
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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287-05-A	32-42 33 rd Street, Queens
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DOCKETS

New Case Filed Up to September 25, 2012

277-12-BZ

1776 Eastchester Road, east of Basset Avenue, west of Marconi Street, 385' north of intersection of Basset Avenue and Eastchester Road., Block 4226, Lot(s) 16, Borough of **Bronx, Community Board: 11**. Special permit (§73-49) to permit proposed roof top parking. M1-1 zoning district. M1-1 district.

278-12-BZ

3143 Atlantic Avenue, northwest corner of Atlantic Avenue between Hale Ave. and Norwood Ave., Block 3960, Lot(s) 58, Borough of **Brooklyn, Community Board: 5**. Special Permit (§73-52) to extend by 25'-0" a commercial use into a residential zoning district to permit the development of a proposed eating and drinking establishment (McDonald's) with accessory drive thru. C8-2 and R5 zoning district. C8-2 & R5 district.

279-12-BZ

27-22/26 College Point Boulevard, northwest corner of the intersection of College Point Boulevard and 28th Avenue., Block 4292, Lot(s) 12, Borough of **Queens, Community Board: 7**. Variance (§72-21) to permit a Use Group 6 bank in a residential zone, contrary to ZR 22-00. R4/R5B zoning district. R4/R5B district.

280-12-BZ

1249 East 28th Street, East side of 28th Street, Block 7646, Lot(s) 26, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family contrary to floor area, open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R-2 zoning district. R2 district.

281-12-BZ

1995 East 14th Street, northeast corner of East 14th Street and Avenue T., Block 7293, Lot(s) 48, Borough of **Brooklyn, Community Board: 15**. Variance (§72-21) to permit a straight-line and vertical enlargement of the first and second floors as well as the attic of an existing two story and attic level use group 2 detached single family home contrary to front yard (§23-45) requirements. R5 zoning district. R5 district.

282-12-BZ

1995 East 14th Street, northeast corner of East 14th Street and Avenue T, Block 7293, Lot(s) 48, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing two story and attic level detached single family home contrary to the side yard (ZR§23-461) requirements. R5 zoning district. R5 district.

283-12-BZ

440 Broadway, between Howard Street and Grand Street, Block 232, Lot(s) 3, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar of the existing building, contrary to Section 42-14D(2)(b). M1-5B zoning district. M1-5B district.

284-12-BZ

2047 East 3rd Street, eastern side of East 3rd Street, between Avenue S and Avenue T., Block 7106, Lot(s) 122, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single-family home contrary to floor area (ZR 23-141) and perimeter wall height (ZR 23-631) requirements. R2X (OP) zoning district. R2X district.

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

CALENDAR

OCTOBER 17, 2012, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a special hearing, Wednesday morning, October 17, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL HEARING

117-12-A thru 135-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-1 and R-4 Zoning Districts.

PREMISES AFFECTED –

Van Wyck Expressway & Atlantic Avenue, Block 9989, Lot 70

BQE & Queens Boulevard

BQE & 31st Street, Block 1137, Lot 22

BQE & 31st Avenue, Block 1137, Lot 22

BQE & 32nd Avenue

BQE & 34th Avenue, Block 1255, Lot 1

Long Island Expressway, East of 25th Street, Block 110, Lot 1

Northern Boulevard & BQE, Block 1163, Lot 1

Queens Boulevard & BQE, Block 1343, Lot 129 and 139

Queens Boulevard & 74th Street, Block 2448, Lot 213

Skillman Avenue between 28th & 29th Street, Block 72, Lot 250

Van Wyck Expressway north of Roosevelt Avenue, Block 1833, Lot 230

Woodhaven Boulevard north of Elliot Avenue, Block 3101, Lot 9

Long Island Expressway & 74th Street, Block 2814, Lot 4

Borough of Queens

COMMUNITY BOARDS #12, 2, 1, 4, 6, 5Q

171-12-A thru 180-12-A

APPLICANT – Stroock, Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – CSX and Amtrak Corporate Office.

SUBJECT – Application June 8, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R3-2, M1-2, C8-1 and M1-1 Zoning Districts.

PREMISES AFFECTED –

Cross Bronx Expressway east of Sheridan

Cross Bronx Expressway & Bronx River, Lot 3904, Lot 1

Cross Bronx Expressway east of Bronx River & Sheridan, Block 3904, Lot 1

I-95 & Hutchinson Parkway, Block 4411, Lot 1

I-95 & Hutchinson Parkway, Block 4411, Lot 1

Bruckner Boulevard & Hunts Point Avenue, Block 2734, Lot 30

Bruckner Expressway north of 156th Street, Block 2730, Lot 101

Major Deegan Expressway south of Van Cortland, Block 3269, Lot 70

Borough of Bronx.

COMMUNITY BOARDS #9, 6, 11, 2, 8BX

273-12-A & 274-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – CSX.

SUBJECT – Application September 6, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R7-1, M1-1 Zoning Districts.

PREMISES AFFECTED – Major Deegan @ 167th Street, Block 2539, Lot 502, Borough of Bronx.

COMMUNITY BOARD #4BX

182-12-A

APPLICANT – Davidoff Hatcher & Citron LLP, for Lamar Advertising of Penn LLC, lessee.

OWNER OF PREMISES – Metropolitan Transportation Authority.

SUBJECT – Application June 11, 2012 – Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use as an advertising sign. M1-1 Zoning District.

PREMISES AFFECTED – Major Deegan Expressway and 161st Street, located on MTA Railroad Property, Borough of Bronx.

COMMUNITY BOARD #4BX

183-12-A thru 188-12-A

APPLICANT – Herrick Feinstein, LLP, for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA & Department Ports of Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C4-4 and M1-1 Zoning Districts.

PREMISES AFFECTED – 476, 477, 475 Exterior Street and Major Deegan, Block 02349, Lot 12, Borough of

CALENDAR

Bronx.

COMMUNITY BOARD #1BX

OCTOBER 23, 2012, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 23, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

5-96-BZ

APPLICANT – Sheldon Lobel, P.C., for St. Johns Place LLC, owner; Park Right Corporation, lessee.
SUBJECT – Application August 2, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously approved variance which permitted the operation a one-story public parking garage for no more than 150 cars (UG 8) which expired on February 2, 2011; Waiver of the Rules. R7-1 zoning district.
PREMISES AFFECTED – 564-592 St. John's Place, south side of St. John's Place, 334' west of Classon Avenue. Block 1178, Lot 26. Borough of Brooklyn.

COMMUNITY BOARD #8BK

96-00-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for 4 East 77th Street Company, owner.
SUBJECT – Application July 23, 2012 – Extension of Term (§11-411) of a previously granted variance which permitted the use of a portion of the second floor in an existing five story building as an Art Gallery which expired on August 8, 2010; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Rules. R8B/R10 zoning district.
PREMISES AFFECTED – 4 East 77th Street, south side of East 77th Street, between Fifth and Madison Avenues, Block 1391, Lot 69, Borough of Manhattan.

COMMUNITY BOARD #2M

209-04-BZ

APPLICANT – Eric Palatnik, P.C., for Waterfront Resort, Inc., owner.
SUBJECT – Application August 14, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) to permit the conversion and enlargement of an existing industrial building to residential use in an M2-1 zoning district, which expired on July 19, 2012.
PREMISES AFFECTED – 109-09 15th Avenue, corner lot of 15th Avenue and 110th Street. Block 4044, Lot 60. Borough of Queens.

COMMUNITY BOARD #7Q

143-07-BZ

APPLICANT – Fredrick A. Becker, for Chabad House of Canarsie, Inc., owner.

SUBJECT – Application July 16, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the construction of a three-story and cellar synagogue, religious pre-school and Mikvah which expired on July 22, 2012. R2 zoning district.

PREMISES AFFECTED – 6404 Strickland Avenue, northeast corner of Strickland Avenue and East 64th Street, Block 8633, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

197-08-BZ

APPLICANT – Stuart Klein, Esq., for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application April 27, 2012 – This application seeks to amend the previously approved BSA variance.

PREMISES AFFECTED – 341-349 Troy Avenue aka 1515 Carroll Street, north east corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEALS CALENDAR

114-12-A

APPLICANT – Leavitt, Kerson & Duane by Paul E. Kerson for Astoria Landing Inc., owner.

SUBJECT – Application April 24, 2012 – Appeal challenging Department of Buildings determination that the owner has failed to establish a legal non-conforming advertising sign in an residential zoning district.

PREMISES AFFECTED – 24-59 32nd Street, 32nd Street at Grand Central Parkway Service Road, Block 837, Lot 95, Borough of Queens.

COMMUNITY BOARD

136-12-A

APPLICANT – Fried Frank, LLP for Van Wagner Communications, lessee.

OWNER OF PREMISES – Point 27 LLC.

SUBJECT – Application April 26, 2012 – Appeal from Department of Buildings determination that the owner has not established use as a non- conforming advertising sign in a residential district. R-4 Zoning District.

PREMISES AFFECTED – 37-27 Hunter's Point between Greenpoint Avenue and 38th Street, Block 234, Lot 31, Borough of Queens.

COMMUNITY BOARD #2Q

CALENDAR

OCTOBER 23, 2012, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 23, 2012, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

185-11-BZ

APPLICANT – Eric Palatnik, P.C., for 2000 Stillwell Avenue, LLC, owner.

SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the use of the premises as voluntary accessory parking for the adjacent as for right retail development (Walgreens), contrary to use regulations ZR §22-00. R5 zoning district.

PREMISES AFFECTED – 2538 85th Street, north intersection of 86th Street and Stilwell Avenue. Block 6860, Lot 21. Borough of Brooklyn.

COMMUNITY BOARD #11BK

63-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Harris and Marceline Gindi, owner; Khai Bneu Avrohom Yaakov, Inc. c/o Allen Konstam, lessee.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship, located within R2 zoning district, which is contrary to floor area, lot coverage, yard, parking, height, and setback requirements.

PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27th Street and Avenue N. Block 7663, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #14BK

72-12-BZ

APPLICANT – Raymond H. Levin, Wachtel Masyr & Missry, LLP, for Lodz Development, LLC, owner.

SUBJECT – Application March 28, 2012 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to residential off-street parking requirements, residential floor area, open space, lot coverage, maximum base height and maximum building height regulations. R7A/C2-4 and R6B Zoning Districts.

PREMISES AFFECTED – 213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue. Block 1135, Lot 11. Borough of Brooklyn.

COMMUNITY BOARD #6BK

150-12-BZ

APPLICANT – Goldman Harris LLC, for Roseland/Stempel 21st Street, owner; TriCera Revolution, Inc., lessee.

SUBJECT – Application May 9, 2012 – Special Permit (§73-36) to permit a physical culture establishment. C6-4A zoning district.

PREMISES AFFECTED – 39 West 21st Street, north side of West 21st Street, between 5th and 6th Avenues. Block 823, Lot 17. Borough of Manhattan.

COMMUNITY BOARD #5M

165-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sarah Weinberger and Moshe Weinberger, owner.

SUBJECT – Application June 4, 2012 – Special Permit (§73-622) for the enlargement and partial legalization of an existing single family home contrary to floor area and open space (ZR §23-141) and less than the required rear yard (§23-47); R2 zoning district.

PREMISES AFFECTED – 1286 East 23rd Street, west side of East 23rd Street, 60' north of Avenue M. Block 7640, Lot 82. Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, SEPTEMBER 25, 2012 10:00 A.M.

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

SPECIAL ORDER CALENDAR

739-76-BZ

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development, LLC, owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application June 1, 2012 – Extension of Term of a Special Permit (§73-35) for the continued operation of an amusement arcade (*Peter Pan Games*) which expired on April 10, 2012; Waiver of the Rules. C4-1 zoning district.

PREMISES AFFECTED – 212-95 26th Avenue, 26th Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a special permit, which expired on April 10, 2012; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in *The City Record*, and then to decision on September 25, 2012; and

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

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

WHEREAS, the subject site is located on the northwest corner of the intersection at 26th Avenue and Bell Boulevard, within a C4-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 1977 when, under the subject calendar number, the Board granted an application pursuant to ZR § 73-35, to permit the conversion of a retail store in a shopping center to an amusement arcade for a term of one year; and

WHEREAS, on May 6, 1997, under the subject calendar number, the Board permitted the relocation of the arcade from

212-65 26th Avenue to 212-95 26th Avenue; and

WHEREAS, the grant was extended and amended at various other times; most recently on July 12, 2011 when the Board granted a one-year extension to the term of the special permit, to expire on April 10, 2012; and

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

WHEREAS, based upon the submitted evidence, the Board finds that the proposed extension of term is appropriate, with conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on February 8, 1977, as later amended, so that, as amended, this portion of the resolution shall read: “to grant a one-year extension of the term of the special permit, to expire on April 10, 2013; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of this grant shall be for one year from the expiration of the prior grant, to expire on April 10, 2013;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT the operation of the arcade at the subject premises shall comply with the previously approved Board plans, and 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)/configuration(s) not related to the relief granted.” (DOB Application No. 401710430)

Adopted by the Board of Standards and Appeals, September 25, 2012.

365-79-BZ

APPLICANT – Kevin B. McGrath c/o Phillips Nizer LLP, for 89-52 Queens LLC, owner.

SUBJECT – Application February 21, 2012 – Amendment of a variance (§72-21) which allowed a hospital to be built contrary to bulk regulations. The amendment would convert the hospital building to commercial, community facility and residential uses. R6/C1-2 zoning district.

PREMISES AFFECTED – 90-02 Queens Boulevard, Hoffman Drive and Queens Boulevard, block 2857, Lot 36, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Kevin McGrath.

ACTION OF THE BOARD – Application granted on condition.

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THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, and an amendment to permit the conversion and enlargement of a hospital building for mixed-use commercial/community facility/residential use; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 14, 2012, and then to decision on September 25, 2012; and

WHEREAS, a companion application for an adjacent site occupied by a parking garage and subject to a prior board variance under BSA Cal. No. 25-89-BZ was decided on the same date; 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 4, Queens, recommended approval of this application; and

WHEREAS, the subject site is located on a through lot with frontage on Hoffman Drive and Queens Boulevard and at the intersection of 58th Avenue and Hoffman Drive within an R6 (C1-2) zoning district; and

WHEREAS, the site is occupied by a building built in 1947 for hospital use, most recently St. John's Queens Hospital; and

WHEREAS, on April 17, 1962, under BSA Cal. No. 52-62-BZ, the Board approved a variance for a six-story horizontal enlargement of the building, which did not provide the required open spaces and exceeded the permitted wall height; and

WHEREAS, on March 14, 1980, under the subject calendar number, the Board again approved a variance for the enlargement of the building, which did not comply with front yard, side yard, and sky exposure plane regulations; and

WHEREAS, the applicant states that the hospital has gone out of business and there was not any interest from other hospitals or medical providers to occupy the site and it has been vacant since early 2009; and

WHEREAS, the applicant states that due to the age of the building and a history of deferred maintenance during the hospital's decline, it was in poor condition and required significant remedial work including asbestos removal, environmental remediation, new windows, repair of leaks and other water conditions, a new roof, new elevators, a new sprinkler system, and a new façade; and

WHEREAS, the applicant now seeks to amend the 1980 variance to allow for the conversion of the building to a mixed-used commercial/community facility/residential building, including the modification of certain rooftop mechanical space for residential use; and

WHEREAS, DOB reviewed the proposal and noted that

the proposed uses do not comply with the prior Board approval and, due to the use change, the plans do not comply with side yard, rear yard equivalent, sky exposure plane, and outer court regulations; and

WHEREAS, the applicant states that a side yard would not be required however, since there is space between the building and the easterly lot line, a side yard with a width of 8'-0" is required; the applicant notes that no change is proposed to the side yard which will be maintained at widths ranging from 6'-9 1/2" to 24'-3 3/4", which averages 15'-5/8" and the degree of non-compliance will not be increased; and

WHEREAS, as to the rear yard, the applicant states that for commercial and community facility uses, a rear yard equivalent of 20'-0" facing the street on each side of the building or a 40'-0" open space midway on the lot is required; however, the requirement for residential use is either two 30'-0" open spaces or a 60'-0" area midway on the lot; and

WHEREAS, the applicant states that it does not intend to enlarge or construct anything new on the site, but rather to maintain the pre-existing condition, which does not comply with residential regulations; and

WHEREAS, as to the sky exposure plane, the applicant states that the 1980 approval addressed the sky exposure plane regulations for commercial and community facility use; however, since the building is being converted pursuant to the Quality Housing regulations, it does not comply with the sky exposure plane limitations for residential use; and

WHEREAS, as to the court, the applicant states that it is not possible to expand the outer court to create compliance without significant structural reconfiguration including the removal of sections of the exterior wall facing the outer court to a depth of at least 4'-6"; and

WHEREAS, the applicant represents that seven of the 32 units on each floor have some degree of non-compliance due to the existing dimensions of the outer court; and

WHEREAS, the applicant notes that the portions of the building fronting the insufficient outer court have historically been used for dwelling purposes, either by patients or hospital staff, and, thus, it does not propose to introduce dwelling rooms to this non-complying condition which has always existed; and

WHEREAS, the applicant represents that it does not require any MDL waivers; and

WHEREAS, the applicant states that the maximum allowable floor area is 323,900 sq. ft. and the total existing floor area is 212,935 sq. ft.; and

WHEREAS, the applicant states that the only change to the building envelope is to convert certain rooftop mechanical space and enclose other rooftop space to be occupied by residential use, which results in an increase in the floor area from 212,935 sq. ft. to 223,152 sq. ft.; and

WHEREAS, the applicant explained that the existing rooftop does not comply with the plans previously-approved by the Board due to portions of the mechanical space never being constructed and or being altered; and

WHEREAS, the applicant states that all three uses comply with floor area regulations: (1) 40,570 sq. ft. of

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commercial use (a maximum of 107,967 sq. ft. is permitted); (2) 34,473 sq. ft. of community facility use (a maximum of 53,983 sq. ft. is permitted); and (3) 148,109 sq. ft. of residential use (a maximum of 161,950 sq. ft. is permitted); and

WHEREAS, the proposed building will accommodate the following program: (1) commercial use in the basement and on the first floor; (2) community facility use on the second floor; (3) residential use on the third, fourth, fifth, sixth, and partial seventh (penthouse) floors; and

WHEREAS, the applicant notes that all three proposed uses are permitted by zoning district regulations; and

WHEREAS, the applicant states the neighboring uses include an abandoned gas station to the west and a Sears Auto Center to the east and that, otherwise, it is within a large commercial artery two blocks east of the entrance to the Long Island Expressway; and

WHEREAS, the applicant states that the proposed mixed-use of the building is compatible with the retail corridor of Queens Boulevard and the residential streets running off Hoffman Drive at the rear of the site; and

WHEREAS, the applicant states that it commissioned a traffic study and a parking demand study to assess the effect of the proposed change in use and found that there would not be any significant impact; and

WHEREAS, as addressed in the companion application, the garage approved under BSA Cal. No. 25-89-BZ provides 115 parking spaces for commercial use, 55 parking spaces for community facility use, and 120 parking spaces for residential use; and

WHEREAS, the applicant states that the 290 parking spaces in the companion garage will accommodate the parking demand at the site; and

WHEREAS, the applicant represents that at the time the building was constructed in 1947, there was not a requirement for parking; and

WHEREAS, accordingly, the applicant represents that the proposed conversion will not alter the essential character of the surrounding neighborhood; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 14, 1980, so that as amended this portion of the resolution shall read: "to permit the conversion from hospital (Use Group 4) use to mixed commercial (Use Group 6)/community facility (Use Group 4)/residential (Use Group 2) and to allow for the noted modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings filed with this application marked 'Received September 18, 2012- (16?) sheets and *on further condition*:

THAT the building parameters will be: a total floor area of 223,152 sq. ft.; a commercial floor area of 40,570 sq. ft., a community facility floor area of 34,473 sq. ft.; a residential floor area of 148,109 sq. ft., as illustrated on the BSA-

approved plans;

THAT a minimum of 290 accessory parking spaces be provided at 58-04 Hoffman Drive as set forth in the Board's decision for BSA Cal. No. 25-89-BZ;

THAT the above condition be noted 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; 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. 420335729)

Adopted by the Board of Standards and Appeals, September 25, 2012.

25-89-BZ

APPLICANT – Kevin B. McGrath c/o Phillips Nizer LLP, for St. John's Garage LLC, owner.

SUBJECT – Application February 23, 2012 – Amendment of a variance (§72-21) which allowed for an accessory parking garage to be built for a hospital. The amendment seeks to permit the accessory parking to be used for community facility, commercial and residential uses. R6B zoning district.

PREMISES AFFECTED – 58-04 Hoffman Drive, 58th Avenue and Hoffman Drive, Block 2860, Lot 16, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Kevin McGrath.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....5

THE RESOLUTION –

WHEREAS, this is an application for a reopening, and an amendment to permit the conversion of a parking garage associated with the conversion of a hospital building to mixed-use commercial/community facility/residential use; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 14, 2012, and then to decision on September 25, 2012; and

WHEREAS, a companion application for the site at 89-52 Queens Boulevard occupied by the former hospital building and subject to a prior board variance under BSA Cal. No. 365-79-BZ was decided on the same date; and

WHEREAS, the premises and surrounding area had

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site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Queens, recommended approval of this application; and

WHEREAS, the subject site is located at the southeast corner of Hoffman Drive and 58th Avenue within an R6B zoning district; and

WHEREAS, the site is occupied by a five-story open parking garage built to be accessory to the hospital use across Hoffman Drive; and

WHEREAS, on February 11, 1992, under the subject calendar number, the Board approved a variance for a five-story parking garage which did not comply with lot coverage, front, side, and rear yards, location of access to street, exceeded the number of permitted parking spaces and included rooftop parking; and

WHEREAS, the applicant states that the hospital has gone out of business and there was not any interest from other hospitals or medical providers to occupy the hospital site at 89-52 Queens Boulevard and it has been vacant since early 2009; and

WHEREAS, the applicant now seeks to amend the 1992 variance to allow for the conversion of the continued use of the parking garage, but to convert it to be accessory to the converted mixed-used commercial/community facility/residential building; and

WHEREAS, DOB reviewed the proposal and noted that the proposed use does not comply with the prior Board approval and that the portion of the parking which will be accessory to the commercial use, will be non-conforming with the underlying R6B district use regulations; and

WHEREAS, the applicant states that it does not intend to enlarge or construct anything new on the site, but rather to maintain the 1992 garage building, which remains non-compliant as to the noted bulk conditions and establishes a non-conforming use for the portion accessory to commercial use; and

WHEREAS, the applicant states the neighboring uses include a church, several residential buildings, a vacant lot, and a park area with a fenced playground and athletic fields; and

WHEREAS, the applicant states that the area to the south of Hoffman Drive includes single-family homes, multiple dwellings, and medical offices and that the site across Hoffman Drive to the north is occupied by the former St. John's Hospital building, which is the subject of the companion application; an abandoned gas station; and a Sears Auto Center; further, the applicant states that the site is within a large commercial artery two blocks east of the entrance to the Long Island Expressway; and

WHEREAS, the applicant states that the resumed use of the building for parking is compatible with the retail corridor of Queens Boulevard and the residential streets to the south; and

WHEREAS, the applicant states that it commissioned a traffic study and a parking demand study to assess the effect of

the proposed change in use and found that there may be a slight traffic impact due to the change in use; and

WHEREAS, accordingly, the impact was addressed and resolved in the Recommended Transportation System Improvement Measures (RTSIM), which included signal phasing measures that could be easily implemented; and

WHEREAS, the applicant asserts that the traffic study findings were conservative since they were unable to compare the hospital's traffic conditions with the proposed traffic conditions since the hospital had already vacated the site at the time of the study; and

WHEREAS, in an August 31, 2012 letter, DOT identifies all of the proposed signal timing measures at Queens Boulevard and 57th Avenue and notes that the improvements appear reasonable and feasible; and

WHEREAS, the applicant proposes to provide 115 parking spaces for commercial use, 55 parking spaces for community facility use, and 120 parking spaces for residential use; and

WHEREAS, the applicant notes that the parking requirement for the residential use is 72 spaces (50 percent of the 144 dwelling units) and the maximum permitted for residential use is 150 spaces; and

WHEREAS, the applicant states that the 290 parking spaces will accommodate the parking demand at the site; and

WHEREAS, the applicant intends to allocate the parking spaces, by signage as follows: (1) community facility spaces on the lower levels; (2) the commercial use above the community facility use; and (3) the parking for the residential use on the upper levels; and

WHEREAS, the applicant states that it will provide an attendant to monitor the site for safety purposes; and

WHEREAS, the applicant states that its ten reservoir spaces are adequate to accommodate demand; and

WHEREAS, the applicant states that it will comply with all conditions of the prior grant, including (1) directing lighting for the rooftop parking downward and away from any adjacent residential uses; (2) maintaining the site free of graffiti; (3) monitoring the building by closed circuit television 24 hours a day; (4) including the building on security watch tours; (5) installing interior and exterior lighting to provide adequate illumination for security purposes; (6) posting "garage full" signs which are visible at all hours and from at least 300 feet away from the garage; (7) installing mirrors or lights at least ten feet away from the entrance/exit; and (8) planting and maintaining landscaping in accordance with the approved plans; and

WHEREAS, accordingly, the applicant represents that the proposed conversion will not alter the essential character of the surrounding neighborhood; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 11, 1992 so that as amended this portion of the resolution shall read: "to permit the conversion of the garage from accessory

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hospital (Use Group 4) use to accessory mixed commercial (Use Group 6)/community facility (Use Group 4)/residential (Use Group 2) use and to allow for the noted modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings filed with this application marked 'Received September 18, 2012'- (13) sheets and *on further condition*:

THAT the garage will contain a minimum of 290 parking spaces, as illustrated on the BSA-approved plans;

THAT the garage will be restricted to serving as accessory use to the building at 89-52 Queens Boulevard;

THAT that space will be provided for ten reservoir vehicles;

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

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

THAT the building will be monitored by closed circuit television 24 hours a day;

THAT the building will be included on security watch tours;

THAT interior and exterior lighting will be installed and maintained to provide adequate illumination for security purposes;

THAT "garage full" signs will be posted which will be visible at all hours and from at least 300 feet away from the garage;

THAT mirrors or lights will be installed at least ten feet away from the entrance/exit for additional visibility and safety;

THAT planting and landscaping be maintained in accordance with the approved plans;

THAT the above conditions and all other applicable conditions from prior approvals be noted on the Certificate of Occupancy;

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

THAT the applicant will submit to DOT as least six months in advance of completion of the project all of the required drawings/designs relating to the improvements identified in DOT's August 31, 2012 letter;

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. 420335710)

Adopted by the Board of Standards and Appeals, September 25, 2012.

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.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for the continued use of a gasoline service station, which expired on June 3, 2010; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2012, and then to decision on September 25, 2012; and

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

WHEREAS, Community Board 6, Queens, recommends approval of this application on the condition that no transient food trucks or other retail trucks be permitted to conduct business or sell food or retail products on the site; and

WHEREAS, the site is located on the southwest corner of Northern Boulevard and Parsons Boulevard, within a C1-2 (R6) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 9, 1960 when, under BSA Cal. No. 436-59-BZ, the Board granted a variance to permit the construction of a gasoline service station with accessory uses for a term of 20 years; and

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

WHEREAS, most recently, on March 29, 2005, under the subject calendar number, the Board granted the reestablishment of the variance for ten years from the expiration of the prior grant, to expire on June 3, 2010, and granted an amendment to permit a minor alteration to the signage at the site and to legalize the existing convenience store as an accessory use; and

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

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

WHEREAS, during the hearing process, the Board directed the applicant to discontinue the rental car business that was being operated at the site and to restore the landscaping at the site; and

WHEREAS, in response, the applicant agreed to discontinue the rental car business and submitted photographs showing the removal of the cars and an affidavit from the owner of the site stating that the rental car franchise has been discontinued and will not be resumed at the site; and

WHEREAS, the applicant also submitted photographs and revised plans reflecting the restoration of the landscaping on the site; 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 March 29, 2005, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 3, 2010, to expire on June 3, 2020; *on condition* that all use and operations shall substantially conform drawings filed with this application marked ‘Received August 28, 2012’-(3) sheets; and *on further condition*:

THAT the term of the grant will expire on June 3, 2020;

THAT no transient food trucks or other retail trucks be permitted to conduct business or sell food or retail products on the site;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 4018275640)

Adopted by the Board of Standards and Appeals, September 25, 2012.

724-56-BZ

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

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

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

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Michael A. Cosentino and Tony Cosentino.
For Opposition: Henry Euler and Christine Scherer.

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

30-58-BZ

APPLICANT – Vassalotti Associates Architects, LLP for Maximum Properties, Inc., owner; Joseph Macchia, lessee.
SUBJECT – Application July 10, 2012 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) which expired on March 12, 2004; Waiver of the Rules. C2-1/R3-1 zoning district.

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

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

For Opposition: Henry Euler.

ACTION OF THE BOARD – Laid over to October 30, 2012, at 10 A.M., for continued hearing.

39-65-BZ

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

SUBJECT – Application March 13, 2012 – Amendment of a previously-approved variance (§72-01) to convert repair bays to an accessory convenience store at a gasoline service station (*Sunoco*); Extension of Time to obtain a Certificate of Occupancy, which expired on January 11, 2000; and Waiver of the Rules. C3 zoning district.

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 30, 2012, at 10 A.M., for adjourned hearing.

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 107th Street, Block 1694, Lot 1, Borough of Queens.

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COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 30, 2012, at 10 A.M., for adjourned hearing.

311-71-BZ

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

SUBJECT – Application March 13, 2012 – Amendment (§11-412) to permit the conversion of automotive service bays to an accessory convenience store of an existing automotive service station (Sunoco); Extension of Time to obtain a Certificate of Occupancy which expired July 13, 2000; waiver of the rules. R-5 zoning district.

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

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 30, 2012, at 10 A.M., for continued hearing.

173-99-BZ

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

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

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

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

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

302-01-BZ

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

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

PREMISES AFFECTED – 2519-2525 Creston Avenue,

west side of Creston Avenue between East 190th and East 191st Streets, Block 3175, Lot 26, Borough of Bronx.

COMMUNITY BOARD #3BX

APPEARANCES – None.

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

134-06-BZ

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

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

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

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 30, 2012, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

149-05-A

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

SUBJECT – Application May 10, 2012 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application which expired on May 12, 2007. R2A Zoning District.

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

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

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WHEREAS, this is an application for a reopening and an amendment to a previous grant to permit an extension of time to complete construction and obtain a certificate of occupancy for a prior Board determination that the owner of the premises obtained the right to complete construction of the enlargement of a single-family home under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in the *City Record*, with a continued hearing on August 21, 2012, and then to decision on September 25, 2012; and

WHEREAS, the site was inspected by Commissioner Montanez; and

WHEREAS, the site is located on the east side of 211th Street, between 32nd Avenue and 33rd Avenue, and has a total lot area of 4,500 sq. ft.; and

WHEREAS, the owner proposes to enlarge the existing single-family home at the site; and

WHEREAS, the subject site was formerly within an R2 zoning district; and

WHEREAS, the proposed enlargement complies with the former zoning district parameters; and

WHEREAS, however, on April 12, 2005 (hereinafter, the "Rezoning Date"), the City Council approved the rezoning proposal which rezoned the site to an R2A zoning district; and

WHEREAS, the building does not comply with the R2A district parameters; and

WHEREAS, because DOB did not find that work was completed as of the Rezoning Date, the applicant filed a request to continue construction pursuant to the common law doctrine of vested rights; and

WHEREAS, on November 1, 2005, the Board determined that, as of the Rezoning Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights; and

WHEREAS, the Board granted the applicant six months to complete construction, which expired on May 1, 2006; and

WHEREAS, subsequently, on May 16, 2006, the Board granted a one-year extension of time to complete construction and obtain a certificate of occupancy, which expired on May 16, 2007; and

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

WHEREAS, the applicant states that the building was not completed by the stipulated date due to financing delays; and

WHEREAS, however, the applicant submitted an affidavit from the owner stating that subsequent to the May 16, 2006 extension of time to complete construction, all exterior brick work, steps, air conditioning, plumbing, and light fixtures have been installed; and

WHEREAS, the affidavit from the owner states that the boiler has also been installed, and the only remaining work is

to have the gas meter installed and to obtain the necessary sign-offs from DOB; and

WHEREAS, the applicant represents that it will take approximately one year to complete the work at the site, obtain the necessary sign-offs from DOB, and obtain a certificate of occupancy; and

WHEREAS, the Board has reviewed the evidence and determined that an extension of time is warranted; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a one-year extension of time to complete construction; and

Therefore it is Resolved that this application to renew DOB Permit No. 401867618, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one year from the date of this resolution, to expire on September 25, 2013.

Adopted by the Board of Standards and Appeals, September 25, 2012.

125-11-A

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

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

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

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

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

WHEREAS, a public hearing was held on this application on December 6, 2011, after due notice by publication in *The City Record*, with continued hearings on January 24, 2012, February 28, 2012 and March 27, 2012, and then to decision on September 25, 2012; and

WHEREAS, the applicant filed a variance application, under BSA Cal. No. 96-11-BZ, seeking zoning waivers, which address the non-compliance with the current zoning; the Board agreed to adjourn the hearings on the variance application

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pending the outcome of the subject vested rights application; and

WHEREAS, the site is the subject of two prior Board decisions: (1) by decision dated November 25, 2008, under BSA Cal. No. 81-08-A (the "MDL Appeal"), the Board determined that DOB had erroneously approved waivers to the Multiple Dwelling Law ("MDL") and (2) by decision dated August 3, 2010, under BSA Cal. No. 217-09-A (the "MDL Variance"), the Board approved a conditional grant to vary certain sections of the MDL to allow for the legalization of the enlargement of the building, subject to conditions to be reviewed by the Department of Buildings ("DOB"), as set forth in the Board's decision; and

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

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application, citing the concern that the permits should not be reinstated to allow construction that does not comply with the current zoning; and

WHEREAS, State Assembly Speaker Sheldon Silver, State Senator Thomas Duane, and State Senator Daniel Squadron submitted written testimony in opposition to the application because the enlargement of the building does not comply with the MDL, the owner has not yet installed fire safety measures or eliminated the seventh floor construction, and on the basis that the Board's earlier determination that the permit be revoked should not be reversed; and

WHEREAS, City Council Member Rosie Mendez submitted oral and written testimony in opposition to the application, citing concerns about the validity of the permit and that the building has not been modified in conformance with the Board's prior decision and removed the seventh floor by February 3, 2011; and that the permit was properly revoked in November 2008 and the sixth and seventh floors violate MDL provisions; and

WHEREAS, the Greenwich Village Society for Historic Preservation submitted oral and written testimony in opposition to the application citing concerns that the construction violates the MDL and the current zoning and that the enlargement of the building is out of character with the neighborhood and that the permits should not be retroactively corrected; and

WHEREAS, certain community members raised concerns about approving a building that does not comply with current zoning and the issuance of the permit, and failure to complete work within the timeframe set forth in the MDL Variance decision; and

WHEREAS, the subject site is located on the south side of East 6th Street between Avenue A and Avenue B, within an R7B zoning district; and

WHEREAS, the site comprises two adjacent lots each occupied by a six-story attached building (together, the "Buildings") with a total floor area pre-enlargement of 13,500 sq. ft. and a total lot area of 4,850 sq. ft.; and

WHEREAS, the applicant proposes to complete construction of an enlargement to the Buildings to result in a

total floor area of 16,200 sq. ft. (3.34 FAR); and

WHEREAS, the subject site is currently located within an R7B zoning district, but was formerly located within an R7-2 zoning district; and

WHEREAS, the applicant represents that the Buildings comply with the former R7-2 zoning district parameters, specifically with respect to FAR; and

WHEREAS, however, on November 19, 2008 (the "Rezoning Date"), the City Council voted to adopt the East Village/Lower East Side Rezoning, which rezoned the site to R7B; and

WHEREAS, the Buildings do not comply with the R7B zoning district parameters as to FAR; and

WHEREAS, the Board notes that, under the subject calendar number, the applicant initially sought to appeal DOB's determination not to reinstate its permits along with asserting that it had met the vesting criteria; through the hearing process, the applicant modified its application to focus on the common law vesting criteria and did not pursue the appeal against DOB; and

WHEREAS, accordingly, the Board's analysis addresses the common law vesting criteria and it does not take a position on DOB's determination not to reinstate the permits; and

Procedural History

WHEREAS, on January 31, 2007, DOB issued an Alteration Type 2 ("Alt 2") building permits (Job Nos. 104668646 and 104668655) for the renovation of the existing Buildings; the work performed under those permits included upgrading existing apartments, modernizing kitchens and bathrooms, and excavating the cellar for the installation of new steel columns to support the enlargement; the applicant also made MDL-related improvements including increasing the fire rating of common areas, improving the fire safety of stairways, installing fire-rated self-closing doors, and smoke detectors; and

WHEREAS, on May 21, 2007, DOB issued Alt 2 permit (Job No. 104694476) for the installation of sprinklers and on May 25, 2007, DOB issued an Alt 2 permit (Job No. 104762507) for the installation of new boilers, storage tanks, gas meters, and gas piping; and

WHEREAS, on June 28, 2007, DOB issued an Alt 1 permit (Job. No. 104816353) for the vertical enlargement of the Buildings; work on the enlargement commenced immediately including waterproofing, masonry, and roofing; and

WHEREAS, on July 24, 2007, DOB revoked the Alt 1, by which time the superstructure and walls were complete; and

WHEREAS, on October 4, 2007, DOB issued another Alt 1 (Job No. 104744877) based on an Alt 1 application filed on May 2, 2007, and work on the enlargement commenced, including plumbing, electrical, flooring, installation of fixtures, appliances, and tile and exterior work; and

WHEREAS, in early December 2007, at which time, per the applicant, work on the enlargement was 97 percent complete, DOB conducted a special audit and temporarily stopped work; and

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WHEREAS, the applicant represents that as of December 14, 2007, the last time construction was in progress, the project was approximately 97 percent finished; and

WHEREAS, on July 28, 2008, DOB granted a partial lift of the Stop Work Order so that the roof of the enlargement could be completed and the construction protected from the elements; and

WHEREAS, on November 19, 2008, the East Village/Lower East Side Rezoning took effect and the permit lapsed by operation of law; and

WHEREAS, in the MDL Appeal decision, dated November 25, 2008, the Board granted the appellant's request that the permit be revoked; and

WHEREAS, in the MDL Variance decision, dated August 3, 2010, the Board granted a conditional approval to vary certain conditions of the MDL; and

The Validity of the Permit

WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued lawfully prior to the Rezoning Date and that the work was performed pursuant to such permit; and

WHEREAS, in this case, there is no dispute that permits were issued and work was performed pursuant to those permits well in advance of the Rezoning Date; and

WHEREAS, however, a question raised by the Opposition is whether that permit can be deemed to have been lawful, in light of the fact that it was associated with DOB's erroneous approval of MDL variances (the subject of the MDL Appeal) and was ultimately revoked through its MDL Appeal decision; and

WHEREAS, subsequent to the Board's decision in the MDL Variance case, the applicant sought permits from DOB to complete the work authorized by the MDL Variance and reflected on the associated plans; and

WHEREAS, at that time, DOB took the position that it did not have the authority to reissue the permit under the R7-2 zoning in effect at the time of the permit's first issuance, and that, absent vesting, could only reissue the permit pursuant to R7B zoning; DOB determined that it could not reinstate the permits that the Board had directed to be revoked, through its resolution; and

WHEREAS, accordingly, because DOB will not reinstate the permit that the Board directed to be revoked in the MDL context, the Board considers whether its revocation determination has any effect on the permit in the vesting context; and

WHEREAS, the Board must consider the status of the permit which relied on DOB's erroneous approval and which it directed to be revoked, six days after the permit had already lapsed by operation of law; and

WHEREAS, the Board notes that in granting the MDL Appeal brought on behalf of a tenant of the Buildings, it agreed with the tenant that DOB erroneously modified the MDL in its approval of the building plans as it did not have authority to do so; in its resolution, the Board granted the appellant's request to (1) reverse DOB's final determination

and (2) revoke the permit.

WHEREAS, the Board notes that the MDL Appeal resolution addressed the authority to modify MDL regulations and did not address zoning compliance or the fact that on November 19, 2008, six days prior to its decision on the appeal, the East Village/Lower East Side Rezoning took effect, at which time the permit lapsed by operation of law; and

WHEREAS, subsequently, the Board granted the property owner's request to modify the MDL provisions that formed the basis for the MDL Appeal through the MDL Variance; and

WHEREAS, the Board also notes that New York state courts have recognized the permit validity question as one subject to the expertise of and have deferred to the buildings departments' and zoning boards' determinations about the validity of a permit; and

WHEREAS, the Board notes that it defers to DOB, as the permit issuing body, on the question of permit validity and that by its January 10, 2012 submission it states that the reinstatement of the Permit "would not present a correctable error issue" as long as the Board granted the vested rights application and its pending audit review concluded favorably for the applicant; and

WHEREAS, in support of its conclusion that the permit was validly issued prior to the Rezoning Date, the Board notes that (1) the MDL non-compliance had been resolved at DOB to a great extent prior to the rezoning in 2008, but the applicant had to re-apply to the Board, the appropriate authority, for additional modifications, which were not resolved until after the rezoning; (2) the flaws in the original permits relate to the erroneous assumption of jurisdiction of the permit-issuing entity first and secondarily to the substance of the non-compliance; (3) the Board's revocation was only intended to prevent the application from moving forward until the MDL issues were resolved and did not relate to zoning; (4) the MDL has not changed during the relevant time periods and the requirements were the same under the prior and current zoning regulations; and (5) the revocation was by the Board in the context of an interpretive appeal, rather than by DOB; and

WHEREAS, the Board states that the intent of its 2008 revocation was for the permit to be revoked to the extent of the MDL non-compliance and not to take any position on the remainder of the building subject to zoning and other regulations; and

WHEREAS, the Board recognizes that it directed the revocation of the permit and that it is within DOB's and the Board's authority to determine that the corrected permit is valid; and

WHEREAS, thus, because DOB's audit concludes to DOB's satisfaction that the plans comply with R7-2 zoning regulations, it is appropriate for the Board to accept the permit as valid while considering the vesting criteria; and

WHEREAS, by letter dated September 24, 2012, DOB states that all zoning objections have been resolved; and

WHEREAS, the applicant cites to GRA V, LLC v. Srinivasan, 12 N.Y.3d 863 (2009), for the proposition that

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minor plan errors may be corrected in the vested rights context in accordance with the prior zoning; and

WHEREAS, the applicant states that DOB's erroneous issuance of the initial permit, which included waiver of MDL non-compliance, was authorized by the highest levels of DOB and the MDL non-compliance has already been corrected and resolved by the Board's MDL Variance; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date and based on the fact that it directed the Permit to be revoked solely due to MDL non-compliance, it makes the determination that the Permit (with its zoning objections resolved) was valid; and

WHEREAS, however, pursuant to ZR § 11-332, for other construction, the applicant must apply to renew the lapsed permit within 30 days of the Rezoning Date; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the Permit pursuant to ZR § 11-332 within 30 days of their lapse on November 19, 2008, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

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

The Vesting Analysis

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

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

WHEREAS, as to substantial construction, the applicant states that the owner has completed the following: approximately 97 percent of the enlargement, as described above, nearly a year before the Rezoning Date; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site, an engineer's statement, and communication with DOB; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the

documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed prior to the Rezoning Date; and

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

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

WHEREAS, the applicant states that prior to the Rezoning Date (and prior to the December 14, 2007 Stop Work Order), the owner expended \$1,517,062, including hard and soft costs and irrevocable commitments, out of \$1,557,062 budgeted for the Enlargement; the applicant separated out the additional costs associated with the entire project including work in the existing Buildings not affected by the rezoning; and

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

WHEREAS, thus, the expenditures up to the December 14, 2007 Stop Work Order represent approximately 97 percent of the projected total cost; and

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

WHEREAS, the Board notes that it did not consider or credit the work or costs associated with the seventh-floor portion of the enlargement as it is to be removed pursuant to the Board's approval in the MDL Variance; and

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

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

WHEREAS, the applicant states that if vesting were not permitted, the site's floor area would have to be reduced from the proposed 16,200 sq. ft. (3.34 FAR) to a maximum of 14,550 sq. ft. (3.0 FAR); and

WHEREAS, the applicant represents that if vesting were not permitted, it would have to remove nearly the entire sixth floor enlargement (the application does not seek to vest the seventh-floor enlargement and has not considered it in its loss analysis); and

WHEREAS, the applicant represents that compliance with the R7B zoning district parameters would result in a

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reduction of the annual rental income of approximately \$165,500; and

WHEREAS, additionally, the applicant states that the deconstruction of the enlargement would require the fifth floor to be vacated for the six months of reconstruction, resulting in additional lost rental income of \$90,000; and

WHEREAS, the applicant states that it would lose the entire \$1,517,062 cost of the enlargement and the \$320,000 cost to remove the enlargement and reconstruct the roof; and

WHEREAS, the applicant states that the floor area that would be lost represents 20 percent of the floor area of the pre-existing Buildings and that since the units in the enlargement are new and on the highest floor, they have a disproportionately higher value compared to the other units; and

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

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Buildings had accrued to the owner of the premises at the Rezoning Date; and

WHEREAS, as to the Opposition's concerns that the Buildings do not comply with MDL requirements, the Board notes that it has thoroughly reviewed and approved the MDL-related provisions as reflected in the resolution and on the plans associated with the MDL Variance and that none of the requirements set forth in that decision or the associated plans have been disturbed or will be altered without the Board's review and approval; further, the Board notes that the Appellate Division has upheld its decision in the MDL Variance case See Chin v. Board of Standards and Appeals, 97 A.D.3d 485 (1st Dept. 2012); and

WHEREAS, as to the Opposition's concerns that the applicant has not yet instituted the changes associated with the MDL Variance, including the installation of fire safety measures and the removal of the partial seventh floor, the Board accepts the applicant's assertion that those changes would be affected by the determination in the subject vested rights application and, thus it sought a determination on vesting prior to commencing the work; and

WHEREAS, as to the Opposition's assertion that the Board's determination in the MDL Appeal case that the permit be revoked not be reversed, as discussed above, the revocation of the permit was associated with MDL non-compliance and was not a reflection of the Board's position on the validity of the permit; and

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

vested rights analysis; and

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

WHEREAS, while the Board is not persuaded by any of the Opposition's arguments, it nevertheless understands that the community and the elected officials worked diligently on the East Village/Lower East Side Rezoning and that the Building does not comply with the new zoning parameters; and

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of Permit No. 104744877, as well as all related permits for various work types, either already issued or necessary to complete construction as approved by DOB and in compliance with the MDL Variance and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, September 25, 2012.

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.

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to Notice of Sign Registration Rejection letters from the Bronx Borough Commissioner of the Department of Buildings ("DOB"), dated March 7, 2012, denying Application Nos. 2004601 and 2004702 for sign registration at the subject site (the "Final Determinations"); and

WHEREAS, the Final Determinations state, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to

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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 appeal on August 7, 2012 after due notice by publication in *The City Record*, and then to decision on September 25, 2012; and

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

WHEREAS, the subject site is located on an irregularly-shaped lot bounded by Bruckner Boulevard to the south and Timpson Place to the north, within a C8-3 zoning district; and

WHEREAS, the site is occupied by a two-story building with a rooftop sign structure with two 14'-0" by 48'-0" signs; one facing north and one facing south (the "Signs"); and

WHEREAS, the Signs are located within 200 feet of the Bruckner Expressway, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the lessee of the Signs (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 determinations that the Appellant (1) failed to provide evidence of the establishment of the advertising signs and (2) failed to establish that such use has, if lawfully established, continued without an interruption of two years or more; and

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

PROCEDURAL HISTORY

WHEREAS, the Appellant asserts that the Signs have been in continuous operation as advertising signs since as early as 1945; and

WHEREAS, the Appellant states that it began leasing the sign structure in 2004, and following the commencement of its lease, the Appellant applied to DOB for maintenance permits to place new advertising signage copy on each of the Signs; and

WHEREAS, the Appellant further states that on March 16, 2004, DOB issued permits 200844042-01-SG, 200844033-01-SG, 200843962-01-EW, and 200843971-01-EW (the "2004 Permits"), for the maintenance and replacement of "advertising sign copy" for each of the Signs and for maintenance of the "existing sign structure," noting that there was no change in use; 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 sign registration applications with DOB to register the Signs as non-conforming advertising signs (the "Sign

Registration Applications"); and

WHEREAS, by letter dated October 3, 2011, DOB informed the Appellant that its filing failed to provide proof of legal establishment of the Signs prior to the 2004 Permits; and

WHEREAS, by letter dated January 6, 2012, the Appellant argued to DOB that the issuance of the 2004 Permits alone, without any further information, is sufficient "proof of legal establishment;" and

WHEREAS, by letter dated January 30, 2012, the Appellant supplemented its Sign Registration Applications with an affidavit attesting to the uninterrupted and continuing presence and use of the Signs from 1963 until 1989; and

WHEREAS, DOB determined that the additional material was inadequate proof of the legal establishment of the Signs, and issued the Final Determinations on March 7, 2012; and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 Definitions

Non-conforming, or non-conformity

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

* * *

ZR § 32-662 Additional Regulations for Advertising Signs

In all districts, as indicated, no advertising sign shall be located, nor shall an existing advertising sign be structurally altered, relocated or reconstructed within 200 feet of an arterial highway...However, in all districts as indicated, the more restrictive of the following shall apply:

- (1) Any advertising sign erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highways, shall have legal non-conforming use status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size on May 31, 1968.
- (2) Any advertising sign erected, structurally altered, relocated, or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in surface area on its face, 30 feet in height and 60 feet in length, shall have legal non-conforming use status pursuant to Section 52-83, to the extent of its size existing on

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November 1, 1979.

* * *

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

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

* * *

ZR § 52-61 *Discontinuance*
General Provisions

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

* * *

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

...(d)(15) With respect to each sign that has been identified in the sign inventory as a non-conforming sign, the following additional information shall be included with the registration application:

- a. The Zoning Resolution section that establishes the sign as a non-conforming sign.
- b. Evidence that the non-conforming sign existed and the size of the sign that existed as of the relevant date set forth in the Zoning Resolution to establish its lawful status. Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date. Affidavits, Department cashier's receipts and permit applications, without other supporting documentation, are not sufficient to establish the non-conforming status of a sign. The submitted evidence must specifically establish the non-conforming aspect of the sign. For example, where evidence is submitted to establish that a sign is a non-conforming advertising sign, proof that the sign was erected, but that does not establish that it was advertising, will not be sufficient; and

THE APPELLANT'S POSITION

A. Lawful Establishment and Continuous Use

WHEREAS, the Appellant contends that the Final Determinations should be reversed because (1) the Signs were

lawfully established as advertising signs prior to November 1, 1979 and may therefore be maintained as legal non-conforming advertising signs pursuant to ZR § 52-11, and (2) the Signs have operated as advertising signs with no discontinuance of two years or more since their lawful establishment; and

WHEREAS, in support of its assertion that the Signs were lawfully established prior to November 1, 1979 and have been in continuous use to the present, the Appellant relies on: (1) a 1945 action relating to an Electric Sign (ES 39-45) listed in DOB's Building Information System ("BIS"); (2) two 1960 actions relating to Electric Signs (ES 95-60 and ES 96-60) listed in BIS; (3) an affidavit dated January 21, 2012 from Donald Robinson, an employee of various outdoor advertising companies from 1963 through 1989, which states that the Signs were existing in 1963 and that they were being used from 1963 to 1989 as advertising signs (the "Robinson Affidavit"); and (4) aerial photographs dated March 30, 1978 showing a sign structure (with indiscernible sign copy) at the site (the "1978 Photographs"); and

WHEREAS, in support of the existence of the Signs as advertising signs from 1979 through 1985, the Appellant relies on: (1) aerial photographs dated January 3, 1980, which the Appellant claims show advertising copy for a retail establishment on the Signs (the "1980 Photographs"); (2) a 1984 action relating to an Electric Sign (ES 20-84) listed in BIS; (3) a 1985 action relating to an Electric Sign (ES 84-85) listed in BIS; and (4) the Robinson Affidavit; and

WHEREAS, in support of the existence of the Signs from 1986 through 1989, the Appellant relies on: (1) a letter dated December 18, 2000 from Frank Ferrovicchio, the then owner of the site, referencing a lease agreement for advertising signs at the site from February 18, 1986 which was amended and extended on February 29, 1996, to expire on February 28, 2001 (the "December 18, 2000 Letter"); (2) a letter dated October 6, 2000 from Vista Media Group stating that it has assumed the lessee rights and obligations under a lease with TDI/Outdoor Systems/Infinity (the "October 6, 2000 Letter"); and (3) the Robinson Affidavit; and

WHEREAS, in support of the existence of the Signs from 1990 through 1992, the Appellant relies on: (1) an aerial photograph dated February 2, 1990, which the Appellant claims shows advertising copy on the Signs (the "1990 Photograph"); (2) the December 18, 2000 Letter; and (3) the October 6, 2000 Letter; and

WHEREAS, in support of the existence of the Signs from 1993 through 1999, the Appellant relies on: (1) an aerial photograph dated March 26, 1993 (the "1993 Photograph"); (2) the December 18, 2000 Letter; and (3) the October 6, 2000 Letter; and

WHEREAS, in support of the existence of the Signs in

¹ DOB acknowledges that the surface area of the Signs do not exceed 1,200 sq. ft. on their face, 30 feet in height, or 60 feet in length, and therefore the Signs may have legal non-conforming status if erected prior to November 1, 1979 pursuant to ZR § 32-662.

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2000, the Appellant relies on: (1) the December 18, 2000 Letter; and (2) the October 6, 2000 Letter; and

WHEREAS, in support of the existence of the Signs in 2001, the Appellant relies on: (1) a letter dated July 11, 2001 from City Outdoor Inc., an outdoor advertising company, referencing a contract with an advertiser from September 2001 to December 2001 (the "July 11, 2001 Letter"); (2) the December 18, 2000 Letter; and (3) the October 6, 2000 Letter; and

WHEREAS, in support of the existence of the Signs in 2002, the Appellant relies on aerial photographs dated February 12, 2002 showing advertising copy for a car on the Signs (the "2002 Photographs"); and

WHEREAS, in support of the existence of the Signs in 2004, the Appellant relies on the 2004 Permits; and

WHEREAS, in support of the existence of the Signs in 2009, the Appellant relies on photographs taken in 2009 and submitted by the Appellant to DOB with its Sign Registration Applications; and

WHEREAS, the Appellant argues that the 1978 Photographs clearly show a sign structure on the site, and although the exact copy on the Signs is not discernible from the photographs, that evidence combined with the 1980 Photographs (taken less than three months after November 1, 1979) which clearly depict advertising copy on the Signs, supports the inference that the Signs were established as advertising signs prior to November 1, 1979; and

WHEREAS, the Appellant contends that it has submitted sufficient evidence for the Board to conclude that the Signs were established prior to November 1, 1979 and have been maintained as legal non-conforming uses since that date; and

B. Ability to Rely on 2004 Permits Alone

WHEREAS, the Appellant asserts that the Signs qualify as non-conforming advertising signs under ZR § 32-662 because the 2004 Permits issued by DOB establish that DOB has already accepted the legal non-conforming status of the Signs; and

WHEREAS, the Appellant further contends that the 2004 Permits specifically provide for the maintenance and replacement of "advertising sign copy" for the Signs and DOB has never alleged that the permits were issued for anything other than advertising signs; therefore, the fact that DOB issued the 2004 Permits establishes that DOB has sufficient evidence that advertising signs have continuously been maintained on the site prior to November 1, 1979; and

WHEREAS, as to the 1980s Department of Finance ("DOF") tax photograph submitted by DOB (the "1980s DOF Photograph"), which DOB claims is evidence of an accessory sign at the site at that time, the Appellant argues that DOB provides no substantiation as to whether this sign was an accessory sign or advertising sign, and in the event that the sign depicted in the photograph were determined to have been an accessory sign, DOB has not provided any proof that the advertising use of the Signs was discontinued for two years or more, and one single photo from a single moment in time is not in and of itself sufficient to establish

discontinuance for a period of two years or more; and

WHEREAS, the Appellant argues that it made substantial investments in the Signs, including investments in repairs and maintenance along with the marketing costs involved in placing advertisements on the site, in reasonable reliance on DOB's issuance of the 2004 Permits; and

WHEREAS, the Appellant contends that it has continued to invest in the Signs in reliance on DOB's issuance of the 2004 Permits for eight years, and as the applicable laws have not changed since 2004, under established principles of equity DOB cannot now be allowed to change its position arbitrarily on the legality of the Signs to the detriment of the Appellant's business; and

DOB'S POSITION

A. Lawful Establishment

WHEREAS, DOB contends that the Appellant has failed to provide adequate evidence that the Signs were established as advertising signs prior to November 1, 1979; and

WHEREAS, DOB states that in order to show proof of establishment of the advertising signs under the non-conforming use provisions of ZR § 32-662, the Appellant would need to demonstrate that the advertising signs were installed prior to November 1, 1979; and

WHEREAS, DOB further states that if the Appellant produced a permit for the advertising signs prior to November 1, 1979, DOB would accept the advertising signs as lawfully established; further, if the Appellant is unable to produce an advertising sign permit, DOB states that it would also look at additional evidence indicated in RCNY 49(d)(15)(b), including photographs, affidavits, leases, and receipts which indicate that advertising signs were installed prior to November 1, 1979; and

WHEREAS, DOB argues that the only evidence the Appellant has produced to show lawful establishment of the Signs are the BIS printouts indicating applications for electric sign permits in 1945, 1960, 1984, and 1985, the aerial photographs from 1978 and 1980, the 2004 Permits, and the Robinson Affidavit, and none of these records establish that an advertising sign was installed prior to November 1, 1979; and

WHEREAS, as to the electric sign permits indicated on BIS from 1945, 1960, 1984, and 1985, DOB states that it performed a search of its records and, based on the documentation discovered with respect to the applications, finds that they do not establish the advertising signs prior to November 1, 1979; and

WHEREAS, specifically, DOB states that for ES 39-45, DOB's records only contain a "Block and Lot" docket entry dated April 13, 1945 indicating an electric sign 5'-0" by 8'-0" at the site, which does not support a contention that the Signs were established as advertising signs under this application; and

WHEREAS, DOB states that for ES 95-60 and ES 96-60, DOB's records only contain a "Block and Lot" docket entry dated April 7, 1960 which provides a limited description of two electric signs at the site and the

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description states “International Harvester Company, T. George Paladino Holding Corp., O.”; and

WHEREAS, DOB contends that, based on a review of other sign entries in the “Block and Lot” dockets, the description for most advertising signs will specifically indicate that the sign is an advertising sign; since the description for the 1960 BIS records does not indicate that the signs are advertising signs, DOB states that it cannot conclude that advertising signs were established under these electric sign applications without further information; and

WHEREAS, DOB states that for BN 145-84, the application indicates that the proposed work was for “Refurbishing roof structure *for business signs* 10’-4” x 48’-0” = 496 Sq. Ft.” (emphasis added), and since this application was filed to refurbish business signs (now defined as accessory signs under the Zoning Resolution), not advertising signs, this application not only fails to establish the Signs as advertising signs prior to November 1, 1979, but it also provides evidence that the advertising signs were not in existence at the site at that time; and

WHEREAS, DOB also submitted the 1980s DOF Photograph, and DOB contends that the 1985 BIS documentation to refurbish business signs is consistent with the 1980s DOF Photograph which clearly indicates that one of the Signs is being used as an accessory business sign, not as an advertising sign; specifically, the 1980s DOF Photograph clearly shows that the sign copy states “Center Sheet Metal,” and a review of documents recorded for the site with DOF in ACRIS clearly indicates the existence of a “Center Sheet Metal, Inc.” at the subject site from at least 1988 to 1993; and

WHEREAS, DOB states that for BN 741-85, the application indicates that the proposed work was for “a roof sign support structure,” and since the application was filed in 1985, six years after the relevant date in ZR § 32-662 to establish a non-conforming advertising sign, this application does not support a contention that advertising signs were established prior to November 1, 1979, especially since BN 145-84 was filed a year before indicating business signs at the site; and

WHEREAS, DOB argues that while BN 741-85 does indicate that an application exists for proposed work on an advertising sign at the site, the Appellant has not produced any evidence which indicates the establishment of advertising signs at the site prior to November 1, 1979; and

WHEREAS, DOB disagrees with the Appellant’s contention that the 1978 Photographs combined with the 1980 Photographs establish the use of the advertising signs at the site prior to November 1, 1979, and asserts that the 1978 Photographs and one of the two 1980 Photographs are unclear and the other 1980 Photograph shows a sign with a copy that states, in part, “the Tire Shop,” which may be an accessory sign and not an advertising sign; and

WHEREAS, DOB argues that the Appellant has not provided evidence which proves that the 1980 Photographs demonstrate an advertising copy on the Signs, and while there is no evidence that advertising signs existed in 1979,

as noted above, there is substantial evidence which indicates that at least one accessory sign was located at the site in the 1980’s as evidenced by the BN 145-84 job application to refurbish a roof structure for “business signs” and the 1980s DOF Photograph with ACRIS documents supporting the fact that the sign was accessory; and

WHEREAS, as to the Appellant’s claim that issuance of the 2004 Permits is sufficient for the lawful establishment of the Signs, DOB states that the 2004 Permits were based on professionally certified plans and job applications, and were issued in error and would have been the subject of objections and a 15-day Letter of Intent to Revoke had it not been for the commencement of the subject appeal; and

WHEREAS, DOB argues that, as the 2004 Permits were issued based on professionally certified job applications and plans, DOB did not review the plans to determine whether the Signs complied with the non-conforming use requirements in a C8-3 zoning district pursuant to ZR § 32-662 at the time of filing; however, once DOB reviewed the legality of the Signs under ZR § 32-662 as part of its review of the Sign Registration Applications, DOB determined that the Signs did not comply with the non-conforming use requirements; and

WHEREAS, DOB further argues that the 2004 Permits were issued to “maintain” the existing roof structures and Signs and to replace the advertising copy based on the Appellant’s professional certification that the Signs were lawfully used as advertising signs; however, the applications did not include evidence to establish the legality of the Signs or the erection of advertising signs prior to November 1, 1979, and therefore the 2004 Permits do not establish the Signs as non-conforming advertising signs; and

B. The Evidence of Continuity Fails to Satisfy the Standard Set Forth in DOB Technical Policy and Procedure Notice 14/1988 (“TPPN 14/1988”)

WHEREAS, DOB asserts that even if the Appellant has established the Signs as non-conforming advertising signs, the Appellant must also submit sufficient evidence to establish that the Signs have been continuously used as advertising signs since November 1, 1979, without any two-year period of discontinuance, as required by ZR § 52-61; and

WHEREAS, DOB contends that the Appellant’s evidence of continuity of the Signs fails to satisfy TPPN 14/1988, which sets forth guidelines for DOB’s review of whether a non-conforming use has been continuous; the TPPN includes the following types of evidence, which have been accepted by the Borough Commissioner: (1) Item (a): City agency records; (2) Item (b): records, bills, documentation from public utilities; (3) Item (c): other documentation of occupancy including ads and invoices; and (4) Item (d): affidavits; and

WHEREAS, DOB notes that the Appellant has not provided any relevant records from any City agency (Item (a) evidence), except for the 2004 Permits, which were improperly issued as described above, and the BIS and DOB records from 1945, 1960, 1984, and 1985; DOB asserts that, at most, BN 741-85 indicates that applications were filed with

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DOB for proposed work on advertising signs in 1985; and

WHEREAS, DOB notes that no public utility bills or records (Item (b) evidence) and no other bills indicating the use of the building (Item (c) evidence) were submitted by the Appellant; and

WHEREAS, as to the Robinson Affidavit (Item (d) evidence), which the Appellant alleges is evidence of the continuous use of the Signs as advertising signs from 1963 until 1989, DOB argues that the affidavit is not credible based on the 1980s DOF Photograph and ACRIS records which clearly indicates that at least one of the Signs was being used as an accessory sign for a time in the 1980s, not an advertising sign of “off premise advertisements;” and

WHEREAS, DOB asserts that because the Robinson Affidavit is uncorroborated testimonial evidence that the Signs have existed continuously from 1963 until 1989, this evidence is not considered sufficient because the testimony may be tainted by memory lapses, bias, and misperception, and because it is clear from the 1980s DOF Photograph that the affidavit cannot be deemed credible; and

WHEREAS, as to the photographs, DOB states that, even if it accepted the lawful establishment of the Signs, there is a gap of photographic evidence from January 3, 1980 (which as described above, may be a photograph of an accessory sign) until March 26, 1993 (which is a photograph of a sign with an unusual size, proportion, and angle compared to the Signs currently located on the site, and it is not clear that the sign in the photograph is located on the subject site); and

WHEREAS, DOB asserts that, due to the gap in photographic evidence, the job application from 1984 (BN 145-84) which states that business signs were located on the site, the 1980s DOF Photograph and ACRIS records which indicate that there were accessory signs on the site for a time starting in the 1980s, and the fact that it does not find the Robinson Affidavit to be credible, DOB concludes that the totality of the evidence presented by the Appellant does not establish that advertising signs have continued on the site without an interruption of two years or more since November 1, 1979; and

CONCLUSION

WHEREAS, the Board agrees with DOB’s determination that the Appellant has not provided sufficient evidence of the lawful establishment of the Signs as advertising signs prior to November 1, 1979, or of their continuous use as advertising signs without any two-year interruption since 1979; and

WHEREAS, the Board finds the Appellant’s evidence of lawful establishment of the Signs as advertising signs to be insufficient primarily because: (1) the 1945 and 1960 BIS documentation does not provide sufficient information to support the establishment of advertising signs; (2) the 1978 Photographs are not decipherable as to whether the Signs depicted advertising or accessory copy; (3) the 1980 Photographs are beyond the applicable date for establishing the advertising signs, the north-facing sign is not decipherable, and the south-facing sign which reads “The Tire Shop” is not sufficient to establish that the sign is an advertising sign rather

than an accessory sign; and (4) the Robinson Affidavit is not substantiated and is contradicted by the evidence submitted by DOB (the 1984 BIS documentation, the 1980s DOF Photograph, and the corresponding ACRIS records) that the signs were used as accessory signs for a time in the 1980s; and

WHEREAS, the Board agrees with DOB that, even if the Appellant had provided sufficient evidence of the lawful establishment of the Signs, the evidence submitted regarding the continuous use of the Signs as advertising signs without any two-year discontinuance is also insufficient; and

WHEREAS, as noted above, the Board finds that the 1978 Photographs and the 1980 Photographs are not clear enough to establish that the Signs were being used as advertising signs, the Robinson Affidavit cannot be relied upon as evidence of the continued use of the Signs as advertising signs given the contradiction between the affidavit and the evidence submitted by DOB that the Signs were used as accessory business signs for a time in the 1980s, and the 1984 BIS documentation indicates use of the Signs as business signs rather than advertising signs; accordingly, even if the Board found that there was lawful establishment of the Signs as advertising signs, the Appellant has failed to provide any evidence of the continuous use of the Signs as advertising signs from November 1, 1979, until at least 1985, when BN 741-85 was filed for proposed work on an “advertising sign;” and

WHEREAS, as to the remaining evidence submitted by the Appellant in support of the continuous use of the Signs as advertising signs, the Board finds (1) the 1990 Photograph is not clear enough to establish whether the Signs were being used to display advertising or accessory copy; (2) the December 18, 2000 Letter, which references a lease agreement for advertising signs on the site from February 18, 1986 through February 28, 2001, does not constitute sufficient evidence in and of itself, and particularly without a copy of the lease in question, to establish that the Signs were being used as advertising signs throughout this period; and (3) the October 6, 2000 Letter and the July 11, 2001 Letter are not substantiated and are insufficient to establish the use of the Signs without additional supporting information, given that the letters make no reference to the address or location of the subject site, or to the signs in question at the site; and

WHEREAS, the Board finds that only the 1993 Photograph, the 2002 Photographs, and the 2009 Photographs submitted with the Sign Registration Applications are clearly decipherable as advertising signs; and

WHEREAS, the Board agrees with DOB that the issuance of the 2004 Permits is not sufficient for the lawful establishment of the Signs, as the 2004 Permits were based on professionally certified plans and job applications, and once DOB reviewed the legality of the Signs under ZR § 32-662 as part of its review of the Sign Registration Applications, DOB determined that the Signs did not comply with the non-conforming use requirements and therefore the 2004 Permits were issued in error; and

WHEREAS, the Board notes the principle that government agencies, like DOB, maintain the ability to

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correct mistakes, such as the issuance of building permits (see Charles Field Delivery v. Roberts, 66 N.Y.2d 516 (1985) in which the court states that agencies are permitted to correct mistakes as long as such changes are rational and are explained), and agrees that DOB is not estopped from correcting an erroneous approval of a building permit (see Parkview Associates v. City of New York, 71 N.Y.2d 274, cert. denied, 488 U.S. 801 (1988)); and

WHEREAS, based upon the above, the Board finds that there are significant gaps in time regarding the evidence submitted by the Appellant in support of the continuous use of the Signs as advertising signs, which the Board cannot ignore, and the limited evidence to which the Board does give some weight (the 1985 BIS documentation, the 1993 Photograph, the 2002 Photographs, and the 2009 Photographs), does not support the continuous use of the Signs as advertising signs since November 1, 1979, but merely indicates moments in time at which the Signs may have been used as advertising signs, without any evidence supporting the Appellant's claim that there was no two-year discontinuance of the use; and

WHEREAS, as to the Appellant's claim that the Board should find that the Signs are legal based on the principles of equity, the Board notes that questions of equity are not within its purview, as the Board is an administrative body and is not empowered to provide an equitable remedy (see People ex rel. New York Tele. Co. v. Public Serv. Comm., 157 A.D. 156, 163 (3d Dep't 1913) (administrative body "ha[s] no authority to assume the powers of a court of equity"); see also Faymor Dev. Co. v Bd. of Sds. and Apps., 45 N.Y.2d 560, 565-567 (1978)); and

WHEREAS, in sum, the Board concludes as follows: the Appellant has not established that the Signs were lawfully established as advertising signs prior to November 1, 1979 or that the Signs have been in continuous use as advertising signs since November 1, 1979 without any two-year period of discontinuance; thus, the Signs do not meet the criteria required for continuing such use within the subject zoning district and must cease; and

Therefore it is Resolved that this appeal, which challenges the Final Determinations issued on March 7, 2012 is denied.

Adopted by the Board of Standards and Appeals, September 25, 2012.

164-12-A

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

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

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

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 29, 2012, acting on Department of Buildings Application No. 420521992, reads in pertinent part:

- A1- The proposed building is on a site located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3 Sect. 35 of the General City Law
- A2- The site and building is not fronting on an official mapped street therefore; No permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; and also no permit can be issued since proposed construction does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in the *City Record*, with continued hearings on August 21, 2012 and September 25, 2012, and then to decision on the same date; and

WHEREAS, by letter dated August 20, 2012 the Fire Department states that it has no objection to the subject proposal, and due to the fact that the proposed enlargement is less than 125 percent of the existing floor area, no Fire Code regulations are triggered; and

WHEREAS, by letter dated June 25, 2012, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated September 5, 2012, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

WHEREAS, DOT further states that the subject lot is not currently included in the agency's Capital Improvement Program; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 29, 2012, acting on Department of Buildings Application No. 420521992, is modified by the power vested in the Board by Section 35 and Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 14, 2012"-one

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(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, September 25, 2012.

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, Lot 60, 80, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Joe Loccisano.

For Administration: Simon Ressler, Fire Department.

ACTION OF THE BOARD – Laid over to November 20, 2012, at 10 A.M., for continued hearing.

89-07-A

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

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

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

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Simon Ressler, Fire Department.

ACTION OF THE BOARD – Laid over to October

30, 2012, at 10 A.M., for continued hearing.

92-07-A thru 94-07-A

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

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Simon Ressler, Fire Department.

ACTION OF THE BOARD – Laid over to October 30, 2012, at 10 A.M., for continued hearing.

95-07-A

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

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

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

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Simon Ressler, Fire Department.

ACTION OF THE BOARD – Laid over to October 30, 2012, at 10 A.M., for continued hearing.

46-12-A

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

SUBJECT – Application March 1, 2012 – Application to permit a mixed use development located partially within the bed of a mapped but unbuilt street (East Tremont Avenue), contrary to General City Law Section 35. C4-5X/R7X zoning district.

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

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

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Commissioner Montanez.....5

Negative:.....0

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

144-12-A

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

SUBJECT – Application May 3, 2012 – Appeal of the Multiple Dwelling Law pursuant to §310 to allow the enlargement to a five-story building, contrary to §171(2)(f).

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

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Marvin Mitzer.

For Opposition: Jack Lester, Richard N. Gottfried, Simson Bansft, Fern Luskin, Andito Lloyd, Barbara Tesx, Christiabel Gough, Julie M. Finch, Paul Spencer, Cathy Cleman, David Holowka, Edward S. Kirkland, Joanne Gaboriault and Henry Euler.

For Administration: Mark Davis, Department of Buildings.

ACTION OF THE BOARD – Laid over to November 20, 2012, at 10 A.M., for continued hearing.

145-12-A

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

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

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

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Marvin Mitzer.

For Opposition: Jack Lester, Richard N. Gottfried, Simson Bansft, Fern Luskin, Andito Lloyd, Barbara Tesx, Christiabel Gough, Julie M. Finch, Paul Spencer, Cathy Cleman, David Holowka, Edward S. Kirkland, Joanne Gaboriault and Henry Euler.

For Administration: Mark Davis, Department of Buildings.

ACTION OF THE BOARD – Laid over to November 20, 2012, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, SEPTEMBER 25, 2012

1:30 P.M.

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

ZONING CALENDAR

178-11-BZ

CEQR #12-BSA-042K

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, May 24, 2012, acting on Department of Buildings Application No. 320369695, reads in pertinent part:

- 1- Proposed plans are contrary to ZR 23-141(b) proposed Floor Area Ratio (FAR) exceeds the maximum FAR of 1.25
- 2- Proposed plans are contrary to ZR 23-141(b) minimum open space (45%) and maximum lot coverage (55%)
- 3- Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the required 30'-0"
- 4- Proposed plans are contrary to ZR 23-461(b) proposed side yard that is being horizontally extended is less than 8'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R5 zoning district, the proposed enlargement of a single-family semi-detached home, which does not comply with the zoning requirements for floor area ratio (FAR), open space, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this

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application on July 17, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2012, and then to decision on September 25, 2012; and

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

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

WHEREAS, the subject site is located on the west side of East 12th Street, between Avenue S and Avenue T, within an R5 zoning district; and

WHEREAS, the subject site has a total lot area of 2,000 sq. ft., and is occupied by a single-family home with a floor area of 1,397 sq. ft. (0.69 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 1,397 sq. ft. (0.69 FAR) to 3,054 sq. ft. (1.52 FAR); the maximum permitted floor area is 2,500 sq. ft. (1.25 FAR); and

WHEREAS, the applicant proposes to provide an open space of 44.15 percent (45 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 55.85 percent (55 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide a side yard with a width of 3'-10" (a side yard with a minimum width of 8'-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, specifically, the applicant submitted land use maps and photographs which reflect the history of enlargement to similar semi-detached homes in the area; and

WHEREAS, the applicant also provided an analysis which included seven homes (six of which are within the 400-ft. radius of the subject home), with comparable FARs; 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 R5 zoning district, the proposed enlargement of a single-family semi-detached home, which does not comply with the zoning requirements for floor area ratio (FAR), open space, lot coverage, side yard, 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 August 7, 2012"-(11) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,054 sq. ft. (1.52 FAR); a minimum open space of 44 percent; a maximum lot coverage of 55.85 percent; a side yard with a minimum width of 3'-10" along the northern 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, September 25, 2012.

10-12-BZ CEQR #12-BSA-066Q

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Natalie Hardeen, owner.

SUBJECT – Application January 18, 2012 – Variance (§72-21) to permit the legalization of an existing cellar and two story, two-family detached dwelling, contrary to front yard (§23-45) and side yard (§23-461) regulations. R5 zoning district.

PREMISES AFFECTED – 114-01 95th Avenue, northeast corner of 95th Avenue and 114th Street, Block 9400, Lot 37, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Todd Dale.

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ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 23, 2011, acting on Department of Buildings Application No. 402225258, reads in pertinent part:

Proposed two family dwelling without a required front yard and without a required side yard is contrary to Sections 23-45 and 23-461 and must be referred to the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the legalization of a two-story two-family home that does not comply with the zoning requirements for front yards and side yards, contrary to ZR §§ 23-45 and 23-461; and

WHEREAS, a public hearing was held on this application on July 24, 2012 after due notice by publication in *The City Record*, with continued hearings on August 14, 2012 and September 11, 2012, and then to decision on September 25, 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 9, Queens, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of 95th Avenue and 114th Street, within an R5 zoning district; and

WHEREAS, the site is an “L”-shaped lot with 23.45 feet of frontage on 95th Avenue, 90.22 feet of frontage on 114th Street, and a total lot area of 3,471 sq. ft.; and

WHEREAS, the site was previously occupied by a pre-existing non-conforming two-story, one-family home with a floor area of 1,264 sq. ft. (0.36 FAR) with a front yard with a depth of 3’-0” along 95th Avenue, no front yard along 114th Street, and no side yard along the eastern lot line (the “Original Home”); and

WHEREAS, the applicant states that in 2006 the Original Home was enlarged and converted into a two-family home that added a 22’-0” wide by 20’-0” deep, two-story rear extension to the home, which increased the floor area of the subject home by 880 sq. ft. and extended the pre-existing non-complying front and side yards; and

WHEREAS, the applicant now seeks to legalize the subject two-story two-family home, which has the following parameters: a floor area of 2,144 sq. ft. (0.61 FAR) (a maximum floor area of 4,338.75 sq. ft. (1.25 FAR) is permitted); a front yard with a depth of 3’-0” along 95th Avenue and no front yard along 114th Street (two front yards, with minimum depths of 18’-0” and 10’-0”, respectively, are

required); no side yard along the eastern lot line (a side yard with a minimum width of 5’-0” is required); and a side yard with a width of 47’-0” along the northern lot line and (a side yard with a minimum width of 20’-0” is required); and

WHEREAS, the applicant states that the front and side 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 subject site is a narrow, irregularly-shaped corner lot; and

WHEREAS, the applicant represents that the subject lot is an irregular “L”-shaped lot with a width of approximately 22’-0”, which cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site is a corner lot, which requires two front yards with depths of 18’-0” and 10’-0”, respectively, and two side yards with minimum widths of 20’-0” and 5’-0”, respectively; and

WHEREAS, the applicant states that the building would have a maximum exterior width of 7’-0” and constrained floor plates if the front and side yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the front and side yard waivers are necessary to create a building with a sufficient width; and

WHEREAS, as to the uniqueness of the subject lot, the applicant states that there are no other similarly constrained lots within the immediately surrounding area, and this unusual shape limits the potential development and floor area at the site; 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 zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; 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 notes that the subject home complies with all bulk requirements in the subject R5 district, with the exception of front yards and side yards; and

WHEREAS, the applicant submitted a yard study of corner lots in the surrounding area, which shows that the bulk configuration of the proposed home is nearly identical to each of the similarly situated corner lots at the subject intersection; and

WHEREAS, specifically, the yard study reflects that each of the existing buildings at the subject intersection provides no side yard abutting the adjacent building, and the side yard to the back side of each building is used for parking in the same manner as the subject site, with two of the three other corner lots developed with a comparable garage; and

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WHEREAS, the yard study further reflects that the front yards for the other sites at the subject intersection are also similar, with the front yard along the width of each lot limited to 3'-0", and with no front yard along the depth of each lot; and

WHEREAS, the applicant notes that the proposed legalization merely seeks to extend the Original Home's pre-existing non-complying front and side yards, and that the depth of the front yards along 95th Avenue and 114th Street and the width of the side yard along the eastern lot line for the proposed home are identical to that of the Original Home; and

WHEREAS, the applicant states that the subject home abuts the driveway of the adjacent home to the east, which provides a buffer between the homes despite the lack of a side yard along the eastern lot line; and

WHEREAS, the applicant also submitted a consent form signed by the owner of the adjacent home to the east, which the applicant states is an indication that the proposed lot line construction will not impact the adjacent home due to the location of the existing driveway; 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, during the hearing process, the Board questioned whether the subject lot has existed as a single lot with the subject dimensions since prior to December 15, 1961; and

WHEREAS, in response, the applicant states that the subject lot was previously two lots that were merged into a single lot prior to December 15, 1961, and submitted copies of deeds establishing that the subject lot was created pursuant to a lot merger that took place on April 2, 1949, and has been in common ownership and occupied as a single lot since that date; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a result of the unique physical conditions cited above; and

WHEREAS, as noted above, the subject home complies with all bulk requirements, with the exception of front yards and side yards, and the FAR of the home is less than half what is permitted in the subject R5 zoning district; and

WHEREAS, accordingly, the Board finds that this proposal 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 legalization of a two-story two-family home that does not comply with the zoning requirements for front yards and side yards, contrary to ZR §§

23-45 and 23-461; *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 January 18, 2012"– (3) sheets and "June 8, 2012"– (4) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a floor area of 2,144 sq. ft. (0.61 FAR); a front yard with a depth of 3'-0" along 95th Avenue; no front yard along 114th Street; a side yard with a width of 47'-0" along the northern lot line; and no side yard along the eastern lot line, 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 objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, September 25, 2012.

13-12-BZ

CEQR #12-BSA-069Q

APPLICANT – Georgios Georgopoulos, for Abumuktadir Rahman, owner.

SUBJECT – Application January 20, 2012 – Variance (§72-21) to permit the legalization and enlargement of a mosque (*Astoria Islamic Center*), contrary to front yard (§24-34), side yard (§24-35), and parking (§25-31) regulations. R5B zoning district.

PREMISES AFFECTED – 22-21 33rd Street, east side of 33rd Street, 200' south of corner formed by the intersection of Ditmars Boulevard and 33rd Street, Block 832, Lot 22, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Georgios Georgopoulos.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 17, 2012, acting on Department of Buildings Application No. 420303077 reads, in pertinent part:

1. Proposed side yard contrary to Zoning Resolution 24-35
2. Proposed front yard contrary to Zoning Resolution 23-45

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3. Proposed parking space waiver contrary to Zoning Resolution 25-31; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in an R5B zoning district, the legalization of a change in use and the construction of an enlargement to a two-story building to be occupied by a mosque (Use Group 4), which does not comply with the underlying zoning district regulations for front yard, side yards, and parking for community facilities, contrary to ZR §§ 24-35, 23-45, and 25-31; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, and then to decision on September 25, 2012; and

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

WHEREAS, Community Board 1, Queens, recommends approval of the application; and

WHEREAS, certain community members provided testimony in support of the application; and

WHEREAS, certain community members provided testimony in opposition to the application, citing concerns about parking and traffic; and

WHEREAS, this application is being brought on behalf of the Astoria Islamic Center (the "Mosque"), a non-profit religious entity; and

WHEREAS, the subject site is located on the east side of 33rd Street between Ditmars Boulevard and 23rd Avenue within an R5B zoning district; and

WHEREAS, the subject site has a width of 25 feet, a depth of 100 feet, and a lot area of 2,500 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story building built for residential use, but now occupied by the Mosque; and

WHEREAS, the applicant proposes to legalize the conversion of the residential building to community facility use and for the proposed enlargement of the first and second floors and the addition of a third floor; and

WHEREAS, the applicant states that the existing building has the following parameters: a floor area of 1,658 sq. ft. (0.66 FAR); no front yard; a side yard with a width of 3'-0" along the eastern lot line, no side yard along the western lot line; and no parking spaces; and

WHEREAS, the applicant proposes to enlarge the building to the following parameters: a floor area of 4,672 sq. ft. (1.86 FAR) (a maximum community facility floor area of 5,001.5 sq. ft. and 2.0 FAR is permitted); no front yard (a front yard with a minimum depth of 5'-0" is required); a side yard with a widths of 3'-0" along the eastern lot line of the front portion of the existing building and 8'-0" along the eastern lot line at the first- second- and third-floor enlargement, and a setback to 8'-0" at the new third floor (a side yard with a minimum width of 8'-0" is required); no side yard along the western lot line (a side yard with a minimum width of 8'-0" is required); and no parking (15 parking spaces is the minimum required); and

WHEREAS, the proposal provides for the following

uses: (1) storage and restrooms in the cellar; (2) the main sanctuary at the first floor; (3) additional worship area, including a worship gallery for female congregants at the second floor; (3) additional worship space and a caretaker's apartment at the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Mosque which necessitate the requested variances: (1) to accommodate the congregation of approximately 250 worshippers; (2) to provide a separate worship space for male and female congregants; and (3) to provide accessory space and a caretaker's apartment; and

WHEREAS, the applicant states that the congregation has occupied the pre-existing residential building since 1994 and that they require additional space to accommodate the congregation onsite; and

WHEREAS, the applicant further states that the current facility does not provide a separate gallery for female worshippers; and

WHEREAS, the applicant states that the requested waivers enable the Mosque to construct a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, and an accessory caretaker's apartment; and

WHEREAS, the applicant represents that worship space which separates men and women is critical to its religious practice; and

WHEREAS, the applicant states that the requested waivers are necessary to provide enough space to meet the programmatic needs of the congregation; and

WHEREAS, specifically, the applicant states that the requested yard waivers will allow the proposed mosque to provide floor plates large enough to accommodate its worshippers at full capacity, which is the minimum space required to provide the congregation with sufficient worship space; and

WHEREAS, the applicant notes that if both required side yards of 8'-0" each were provided, the remaining building width would be only 9'-0" and could not accommodate a suitable worship space and that the existing side yards (which are rendered non-complying due to the change in use from residential to community facility use) will remain and be extended except that a complying 8'-0" side yard will be provided along the eastern lot line at the new third floor; and

WHEREAS, the applicant submitted as-of-right plans which reflected that a complying building enlargement would result in a significantly smaller building with a worship space too constrained to accommodate the size of the congregation and accessory uses; and

WHEREAS, the applicant further states that the parking waiver is required because the small size of the lot and the existing building do not allow space for onsite parking; and

WHEREAS, the Board acknowledges that the Mosque, as a religious 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

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WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious 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 Mosque coupled with the constraints of the existing building create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Mosque is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram which reflects that there are several three- and four-story buildings on the subject block and across the street from the subject site and that there is a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant states that the adjacent buildings do not have the required front yard with a depth of 5'-0" and the existing building was built without a front yard with a depth of 5'-0"; and

WHEREAS, the Board inquired as to whether or not the third floor could be set back at the front and the applicant responded that setting it back would disturb the Islamic design of the façade which includes minarets that are ornamental and do not extend to the back of the building; and

WHEREAS, as to parking, the applicant notes that the use currently occupies the site and that all worshipers live within three-quarters of a mile from the site and walk to the site, so there will not be any parking demand; and

WHEREAS, further, the applicant notes that there are two metered parking lots nearby, including one across the street from the site and another 500 feet away, both with available public parking in the rare instance that a congregant drives to the site; and

WHEREAS, the Board notes that, based on the applicant's representation that all worshipers live within a three-quarter-mile radius of the site, this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship - but for the fact that a maximum of ten spaces can be waived in the subject R5 zoning district under ZR § 25-35; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 75 percent of the congregants live within three-quarters of a mile of the subject

site; and

WHEREAS, accordingly, 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 hardship was not self-created and that no development that would meet the programmatic needs of the Mosque could occur on the existing lot; and

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

WHEREAS, the applicant proposes to provide a set back with a width of 8'-0" along the eastern lot line of the new portions of the first and second floors and the new third floor, which respects the required minimum side yard width along that lot line; and

WHEREAS, the Board notes that the non-complying front yard and western side yard conditions are pre-existing; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Mosque the relief needed to meet its programmatic needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA069Q, dated June 15, 2012; and

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

WHEREAS, 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, 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

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grants a variance, to permit, on a site in an R5B zoning district, the legalization of a change in use and the construction of an enlargement to a two-story building to be occupied by a mosque (Use Group 4), which does not comply with the underlying zoning district regulations for front yard, side yards, and parking for community facilities, contrary to ZR §§ 24-35, 23-45, and 25-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 8, 2012" – (2) sheets, "Received June 15, 2012" – (2) sheets and "Received September 11, 2012" – (3) sheets; and *on further condition*:

THAT the building parameters will be: a maximum floor area of 4,672 sq. ft. (1.86 FAR); a maximum wall height of 30'-0" and total height of 33'-0"; a side yard with a width of 8'-0" at the first- and second-floor enlargement along the eastern lot line, and a setback of 8'-0" at the third floor along the eastern lot line, as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use will be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT the above conditions shall be listed on the certificate of occupancy;

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

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

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

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, September 25, 2012.

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, Barbara Cohen and Chris Taraglia.

THE VOTE TO CLOSE HEARING –

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

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

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 26th Street, between Avenues S and T, Block 7304, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

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

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, Alex Vekster.

For Opposition: Kim Zangrillo and John Lafemina.

THE VOTE TO CLOSE HEARING –

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

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

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9-12-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

43-12-BZ

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

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit a residential building, contrary to use regulations (§42-00). M1-5B zoning district.

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

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Raymond Levin.

ACTION OF THE BOARD – Laid over to November 27, 2012, at 1:30 P.M., for deferred decision.

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 and Shlomo Steve Wygoda.

For Opposition: Juan Reyes, Lora Tenenbaum, Tessa Grundon, Tony Krantz and Marna Lawrence.

ACTION OF THE BOARD – Laid over to November 20, 2012, at 1:30 P.M., for continued hearing.

66-12-BZ

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Nicholas Parking Corp./Owner of Lot 30, owner; Ladera, LLC, Owner of Lot 35, lessee.

SUBJECT – Application March 20, 2012 – Variance (§72-21) to permit a new mixed-use building containing a FRESH Program food store, a preschool and 164 residential units, contrary to use (§22-10), lot coverage (§24-11) and parking (§25-23) regulations. R7A,R8A/C2-4 zoning districts.

PREMISES AFFECTED – 223-237 Nicholas Avenue, aka 305 W. 121st Street and W. 122nd Street, Block 1948, Lot 30, 35, Borough of Manhattan.

COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Frank Chaney.

For Opposition: Nancy Cabrera.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

73-12-BZ

APPLICANT – Jeffrey Chester, Esq./GSHLLP, for 41-19 Bell Boulevard LLC, owner; LRHC Bayside N.Y. Inc., lessee.

SUBJECT – Application March 20, 2012 – Application for a special permit to legalize an existing physical culture establishment (*Lucille Roberts*). C2-2 zoning district.

PREMISES AFFECTED – 41-19 Bell Boulevard between 41st Avenue and 42nd Avenue, Block 6290, Lot 5, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

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

104-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Paula Jacob, owner.

SUBJECT – Application April 12, 2012 – Re-instatement (§11-411) of a previously approved variance which expired on May 20, 2000 which permitted accessory retail parking on the R5 portion of a zoning lot; Extension of Time to obtain a Certificate of Occupancy which expired on April 11, 1994; Waiver of the Rules. C2-4/R6A and R5 zoning district.

PREMISES AFFECTED – 178-21 & 179-19 Hillside Avenue, northside of Hillside Avenue between 178th Street and Midland Parkway, Block 9937, Lot 60, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Josh Rinesmith.

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

MINUTES

137-12-BZ

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

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

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

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Carol Rosenthal, Debra Sale and Jeff Brand.

For Opposition: Stefanie Marezzi (conditional).

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

152-12-BZ

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

SUBJECT – Application May 9, 2012 – Variance (§72-21) to permit construction of a four-story mixed use commercial and residential building, contrary to side yard (§23-462) requirements. C2-4/R6A zoning district.

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

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

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

163-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospitals Center, owner; New York University, lessee.

SUBJECT – Application May 31, 2012 – Variance (§72-21) to permit the development of a new biomedical research facility on the main campus of the NYU Langone Medical Center, contrary to rear yard equivalent, height, lot coverage, and tower coverage (§§24-382, 24-522, 24-11, 24-54) regulations. R8 zoning district.

PREMISES AFFECTED – 435 East 30th Street, East 34th Street, Franklin D. Roosevelt (FDR) Drive Service Road, East 30th Street and First Avenue, Block 962, Lot 80, 108, 1001-1107, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES – None.

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

190-11-BZ

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

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

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

COMMUNITY BOARD #3BX

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Donald Wilson.

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

193-12-BZ

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

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

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

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

202-12-BZ

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

SUBJECT – Application June 26, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building and special permit (§73-52) to permit the 25’-0” extension of the physical culture establishment use into a residential zoning district. C4-4/R7-1 zoning district.

PREMISES AFFECTED – 1030 Southern Boulevard, east

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side of Southern Boulevard, 264' south of intersection of Westchester Avenue and Southern Boulevard, Block 2743, Lot 6, Borough of Bronx.

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Todd Dale.

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on July 24, 2007, under Calendar No. 287-05-A and printed in Volume 92, Bulletin No. 29, is hereby corrected to read as follows:

287-05-A

APPLICANT – Evie Hantzopoulos/Astoria Neighborhood Coalition for 32-42 33rd Street LLC, owner.

SUBJECT – Application September 15, 2005 – Appeal seeking to revoke the Department of Buildings’ adoption of Technical Policy and Procedure Notice#5/98 and associated permit for the installation of cellular equipment on the roof of the subject site

PREMISES AFFECTED – 32-42 33rd Street, between Broadway and 34th Avenue, Block 612, Lot 53, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION –

WHEREAS, the instant appeal comes before the Board in response to a letter dated August 17, 2005, addressed to the appellant and to Councilmember Vallone that purports to be a final determination of the Commissioner of the NYC Department of Buildings (“DOB”) (the “Final Determination”); and

WHEREAS, the Final Determination states, in pertinent part:

This responds to your letter dated August 4, 2005 wherein you express concern about the proliferation of cellular antennas in the City and specifically question the Department’s justification for issuing a permit dated May 22, 2003 for the installation of cellular equipment at 32-42 33rd Street, Queens (the “Premises”), without a special permit from the Board of Standards and Appeals (the “BSA”).

This letter affirms the Department’s determination to permit the cellular antennas on the roof of the Premises without obtaining a special permit from BSA. While you correctly note that the Zoning Resolution § 22-21 provides that “telephone exchanges or other communication equipment structures” are permitted by special permit from the BSA, Included in this category are the telephone wires that extend across properties, and related telephone boxes that are often attached to buildings, in order to provide land telephone service to homes in a neighborhood. These wires and boxes have been routinely permitted for many years notwithstanding that the service they provide may not be limited solely, or even primarily, to the

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building or zoning lot on which they are situated. Likewise, on July 1, 1998, the Department issued Technical Policy and Procedure Notice #5/98 which recognized that cellular telephony had become a prevalent form of communication essential to the public interest and clarified the conditions under which small antennas and related equipment would not be classified “communication equipment structures.” The cellular installation that was permitted at the Premises meets the requirements of TPPN 5/98 and therefore is not subject to the requirement for a Special Permit from BSA.

We trust this responds to your inquiry. This is a final determination that may be appealed to the Board of Standards and Appeals.

WHEREAS, the Final Determination was provided in response to a letter dated August 4, 2005 from Councilmember Vallone and the appellant Astoria Neighborhood Coalition, Inc. (“Appellant”), which represents that it is a New York not-for-profit corporation, that requested a final determination with respect to the permit issued on May 22, 2003 for the cellular telephone equipment installed on the roof of the Premises so that this appeal could be filed; and

WHEREAS, the Appellant challenges DOB’s determination, in compliance with TPPN 5/98, that the installation of cellular telephone equipment on the roof of 32-42 33rd Street, Queens (the Premises) does not require a special permit pursuant to ZR § 22-21 from the Board; and

WHEREAS, a public hearing was held on this appeal on April 10, 2007, after due notice by publication in *The City Record*, with continued hearings on June 5, 2007 and July 17, 2007, and then to decision on July 24, 2007; and

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

WHEREAS, DOB and Omnipoint Communications, Inc. (“Omnipoint”), the owner of the cellular telephone equipment installed at the Premises, have been represented by counsel throughout this Appeal, and Appellant has been represented by one of its members, who lives in close proximity to the Premises; and

PROCEDURAL HISTORY

WHEREAS, the Alteration Type 2 DOB permit for installation of the cellular telephone equipment (consisting of antennas and equipment cabinets) on the roof of the Premises was issued on May 22, 2003 pursuant to DOB Application No. 401572712; and

WHEREAS, installation of the equipment on the roof of the Premises was completed no later than January 2004; and

WHEREAS, after correspondence with Appellant and Councilperson Vallone, the Commissioner of DOB issued the Final Determination on August 17, 2005; and

WHEREAS, on September 15, 2005, the Appellant filed the instant appeal; and

WHEREAS, on April 11, 2006 Omnipoint filed a “Statement in Support of Dismissal”; and

WHEREAS, the Board declined to dismiss the appeal and held three hearings on the instant appeal prior to closing

the matter and setting a decision date of July 24, 2007; and

WHEREAS, the Board notes that it has in several instances granted extensions of time to Appellant; and
SECTION 22-21 OF THE ZONING RESOLUTION AND THE SPECIAL PERMIT

WHEREAS, Z.R. § 22-21 lists uses that are permitted in residential districts by special permit pursuant to Z.R. § 73-14 from the Board of Standards and Appeals in residential districts; and

WHEREAS, in all residential districts, “Public utility or public service facilities” are permitted by special permit from the BSA; and

WHEREAS, furthermore, the specific enumeration of “public utility or public service facilities” includes “telephone exchanges or other communications equipment structures”; and

WHEREAS, Z.R. § 73-14 provides, in pertinent part, that:

In all *Residence Districts*, the Board of Standards and Appeals may permit . . . telephone exchanges or other communications equipment structures, provided that the following findings are made:

- (a) that such *use* will serve the residential area within which it is proposed to be located; that there are serious difficulties in locating it in a district wherein it is permitted as of right and from which it could serve the *residential* area, which make it necessary to locate such *use* within a *Residence District*; and

* * * * *

The Board may prescribe appropriate conditions or safeguards to minimize adverse effects on the character of the surrounding area, including requirements that . . . any such use shall be landscaped; and

WHEREAS, Appellant contends that the cellular telephone equipment installed at the Premises falls within the category of “telephone exchanges or other communications equipment structures,” and it therefore requires a special permit from BSA, regardless of size; and

WHEREAS, DOB, as explained below, asserts that it has the authority under the New York City Charter to interpret or “clarify” the Zoning Resolution; and

THE TPPN

WHEREAS, TPPN #5/98, dated July 1, 1998, reads, in pertinent part:

“The Department recognizes that cellular telephony has become a prevalent form of communication essential to the public interest. As such, those companies wishing to erect cellular antennas, and install related equipment are to be treated with the deference afforded other public utilities. Thus, to the extent the cellular antennas and related equipment meet the specifications and requirements set forth below, they are not subject to zoning. These specifications and requirements are based on

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the standards for cellular telephony at this time, and are designed to permit necessary and customary public utility service. To the extent the antenna and related equipment do not meet these criteria, they may be classified as Use Group 7 ‘communication equipment structures,’ and as such, may require a special permit in residence districts pursuant to Z.R. § 22-21.

1. The antennas must be attached to a building or other structure that has a use independent of supporting the antennas.
2. The antennas may not extend higher than six (6) feet above the height of the roof or parapet on the roof, or six feet above any penthouse or bulkhead, if placed on such penthouse or bulkhead.
3. The antennas shall each have an area no more than 8.45 square feet or one meter in diameter.
4. The related cellular equipment must not occupy more than 5% of the floor area on a zoning lot or 400 square feet”; and

WHEREAS, TPPN #5/98 contains additional Building Code requirements, which are not at issue in the instant appeal; and

WHEREAS, in April 2007, through both a review of plans and a physical inspection, DOB confirmed that the antennas and cabinets installed at the Premises comply with TPPN #5/98; and

WHEREAS, Appellant does not dispute that the antennas and other equipment fall within the category of equipment exempted from special permit requirements set forth in TPPN #5/98 but rather challenge the ability of the jurisdiction of DOB to issue the TPPN; and

DISCUSSION

A. DOB’s Authority to Interpret the Zoning Resolution

WHEREAS, Appellant argues that DOB’s issuance of TPPN #5/98 was beyond its authority and effectively changed the Zoning Resolution without going through the public process required for text amendment of the Zoning Resolution; and

WHEREAS, DOB asserts that the City Charter gives DOB the power to enforce the Zoning Resolution, and concomitant with the power to enforce or administer the Zoning Resolution is the power to clarify or interpret; and

WHEREAS, DOB further argues that TPPN #5/98 is a clarification, rather than a “variance” from the requirements of the Zoning Resolution; and

WHEREAS, Appellant in its April 24, 2007 submission provides a list of TPPNs printed from DOB’s web page at www.nyc.gov as evidence that only TPPN #5/98 changes the Zoning Resolution instead of merely clarifying or interpreting it; and

WHEREAS, Appellant discusses none of the listed TPPNs or makes any attempt otherwise to distinguish them from TPPN #5/98; and

WHEREAS, Omnipoint points out that other TPPNs on the list submitted by appellants – specifically, TPPN #10/99

(setting a specific square footage minimum for determining whether a convenience store is accessory to an automotive service station) and TPPN #11/93 (setting criteria to qualify Pet Receiving Facilities similar to other veterinary medical facilities for use and siting purposes) – are analogous to TPPN #5/98 in carving out certain categories of uses for a different standard of regulatory scrutiny; and

WHEREAS, the Board notes that neither of the key phrases -- “telephone exchanges” or “communications equipment structures” – or their component words, is a defined term within the Zoning Resolution; and

WHEREAS, if DOB cannot interpret or define the phrases “telephone exchange” and “communications equipment structure,” it would not be possible for DOB to enforce ZR § 22-21; and

WHEREAS, furthermore, Omnipoint observes that § 641 of the City Charter gives broad authority to the Commissioner of DOB to regulate alterations of buildings and equipment, including “the regulation of electrical wires and wiring apparatus . . . used . . . for signaling, communication, alarm and data transmission in or on any building or structure . . .”; and

WHEREAS, although not dispositive on the issue of DOB’s authority to interpret the Zoning Resolution, Omnipoint also cites language from federal regulations, the Building Code and the Zoning Resolution that supports its position that the cellular telephone equipment at issue in the instant appeal is neither a “telephone exchange” nor a “communications equipment structure”; and

WHEREAS, both DOB and Omnipoint also cite In the Matter of Cellular Telephone Company, D/B/A Cellular One v. Armand Rosenberg, et al., 82 N.Y.2d 364 (1993) for the proposition that wireless carriers provide an essential public service and should be accorded favored treatment in matters of zoning; and

B. DOB’s Interpretation of ZR § 22-21 in TPPN #5/98 is a Reasonable Exercise of its Authority to Interpret the Zoning Resolution

WHEREAS, DOB observes that in the six months between September 1, 2006 and February 28, 2007, it issued over 100 permits for cellular antennas in residential districts; and

WHEREAS, TPPN #5/98 was issued in response to the growing number of applications for permits to install cellular telephone equipment; and

WHEREAS, TPPN #5/98 has the effect of expediting the permitting by DOB of many small cellular telephone equipment installations that fall below the minimum specifications set forth in TPPN #5/98 and that are no more obtrusive than landline telephone poles and wires that do not require approvals from DOB or the Board; and

WHEREAS, only small installations, which are unlikely to have other significant impacts, fall within the ambit of TPPN #5/98; and

WHEREAS, given the limited requirement of the special permit set forth at Z.R. § 73-14 that the “telephone exchange or other communications equipment structures”

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serve the residential area in which they are located and that there are “serious difficulties” in locating them elsewhere, along with the nature of such cellular telephone antennas as are at issue in the instant appeal to serve only the area in which they are located, the siting of such small structures would be expected to be routine and therefore a proper area for DOB’s exercise of its authority to interpret the Zoning Resolution; and

WHEREAS, the Zoning Resolution does not define “telephone exchange” or “communications equipment structure” in such a way as to preclude DOB from exercising its authority to interpret the Zoning Resolution; and

WHEREAS, Omnipoint argues that the cellular telecommunications equipment at issue in this appeal is neither a “telephone exchange” nor a “communications equipment structure” and therefore not even within the scope of the special permit; and

WHEREAS, Omnipoint further points to Appellant’s omission of the word “structure” from its characterization of Z.R. § 22-21 in its April 24, 2007 submission in order to broaden the applicability of the special permit beyond the structures intended to be covered; and

WHEREAS, whether or not Omnipoint’s argument that the antennas in the instant case are not “structures” regulated under the special permit is correct, their small size and ubiquity make their status under the Zoning Resolution appropriate for clarification by DOB through TPPN #5/98; and

WHEREAS, at hearing, Omnipoint cited statistics indicating the level of integration of cellular communications into the New York telecommunications network, including usage of the particular cellular antennas at issue in the instant appeal, which included 1,443 “911” calls in 2006, and 1.6 million minutes of calls in 2007; and

WHEREAS, the effect of TPPN #5/98 is to streamline the siting process for small cellular telephone equipment installations, which provide a public benefit and which are now thoroughly integrated into the telephone communications network; and

WHEREAS, DOB explicitly recognized in TPPN #5/98 that cellular telephone equipment has become “a prevalent form of communication essential to the public interest”; and

WHEREAS, the Final Determination reiterates that “it has long been accepted that there are certain public utility uses that are so essential to the public interest and that are so incidental to the principal uses on the zoning lot, that they are not the intended subject of zoning use restrictions”; and

WHEREAS, in its submission of March 23, 2007, DOB states that, “[a]s cellular telephone service has become a service effectively comparable in ubiquity to traditional landline phone service, it is necessary and appropriate to treat cellular antenna facilities comparably to telephone wiring facilities, with the provisions of the Zoning Resolution being inapplicable to basic transmission facilities of reasonable, minimal size and scope as described in the TPPN”; and

WHEREAS, the Board finds that DOB reasonably

exercised its authority to interpret the Zoning Resolution in issuing TPPN #5/98 by permitting certain categories of cellular telephone equipment without requiring a special permit from the Board of Standards and Appeals; and

C. Prior BSA Decisions Do Not Contradict DOB’s Authority to Issue the TPPN

WHEREAS, Appellant argues that TPPN #5/98 removed cellular telecommunications equipment installations like the one at issue in the instant appeal from public review and BSA jurisdiction under Z.R. § 73-14; and

WHEREAS, the Board directed Appellant to provide evidence of its assertion that BSA has customarily granted special permits pursuant to Z.R. § 73-14 to such telecommunications equipment installations; and

WHEREAS, Appellant did not introduce any such evidence into the record; and

WHEREAS, Appellant cites BSA Cal. No. 631-87-BZ, which involved the issuance of a special permit for the installation of cellular telephone transmission equipment on and in a Queens building as precedent for requiring a special permit for installation of all rooftop cellular telephone transmission equipment; and

WHEREAS, the DOB objection on which BSA Cal. No. 631-87-BZ was based states:

The use of a portion of the cellar in an R4 Zone for a “telephone exchange or other communications equipment structure,” including roof mounted antennae, in Use Group 6 is contrary to Section 22-10 of the Zoning Resolution; and

WHEREAS, the language of the DOB objection makes clear that the denial was based on the equipment proposed to be installed in the cellar, and not on the antennas; and

WHEREAS, BSA Cal. No. 631-87-BZ, decided over ten years prior to the issuance of TPPN #5/98, is distinguishable from the matter in the instant appeal in that 1) it involved the installation of a substantial amount of equipment in the cellar of the building, 2) it would not fall within the exemption from special permit requirement created by TPPN #5/98, and 3) it arose during the early implementation of a cellular telephone network, and before either the federal Telecommunications Act of 1996 or before DOB had reasonably determined, based on the proliferation of cellular communications, that certain small cellular installations should not be required to go through the application process for a special permit from the Board; and

WHEREAS, even if the cellular equipment at issue in BSA Cal. No. 631-87-BZ were comparable to that giving rise to the instant appeal, DOB correctly notes and the Board agrees that cellular communications companies are always free to seek a special permit, as the TPPN does not – and could not – prohibit an applicant from seeking a special permit or prohibit the BSA from granting one; and

D. Federal Law

WHEREAS, Omnipoint, in its Statement in Support of Dismissal, cites the federal Telecommunications Act of 1996 (the “Act”) in support of its argument that Appellant lacks standing (a question not addressed by the Board herein); and

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WHEREAS, the Act specifically provides that “[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulation concerning such emissions, 47 U.S.C. § 332(c); and

WHEREAS, Omnipoint also cites Cellular Telephone Co. v. Oyster Bay, 166 F.3d 490 (2d Cir. 1999) and Reno v. ACLU, 521 U.S. 844, 857 (1997) for the general proposition that federal policy is to promote the availability of cellular communication; and

WHEREAS, although the Act explicitly limits local authority only with respect to regulating cellular transmission facilities on the basis of potential health effects; and

WHEREAS, TPPN #5/98, to the extent it makes the siting of small cellular telephone transmission facilities less burdensome, is consonant with federal policy; and

WHEREAS, in the absence of City legislation to regulate small cellular telecommunications installations, federal policy supports the rationale behind TPPN #5/98; and
ISSUES NOT ADDRESSED IN THIS APPEAL

WHEREAS, in its “Statement in Support of Dismissal,” dated April 11, 2006, Omnipoint makes a number of arguments in support of dismissal of the instant appeal, including arguments based on statutory law and equitable principles; and

WHEREAS, in the interest of deciding the substantive issues presented by this appeal, the Board declines to rule on any of the above reasons for dismissal of the instant appeal; and
CONCLUSION

WHEREAS, the Board finds that DOB acted within the scope of its authority in issuing TPPN #5/98; and

WHEREAS, the Board also finds that DOB acted reasonably in exercising its authority to interpret the Zoning Resolution in TPPN #5/98; and

WHEREAS, DOB’s clarification of Z.R. § 22-21 is consistent with its practice in issuing prior Technical Policy and Procedure Notices; and

WHEREAS, the Board declines to substitute its judgment for either that of DOB, which is charged with interpretation of the Zoning Resolution, or that of the City Council, which may act to provide citizens the opportunity to be heard on all matters, however small, involving the installation of cellular telephone equipment; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated August 17, 2005, determining that the cellular telephone equipment installed at the Premises did not require a special permit from the Board of Standards and Appeals pursuant to Z.R. § 22-21, is hereby denied.

Adopted by the Board of Standards and Appeals, July 24, 2007.

***The resolution has been revised to correct the Applicant and Subject. Corrected in Bulletin Nos. 39-40, Vol. 97, dated October 3, 2012.**

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*CORRECTION

This resolution adopted on August 7, 2012, under Calendar No. 117-11-BZ and printed in Volume 97, Bulletin Nos. 32-33, is hereby corrected to read as follows:

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 Montanez5

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 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. (0.87 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. (0.91 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

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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 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,

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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

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);

MINUTES

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.

***The resolution has been revised to correct the FAR on the 9th and 10th WHEREAS, which read: ... (1.48 FAR) and (1.58 FAR); now reads: ... (0.87 FAR) and (0.91 FAR).**

Corrected in Bulletin Nos. 39-40, Vol. 97, dated October 3, 2012.