signs for the purposes of compliance with the Zoning Resolution:

- (a) Signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot, and that storage or warehouse use occupies less than the full building on the zoning lot; or
- (b) All signs, other than non-commercial, larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot.

\* \* \*

## THE APPELLANT’S POSITION

### a. Lawful Establishment and Continuous Use

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) the Signs were lawfully established in 1999 as an accessory sign as defined by ZR § 12-10 and may therefore be maintained as a legal non-conforming accessory sign pursuant to ZR § 52-11, and (2) the Signs have operated as accessory signs with no discontinuance of two years or more since their lawful establishment; and

WHEREAS, in support of the lawful establishment of the Signs in 1999, the Appellant relies on (1) the 1999 Permits, (2) a 1999 media contract between the Appellant and Tommy Hilfiger for the use of the Signs, dated December 24, 1998, which commenced on April 1, 1999 and expired on March 31, 2002 (the “1999 Media Contract”), (3) a license agreement between the Appellant and Tommy Hilfiger for the use of the site for storage and/or warehousing of Tommy Hilfiger’s products, which commenced on January 4, 1999 and expired at the end of the 1999 Media Contract; and (4) an affidavit from Peter Connolly, the President of Marketing for Tommy Hilfiger from 1998 until September 2006, stating that from January 4, 1999 through his departure from the company in September 2006, the subject building was used by Tommy Hilfiger for “the storage, staging and repair of...display fixtures as well as administrative functions related to such use...” (the “Tommy Hilfiger Affidavit”); and

WHEREAS, in support of the continuous use of the Signs since 1999, the Appellant submitted a timeline with supporting evidence consisting of media contracts, license agreements, lease agreements, affidavits, and photographs, for each year from 1999 through 2012; and

WHEREAS, the Appellant asserts that at the time the Signs were erected in 1999, the Zoning Resolution permitted accessory signs in the subject M1-2 zoning district with no restriction as to size, however, on February 27, 2001 new zoning regulations were enacted under ZR § 42-55 imposing a 500 sq. ft. area limitation on signs within 200 feet and within view of arterial highways and public parks; and

WHEREAS, the Appellant contends that following the enactment of ZR § 42-55 on February 27, 2001, the Signs – measuring 1,200 sq. ft. each – became existing non-conforming uses as defined by the Zoning Resolution; and

WHEREAS, the Appellant asserts that it has provided

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to DOB a preponderance of evidence including DOB permits, advertising contracts, licenses for use of the at-grade portions of the site, and photographs demonstrating that the Signs were lawfully established and continually used from 1999 to the present, without any discontinuance of use of the Signs for two years or more; and

b. The Accessory Sign v. Advertising Sign Analysis

WHEREAS, the Appellant asserts that it has established by a preponderance of the evidence that, when established, the Signs were accessory signs as defined by the Zoning Resolution; and

WHEREAS, the Appellant relies on the definitions for “advertising sign” and “accessory use” set forth at ZR § 12-10; and

WHEREAS, as noted above, ZR § 12-10 defines an accessory use as a use: (1) conducted on the same zoning lot as the principal use to which it is related; (2) which is clearly incidental to, and customarily found in connection with, such principal use; and (3) which is either in the same ownership as such principal use, or is operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal use; and

WHEREAS, the Appellant asserts that the Signs meet each of the criteria of the ZR § 12-10 definition of accessory use; and

WHEREAS, specifically, the Appellant contends that the Signs meet the ZR § 12-10(a) definition of “accessory use” in that the Signs were established in 1999 by Tommy Hilfiger on the same zoning lot (comprised of tax lot 32) as the principal use of the building on the site for storage, staging, and repair of display fixtures by Tommy Hilfiger, and the Signs remain on the same zoning lot as the use of the entirety of the building on the zoning lot by Wodka; and

WHEREAS, the Appellant contends that the Signs meet the ZR § 12-10(b) definition of “accessory use” in that the display of Tommy Hilfiger copy and Wodka copy on the Signs has clearly been incidental to the use by Tommy Hilfiger and Wodka of the building on the site, and a company using a property “customarily” posts signs displaying the company name “in connection with” its use of such property; and

WHEREAS, finally, the Appellant contends that the Signs meet the ZR § 12-10(c) definition of “accessory use” in that the Signs were operated and maintained on the same zoning lot for display of Tommy Hilfiger copy and Wodka copy, which display of copy has been substantially for the benefit of the occupants of the principal use of the at-grade portions of the site; and

WHEREAS, the Appellant notes that ZR § 12-10 states that an “advertising sign” is a sign which is “not #accessory# to a #use# located on the #zoning lot#,” and therefore the Signs are specifically excluded from the definition of “advertising sign” since they were established as accessory to Tommy Hilfiger’s use of the same zoning lot; and

WHEREAS, accordingly, the Appellant contends that it satisfies the plain meaning of the Zoning Resolution

definition of accessory use, and cites to Gruson v. Dep’t of City Planning, 2008 N.Y. Slip Op 32791U (Sup. Ct., N.Y. Cnty October 3, 2008) and Raritan Dev. Corp. v. Silva, 91 N.Y.2d 98 (1997) for the principle that, in interpreting statutes such as the Zoning Resolution, the plain meaning of words should be applied when the statutory language is clear and unambiguous; and

WHEREAS, the Appellant further contends that in rejecting the registration of the Signs, DOB has impermissibly construed ambiguity in the meaning of the term “accessory use” against the Appellant, and any ambiguity in the Zoning Resolution must be determined in favor of the property owner; and

WHEREAS, specifically, the Appellant asserts that even if the meaning of “principal use” in the definition of “accessory use” is ambiguous, the New York State Court of Appeals in Toys “R” Us v. Silva, 89 N.Y.2d 411, 421 (1996) found that “zoning restrictions, being in derogation of common-law property rights, should be strictly construed and any ambiguity resolved in favor of the property owner”; and

WHEREAS, the Appellant also discusses three Board cases cited by DOB as evidence of the Board’s experience in reviewing DOB determinations regarding accessory uses (BSA Cal. Nos. 14-11-A, 45-96-A, and 194-94-A); and

WHEREAS, specifically, the Appellant argues that BSA Cal. No. 14-11-A does not offer any precedential value as to whether the Signs may be considered an accessory use because that case concerned permitted floor space in the cellar of a residential building; and

WHEREAS, the Appellant argues that BSA Cal. No. 45-96-A, which concerned a large cigarette sign in connection with a small convenience store, can be distinguished from the instant case because cigarettes were among the many types of products sold from the principal use which was the convenience store itself, while at the subject site the Signs have been leased and operated by and for the benefit of the sole occupant and use of the building on the site; and

WHEREAS, the Appellant contends that the subject case is more analogous to BSA Cal. No. 194-94-A, where the Board found (and the Court of Appeals affirmed in New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 N.Y.2d 413 (1998)) that a 480-ft. (approximately 45-story) radio tower for a 50,000 watt radio station constituted an accessory use notwithstanding its large size and the fact that broadcasting from the station would go well beyond the boundaries of the university to which the radio station and its proposed tower were accessory; and

WHEREAS, the Appellant argues that, similar to BSA Cal. No. 194-94-A, the Board should not consider the size of the Signs in relation to the size of the principal use as determinative of whether they may be considered accessory to the use of the building; and

## DOB’S POSITION

WHEREAS, DOB makes the following primary points to support its position that the Signs do not qualify as non-

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conforming accessory signs: (1) the Signs were never lawfully established as accessory signs because the warehouse at the site was not a legitimate principal use; and (2) the Signs are currently used as unlawful advertising signs for the display of Wodka copy; and

WHEREAS, DOB asserts that there was never a legitimate principal use at the subject lot that would have permitted the use of the Signs by Tommy Hilfiger as an accessory use; and

WHEREAS, DOB notes that, according to Certificate of Occupancy No. 102657947, dated January 31, 2003, the principal use of the zoning lot is “warehouse with accessory commercial office;” and

WHEREAS, DOB relies on the language in RCNY § 49-43 which establishes a rebuttable presumption that “signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot” and that signs “larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot” are advertising signs for purposes of compliance with the Zoning Resolution; and

WHEREAS, DOB also relies on Department Operations Policy and Procedure Notice 10/99 (“OPPN 10/99”), issued prior to the promulgation of Rule 49 but remaining in effect, which sets forth the requirements for obtaining an accessory sign permit; and

WHEREAS, DOB notes that OPPN 10/99 parallels the rebuttable presumption set forth in RCNY § 49-43, that signs connected to a principal use whose activity on the zoning lot consists primarily of storage or a warehouse, and signs larger than 300 square feet which do not direct attention to the zoning lot are deemed to be advertising signs; and

WHEREAS, DOB further notes that OPPN 10/99 also sets forth what evidence is required in a permit application to demonstrate that the principal use can support the sign as an accessory use, which includes: (1) the name of the business owner, (2) a description of the business operation signed by the owner, (3) evidence that the use is permitted on the zoning lot, (4) a lease or deed demonstrating the amount of space on the zoning lot that will be used by the principal use and how the space will be used, (5) a description of the proposed sign and copy, (6) evidence that the sign will be owned and paid for by the owner of the principal use, and (7) a statement of the size and type of sign to be installed; and

WHEREAS, OPPN 10/99 further provides that if the plan examiner cannot determine based on the evidence provided that the proposed sign is a legitimate accessory sign, the application may be referred to the borough commissioner for further review, in which case the borough commissioner may request additional evidence to determine:

- (1) that the use identified as the principal use is in fact a bona fide business (e.g., a business plan, purchase orders and receipts for merchandise or service equipment, copies of advertisement

and/or phone listings identifying the business at the zoning lot, sales or other accounting/financial records (if the business is an existing business), request for a site inspection to show planned or existing business operations, etc.) and/or

- (2) that the proposed sign is accessory to the identified principal use (e.g., evidence that the actual or anticipated revenue generated by the business or the expense of operating the business on the zoning lot at least equals or exceeds the cost of purchasing or leasing and maintaining the sign); and

WHEREAS, DOB states that OPPN 10/99 was published to prevent sham warehouses with “accessory signs” which in fact were nothing more than an empty building with an advertising sign, and OPPN 10/99 represents the interpretation and implementation of two well-established Zoning Resolution requirements: (1) that an accessory use be “clearly incidental to” and “customarily found in connection with” the principal use; and (2) that advertising signs be placed a certain distance from the City’s arterial highways; and

WHEREAS, DOB asserts that a sign (use) whose revenue far exceeds that which is generated by the principal use of the zoning lot cannot be considered a “clearly incidental” use, and while it is customary for a business to have accessory signage, it is not customary for the sign revenue to dwarf the business revenue such that the business would scarcely exist without the sign; and

WHEREAS, DOB further asserts that where, as here, the surface area of the sign copy is four-fifths the square footage of the warehouse (the Signs measure 1,200 sq. ft. each, for a total of 2,400 sq. ft., while the subject warehouse building is approximately 3,000 sq. ft.), the sign cannot reasonably be considered “clearly incidental to” the warehouse; and

WHEREAS, DOB argues that the Appellant’s reliance on DOB permits as evidence of the establishment of non-conforming accessory signs is misplaced, noting that the 1999 Permits were not signed off until January 22, 2003 and were filed under professional certification and pursuant to Department Directive 14/1975, which means that the job applicant certified to DOB at the time of filing and at the time of sign-off that the permit applications complied with all applicable laws, rules, and regulations; and

WHEREAS, DOB contends that, despite the sign-off, a review of the job folders reflects that the items required by OPPN 10/99 to establish a legitimate principal use are not included; and

WHEREAS, DOB asserts that the only evidence provided regarding the warehouse operations from 1999 through 2008 is the Tommy Hilfiger Affidavit, which states that the warehouse was “used by Tommy Hilfiger for the storage, staging, and repair of...display fixtures as well as for administrative functions related to such use...”; however, there is nothing in the record that corroborates this statement; and

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WHEREAS, specifically, DOB argues that there is no objective, independently verifiable evidence of warehouse operations, such as a business plan, purchase orders or receipts for merchandise or service equipment, copies of advertisements or phone listings, or financial records of any kind; and

WHEREAS, further, DOB notes that the Signs did not direct the attention of vehicular and pedestrian traffic to the Tommy Hilfiger business on the zoning lot; and

WHEREAS, DOB asserts that one uncorroborated statement cannot be considered sufficient evidence of almost ten years of warehouse operations; accordingly, the legitimacy of the principal use has not been demonstrated; and

WHEREAS, DOB further asserts that absent a demonstrated, legitimate principal use at the subject lot, the Tommy Hilfiger signs could not have been accessory signs; rather, they were by definition advertising signs; and

WHEREAS, DOB states that, therefore, the Signs could not have become non-conforming accessory signs when the Zoning Resolution was amended, effective February 27, 2001, to restrict the height and surface area of accessory signs near arterial highways, and since the Signs were advertising signs near an arterial highway and a public park, the Signs were maintained in violation of ZR § 42-55; and

WHEREAS, DOB asserts that when Wodka took over the use of the site, the use of the Signs as unlawful advertising signs continued; and

WHEREAS, DOB argues that the Appellant has similarly failed to submit evidence to DOB that would rebut the presumption set forth in RCNY § 49-43 and OPPN 10/99 that the Wodka signs – which are located on a zoning lot whose principal use consists primarily of a warehouse and which is greater than 200 sq. ft. and clearly not used to direct the attention of vehicular and pedestrian traffic to the business of the zoning lot – are advertising signs rather than accessory signs; and

WHEREAS, DOB states that it inspected the warehouse on or about February 3, 2012, and observed minimal warehouse activities and a Wodka sign that did not indicate any connection to the Wodka warehouse; and

WHEREAS, accordingly, DOB concludes that the use of the Signs by Wodka is also deemed to be as advertising signs in violation of ZR § 42-55, and that the registration of the Signs as non-conforming accessory signs was properly rejected; and

WHEREAS, in response to the Appellant's argument that the plain meaning of the Zoning Resolution supports its continued use of the Signs as accessory to the warehouse on the subject lot, DOB asserts that the plain meaning of the text actually supports DOB's determination that the Appellant has failed to demonstrate the existence of a principal use for which an accessory sign may be erected and maintained; and

WHEREAS, specifically, DOB argues that the ZR § 12-10 definition of "accessory use" divides uses into two categories – principal uses and accessory uses – with

accessory uses being subordinate and dependent upon principal uses; therefore, before determining whether a particular use may be considered "accessory" per ZR § 12-10, the principal use of the lot must be identified; and

WHEREAS, DOB contends that rather than establishing that the principal use of the subject lot is a warehouse, the evidence submitted by the Appellant, including the Tommy Hilfiger leases and media contracts, favors the conclusion that the principal use of the lot is the advertising sign, and the warehouse exists for the sole purpose of claiming that the advertising sign is accessory to it; and

WHEREAS, DOB further contends that, even assuming the warehouse is considered a principal use, the Signs do not satisfy the remainder of the criteria for an "accessory use," as they are not "clearly incidental to and customarily found in connection with the principal use of the lot;" and

WHEREAS, specifically, DOB states that the combined surface area of the Signs at 2,400 sq. ft. is almost as large as the floor area of the one-story warehouse (3,000 sq. ft.), and the evidence of the operations at the site (media contracts, license agreements, and photographs) relate predominantly to the Signs rather than the warehouse; and

WHEREAS, DOB also cites to New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 N.Y.2d 413, 420 (1998), where the Court of Appeals observed that whether a proposed use is accessory "depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the over-all character of the particular area in question;" and

WHEREAS, DOB argues that the analysis espoused by the Court of Appeals favors DOB's determination, as the subject lot's value derives substantially from its proximity to the Henry Hudson Parkway and 12<sup>th</sup> Avenue, and while the site could reasonably be used for a warehouse use, the evidence suggests that the use of the Signs is too significant to be accessory to the warehouse operation; and

WHEREAS, as to the Appellant's argument that if there is ambiguity regarding the meaning of "principal use" such ambiguity must be resolved in favor of the property owner, DOB asserts that the Appellant is not requesting the Board to resolve an ambiguity in the meaning of the term; rather, the Appellant is requesting the Board to consider a tiny warehouse with absolutely no proof of active operations to be a "principal use," which amounts to giving the term no effect whatsoever, contrary to the fundamental principles of statutory interpretation; and

WHEREAS, DOB notes that the Board has reviewed DOB determinations regarding accessory uses in the past (citing BSA Cal. Nos. 14-11-A, 45-96-A, and 194-94-A), and asserts that the subject case does not come close to satisfying the criteria for accessory use; and

## CONCLUSION

WHEREAS, the Board agrees with DOB that the Signs are unlawful advertising signs which were never established as accessory signs pursuant to the ZR § 12-10

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definition of accessory use; and

WHEREAS, the Board finds that the Signs do not meet the criteria of “accessory use” because the warehouse at the site does not qualify as a legitimate principal use and the Signs are not “clearly incidental to” the purported principal use of the site as a warehouse; and

WHEREAS, the Board agrees with DOB that in order to determine whether a use satisfies the ZR § 12-10 definition of “accessory use,” the principal use, upon which the accessory use depends, must first be identified; and

WHEREAS, the Board finds that DOB appropriately relied upon RCNY § 49-43 and OPPN 10/99 for guidance in determining whether the purported principal use at the site was legitimate; and

WHEREAS, the Board notes that RCNY § 49-43 and OPPN 10/99 reflect the public policy goal of ensuring that otherwise unlawful advertising signs or billboards cannot circumvent the requirements of the Zoning Resolution by designating a “sham” warehouse or storage facility as a principal use solely in an attempt to justify the actual principal use of the site as an advertising sign; and

WHEREAS, the Board agrees with DOB that RCNY § 49-43 and OPPN 10/99 establish a rebuttable presumption that the Signs are advertising signs because they (1) are connected to a principal use whose activity on the zoning lot consists primarily of storage or a warehouse, and (2) are larger than 300 sq. ft. and do not direct attention to the zoning lot; and

WHEREAS, the Board finds that the Appellant has failed to submit evidence reflecting that the “revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention,” and therefore has not met the criteria in RCNY § 49-43 for overcoming the presumption that the Signs are advertising signs; and

WHEREAS, similarly, the Board finds that the Appellant has failed to submit sufficient evidence pursuant to OPPN 10/99 to establish that the claimed principal use is a “bona fide business” or that “the actual or anticipated revenue generated by the business or the expense of operating the business on the zoning lot at least equals or exceeds the cost of purchasing or leasing and maintaining the sign;” and

WHEREAS, specifically, the Board agrees with DOB that the leases and media contracts submitted by the Appellant reflect that the revenue generated from the Signs far exceeds the revenue generated by the warehouse or storage facility use on the site, and that all of the evidence provided indicates that the use of the building on the site is subservient to the Signs; and

WHEREAS, the Board further agrees with DOB that the only evidence submitted by the Appellant regarding the warehouse operations from 1999 through 2008 is the Tommy Hilfiger Affidavit, which provides a generic description of the use of the site for “storage, staging, and repair of...display fixtures as well as for administrative functions related to such use,” and which, absent the submission of objective, independently verifiable evidence

of warehouse operations to corroborate the affidavit, as required by OPPN 10/99, the Board finds insufficient to establish a legitimate principal use on the site; and

WHEREAS, as to the current use of the site, the Board finds that, based on its site visits and the photographs submitted by the Appellant and DOB, Wodka’s use of the warehouse building is not indicative of a legitimate principal use, and there is nothing on the Signs that directs attention to the building on the site; and

WHEREAS, specifically, the Board notes that the building currently consists largely of empty space, with the occupied portions used for the storage of a small amount of “promotional material,” which the Board finds cannot support the Appellant’s contention that this is a principal use to which the two 1,200 sq. ft. signs are accessory; and

WHEREAS, the Board further notes that a large, deteriorating Tommy Hilfiger sign remains on the exterior of the subject building despite the fact that Wodka has operated the site exclusively since 2010, which further indicates that the only purpose for the subject building is to justify the Appellant’s claim that the Signs qualify as accessory rather than advertising signs; and

WHEREAS, the Board agrees with DOB that, since the Signs were never established as accessory signs, they could not have become non-conforming accessory signs when ZR § 42-55 was modified on February 27, 2001 to restrict the height and surface area of accessory signs near arterial highways; accordingly, the Appellant’s reliance on ZR § 42-55 and the provisions for the continuance of non-conforming uses is misplaced; and

WHEREAS, the Board disagrees with the Appellant’s contention that the Signs satisfy the plain meaning of the ZR § 12-10 definition of “accessory use,” as the text requires that such use be accessory to a principal use, and the Appellant has not established that the purported principal use on the site is legitimate; and

WHEREAS, the Board finds that, even if the principal use identified on the site were legitimate, the Appellant still would not satisfy the plain meaning of “accessory use,” as the relationship between the Signs and the warehouse is such that the Signs cannot be considered “clearly incidental to” the warehouse; and

WHEREAS, the Board further finds that the Signs, during their operation by both Tommy Hilfiger and Wodka, meet the ZR § 12-10 definition of “advertising signs” in that they “direct[] attention to a business...conducted, sold, or offered elsewhere than upon the same zoning lot...” and

WHEREAS, specifically, the Board finds that the Signs do not provide any information which would direct attention to the purported principal use on the subject zoning lot; rather, the Signs serve to advertise the business conducted elsewhere; and

WHEREAS, the Board finds the Appellant’s argument that the Signs are explicitly excluded from the definition of “advertising sign” because the definition states that an advertising sign is a sign which is “not #accessory# to a #use# located on the #zoning lot#” to be misguided, as the essence of the subject appeal concerns whether or not the

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Signs qualify as “accessory,” and since the Board has determined that they are not “accessory” signs, they are clearly not excluded from the definition of an “advertising sign;” and

WHEREAS, the Board disagrees with the Appellant’s assertion that DOB has injected ambiguity into the term “principal use,” and finds that DOB has applied a rational interpretation to the term, pursuant to the guidance provided by RCNY § 49-43 and OPPN 10/99, while the Appellant would have the Board interpret the term in such a way that merely claiming a use as a “principal use” would be sufficient to establish it as such, despite the lack of any evidence whatsoever regarding the actual activity on the site or the relationship between the purported “principal use” and “accessory use;” and

WHEREAS, as to the Appellant’s analysis of the prior Board cases cited by DOB, the Board finds that DOB’s purpose for citing the cases was merely as evidence that the Board has previously engaged in the analysis regarding what constitutes an accessory use, and DOB did not claim that the facts in any of the cited cases were analogous to the facts in the subject case or that they offered any precedential value; and

WHEREAS, accordingly, the Appellant’s ability to distinguish the facts of the cases under BSA Cal. Nos. 14-11-A and 45-96-A is not relevant to the Board’s analysis of the current case; and

WHEREAS, the Board is not persuaded by the Appellant’s assertion that the subject case is analogous to BSA Cal. No 194-94-A, where the Board determined that a 50,000 watt radio tower with a height of 480 feet on the Fordham University campus qualified as an “accessory use;” and

WHEREAS, specifically, the Board notes that unlike the subject site, there was no question in the Fordham University case that the university was a legitimate principal use, and in its decision the Board noted that the university submitted evidence demonstrating that the radio station and the radio tower were subordinate to the functions of the university as a whole, that it is commonplace for universities to own and operate radio stations as part of their educational mission, and that many universities had university-affiliated public radio stations with signal strengths of 50,000 watts or more; and

WHEREAS, as to the Appellant’s argument that, similar to the radio tower in the Fordham University case, the Board should not consider the size of the Signs in relation to the principal use to be determinative of whether they can be considered an “accessory use,” the Board finds the Appellant’s argument misguided in that the Board’s decision did not directly address that issue; and

WHEREAS further, the Board does not consider the fact that the combined surface area of the Signs (2,400 sq. ft.) is nearly as large as the floor area of the building (3,000 sq. ft.) to be dispositive of whether or not the Signs are an accessory use; however, the Board does find that the size of the Signs in relation to the size of the warehouse reinforces the additional evidence in the record which reflects that the

Signs are not “clearly incidental to” the warehouse building; and

WHEREAS, as to the question of continuity, the Board finds that since the threshold matter of the classification of the Signs is not met, it is not necessary to address whether there has been any two-year discontinuance of the Signs; and

WHEREAS, the Board finds that the Appellant has failed to provide evidence that the Signs were established as accessory signs prior to the modification of ZR § 42-55 on February 27, 2001 and, thus, are not eligible for legal non-conforming status as accessory signs; and

WHEREAS, the Board further finds that the current use of the Signs remains as unlawful advertising signs; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant’s registration of the Signs as accessory signs.

*Therefore it is resolved* that the subject appeal, seeking a reversal of the Final Determinations of the Department of Buildings, dated January 3, 2012, is hereby denied.

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

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**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 a single-family dwelling which is not fronting on a legally mapped street and is located within the bed of a mapped street, contrary to Sections 35 and 36 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, Lots 60, 80, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES – None.

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

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**47-12-A**

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

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

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

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Todd Dale.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

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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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## 83-12-A & 84-12-A

APPLICANT – Richard G. Leland, Esq./Fried Frank, for Frank Ferrovicchio, owner; Millennium Billboards LLC, lessee..

SUBJECT – Application April 6, 2012 – Appeal from Department of Buildings’ determination that a sign is not entitled to continued, non-conforming use status as an advertising sign. C8-3 zoning district.

PREMISES AFFECTED – 653 Bruckner Boulevard, intersection of Bruckner Boulevard and Timpson Place, Block 2603, Lot 115, Borough of Bronx.

### COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Richard Leland and Mark Johnston.  
For Administration: Amandus Derr, Department of Buildings.

THE VOTE TO CLOSE HEARING –

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

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

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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 reconstruction and enlargement of a single family home not fronting on a legally mapped street contrary to Art. 3 Sect.36 GCL and also partially in the bed of a mapped street contrary to Art 3 Sect. 35 of the Gen. City Law.

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

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: None.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for postponed hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING TUESDAY AFTERNOON, AUGUST 7, 2012 1:30 P.M.

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

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## ZONING CALENDAR

### 117-11-BZ

#### CEQR #12-BSA-012Q

APPLICANT – Sheldon Lobel, P.C., for Sisters of St. Joseph, owners.

SUBJECT – Application August 15, 2011 – Variance (§72-21) to permit the development of a new athletic center accessory to an existing UG 3 school (*Mary Louis Academy*), contrary to maximum height and sky exposure plane (§24-521), minimum rear yard, (§24-382) minimum front yard (§24-34) and nameplates or identification signs (§22-321). R1-2 and R5 zoning districts.

PREMISES AFFECTED – 86-50 Edgerton Boulevard, corner through lot bounded by Dalny Road, Wexford Terrace, and Edgerton Boulevard, block 9885, Lot 8, borough of Queens.

### COMMUNITY BOARD # 8Q

APPEARANCES –

For Applicant: Richard Lobel.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 13, 2011, acting on Department of Buildings Application No. 420370486, reads in pertinent part:

Proposed Use Group 3 accessory athletic center building in R1-2 and R5 zoning districts:

Exceeds the maximum height permitted pursuant to ZR Section 24-521.

Exceeds the sky exposure plane required pursuant to ZR Section 24-521.

Proposed sign exceeds the maximum size permitted pursuant to ZR Section 22-321; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R1-2 zoning district and partially within an R5 zoning district, the construction of a two-story athletic center on the existing school campus, which does not comply with zoning regulations for height, sky exposure plane, and signage, contrary to ZR §§ 24-521 and 22-321; and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in

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the *City Record*, with continued hearings on June 12, 2012 and 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 Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends approval of the application; and

WHEREAS, this application is brought on behalf of The Mary Louis Academy (the "School"), a not for profit religious educational institution; and

WHEREAS, the site is located on a corner through lot bounded by Dalny Road to the west, Wexford Terrace to the south, and Edgerton Boulevard to the east, partially within an R1-2 zoning district and partially within an R5 zoning district; and

WHEREAS, the site has a lot area of 151,470 sq. ft.; and

WHEREAS, the site is currently occupied by several School buildings, including a three- and four-story main building fronting on Wexford Terrace (the "Main Building"), three accessory residences, and a two-story convent building fronting on Edgerton Boulevard (the "Convent Building"); combined, the School buildings have a total floor area of 131,215 sq. ft. (1.48 FAR); and

WHEREAS, the applicant proposes to demolish the approximately 19,000 sq. ft. (0.13 FAR) Convent Building and construct a new 25,139 sq. ft. (0.17 FAR) accessory athletic facility and wellness center (the "Athletic Center") in its place, resulting in a combined floor area of 137,386 sq. ft. (1.58 FAR) on the entire site; and

WHEREAS, the applicant originally proposed to construct a 26,360 sq. ft. athletic facility which required additional waivers for non-complying front and rear yards; and

WHEREAS, at the direction of the Board, the applicant relocated the proposed building on the site so as to eliminate both the front yard and rear yard objections, and reduced the proposed floor area to 25,139 sq. ft.; and

WHEREAS, the applicant notes that the Convent Building no longer houses any residents, but the School occupies one wing for classrooms and administrative offices which will be relocated to the Main Building; and

WHEREAS, the proposed Athletic Center building will have the following non-compliances: two non-illuminated 50 sq. ft. identification signs (a maximum of 12 sq. ft. of identification signage is permitted); a height of 35'-0" (a maximum front wall height of 25'-0" is permitted in the R1-2 zoning district); and encroachment into the sky exposure plane for the R1-2 zoning district; and

WHEREAS, the Athletic Center will have the following uses: (1) a gymnasium, bleacher seating, fitness room, aerobics room, bathrooms, offices, and lobbies at the first floor; (2) an indoor jogging track at the mezzanine level; and (3) a multi-purpose room, viewing corridor, offices, locker rooms, and lobbies at the second floor; and

WHEREAS, because the proposed Athletic Center building does not comply with the underlying bulk regulations in the subject zoning districts, the requested variance is needed; and

WHEREAS, the applicant states that the variance is necessary to meet the School's programmatic needs of (1) providing an athletic facility with a regulation-sized gymnasium and sufficient space to accommodate the student body; and (2) to provide identification signage large enough to enable visitors to locate the Athletic Center from the street; and

WHEREAS, the applicant states that the existing athletic facility is located within the Main Building and is only approximately 6,250 sq. ft., which does not provide sufficient space for the student body; and

WHEREAS, the applicant further states that the School's existing athletic facility has never been enlarged since opening in 1938, despite the growth of female athletics and the student body since that time; and

WHEREAS, specifically, the applicant states that the athletic program has increased by between 165 and 175 students over the last ten years, and there are typically between 290 and 405 students involved in athletics per school year; and

WHEREAS, the applicant states that the existing gymnasium in the Main Building does not provide sufficient space to comply with the Brooklyn/Queens Catholic High Schools Athletic Association regulations for court size, as a regulation court is 84'-0" by 50'-0" and the School's existing court is only 74'-0" by 38'-6"; and

WHEREAS, the applicant states that as a result of the substandard gymnasium, volleyball and basketball playoff games currently cannot be held at the School; and

WHEREAS, the applicant further states that, due to the space constraints of the existing athletic facility space in the Main Building, the track team is forced to practice in the hallways, the basketball teams have to use gyms at other schools, the cheerleading team has to practice in the auditorium, and other teams have to use classrooms for warm-up and training activities; and

WHEREAS, the applicant represents that the existing athletic facility conditions are also disruptive to school operations and cause practical difficulties for the school staff and general student body; and

WHEREAS, the applicant represents that in addition to athletics, the proposed Athletic Center will provide adequate facilities for physical education, including fitness and aerobics rooms in addition to the main gymnasium; and

WHEREAS, the applicant states that the Athletic Center will also provide space for other school functions, including parent meetings and major fundraising events; and

WHEREAS, the applicant states that the height and sky exposure waivers are required to meet the School's programmatic needs because, while the R5 zoning district permits the 35'-0" height of the proposed building, the portion of the site in the R1-2 zoning district is permitted to go to a maximum front wall height of 25'-0", which would not allow for construction of a two-story building with a double-height regulation size court and running track at the mezzanine; and

WHEREAS, the applicant submitted as-of-right plans reflecting that an athletic facility that complied with the maximum height and sky exposure plane requirements would result in less than 20'-0" of ceiling clearance in the proposed gymnasium, while 25'-0" of clearance is required to support

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tournament play; and

WHEREAS, the applicant represents that the substandard gymnasium that would result under the as-of-right scheme would require the School's teams to travel more frequently to play games at regulation-sized gymnasiums and would limit the games that could be hosted at the School; and

WHEREAS, the applicant states that the requested waiver of sign regulations is also necessary to meet the programmatic needs of the School; and

WHEREAS, specifically, the applicant states that the proposed Athletic Center will be a separate building on the School's large campus, which has frontage on three different streets and contains the Main Building along with several other accessory structures in addition to the proposed Athletic Center; and

WHEREAS, the applicant notes that the proposed signage consists of two 50 sq. ft. signs with letters spelling "The Mary Louis Academy," in capital letters, located on the east and south sides of the Athletic Center; and

WHEREAS, the applicant represents that visiting sports teams, spectators, and parents attending meetings and fundraisers will need to locate the Athletic Center from the street and the requested signage is necessary for easy identification; and

WHEREAS, the applicant represents that providing complying identification signage with a maximum of 12 sq. ft. would result in signage that could not be readily seen and identified from the street; and

WHEREAS, the applicant further represents that placement of identification signage on both sides of the Athletic Center is necessary so that the signs can be seen from both Wexford Terrace and Edgerton Boulevard; 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, 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, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant states that the proposed two-story Athletic Center is comparable in terms of bulk with the existing four-story Main Building, which fronts on Wexford Terrace; and

WHEREAS, the applicant further states that the Athletic Center will be replacing the existing two-story Convent Building, which has a similar height and is in the same general location, thereby reducing the impact of the Athletic Center from the street view and upon neighboring properties; and

WHEREAS, the applicant notes that the Athletic Center will be located in the center of the site, and the closest adjacent property is 125'-0" to the north; and

WHEREAS, the applicant states that to the west of the site are several six- and seven-story residential buildings, and to the east directly across Edgerton Boulevard is a four-story monastery; and

WHEREAS, the applicant further states that the proposed signage is also appropriate in the surrounding area, as the monastery located directly across Edgerton Boulevard has similar identifying signage, and Hillside Avenue, which maintains a commercial character and corresponding signage, runs parallel to Wexford Terrace only one block to the south of the site; and

WHEREAS, the applicant also submitted photographs of existing identification signs located at the site and at the monastery across Edgerton Boulevard, and states that they are approximately the same size as the proposed signs; and

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, as to bulk, the applicant states that the proposed waivers are minimal and the height and sky exposure plane waivers only apply to the R1-2 portion of the site, and the proposed building will comply with all other bulk requirements of the underlying zoning district; 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; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, as noted above, the applicant revised its plans during the course of the hearing process by reducing the floor area and relocating the proposed building on the site in order to provide complying front and rear yards; 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; and

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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. 12BSA012Q dated March 13, 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 § 72-21 and grants a variance to permit, on a site partially within an R1-2 zoning district and partially within an R5 zoning district, the construction of a two-story athletic center on the existing school campus, which does not comply with zoning regulations for height, sky exposure plane, and signage, contrary to ZR §§ 24-521 and 22-321, *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 July 5, 2012" – (8) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a floor area of 25,139 sq. ft. (0.17 FAR); a height of 35'-0"; encroachment into the sky exposure plane; and two non-illuminated 50 sq. ft. identification signs, as illustrated on the BSA-approved plans;

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

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

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

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

THAT the Department of Buildings must ensure compliance with all 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 7, 2012.

## 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 Ottley-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 Ottley-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

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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 § 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; no approval has been given by the Board as to the use and layout of the cellar;

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.

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## 5-12-BZ CEQR #12-BSA-061K

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

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

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

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Tzvi Friedman.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 27, 2011, acting on Department of Buildings Application No. 300655477, reads in pertinent part:

Proposed addition of a third floor to an existing residential building (Two Family) in an R5 District (Borough Park – optional provisions for certain R5

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and R6 districts in Brooklyn) is contrary to:

ZR 23-146(c) Front Yards

ZR 23-146(d) Side Yards

And requires a variance from the Board of Standards and Appeals as per Section 72-21; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the proposed addition of a third floor to an existing two-story, two-family home, which does not comply with the underlying zoning regulations for front yards or side yards, contrary to ZR §§ 23-146(c) and 23-146(d); and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in *The City Record*, with continued hearings on June 19, 2012 and 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 Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of Dahill Road and 19<sup>th</sup> Avenue, within an R5 zoning district; and

WHEREAS, the site is an irregularly shaped lot with approximately 26'-11" of frontage along Dahill Road, 34'-6" of frontage along 19<sup>th</sup> Avenue, a maximum depth of 72'-10", and a total lot area of 2,180.5 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story two-family home with a floor area of 2,144 sq. ft. (0.98 FAR), and with legally non-complying front yards along Dahill Road and 19<sup>th</sup> Avenue and a legally noncomplying side yard along the western lot line; and

WHEREAS, the applicant proposes to enlarge the home by constructing a third story, which will be used in conjunction with the existing second story as a duplex unit; and

WHEREAS, the proposed home will have the following complying parameters: 3,216 sq. ft. of floor area (1.48 FAR); a lot coverage of 49 percent; no side yard along the western lot line; a total height of 34'-11"; and two parking spaces; and

WHEREAS, however, the applicant proposes to maintain the existing non-complying side yard with a width of 1'-3½" along the western lot line (a side yard with a minimum width of 20'-0" is required), a front yard with a depth of 1'-0" along Dahill Road, and no front yard along 19<sup>th</sup> Avenue (two front yards with minimum depths of 5'-0" and 10'-0" are required); and

WHEREAS, the applicant states that yard relief is necessary for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the shallowness and irregular shape of the lot; and

WHEREAS, the applicant states that the subject site is an irregular triangular shaped lot with a maximum depth of only 72'-10"; and

WHEREAS, the applicant represents that, due to the lot's shallowness and irregular shape, and the configuration of the existing building on the lot, complying strictly with the side and front yard requirements would severely restrict the ability to enlarge the home with a usable third floor; and

WHEREAS, the applicant notes that the proposed third story is a straight line extension of the existing two-story home which has legal non-complying front and side yards; and

WHEREAS, the applicant states that an as-of-right third floor would have a sharp, angled triangular shape at the side and rear of the building, and a cut off, set back front that would severely limit the interior size and layout of the third story; and

WHEREAS, the applicant submitted an as-of-right site plan, which reflects that the complying third story floor plate would create significant inefficiencies for residential use; and

WHEREAS, the applicant represents that the significantly smaller, oddly shaped addition that would result from an as-of-right design would not be feasible for its intended use as a bedroom floor in conjunction with the existing second floor unit; and

WHEREAS, as to the uniqueness of the conditions on the site, the applicant submitted a radius diagram reflecting that the subject lot is the shallowest lot on the block; and

WHEREAS, the applicant also submitted a block building length study which reflects that, with the exception of the similarly irregular lot located adjacent to the site, all of the buildings on the subject block are more than 65'-0" in length, while the subject building is significantly smaller, with a length of only 59'-0"; and

WHEREAS, accordingly, the applicant states that the requested front and side yard relief is necessary in order to provide a third story that is feasible for residential use; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable front and side yard regulations; and

WHEREAS, as discussed above, the subject site is an irregularly shaped triangular lot, and given the location of the existing residential building at the site, there is no way to configure a usable residential use at the third floor that complies with the underlying zoning regulations, despite the existence of approximately 1,450 sq. ft. of available floor area on the site; and

WHEREAS, the applicant notes that the subject building is an owner-occupied two-family home, and the requested front and side yard relief is necessary in order to provide a reasonable third floor residential use at the site; and

WHEREAS, the Board agrees that due to the unique physical conditions on the site, there is no reasonable possibility that development in strict conformance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized by single-family to three-family homes; and

WHEREAS, the applicant notes that the proposed bulk is

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compatible with nearby residential development and that it complies with all relevant bulk regulations other than front and side yards; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R5 zoning district regulations for FAR, lot coverage, and height; and

WHEREAS, as noted above, the proposed third story is a straight line extension of the existing two-story home on the site; and

WHEREAS, therefore, the Board finds that this action will neither 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 unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's shallow depth and irregular shape; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except for front and side yards, is the minimum necessary to afford the owner relief; and

WHEREAS, thus, 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 to permit, within an R5 zoning district, the proposed addition of a third floor to an existing two-story, two-family home, which does not comply with the underlying zoning regulations for front yards or side yards, contrary to ZR §§ 23-146(c) and 23-146(d); *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 June 5, 2012" – (11) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 3,216 sq. ft. of floor area (1.48 FAR); a front yard with a minimum depth of 1'-0" along Dahill Road; no front yard along 19<sup>th</sup> Avenue; a side yard with a minimum width of 1'-3½" along the western lot line; no side yard along the northern lot line; a total height of 34'-11"; and parking for two cars, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be subject to DOB review and approval;

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

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

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

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 7, 2012.

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## 35-11-BZ

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

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

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

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Lyra J. Altman.

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

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## 97-11-BZ

APPLICANT – Eric Palatnik, P.C., for Cross Bronx Food Center, Inc., owner.

SUBJECT – Application July 1, 2011 – Variance (§72-21) to permit the expansion of an auto service station (UG 16B) and enlargement of an accessory convenience store use on a new zoning lot, contrary to use regulations. The existing use was permitted on a smaller zoning lot under a previous variance. R5 zoning district.

PREMISES AFFECTED – 1730 Cross Bronx Expressway, northwest corner of Rosedale Avenue and Cross Bronx Expressway, Block 3894, Lot 28 (28,29), Borough of Bronx.

## COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik, Ian Rasmussen, Barbara Cohen, Jose Montero and Kyle Wright.

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

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## 104-11-BZ

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

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

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

## COMMUNITY BOARD #15BK

APPEARANCES –

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For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 1:30 P.M., for continued hearing.  
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## 192-11-BZ

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

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

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

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for adjourned hearing.  
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## 2-12-BZ

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

SUBJECT – Application January 3, 2012 – Variance (§72-21) for the construction of a three-story, two-family dwelling, contrary to side yard requirement (§23-48); less than the required number of parking spaces (§25-21) and location of one parking space within the front yard (§23-44). R5 zoning district.

PREMISES AFFECTED – 95-36 115<sup>th</sup> Street, 335.29' south of intersection of 95<sup>th</sup> Avenue and 115<sup>th</sup> Street, Block 9416, Lot 24, Borough of Queens.

### COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 1:30 P.M., for continued hearing.  
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## 11-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Marc Edelstein, owner.

SUBJECT – Application November 17, 2012 – Special Permit (§73-622) for the legalization of an enlargement to an existing single-family home, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 3599 Bedford Avenue, East side of Bedford Avenue, between Avenue N and Avenue O, Borough of Brooklyn, Block 7679, Lot 13, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Atلمان.

**ACTION OF THE BOARD** – Laid over to

September 11, 2012, at 1:30 P.M., for continued hearing.  
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## 12-12-BZ & 110-12-A

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

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

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

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

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre A. Carson and Daniel Lane.

For Opposition: Stuart Klein, Terri Cude of CB 2M and Tobi Bergman.

**ACTION OF THE BOARD** – Laid over to September 11, 2012 at 1:30 P.M., for continued hearing.  
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## 61-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Martha Schwartz, owner; Altamarea Group, lessee.

SUBJECT – Application March 15, 2012 – Variance (§72-21) to permit a UG 6 restaurant in a portion of the cellar and first floor, contrary to use regulations (§42-10). M1-5B zoning district.

PREMISES AFFECTED – 216 Lafayette Street, between Spring Street and Broome Street, 25' of frontage along Lafayette Street, Block 482, Lot 28, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel, Barbara Cohen, Michael White, David Reck and Shlomo Wygoda Wygoda.

For Opposition: Juan Reyes, James Sachs, Matt Borden Tobi Bergman of CB 2, Georgette Fleischer, Lora Tenenbaum, Tessa Grundon and Kristin Dornig Krantz.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for continued hearing.  
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## 68-12-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Rockaway Boulevard Associates, LLC, owner.

SUBJECT – Application March 21, 2012 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on December 22, 1999; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 89-15 Rockaway Boulevard, northwest corner of the intersection of Rockaway Boulevard and 90<sup>th</sup> Street, Block 9093, Lot 13, Borough of Queens.

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## COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

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 1:30 P.M., for decision, hearing  
closed.

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## 141-12-BZ

APPLICANT – Eric Palatnik, for Won Hoon Cho, Inc.,  
owner.

SUBJECT – Application May 3, 2012 – Re-Instatement  
(§§11-411 & 11-412) of a previously approved variance  
which permitted retail (UG 6) in a residential district which  
expired on October 14, 1989; amendment to permit the  
installation of awnings/signage, and changes to the interior  
layout; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 65-02/10 164<sup>th</sup> Street, southwest  
corner of 65<sup>th</sup> Street, Block 6762, Lot 53, Borough of  
Queens.

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

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

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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## \*CORRECTION

This resolution adopted on July 10, 2012, under Calendar No. 359-01-BZ and printed in Volume 97, Bulletin Nos. 27-29, is hereby corrected to read as follows:

### 359-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Bnos Zion of Bobov, Inc., owner.

SUBJECT – Application February 3, 2012 – Amendment to previously approved variance (§72-21) for a school (*Bnos Zion of Bobov*). Amendment would legalize the enclosure of an one-story entrance, contrary to lot coverage and floor area ratio (§24-11). R6 zoning district.

PREMISES AFFECTED – 5002 14<sup>th</sup> Avenue, aka 5000-5014 14<sup>th</sup> Avenue, aka 1374-1385 50<sup>th</sup> Street, Block 5649, Lot 38, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

#### APPEARANCES –

For Applicant: Elizabeth Bennett.

**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, this is an application for a reopening and an amendment to a previously granted variance legalizing the existing sixth floor in a Use Group 3 religious school/yeshiva building; and

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

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of the intersection of 14<sup>th</sup> Avenue and 50<sup>th</sup> Street, within an R6 zoning district; and

WHEREAS, the site is occupied by a seven-story (including penthouse) community facility building with a floor area of 69,350 sq. ft. (5.77 FAR), which is used as a private, Orthodox Jewish religious school for females ranging from pre-Kindergarten to 12<sup>th</sup> grade (the “Yeshiva”); and

WHEREAS, the adjacent site to the west, on Lot 35, is occupied by a new five-story school building which is also owned by the applicant; and

WHEREAS, on March 26, 2002, under the subject calendar number, the Board granted a variance to legalize the creation of the sixth floor within the envelope of the existing building, which did not comply with the zoning regulations for

floor area ratio; and

WHEREAS, the applicant now requests an amendment to legalize the one-story enclosure of an existing areaway adjacent to the subject building; and

WHEREAS, the applicant states that the areaway is located along the northern side lot line adjacent to the new five-story school building on Lot 35, and the areaway is approximately 10'-0" wide by 61'-4" deep; and

WHEREAS, the applicant further states that the enclosure of the areaway creates approximately 672 sq. ft. of additional floor area, increasing the total floor area from 69,350 sq. ft. (5.77 FAR) to 70,022 sq. ft. (5.82 FAR), and increases the lot coverage from 94.4 percent to 100 percent; and

WHEREAS, the applicant notes that the enclosure of the areaway has created a covered one-story shared entrance way from 50<sup>th</sup> Street that is utilized by both the subject building and the adjacent school for ingress and egress; and

WHEREAS, the applicant represents that the entrance way is necessary to meet the programmatic needs of the Yeshiva because it serves as a separate entrance for women during religious school-related functions attended by both genders, in accordance with principles of the Orthodox Jewish faith; and

WHEREAS, the applicant notes that the entrance way also provides sheltered handicapped access by means of a ramp; and

WHEREAS, the applicant represents that the enclosure has minimal impacts on the exterior appearance and building envelope of the subject building, and no other changes to the interior layout or operations of the Yeshiva are proposed; and

WHEREAS, at hearing, the Board directed the applicant to clarify that the egress for the subject building and the adjacent building on Lot 35 comply with all applicable egress requirements; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the egress for both buildings complies with all applicable Building Code requirements, and the shared use of the enclosed areaway for the third required means of egress for both buildings is permitted; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 26, 2002, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the previously-approved plans; *on condition* that all work substantially complies to drawings marked ‘Received May 22, 2012’ – Fourteen (14) sheets; and *on further condition*:

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

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

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

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configuration(s) not related to the relief granted.”  
(DOB Application No. 320235964)

Adopted by the Board of Standards and Appeals, July 10,  
2012.

**\*The resolution has been amended to remove the word  
“glass” in the 9th WHEREAS. Corrected in Bulletin  
Nos. 32-33, Vol. 97, dated August 15, 2012.**

## **\*CORRECTION**

This resolution adopted on July 24, 2012, under Calendar  
No. 58-12-BZ and printed in Volume 97, Bulletin No. 31, is  
hereby corrected to read as follows:

### **58-12-BZ**

#### **CEQR #12-BSA-091K**

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

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

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

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

APPEARANCES –

For Applicant: Lyra Altman.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough  
Commissioner, dated February 16, 2012, acting on  
Department of Buildings Application No. 320303523, reads  
in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in  
that the proposed floor area ratio exceeds the  
maximum permitted
2. Proposed plans are contrary to ZR 23-141 in  
that the proposed open space is less than the  
minimum required
3. Proposed plans are contrary to ZR 23-141 in  
that the proposed lot coverage exceeds the  
maximum permitted
4. Proposed plans are contrary to ZR 23-461 in  
that the proposed side yard is less than  
minimum required
5. Proposed plans are contrary to ZR 23-47 in  
that proposed rear yard is less than minimum  
required; and

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

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

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

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

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

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 1,948 sq. ft. (0.49 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,948 sq. ft. (0.49 FAR) to 2,829 sq. ft. (0.71 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 59 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes a lot coverage of 41 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 4'-10" (a minimum width of 5'-0" is required); and

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

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

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

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

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

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

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards, and rear yard, contrary

to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 6, 2012"-(6) sheets and "July 10, 2012"-(4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,829 sq. ft. (0.71 FAR); a minimum open space of 59 percent; a maximum lot coverage of 41 percent; a side yard with a minimum width of 4'-10" along the northern lot line; a side yard with a width of 8'-0" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

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

THAT the approved plans 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, July 24, 2012.

**\*The resolution has been amended to reflect changes in the first WHEREAS. Corrected in Bulletin Nos. 32-33, Vol. 97, dated August 15, 2012.**