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# BULLETIN

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

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Volume 97, Nos. 41-43

October 25, 2012

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### DIRECTORY

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**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan**, *Executive Director*

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# DOCKET

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New Case Filed Up to October 16, 2012  
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**285-12-BZ**

54 West 39th Street, south side of West 39th Street between Fifth Avenue and Avenue of the Americas., Block 840, Lot(s) 78, Borough of **Manhattan, Community Board: 5**. This application is filed pursuant to Section 73-36 of the Zoning Resolution, seeking a special permit to allow the operation of a physical culture establishment on the 4th floor of the existing building at the premises. M1-6 district.  
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**286-12-BZ**

1925 Union Street, north side of Union Street between Portal Street and Ralph Avenue., Block 1399, Lot(s) 82, Borough of **Brooklyn, Community Board: 8**. Variance (§72-21) to permit to permit for a vertical enlargement and conversion of an existing two-story automotive repair facility to a four-story Use Group 4A House of Worship (the Church). Variances are required to maintain its existing lawful non-conforming lot coverage ratio (§24-11) and rear yard (§24-391) and waiver the minimum parking spaces (§25-30). R6 zoning district.  
-----

**287-12-A**

165 Reid Avenue, East side of Beach 201 Street, 335' north of Breezy Point Blvd., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. The proposed enlargement of the existing building located partially with in the bed of a mapped street contrary to General City Law Section 35 and the upgrade of an existing private disposal system is to the Department of Building policy. R4 zoning district.  
-----

**288-12-A**

319 Ramona Avenue, northwest corner of intersection of Ramona Avenue and Huguenot Avenue, Block 6843, Lot(s) 2, Borough of **Staten Island, Community Board: 3**. Proposed construction of three two family homes not fronting on a legally mapped street contrary to General City Law Section 36 . R3X (SRD) zoning district.  
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**289-12-A**

323 Ramona Avenue, northwest corner of intersection of Ramona Avenue and Huguenot Avenue., Block 6843, Lot(s) 3, Borough of **Staten Island, Community Board: 3**. Proposed construction of three two family homes not fronting on a legally mapped street contrary to General City Law Section 36 . R3X (SRD) zoning district.  
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**290-12-A**

327 Ramona Avenue, northwest corner of intersection of Ramona Avenue and Huguenot Avenue, Block 6843, Lot(s) 4, Borough of **Staten Island, Community Board: 3**. Proposed construction of three two family homes not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SRD) zoning district.  
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**291-12-BZ**

301 West 125th Street, northwest corner of intersection of West 125th Street and Frederick Douglas Boulevard., Block 1952, Lot(s) 29, Borough of **Manhattan, Community Board: 10**. Application for special permit to allow physical culture establishment within proposed commercial building. C4-4D(125) district.  
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**292-12-A**

19 Marion Walk, east side of Marion Walk, 125' north of Breezy Point., Block 16350, Lot(s) p/o400, Borough of **Queens, Community Board: 14**. The proposed reconstruction and enlargement of the existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law. The proposed upgrade of the existing private disposal system in the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law. R4 district.  
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**293-12-BZ**

1245 83rd Street, north side of 83rd Street between 12th Avenue and 13th Avenue, Block 6302, Lot(s) 60, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to §23-141(b) (floor area regulations) and §23-461(a) (side yard requirements). R3X zoning district. R3X district.  
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**294-12-BZ**

130 Clinton Street, between Joralemon Street and Aitken Place., Block 264, Lot(s) 17, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to permit a physical culture establishment. C5-2A/DB special zoning district. C5-2A DB district.  
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# DOCKET

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**295-12-BZ**

49-33 Little Neck Parkway, Little Neck Parkway and Bates Road., Block 8263, Lot(s) 110, Borough of **Queens, Community Board: 11.** Variance (§72-21) to permit the expansion of a non-conforming Use Group 4 dentist's office, contrary to §52-22. R1-2 zoning district.

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**296-12-BZ**

2374 Grand Concourse, northeast corner of intersection of Grand Concourse and East 184th Street., Block 3152, Lot(s) 36, Borough of **Bronx, Community Board: 5.** Special Permit (§73-36) to permit a physical culture establishment within existing building. C4-4 zoning district.

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

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# CALENDAR

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**OCTOBER 30, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 30, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **95-90-BZ**

APPLICANT – Akerman Senterfitt, LLP, for Bell Realty, owner; CVS Pharmacy, lessee.

SUBJECT – Application July 26, 2012 – Extension of Term of a previously approved variance (§72-21) which permitted retail (UG 6) with accessory parking for 28 vehicles which expired on January 28, 2012. R1-2 zoning district.

PREMISES AFFECTED – 242-24 Northern Boulevard, bounded by Northern Boulevard north of Douglaston Parkway, west and 243<sup>rd</sup> Street to the east, Block 8179, Lot 1, Borough of Queens.

**COMMUNITY BOARD #11Q**

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### **67-91-BZ**

APPLICANT – Sheldon Lobel, P.C., for H.N.F. Realty, LLC, owner; Cumberland Farms, Inc. lessee.

SUBJECT – Application July 27, 2012 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on March 17, 2012; Waiver of the Rules. C1-2 zoning district.

PREMISES AFFECTED – 260-09 Nassau Boulevard, north corner of intersection formed by Little Neck Parkway and Nassau Boulevard, Block 8274, Lot 135, Borough of Queens.

**COMMUNITY BOARD #11Q**

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### **68-91-BZ**

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application August 24, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on May 19, 2012; Amendment §11-412) to permit the legalization of certain minor interior partition changes and a request to permit automotive repair services on Sundays; Waiver of the Rules. R5D/C1-2 & R2A zoning district.

PREMISES AFFECTED – 223-15 Union Turnpike, northwest corner of Springfield Boulevard and Union Turnpike, Block 7780, Lot 1, Borough of Queens.

**COMMUNITY BOARD #11Q**

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### **314-08-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 437-51 West 13<sup>th</sup> Street LLC, owner.

SUBJECT – Application September 12, 2012 – Time to complete construction of a previously approved variance (§72-21) to permit the construction of a 12-story commercial building (office and UG10 retail). M1-5 zoning district.

PREMISES AFFECTED – 437-447 West 13<sup>th</sup> Street, southeast portion of block bounded by West 13<sup>th</sup>, West 14<sup>th</sup> and Washington Streets and Tenth Avenue, Block 646, Lot 19, 20, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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## **APPEALS CALENDAR**

### **88-12-A & 89-12-A**

APPLICANT – Fried Frank by Richard G. Leland, Esq., Van Wagner Communications, LLC

OWNER OF PREMISES – Name Mutual, LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in commercial district.

PREMISES AFFECTED – 462 11<sup>th</sup> Avenue, between 37<sup>th</sup> and 38<sup>th</sup> Streets, Block 709, Lot 3, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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### **95-12-A & 96-12-A**

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communications, LLC.

OWNER OF PREMISES – Calandra LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district.

PREMISES AFFECTED – 2284 12<sup>th</sup> Avenue, west side of 12th Avenue between 125<sup>th</sup> and 131<sup>st</sup> Streets, Block 2004, Lot 40, Borough of Manhattan.

**COMMUNITY BOARD #9M**

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### **99-12-A & 100-12-A**

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – 393 Canal Street LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-5B zoning district.

PREMISES AFFECTED – 393 Canal Street, Laight Street and Avenue of the Americas, Block 227, Lot 7, Borough of Manhattan.

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# CALENDAR

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## COMMUNITY BOARD #2M

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### 101-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq. for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – Mazda Realty Associates.

SUBJECT – Application April 11, 2012 – Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-5 zoning district.

PREMISES AFFECTED – 13-17 Laight Street, south side of Laight Street between Varick Street and St. John's Lane, Block 212, Lot 18, Borough of Manhattan.

### COMMUNITY BOARD #1M

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*Jeff Mulligan, Executive Director*

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

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

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## ZONING CALENDAR

### 55-12-BZ

APPLICANT – Eric Palatnik, P.C., for Kollel L'Horoah, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-19) to permit the legalization of an existing Use Group 3 religious-based not for profit school (*Kollel L'Horoah*) which is contrary to §42-00. M1-2 zoning district.

PREMISES AFFECTED – 762 Wythe Avenue, corner of Penn Street, Wythe Avenue and Rutledge Street, Block 2216, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

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### 67-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 1442 First Avenue, LLC, owner.

SUBJECT – Application March 21, 2012 – Variance (§72-21) to allow for the extension of an eating and drinking establishment from the first to the second floor, contrary to ZR §32-421. C1-9 zoning district.

PREMISES AFFECTED – 1442 First Avenue, southeast corner of the intersection formed by 1<sup>st</sup> Avenue and East 75<sup>th</sup> Street, Block 1469, Lot 46, Borough of Manhattan.

### COMMUNITY BOARD #8M

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### 112-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Raymond B. and Colleen Olsen, owners.

SUBJECT – Application April 23, 2012 – Special Permit (§73-621) for the enlargement of an existing one-family dwelling that will decrease the open space ratio contrary to ZR §23-141. R2 zoning district.

PREMISES AFFECTED – 244 Demorest Avenue, southwest corner of intersection of Demorest Avenue and Leonard Avenue, Block 444, Lot 15, Borough of Staten Island.

### COMMUNITY BOARD #1SI

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### 154-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Caroline Teitelbaum and Joshua Teitelbaum, owners.

SUBJECT – Application May 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR §23-141);

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# CALENDAR

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side yards (ZR §23-461(a)) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1202 East 22<sup>nd</sup> Street, west side of East 22<sup>nd</sup> Street between Avenue K and Avenue L, Block 7621, Lot 59, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**209-12-BZ**

APPLICANT – The Law Offices of Stuart Klein, for 910 Manhattan Avenue Realty Corp., owner.

SUBJECT – Application July 6, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment. C4-3A zoning district.

PREMISES AFFECTED – 910 Manhattan Avenue, north east corner of Greenpoint and Manhattan Avenues, Block 2559, Lot 4, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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**241-12-BZ**

APPLICANT – Greenberg Traurig, LLP by Deidre A. Carson, Esq., for 8-12 Development Partners, owners; 10-12 Bond Street, lessee.

SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a new residential building with residential and retail use below the level of the second story contrary to §42-10 and §42-14D(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street aka 358-364 Lafayette Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot 62, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, OCTOBER 16, 2012  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**301-85-BZ**

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

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

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

**COMMUNITY BOARD #8M**

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance to permit certain retail uses (Use Group 6) at the first floor of a six-story (including penthouse) building within a residential zoning district; 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 October 16, 2012; and

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

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

WHEREAS, representatives of Carnegie Hill Neighbors and certain members of the community provided testimony in opposition to this application (hereinafter, the "Opposition"), raising the primary concern that the proposed expansion of the permissible Use Group 6 uses at the site would be detrimental to the surrounding neighborhood character; and

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

WHEREAS, the site is located on the south side of East

86<sup>th</sup> Street between Madison Avenue and Park Avenue, in an R10 zoning district within the Special Park Improvement District; and

WHEREAS, the site is occupied by a six-story (including penthouse) mixed-use building with ground floor retail use and with residential use above; and

WHEREAS, on February 11, 1986, under the subject calendar number, the Board granted a variance to permit the ground floor of the subject building to be occupied by certain retail uses (Use Group 6) limited to the following: a beauty parlor, art gallery, or clothing store; and

WHEREAS, subsequently, the grant has been amended and the term extended on various occasions; and

WHEREAS, most recently, on August 22, 2006, Board granted a 15-year extension of term, to expire on February 11, 2021; and

WHEREAS, the applicant now requests an amendment to permit: (1) the expansion of the uses permitted to occupy the ground floor to include a bank, drug store, optician, a sporting goods store, and a bicycle sales, rental or repair shop; and (2) an expansion of the permitted days of operation from Monday through Saturday to seven days per week; and

WHEREAS, the applicant states that the ground floor of the subject building was leased to a beauty parlor on September 1, 1986, and that this business has occupied the site continuously since that time; and

WHEREAS, the applicant submitted a letter from the owner of the building stating that the current tenant (the beauty parlor) may choose not to renew its lease, in which case the limitation of the permitted Use Group 6 uses to beauty parlor, art gallery, and clothing store would be detrimental to renting the space; and

WHEREAS, the applicant further states that the ground floor of the subject building has been occupied by a commercial use since before the enactment of the 1916 Zoning Resolution, and that the building is located only 13 feet east of a C5-1 zoning district; and

WHEREAS, the applicant represents that the requested additional Use Group 6 uses were selected based on consultations with real estate brokers concerning other possible retail uses that would be similarly compatible with the neighborhood as the existing beauty parlor has been; and

WHEREAS, as to the request to expand the permitted days of operation from six to seven, the applicant states that the ground floor retail space is currently permitted to operate Monday through Saturday, from 9:00 a.m. to 8:00 p.m., and that it now seeks to also operate on Sundays, from 11:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant submitted a table reflecting all of the commercial uses on East 86<sup>th</sup> Street between Fifth Avenue and Lexington Avenue and their days and hours of operation, which reflects that most stores are open from approximately 11:00 a.m. to 6:00 p.m. on Sundays; accordingly, the proposed hours of operation would be consistent with other commercial stores in the area; and

WHEREAS, the Opposition contends that the proposed expansion of the permitted Use Group 6 uses at the site would

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# MINUTES

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have a negative impact on the surrounding neighborhood character; and

WHEREAS, specifically, the Opposition argues that the mid-block portion of the subject block is distinctly residential in character and that the subject site is the only commercial presence on the subject block within the R10 district; and

WHEREAS, the Opposition states that, while it does not object to the request to permit Sunday hours at the site or to expand the permitted uses on the site to include an optician, the impact of increased commercial traffic, increased lighting, or increased utilization of display windows that could result from the other uses proposed by the applicant would have a detrimental impact on the residential character of the area; and

WHEREAS, in response to the concerns raised by the Opposition, the applicant revised its proposal to remove the requested bicycle sales, rental, or repair shop from the requested uses on the site; and

WHEREAS, the Opposition expressed additional concerns that a bank use at the site would present after-hours security issues on the block, and a drug store use could result in "mission creep" whereby drug stores expand their sales to convenience items and food, including prepared take-out items such as sandwiches; and

WHEREAS, the Board finds that, given the security concerns raised by the Opposition, the retail uses permitted on the ground floor should not be expanded to include the proposed bank use, which the applicant indicates would include ATM use on the interior of the bank accessible by cardholders after hours; and

WHEREAS, however, the Board finds that the optician, sporting goods store, and drug store uses proposed by the applicant would not negatively impact the surrounding area, particularly given the multitude of commercial uses in the vicinity of the site and the small footprint of the subject building which limits the types of drug stores and sporting goods stores that can make use of the site; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, dated February 11, 1986, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received May 8, 2012'-(3) sheets; and *on further condition*:

THAT the term of this grant will expire on February 11, 2021;

THAT the uses on the first floor will be limited to beauty parlor, art gallery, clothing store, drug store, optician, and sporting goods store (not including bicycle sales, rental, or repair);

THAT the hours of operation will be limited to: Monday through Saturday, from 9:00 a.m. to 8:00 p.m.; and Sunday, from 11:00 a.m. to 6:00 p.m.;

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

THAT the above conditions will 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; 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."

(Alt. 121027405)

Adopted by the Board of Standards and Appeals, October 16, 2012.

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## 194-02-BZ

APPLICANT – Sheldon Lobel, P.C., for Shore Plaza LLC, owner; Staten Island Fitness Group, LLC, lessee.

SUBJECT – Application May 16, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*Planet Fitness*) which expired on December 1, 2011; Waiver of the Rules. C4-3 zoning district.

PREMISES AFFECTED – 1775 South Avenue, southeast corner of the intersection formed by Meredity and South Avenues, Block 2800, Lot 37, Borough of Staten Island.

### COMMUNITY BOARD #2SI

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on December 1, 2011; 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 October 16, 2012; and

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

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

WHEREAS, the PCE is located on a triangularly-shaped lot on the south side of South Avenue between the West Shore Expressway and Meredith Avenue, within a C4-3 zoning district; and

WHEREAS, the zoning lot has a total area of approximately 777,000 sq. ft. and is occupied by the "West Shore Plaza" shopping center; and

WHEREAS, the PCE occupies approximately 15,000

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# MINUTES

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sq. ft. of floor area located in the southwest corner of the shopping center; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 25, 2003 when, under the subject calendar number, the Board granted a special permit to legalize a PCE in the subject building for a term of ten years, to expire on December 1, 2011; and

WHEREAS, on June 22, 2006, the Board issued a letter of substantial compliance which approved certain minor modifications to the previously-approved plans, and a change in ownership and operation of the PCE from Johnny Lat's Gym to Planet Fitness; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on March 25, 2003, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from December 1, 2011, to expire on December 1, 2021, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received May 16, 2012'-(7) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 1, 2021;

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

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 500522534)

Adopted by the Board of Standards and Appeals, October 16, 2012.

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### 330-05-BZ

APPLICANT – Vito J. Fossella, P.E., LPEC, for Frank Bennett, owner.

SUBJECT – Application February 29, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*AF Bennett Salon and Wellness Spa*) which expired on January 30, 2102; Extension of Time to Complete Construction which expired on January 30, 2011; amendment to further

enlarge the PCE into the neighboring cellar; Waiver of the Rules. R3-2/C2-2 zoning district.

PREMISES AFFECTED – 350 New Dorp Lane, south side of New Dorp Lane, 260' east of corner formed by the intersection of New Dorp Lane and Clawson Avenue, Block 4221, Lot 53, Borough of Staten Island.

### COMMUNITY BOARD #2SI

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), an extension of time to complete construction, and an amendment to permit the enlargement of the PCE; 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 October 16, 2012; and

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

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

WHEREAS, the PCE is located on the south side of New Dorp Lane between Clawson Street and Hylan Boulevard, within a C2-2 (R3-2) zoning district; and

WHEREAS, the zoning lot has a total area of 5,670 sq. ft. and is occupied by two one-story and cellar buildings, one at 346 New Dorp Lane (the "346 Building"), and one at 350 New Dorp Lane (the "350 Building"); and

WHEREAS, the applicant represents that the PCE is located in the entirety of the 350 Building and in the cellar of the 346 Building (the first floor of the 346 Building is currently occupied by a photography store); and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 30, 2007 when, under the subject calendar number, the Board granted a special permit to legalize the PCE in the 350 Building and to permit the expansion of the PCE to include 1,284 sq. ft. of floor space in the cellar of the 346 Building, for a total of 7,210 sq. ft. of floor space within the two buildings, for a term of five years, to expire on January 30, 2012; and

WHEREAS, pursuant to ZR § 73-70, substantial construction was to be completed within four years; and

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

WHEREAS, the applicant states that substantial construction was not completed as of the stipulated date because construction was delayed due to financial hardship

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resulting from difficulty in obtaining a construction loan following the Board's grant; and

WHEREAS, however, the applicant states that the owner has now obtained a construction loan and is prepared to proceed with construction; and

WHEREAS, the applicant also requests an amendment to permit the further expansion of the cellar by approximately 600 sq. ft., for a total of approximately 7,810 sq. ft. of total PCE floor space within the two buildings; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on January 30, 2007, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from January 30, 2012, to expire on January 30, 2022, to grant an extension of time to complete construction and obtain a certificate of occupancy for two years from the date of this grant, to expire on October 16, 2014, and to permit the noted modifications to the approved plans, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received February 29, 2012'-(2) sheets and 'August 2, 2012'-(1) sheet; and *on further condition*:

THAT the term of this grant will expire on January 30, 2022;

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

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

THAT substantial construction will be completed and a certificate of occupancy obtained by October 16, 2014;

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

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

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

(DOB Application No. 500809084)

Adopted by the Board of Standards and Appeals, October 16, 2012.

## 299-82-BZ

APPLICANT – Bryan Cave LLP/Robert S. Davis, Esq., for 10 Stanton Owners LLC, Chrystie Land Assoc. LLC c/o Sukenik, Segal & Graff, P.C.

SUBJECT – Application May 4, 2012 – Amendment to a previously granted variance (§72-21) which allowed a

residential building. Proposed amendment would permit a new mixed use hotel and residential building on the subject zoning lot. C6-1 zoning district.

PREMISES AFFECTED – 207-217 Chrystie Street, northwest corner of Chrystie Street and Stan Street, Block 427, Lot 2,200, Borough of Manhattan.

## COMMUNITY BOARD #3M

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 November 27, 2012, at 10 A.M., for decision, hearing closed.

## 271-90-BZ

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

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

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

## COMMUNITY BOARD #2Q

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

## 84-91-BZ

APPLICANT – Eric Palatnik, P.C., for Ronald Klar, owner.

SUBJECT – Application May 17, 2012 – Extension of Term of a previously granted variance (§72-21) which permitted professional offices (Use Group 6) in a residential building which expires on September 15, 2012. R4A zoning district.

PREMISES AFFECTED – 2344 Eastchester Road, east side south of Waring Avenue, Block 4393, Lot 17, Borough of Bronx.

## COMMUNITY BOARD #11BX

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

## 135-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.

SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver of the Rules. C1-2(R5) zoning district.

PREMISES AFFECTED – 1815/17 86<sup>th</sup> Street, 78'-8.3"northwest 86<sup>th</sup> Street and New Utrecht Avenue, Block

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6344, Lot 69, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 10 A.M., for deferred decision.

### 302-01-BZ

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

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

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

## COMMUNITY BOARD #3BX

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

### 189-03-BZ

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

SUBJECT – Application November 21, 2011 – Extension of Term of a previously granted special permit (§73-211) for the continued operation of an automotive service station (*Shell*) with an accessory convenience store (UG 16B) which expires on October 21, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on October 21, 2008; Waiver of the Rules. C2-2/R-5 zoning district.

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

## COMMUNITY BOARD #12BX

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

### 141-06-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.

SUBJECT – Application August 7, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) permitting the construction of a three-story synagogue (*Congregation Tefiloh Ledovid*) which expired on June 19, 2011; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 2084 60<sup>th</sup> Street, corner of 21<sup>st</sup> Avenue and 60<sup>th</sup> Street, Block 5521, Lot 42, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

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

## APPEALS CALENDAR

### 162-11-A

APPLICANT – Akerman Senterfitt, LLP, for 179 Ludlow Holding LLC, owners.

SUBJECT – Application October 17, 2011 – Appeal seeking a common law vested right to continue construction commenced under prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot 26, Borough of Manhattan.

## COMMUNITY BOARD #3M

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a seven-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 March 6, 2012, after due notice by publication in *The City Record*, with continued hearings on April 3, 2012, May 1, 2012, and September 11, 2012, and then to decision on October 16, 2012; and

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

WHEREAS, the subject site is located on the west side of Ludlow Street between Houston Street and Stanton Street, within a C4-4A zoning district; and

WHEREAS, the site has 23.83 feet of frontage on Ludlow Street, a depth of 87.83 feet, and a total lot area of approximately 2,093 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a seven-story mixed-use commercial/residential building with a floor area of 9,652 sq. ft. (4.6 FAR) (the “Building”); and

WHEREAS, the subject site is currently located within a C4-4A zoning district, but was formerly located within C6-1 zoning district; and

WHEREAS, the Building complies with the former C6-1 zoning district parameters, specifically with respect to floor area ratio (“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 C4-4A, as noted above; and

WHEREAS, the Building does not comply with the C4-4A zoning district parameters as to FAR; and

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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, the Board notes that Alteration Permit No. 104385746-01-AL was issued on March 24, 2006 (the "Permit"), authorizing the renovation of the existing two-story building, the conversion of the second floor residential use to commercial use, and the addition of floors three to seven for residential use, pursuant to C6-1 zoning district regulations; and

WHEREAS, the applicant states that construction was not completed as of the Rezoning Date; and

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

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

WHEREAS, by letters dated April 4, 2012 and July 20, 2012, DOB stated that it issued a letter of intent to revoke the permit after an audit revealed an objection related to egress; and

WHEREAS, in response, the applicant met with DOB and revised its plans to address the egress objection; and

WHEREAS, by letter dated September 24, 2012, DOB stated that it removed the egress objection on August 28, 2012, and that the Permit was lawfully issued and there are no outstanding objections; and

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

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

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

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term

which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to substantial construction, the applicant states that the owner has completed the following: the superstructure, exterior walls, and interior rooms; and certain interior finishes; and

WHEREAS, the applicant submitted an affidavit from the general contractor stating that the construction completed at the site prior to the Rezoning Date constitutes approximately 72 percent of the total work for the project; and

WHEREAS, the applicant represents that the only remaining construction for the Building includes the installation of finishes in the kitchens and bathrooms, installation of fire alarm, sprinkler, and HVAC systems, and completion of the elevator shaft, balconies, roof, and facade; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: an existing construction estimate, an affidavit from the general contractor; and photographs of the site from prior to the Rezoning Date; 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, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

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

WHEREAS, the applicant states that prior to the Rezoning Date, the owner expended \$1,587,384, including hard and soft costs and irrevocable commitments, out of \$2,649,906 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted a construction affidavit estimate; and

WHEREAS, thus, the expenditures up to the Rezoning Date represent approximately 60 percent of the projected total cost; and

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

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

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could

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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 in order to bring the existing structure into compliance with the current C4-4A zoning district, the owner would be required to remove the roof, hand demolish the top floor and a half of the building, relocate the bulkhead, construct a new roof, and redesign the units before completing the building, which is estimated to cost \$1,463,984.73, or approximately \$373,000 more than the estimated cost of completing the proposed building under the prior C6-1 zoning district requirements; and

WHEREAS, the applicant further states that it would lose the income from the removed units, estimated at \$1,300,000; 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 Building had accrued to the owner of the premises as of the Rezoning Date.

WHEREAS, accordingly, 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 Alteration Permit No. 104385746-01-AL, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, October 16, 2012.

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## 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

**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, the decision of the Bronx Borough Commissioner, dated September 10, 2012, acting on Department of Buildings Application No. 220157700, reads:

Proposed development which rests partially within the bed of the mapped street is contrary to GCL section 35 and therefore must be referred to NYC BSA; and

WHEREAS, this is an application under General City Law (“GCL”) § 35, to permit the construction of a mixed-use multiple dwelling partially within the bed of a mapped street; and

WHEREAS, a public hearing was held on this application on July 17, 2012, after due notice by publication in *The City Record*, with a continued hearing on September 25, 2012, and then to decision on October 16, 2012; and

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

WHEREAS, the subject site is located on a corner through lot bounded by Webster Avenue to the west, East Tremont Avenue to the South, and Park Avenue to the east, partially within a C4-5X zoning district and partially within an R71- zoning district; and

WHEREAS, the site has a total lot area of 52,335 sq. ft., with approximately 7,000 sq. ft. of lot area located within the bed of the mapped but unbuilt East Tremont Avenue; and

WHEREAS, by letter dated May 22, 2012, the Fire Department states that it has no objections to the subject proposal; and

WHEREAS, by letter dated March 20, 2012, the Department of Environmental Protection (“DEP”) requests that the applicant submit a survey/plan which provides (1) the width of the mapped East Tremont Avenue and the width of the widening portion of the street; and (2) distances from the lot line to the 12-inch diameter combined sewer and the 12-inch diameter City water main in East Tremont Avenue between Webster Avenue and Park Avenue; and

WHEREAS, in response, the applicant submitted a survey as requested by DEP, which shows the 100-ft. width of the traveled portion of East Tremont Avenue, which DEP determined will be sufficient for the maintenance and/or reconstruction of the existing 12-inch diameter combined sewer and the 12-inch diameter City water main in the bed of East Tremont Avenue between Webster Avenue and Park Avenue; and

WHEREAS, by letter dated July 23, 2012, DEP states that it has no objection to the proposed application; and

WHEREAS, by letter dated March 28, 2012, the

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Department of Transportation (“DOT”) states that due to the scale of the project, a Uniform Land Use Review Procedure (“ULURP”) action to demap this portion of East Tremont Avenue is more appropriate since the improvement of East Tremont Avenue at this location, would involve the taking of a portion of the applicant’s property, is not presently included in DOT’s Capital Improvement Program and DOT does not have any intention to acquire it in the future; and

WHEREAS, in response, the applicant states that GCL § 35 empowers the Board to grant a permit for construction in the bed of a mapped street where a proposed street widening or extension has been shown on the official map or plan for ten years or more and the City has not acquired title thereto; accordingly, the applicant represents that the Board is the proper venue for the subject application to permit construction in the bed of a mapped street and it is not required to undertake a ULURP action to demap this portion of East Tremont Avenue; and

WHEREAS, the applicant notes that by letter dated January 26, 2010 the owner consulted DOT to request a review of the subject project, and in response DOT issued a letter dated February 12, 2010 stating that the improvement of East Tremont Avenue at this location is not presently included in DOT’s Capital Improvement Program and instructed the owner that “[i]n order for you to develop your property within the proposed widening...you are required to submit an application to the Board of Standards and Appeals (BSA) in accordance with Chapter 35 of the General City Law...”; and

WHEREAS, therefore, because the City has no plans to improve or widen the referenced street, the applicant requests that the Board approve the subject application to permit construction in the bed of the mapped but unbuilt street pursuant to GCL § 35; and

WHEREAS, the Board agrees with the applicant that the subject application is properly before the Board and does not require a ULURP action to demap the street; 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 Bronx Borough Commissioner, dated September 10, 2012, acting on Department of Buildings Application No. 220157700, is modified by the power vested in the Board by Section 35 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 September 11, 2012”– (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 shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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, October 16, 2012.

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## 196-12-A

APPLICANT – Deidre Duffy, for Breezy Point Cooperation, Inc., owner; Carol Anderson, lessee.

SUBJECT – Application June 19, 2012 – Proposed alteration and enlargement of an existing single family home, not fronting on a legally mapped street, contrary to General City Law, Section 36. R4 zoning district.

PREMISES AFFECTED – 26 Ocean Avenue, west side of Ocean Avenue, 492.25' north of Rockaway Point Boulevard. Block 16350, Lot 300. Borough of Queens.

### COMMUNITY BOARD #14Q

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 21, 2012, acting on Department of Buildings Application No. 420565622, reads in pertinent part:

A1– The street giving access to the existing building to be altered and enlarged is not duly placed on the official map of the City of New York, therefore:

A) A Certificate of Occupancy may not be issued as per Article 3, section 36 of the General City Law

B) The Building to be altered and enlarged does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space contrary to Section 27-291 of the of the Administrative Code of the City of New York, and

A-2– The proposed upgraded private disposal system is in the bed of a service lane contrary to Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated August 28, 2012, and updated on September 12, 2012, the Fire Department states that because the enlargement of the existing building is less

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than 125 percent of the existing square footage, the Fire Department has no objections provided that hard-wired, interconnected smoke detectors are installed throughout the building in compliance with Building Code § 907.2.10 prior the issuance of any Certificate of Occupancy; and

WHEREAS, in response, the applicant submitted plans reflecting that the smoke detectors will be installed in accordance with the Fire Department's request; 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 21, 2012, acting on Department of Buildings Application No. 420565622 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received September 21, 2012"- one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT hard-wired, interconnected smoke detectors will be installed in accordance with the BSA-approved plans;

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

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, October 16, 2012.

## 163-11-A

APPLICANT – FDNY, for Badem Buildings, owner.

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

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

### COMMUNITY BOARD #4M

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

November 20, 2012, at 10 A.M., for decision, hearing closed.

## 21-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Pavel Kogan, owner.

SUBJECT – Application January 30, 2012 – Proposed construction of an accessory swimming pool partially within the bed of a mapped street, contrary to General City Law Section 35. R1-2 (NA-1) Zoning District.

PREMISES AFFECTED – 55 Louise Lane, west of intersection of north side of Louise Lane and west side of Tiber Place, Block 687, Lot 281, Borough of Staten Island.

### COMMUNITY BOARD #2SI

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 November 20, 2012, at 10 A.M., for decision, hearing closed.

## 151-12-A

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

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

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

### COMMUNITY BOARD #3M

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 November 20, 2012, at 10 A.M., for decision, hearing closed.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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**REGULAR MEETING  
TUESDAY AFTERNOON, OCTOBER 16, 2012  
1:30 P.M.**

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

**ZONING CALENDAR**

**168-11-BZ**

**CEQR #12-BSA-037K**

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

SUBJECT – Application October 27, 2011 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Bet Yaakob, Inc.*), contrary to floor area (§§113-11, 503, 51, 77-02, 23-141, 24-11), open space and lot coverage (§§23-141, 24-11, 77-02, 113-11), front, side and rear yard (§§113-11, 503, 543, 77-02, 23-464, 47, 471), height and setback (§§113-11, 503, 55, 77-02, 23-631, 633, 24-593), planting and landscaping (§§113-12, 23-45, 23-451, 113-30) and parking (§§113-58, 25-31) regulations.

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

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

**COMMUNITY BOARD #15BK**

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 1, 2012, acting on Department of Buildings Application No. 320345710 reads, in pertinent part:

Proposed community facility (Use Group A-3 house of worship) building in an R5 (OP Special District), R6A (OP Special District) and R5 (Subdistrict within OP Special District) does not comply with the following bulk regulations:

1. Proposed Floor Area Ratio (FAR) exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141, 24-11 and 24-17
2. Proposed Open Space Ratio (OSR) is less than minimum required pursuant to ZR Sections 113-11, 23-141, 24-11, 113-503
3. Proposed lot coverage exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141, 24-11, 24-17, 113-503
4. Proposed front yard is less than front yard

- required pursuant to ZR Sections 113-12, 23-45, 23-451, 113-11, 24-351, 23-633
5. Proposed side yards are less than side yards required pursuant to ZR Sections 113-11, 23-464, 113-543 and 23-361
6. Proposed rear yard is less than rear yard required pursuant to ZR Sections 113-11, 23-471, 23-543, 113-544, 23-53
7. Proposed height and setback exceeds the minimum required pursuant to ZR Sections 113-11, 23-631, 24-593, 23-633
8. Proposed side and rear yard setbacks exceed the minimum required pursuant to ZR Sections 113-11 and 23-662
9. Proposed development violates front yard planting requirements as per ZR Sections 113-12, 23-45 and 23-451
10. Proposed development violates special landscaping regulations as per ZR 113-30
11. Proposed development provides less than required parking spaces as per ZR Sections 113-561, 25-31 and 25-35; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a four-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area ratio, open space ratio, lot coverage, front yard, side yard, rear yard, height and setback, side and rear setback, front yard planting, special landscaping, and parking, contrary to ZR §§ 23-141, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-633, 23-662, 24-11, 24-17, 24-351, 24-593, 25-31, 25-35, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561; 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 October 16, 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 15, Brooklyn, recommends approval of the application; and

WHEREAS, City Council Member Domenic Recchia provided testimony in support of the proposal; and

WHEREAS, a neighbor initially provided opposition to the proposal, but did not submit continued testimony; and

WHEREAS, this application is being brought on behalf of Congregation Bet Yaakob (the “Synagogue”), a non-profit religious entity which will occupy the proposed Edmond J. Safra Synagogue building; and

WHEREAS, the subject site is an L-shaped corner lot fronting Ocean Parkway and Avenue U, with frontages of approximately 50 feet along Ocean Parkway and 143 feet

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along Avenue U within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts; and

WHEREAS, the subject site has a lot area of 8,840 sq. ft. with 6,500 sq. ft. in the R5 (Special Ocean Parkway District), 1,800 sq. ft. in the R6A (Special Ocean Parkway District), and 540 sq. ft. in the R5 (Special Ocean Parkway Subdistrict); and

WHEREAS, the subject site, which was formerly two separate lots – 48 and 50 – was occupied by two two-story homes, which were demolished in anticipation of construction at the site; and

WHEREAS, the applicant proposes the following parameters: four stories; a floor area of 20,361 sq. ft. (2.30 FAR) (a maximum community facility floor area of 14,335 sq. ft. and an aggregate between the R5 and R6A zoning districts of 1.62 FAR is permitted); a lot coverage of 79 percent (maximum permitted lot coverage ranges from 55 to 60 percent); an open space of 21 percent (the minimum required open space ranges from 40 to 45 percent); a maximum wall height of 60'-0" and a maximum total height of 62'-4" (the maximum permitted height ranges from 35'-0" (R5) to 50'-0" (R6A)); and no parking spaces (a minimum of 17 parking spaces are required); and

WHEREAS, as to yards, the applicant notes that the site is partially a corner lot and partially an interior lot, thus the yard requirements vary across the site; however, it will provide a front yard with the required depth of 30'-0" along Ocean Parkway but no front yard along Avenue U (a front yard with a depth of 10'-0" is required); a rear yard with a depth of 4'-0" on the corner portion (a rear yard with a depth of 8'-0" is required on the corner portion); the required rear yard with a depth of 30'-0" on the interior portion of the lot, but no front yard in the interior portion of the lot (a front yard with a depth of 10'-0" is required); and

WHEREAS, the proposal provides for the following uses: (1) a social hall and small kitchen at the cellar level; (2) the daily sanctuary and men's mikvah at the first floor; (3) the main sanctuary on the second floor; (4) additional worship area, including a worship gallery for female congregants at the third floor; and (5) a board room and two offices on the fourth floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the growing congregation currently of approximately 600 worshippers; (2) to provide a separate worship space for male and female congregants; (3) to provide sufficient separation of space so that multiple activities may occur simultaneously; and (4) to provide accessory space including offices and a social hall; and

WHEREAS, the applicant states that the as-of-right building would allow for a social hall of only 1,197 sq. ft. (to accommodate 80 people); a daily sanctuary of only 542 sq. ft. (to accommodate 37 people); and a main sanctuary of only 1,183 sq. ft. (to accommodate 95 people) – all of which are far too small to accommodate the Congregation; and

WHEREAS, further, the applicant asserts that the necessary women's balcony and men's mikvah could not be provided in an as-of-right scheme; and

WHEREAS, the applicant states that the height and setback waivers permit the double-height ceiling of the second floor main synagogue which is necessary to create a space for worship and respect and an adequate ceiling height for the third floor women's balcony; and

WHEREAS, the applicant states that the parking waiver is only related to the portion of the site within the R5 zoning district and that there is not a parking requirement for a house of worship under R6A zoning district regulations; and

WHEREAS, the applicant notes that approximately 95 percent of congregants live within walking distance of the site and must walk for reasons of religious observance; and

WHEREAS, the applicant states that 76 percent of the congregation lives within a three-quarter-mile radius of the site, which exceeds the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification for a locally-oriented house of worship; and

WHEREAS, the applicant states that it requests a waiver of the Special Ocean Parkway District's special landscaping requirements for the front yard along Ocean Parkway as the front yard is necessary for a ramp and the main entrance; and

WHEREAS, the applicant notes that the site will be landscaped with trees and shrubbery along Avenue U, where the proposed building has 80'-0" of frontage, as well as along Ocean Parkway; and

WHEREAS, the applicant states that the congregation has occupied a nearby rental space for the past three years, which accommodates only 275 seats and is far too small to accommodate the current membership of 600 adults; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue 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, space for religious counseling, and a multipurpose room for educational and social programming; 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, the Board acknowledges that the Synagogue, 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

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, in addition to its programmatic needs, the applicant states that there are unique physical conditions of the site – including its L-shape; the narrow yet deep easternmost

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portion (formerly Lot 48); the location of multiple zoning district and special district boundary lines within the site; and the high groundwater condition contribute to the hardship at the site; and

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

WHEREAS, the Board notes that certain of the site conditions contribute to the hardship associated with the site such as the irregularity of the long narrow easternmost portion; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue 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 building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed use is permitted in the subject zoning districts; and

WHEREAS, as to bulk, the applicant performed a study of buildings within approximately a ½-mile radius of the site, which reflects that there are 18 buildings that are taller, contain more floor area and/or have a higher FAR than the proposed building; and

WHEREAS, further, the applicant notes that DOB has approved plans for a six-story 20-unit apartment building with a height of 70'-0" for the site adjacent to the east at 623 Avenue U; and

WHEREAS, as to yards, the applicant notes that the side yard and front yard conditions were existing longstanding non-compliances with the historic residential use of the site; and

WHEREAS, specifically, the applicant notes that the homes had non-complying yard conditions, including that the home on Lot 50 was built to the front lot line along Avenue U and the home on Lot 48 only provided a front yard with a depth of 1'-11" on Avenue U and was built to the side lot line; and

WHEREAS, further, the applicant notes that although the yards do not meet the minimum yard requirements for a community facility, the proposal does reflect a front yard with a depth of 30'-0" along Ocean Parkway, a side yard with a width of 4'-0" adjacent to the neighboring site on Ocean Parkway, and a rear yard with a depth of 30'-0" is provided on former Lot 48; and

WHEREAS, as to the Special Ocean Parkway District's landscaping and front yard planting requirements, the applicant asserts that it will maintain landscaping and provide trees and shrubbery along Avenue U, where the Synagogue has 80'-0" of frontage, as well as plantings along Ocean Parkway; and

WHEREAS, as to parking, the applicant notes that the majority of congregants will walk to the site and that there is not any demand for parking; and

WHEREAS, further, as noted above, the applicant represents that 76 percent of congregants live within a three-quarter-mile radius of the site and thus are within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, the Board notes that, based on the applicant's representation, 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, during the hearing process, the Board directed the applicant to review the design of the rear of the building to determine if it could be shortened and to explain the mechanical space needs; and

WHEREAS, in response, the project architect explained how each element of the building design is required; specifically, he explained that as much mechanical use as possible had been relocated to the mechanical mezzanine and that it would not be able to relocate additional use from the rear of the building to the roof of the building above the fourth floor; 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 Synagogue 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 Board finds the requested waivers to be the minimum necessary to afford the Synagogue 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. 12BSA037K, dated May 31, 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

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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 grants a variance, to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a four-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area ratio, open space ratio, lot coverage, front yard, side yard, rear yard, height and setback, side and rear setback, front yard planting, special landscaping, and parking, contrary to ZR §§ 23-141, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-633, 23-662, 24-11, 24-17, 24-351, 24-593, 25-31, 25-35, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 8, 2012" – (16) sheets; and *on further condition*:

THAT the building parameters will be: four stories; a maximum floor area of 20,361 sq. ft.; a maximum wall height of 60'-0" and total height of 62'-4"; a minimum open space of 1,866 sq. ft.; and a maximum lot coverage of 6,968 sq. ft. (79 percent), 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, October 16, 2012.

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**2-12-BZ**

**CEQR #12-BSA-058Q**

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

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

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

**COMMUNITY BOARD #9Q**

**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, the decision of the Queens Borough Commissioner, dated August 20, 2012, acting on Department of Buildings Application No. 420283375, reads in pertinent part:

Proposed 3 feet side yards is contrary to ZR 23-48.

The required side yards as per said section is 5 feet.

Proposed number of parking spaces is contrary to ZR 25-21. The required number of parking spaces as per said section is two (2) and the proposed number of spaces is none (0); and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the proposed construction of a three-story two-family home that does not comply with the zoning requirements for side yards and parking spaces, contrary to ZR §§ 23-48 and 25-21; 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 September 11, 2012, and then to decision on October 16, 2012; and

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

WHEREAS, Community Board 9, Queens, recommends disapproval of this application, citing concerns that the proposed home would compromise the light and air of adjacent homes, and that the hardship is self-created; and

WHEREAS, New York City Council Member Ruben Wills recommends disapproval of this application, citing

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concerns with its effect on the character of the neighborhood; and

WHEREAS, the site is located on the west side of 115<sup>th</sup> Street between 95<sup>th</sup> Avenue and 101<sup>st</sup> Avenue, within an R5 zoning district; and

WHEREAS, the site has a width of approximately 20 feet, a depth of 92 feet, and a total lot area of 1,842 sq. ft.; and

WHEREAS, the site is currently occupied by a single-story storage structure; and

WHEREAS, the applicant proposes to demolish the existing structure and construct a three-story two-family home; and

WHEREAS, the proposed home will have the following complying parameters: a floor area of 2,184 sq. ft. (1.19 FAR); a lot coverage of 39.5 percent; a front yard with a depth of 10'-0"; a rear yard with a depth of 30'-0"; a wall height of 28'-7"; and a total height of 31'-7"; and

WHEREAS, however, the applicant proposes two side yards with a width of 3'-0" each (two side yards with a minimum width of 5'-0" each are required); and no parking spaces (two parking spaces are the minimum required); and

WHEREAS, the applicant originally proposed to construct a three-story two-family home with a wall height of 29'-10", a total height of 33'-5", and which provided one parking space located in the front yard, resulting in an additional non-compliance with the location of a parking space in the front yard; and

WHEREAS, in response to concerns raised by the Board, the applicant revised its proposal to reduce the height of the home in order to make it more compatible with the heights of surrounding homes, and removed the parking space from the front yard, thereby removing the non-compliance related to the location of the parking space; and

WHEREAS, the applicant notes that the subject lot is undersized as defined by ZR § 23-32; and

WHEREAS, the applicant represents that it satisfies the requirements of ZR § 23-33, which permits the construction of a two-family home on an undersized lot provided that the lot was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit; and

WHEREAS, in support of this assertion, the applicant submitted deeds reflecting that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the three adjoining lots; and

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

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the narrowness of the subject lot; and

WHEREAS, the applicant represents that the pre-existing lot width of 20'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site requires side yards with widths of 5'-0" each and that the building would have a maximum exterior width of 10'-0" and constrained floor plates if side yard regulations were complied with fully; and

WHEREAS, the applicant states that the narrowness of the lot also precludes locating parking spaces within a side yard without creating a home with a severely constrained width; and

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

WHEREAS, as to the uniqueness of this condition, the applicant submitted land use maps of the surrounding area which reflects that there are only three vacant interior residential lots in the surrounding area, two of which have widths significantly larger than the subject site (with widths of 30 feet and 41 feet, respectively); and

WHEREAS, the applicant states that there is only one other vacant lot in the surrounding area with a width of only 20 feet, and that lot is occupied by a partially constructed structure that is an apparent enlargement or alteration to the adjacent home to the south; 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 surrounding area is characterized by residential uses; and

WHEREAS, the applicant states that neither of the adjacent homes comply with applicable side yard regulations, as they each have minimal side yards; and

WHEREAS, the applicant submitted a parking study which shows that the number of street parking spaces available in the vicinity of the site ranges from an average of 40 at 1:00 p.m. to an average of 22 at 6:00 p.m.; and

WHEREAS, the applicant states that the availability of street parking demonstrates that the lack of parking at the proposed home will not impact the surrounding area; 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, as to the Community Board's concern that the applicant's hardship was created by the purchase of the subject lot, which requires the requested variance to build a habitable home, the Board notes that ZR § 72-21(d) specifically provides that the purchase of a zoning lot subject to the restriction sought to be varied is not a self-created hardship; and

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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 lot's pre-existing narrow width; and

WHEREAS, as noted above, the applicant originally proposed to construct a three-story two-family home with a wall height of 29'-10", a total height of 33'-5", and which provided one parking space located in the front yard, resulting in an additional non-compliance with the location of a parking space in the front yard; and

WHEREAS, in response to concerns raised by the Board, the applicant revised its proposal to reduce the height of the home and remove the parking space from the front yard, thereby making the home more compatible with the surrounding neighborhood and removing the non-compliance related to the location of the parking space; 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, construction of a three-story two-family home that does not comply with the zoning requirements for side yards and parking spaces, contrary to ZR §§ 23-48 and 25-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 30, 2012"-(30) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a floor area of 2,184 sq. ft. (1.19 FAR); a front yard with a depth of 10'-0"; a side yard with a width of 3'-0" along the northern lot line; a side yard with a width of 3'-0" along the southern lot line; a rear yard with a depth of 30'-0"; a wall height of 28'-7"; a total height of 31'-7"; and no parking spaces, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, October 16, 2012.

## 11-12-BZ

### CEQR #12- BSA-067K

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

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

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

### COMMUNITY BOARD #14BK

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 28, 2011, acting on Department of Buildings Application No. 302255020, reads in pertinent part:

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

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed legalization of an enlargement to a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on August 7, 2012 after due notice by publication in *The City Record*, with a continued hearing on September 11, 2012, and then to decision on October 16, 2012; and

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

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

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue N and Avenue O, in an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 3,737 sq. ft. (0.93 FAR); and

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

WHEREAS, the subject home initially had a floor area of approximately 3,246 sq. ft. (0.81 FAR), and was subsequently enlarged to its current floor area of 3,737 sq. ft. (0.93 FAR), which the applicant now seeks to legalize; the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to legalize the current home's open space ratio of 56 percent (150 percent is the minimum required); and

WHEREAS, the proposed legalization will maintain the previously-existing non-complying side yards with a width of 2'-10 7/8" along the northern lot line and a width of 9'-3 5/8" along the southern lot line (two side yards with minimum widths of 5'-0" each and a total width of 13'-0" are required); and

WHEREAS, the proposed legalization will maintain the rear yard with a depth of 21'-3 5/8" for the pre-existing portions of the home and provide a rear yard with a depth of 22'-7 5/8" for the enlarged portions of the home (a minimum rear yard depth of 30'-0" is required); and

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

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

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

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

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the legalization of an enlargement to a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards and rear yards, 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 29, 2012"-(12) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,737 sq. ft. (0.93 FAR); a maximum open space ratio of 56 percent; a side yard with a minimum width of 2'-10 7/8" along the northern lot line; a side yard with a minimum width of 9'-3 5/8" along the southern lot line; and a rear yard with a minimum depth of 21'-3 5/8", as illustrated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, October 16, 2012.

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## 23-12-BZ

### CEQR #12-BSA-073K

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

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

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

### COMMUNITY BOARD #1BK

**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, the decision of the Brooklyn Borough Superintendent, dated January 26, 2012, acting on Department of Buildings Application No. 320413833, reads in pertinent part:

The proposed construction of a building with residential use is not permitted as-of-right in a M1-1 zoning district and is contrary to section 42-00 (use) of the Zoning Resolution and requires a variance from the Board of Standards and Appeals; and

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WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-1 zoning district, the proposed construction of a four-story residential building with ground floor retail use, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in the *City Record*, with continued hearings on July 17, 2012, and then to decision on October 16, 2012; and

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

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

WHEREAS, the subject site is located on the north side of Grand Street, between Catherine Street and Morgan Avenue, within an M1-1 zoning district; and

WHEREAS, the subject premises has 25 feet of frontage along Grand Street, a depth ranging from 97'-8" to 104'-7", and a lot area of 2,530 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-story mixed-use residential/commercial building with a floor area of 5,880 sq. ft. (2.32 FAR) and a total building height of 45'-0"; and

WHEREAS, the proposed building will be occupied by ground floor retail space, with seven residential units above; and

WHEREAS, because residential use is not permitted in the subject M1-1 zoning district, the applicant seeks a use variance to permit construction of the proposed building; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: (1) the site is a small, vacant lot; and (2) the site's history of development; and

WHEREAS, the applicant states that the subject lot is 25 feet in width and has a depth ranging from 97'-8" to 104'-7", and that the small size of the lot does not allow for floor plates of sufficient size to support a conforming manufacturing use; and

WHEREAS, as to evidence regarding the uniqueness of such site condition, the applicant submitted a 400-ft. radius diagram that reflects that the site is one of only four vacant lots out of the 52 lots within the M1-1 area; and

WHEREAS, the applicant states that the other vacant lots have greater lot areas or are owned in conjunction with adjacent lots and therefore have the potential to be merged to create a larger lot; and

WHEREAS, the applicant represents that the other vacant lots are more appropriately sized to accommodate larger floor plates needed for a conforming manufacturing or commercial use than the subject site; and

WHEREAS, the radius diagram further reflects that the subject site is situated between two lots which are occupied by existing non-conforming four-story residential buildings; and

WHEREAS, as to the history of development of the lot,

the applicant represents that the site was developed with a four-story residential building similar to the adjacent buildings until around 1982 when it was demolished; the lot has remained vacant since that time; and

WHEREAS, in support of this representation, the applicant submitted Sanborn Maps dating from 1965, 1980 and 1982; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) an as-of-right one-story retail commercial building and (2) the proposed four-story mixed use building; and

WHEREAS, the study concluded that the as-of-right scenario would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

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

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the M1-1 zoning district consists of a mix of residential and manufacturing uses; and

WHEREAS, the radius diagram further reflects that there are R7A and R6 zoning districts located to the east of the site, and an R6B zoning district to the northwest of the site, all of which allow for residential uses; and

WHEREAS, the applicant represents that the proposed building complies with the bulk regulations for an R6 zoning district pursuant to the Quality Housing Program, to allow for a building with a floor area of 5,880 sq. ft. (2.32 FAR); the maximum permitted floor area for an R6 (Quality Housing) building would be 7,590 sq. ft. (3.0 FAR); and

WHEREAS, further, as to other bulk regulations, the proposed building is four stories and 45'-0" in height and complies with the R6 Quality Housing height and setback regulations and provides a complying rear yard at 36'-0"; and

WHEREAS, while the closest residential district is an R6B zoning district, the applicant states that R7A and R6 zoning districts which allow for 4.0 and 3.0 FAR respectively, are more appropriate zones to compare the subject site, which is located on a wide street, rather than the R6B zoning district which only allows 2.0 FAR and is mapped on narrow streets; and

WHEREAS, the applicant further states that the adjacent lots to the north and south of the subject site are both occupied by four-story residential buildings; and

WHEREAS, the applicant submitted a streetscape reflecting that the street wall height of the proposed building

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will match the two adjacent buildings, thereby filling in a gap in the current street front along Grand Street; and

WHEREAS, the applicant notes that the site's history supports the residential use of the site, as it was developed residentially until 1982 and has remained vacant since; and

WHEREAS, based upon the above, 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 Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

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

WHEREAS, based upon the above, 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 a Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 12BSA073K, dated October 12, 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, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed and accepted the September 2012 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of

1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-1 zoning district, the proposed construction of a four-story mixed-use residential/commercial building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 2, 2012"- eleven (11) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building shall be as follows: a maximum floor area of 5,880 sq. ft. (2.32 FAR); and a total height of 45'-0", as illustrated on the BSA-approved plans;

THAT DOB shall not issue a Certificate of Occupancy until the applicant has provided it with documentation of DEP's approval of the Remedial Closure Report;

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

THAT all interior layouts and exits shall be as approved by the Department of Buildings;

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, October 16, 2012.

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**80-12-BZ  
CEQR #12-BSA-111M**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barbizon Hotel Associates, LP, owner; SoulCycle East 63<sup>rd</sup> Street, LLC, lessee.

SUBJECT – Application April 5, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*). C1-8X and R8B zoning districts. PREMISES AFFECTED – 140 East 63<sup>rd</sup> Street, southeast corner of intersection of East 63<sup>rd</sup> Street and Lexington Avenue, Block 1397, Lot 7505, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 3, 2012, acting on Department of Buildings Application No. 120952950, reads in pertinent

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part:

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

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C1-8X zoning district and partially within an R8B zoning district, the operation of a physical culture establishment (PCE) on a portion of the first floor of a 22-story mixed-use residential/commercial building, contrary to ZR § 32-10; 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 October 16, 2012; and

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

WHEREAS, Community Board 8, Manhattan, recommends disapproval of this application; and

WHEREAS, certain neighbors provided testimony in opposition to the application (the "Opposition"), citing concerns about the potential impact the use would have on the character of the neighborhood, specifically whether an entrance to the PCE on East 63<sup>rd</sup> Street and the associated visitor traffic would be compatible with adjacent residential uses; and

WHEREAS, the Opposition's supplemental concerns include: (1) evening hours of operation; (2) noise; (3) preservation of the façade and windows; (4) the installation of signage; and (5) excessive lighting; and

WHEREAS, the subject site is located on the southeast corner of East 63<sup>rd</sup> Street and Lexington Avenue, partially within a C1-8X zoning district and partially within an R8B zoning district; and

WHEREAS, the applicant notes that pursuant to ZR § 77-11, since more than 50 percent of the lot area of the site is located within the C1-8X zoning district, and since the greatest distance from the district boundary to any lot line within the R8B zoning district does not exceed 25 feet, the C1-8X use and bulk regulations, including the special permit provisions of ZR § 73-36, may apply to the entire zoning lot; and

WHEREAS, the site is occupied by a 22-story mixed-use residential/commercial building known as the historic Barbizon Hotel, an individual landmark designated by the Landmarks Preservation Commission in 2012; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission (LPC), dated May 11, 2012, approving the proposed signage and other modifications under its jurisdiction; and

WHEREAS, the site is occupied by another PCE, which the Board approved pursuant to BSA Cal. No. 107-06-BZ and is operated as Equinox Fitness, with an entrance

on Lexington Avenue; and

WHEREAS, the proposed PCE will occupy 3,270 sq. ft. of floor area on a portion of the first floor; and

WHEREAS, the PCE will be operated as SoulCycle; and

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

WHEREAS, as to the appropriateness of the use on East 63<sup>rd</sup> Street, the Opposition cited to the report associated with the City Planning Commission's (CPC) 2006 text amendment to allow PCEs in C1-8X zoning districts; specifically, the Opposition finds that because the report states that the CPC found it appropriate to allow PCEs along the commercially-zoned avenues of the Upper East Side, such use is not deemed to be appropriate on the side streets; and

WHEREAS, the Opposition notes that the C1-8X zoning district (1) only extends 100 feet from Lexington Avenue onto East 63<sup>rd</sup> Street and (2) does not encompass the entire portion of the building to be occupied by the PCE; thus the Opposition finds the proposed PCE location to conflict with the spirit of the text change; and

WHEREAS, the Opposition also cited to the Board's resolution associated with the Equinox at the site, which reflects that the PCE entrance would be at Lexington Avenue, separate from the residential entrance; and

WHEREAS, in response to the Opposition, the applicant stated that CPC did not note any limitation to the location of PCE's permitted within C1-8X zoning districts; and

WHEREAS, the Board agrees with the applicant that CPC did not draft any locational limitations into the text amendment and that PCEs are permitted anywhere within the C1-8X district; and

WHEREAS, further, the Board notes that because the C1-8X zoning district extends east along East 63<sup>rd</sup> Street, any use, including other kinds of commercial uses, permitted by C1-8X zoning district regulations would be permitted within the subject East 63<sup>rd</sup> Street portion of the building; and

WHEREAS, the Board does not find the language in the Equinox resolution about the entrance being on Lexington Avenue to be a required condition or to have any relationship to the text change; and

WHEREAS, as to relocating the entrance to Lexington Avenue, the Board directed the applicant to analyze such a scheme and the applicant responded that it could not redesign the entrance without disturbing the residential lobby and/or the existing PCE since there is no common membership between the two PCEs; the relocation of the entrance would also require moving the exercise equipment to a space that would be visible from East 63<sup>rd</sup> Street, which the Opposition disfavors; and

WHEREAS, the Board accepts the applicant's explanation as to the considerable difficulties associated with relocating the entrance of the proposed PCE to

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Lexington Avenue; and

WHEREAS, the Opposition recommended that the Board impose certain operational conditions if it approved the proposal; those conditions include: (1) limiting the number of bicycles; (2) limiting the hours of operation in the evening to no later than 8:00 p.m.; (3) requiring sufficient soundproofing so that music cannot be heard outside the building or within nearby residences; (4) limiting any change to the façade or windows; and (5) prohibiting signage on East 63<sup>rd</sup> Street; and

WHEREAS, the Board directed the applicant to: (1) reduce the number of bicycles; (2) limit the hours of operation in light of the acceptable hours of operation at other SoulCycle locations; (3) install and maintain sufficient sound-proofing; and (4) comply with LPC's determination on exterior conditions; and

WHEREAS, the applicant initially proposed to remain open until 11:00 p.m.; however, in response to the Opposition's concerns, the applicant states that the hours of operation for the proposed PCE will be: Monday through Saturday, from 5:30 a.m. to 9:30 p.m., and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, as to the Opposition's supplementary concerns, the Board notes that (1) the applicant has agreed to limit the number of bicycles to 60; (2) the applicant agrees to install and maintain soundproofing as reflected on the Board-approved plans; and (3) the applicant has obtained approval from LPC for the exterior conditions; and

WHEREAS, the Board notes that the applicant has also agreed to dedicate a portion of its interior space to allow for queuing and waiting inside the building rather than on the street; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.12 and 617.4; 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.12BSA111M, dated April 3, 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 Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located partially within a C1-8X zoning district and partially within an R8B zoning district, the operation of a physical culture establishment on a portion of the first floor of a 22-story mixed-use residential/commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 5, 2012" - Two (2) sheets and "Received August 22, 2012" - One (1) sheet and *on further condition*:

THAT the term of this grant will expire on October 16, 2022;

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

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

THAT the maximum number of bicycles in the facility will be limited to 60;

THAT the hours of operation will be limited to Monday through Saturday, from 5:30 a.m. to 9:30 p.m., and Sunday, from 7:00 a.m. to 9:00 p.m.;

THAT soundproofing will be installed and maintained as reflected on the BSA-approved plans;

THAT all modifications to signage and the façade will be in accordance with the Landmarks Preservation Commission's Certificate of No Effect, dated May 11, 2012;

THAT any modifications will be subject to Landmarks Preservation Commission approval;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, October 16, 2012.

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## 42-10-BZ

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

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

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

### COMMUNITY BOARD #18BK

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

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## 5-11-BZ

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

SUBJECT – Application January 14, 2011 – Variance (§72-21) to allow for a new five-story residential development, contrary to use regulations (§42-00). M2-1 zoning district.

PREMISES AFFECTED – 9 Old Fulton Street, northeasterly side of Old Fulton Street, Block 35, Lot 10, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

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 November 27, 2012, at 1:30 P.M., for decision, hearing closed.

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## 35-11-BZ

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

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

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

### COMMUNITY BOARD #13Q

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

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## 93-11-BZ

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

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

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

### COMMUNITY BOARD #4BK

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

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## 156-11-BZ

APPLICANT – Sheldon Lobel, P.C., for The Rector Church Warden and Vestry Men of St. Simeon’s Church owners.

SUBJECT – Application October 5, 2011 – Variance (§72-21) to permit the construction of a 12-story mixed residential (UG 2 supportive housing) and community facility (*St. Simeon’s Episcopal Church*) (UG4 house of worship) building, contrary to setback (§23-633(b)), floor area (§§23-145, 24-161, 77-2), lot coverage (§23-145) and density (§§23-22, 24-20) requirements. R8 zoning district.

PREMISES AFFECTED – 1020 Carroll Place, triangular corner lot bounded by East 165<sup>th</sup> Street, Carroll Place and Sheridan Avenue, Block 2455, Lot 48, Borough of Bronx.

### COMMUNITY BOARD #4BX

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 November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 157-11-BZ

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

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

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

### COMMUNITY BOARD #11M

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

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## 160-11-BZ

APPLICANT – Slater & Beckerman, LLP for Jewish National Fund, owner.

SUBJECT – Application October 14, 2011 – Variance (§72-21) to allow for the enlargement of a community facility (*Jewish National Fund*), contrary to rear yard (§24-33), rear yard setback (§24-552), lot coverage (§24-11), and height and setback (§§23-633, 24-591) regulations. R8B/LH-1A zoning district.

PREMISES AFFECTED – 42 East 69<sup>th</sup> Street, south side of East 69<sup>th</sup> Street, between Park Avenue and Madison Avenue. Block 1383, Lot 43. Borough of Manhattan.

### COMMUNITY BOARD #8M

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 November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 7-12-BZ

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

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

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

### COMMUNITY BOARD #4BK

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 November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 16-12-BZ

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

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

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

### COMMUNITY BOARD #4BK

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

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## 45-12-BZ

APPLICANT – Moshe M. Friedman, P.E., for Bais Sina, owner.

SUBJECT – Application February 27, 2012 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a UG 4 synagogue (*Bais Sina*), contrary to floor area ratio and lot coverage (§24-11), front yard (§24-34), side yards (§24-35), rear yard (§24-36), court and minimum distance between walls or windows and lot lines (§24-60) regulations. R5 zoning district.

PREMISES AFFECTED – 1914 50<sup>th</sup> Street, 100’ east from the corner formed by 19<sup>th</sup> Avenue and south of 50<sup>th</sup> Street, Block 5462, Lot 12, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

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 November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 56-12-BZ

APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461); and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

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

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# MINUTES

## 71-12-BZ

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

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

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

### COMMUNITY BOARD #12Q

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 November 27, 2012, at 1:30 P.M., for decision, hearing closed.

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## 74-12-BZ

APPLICANT – Harold Weinberg, P.E., for Diana Trost, owner.

SUBJECT – Application March 30, 2012 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 252 Exeter Street, west side 350' north of Esplanade and Oriental Boulevard, Block 8742, Lot 2, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

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## 76-12-BZ

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

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

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

### COMMUNITY BOARD #15K

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 November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 115-12-BZ

APPLICANT – Sheldon Lobel, P.C., for RMDS Realty Associates, LLC, owner.

SUBJECT – Application April 24, 2012 – Special Permit (§73-44) to allow for a reduction in parking from 331 to 221 spaces in an existing building proposed to be used for ambulatory diagnostic or treatment facilities in Use Group 6 parking category B1. C4-2A zoning district.

PREMISES AFFECTED – 701/745 64<sup>th</sup> Street, Seventh and Eighth Avenues, Block 5794, Lot 150 & 165, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 1:30 P.M., for continued hearing.

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## 141-12-BZ

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

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

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

### COMMUNITY BOARD #8Q

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 November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 195-12-BZ

APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.

SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance which allowed a two story office building (UG6) with parking spaces for four cars in a residence use district, which expired on May 13, 2000. Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.

### COMMUNITY BOARD #10Q

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

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# MINUTES

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November 27, 2012, at 1:30 P.M. for postponed hearing.  
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**198-12-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for JZS Madison, LLC, owner.

SUBJECT – Application June 22, 2012 – Variance (§72-21) to permit the conversion and enlargement of existing buildings to contain UG 6 retail and UG 2 residential uses, contrary to floor area, lot coverage (§23-145), rear yard (§23-47), rear yard setback (§23-633(b), height (§§23-691, 99-054(b)), streetwall (§23-692(c), 99-051(a)), inner court (§23-851), window-to-lot-line (§23-861), and commercial use (§32-422) regulations. C5-1(MP), R8B zoning district. PREMISES AFFECTED – 933-943 Madison Avenue, block bounded by Madison and Park Avenues, East 74<sup>th</sup> and East 75<sup>th</sup> Streets, Block 1389, Lot 25, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**SPECIAL HEARING**  
**WEDNESDAY MORNING, OCTOBER 17, 2012**  
**10:00 A.M.**

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

**117-12-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 District.

PREMISES AFFECTED – Van Wyck Expressway & Atlantic Avenue, Block 9989, Lot 70. Borough of Queens.

**COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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**118-12-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. R5B/R4-1/R7X/C2 Zoning District.

PREMISES AFFECTED – BQE & Queens Boulevard, Borough of Queens.

**COMMUNITY BOARD #2Q**

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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**119-12-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. R4, M1-1 Zoning District.

PREMISES AFFECTED – BQE & 31<sup>st</sup> Street, Block 1137, Lot 22. Borough of Queens.

**COMMUNITY BOARD #1Q**

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

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# MINUTES

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11, 2012, at 10 A.M., for continued hearing.  
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## 120-12-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. R4, M1-1 Zoning District.

PREMISES AFFECTED – BQE & 31<sup>st</sup> Avenue, Block 1137, Lot 22. Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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## 121-12-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. R4, M1-1 zoning district.

PREMISES AFFECTED – BQE & 32<sup>nd</sup> Avenue, Block 1137, Lot 22. Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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## 122-12-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. R4, M1-1 zoning district.

PREMISES AFFECTED – BQE & 32<sup>nd</sup> Avenue, Block 1137, Lot 22. Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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## 123-12-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. R5, M1-1 zoning district.

PREMISES AFFECTED – BQE & 34<sup>th</sup> Avenue, Block 1255, Lot 1. Borough of Queens.

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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## 124-12-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. R5, M1-1 zoning district.

PREMISES AFFECTED – BQE & 34<sup>th</sup> Avenue, Block 1255, Lot 1. Borough of Queens

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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## 125-12-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. M3-2, M3-1 zoning district.

PREMISES AFFECTED – Long Island Expressway, East of 25<sup>th</sup> Street, Block 110, Lot 1. Borough of Queens.

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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## 126-12-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. M3-1 zoning district.

PREMISES AFFECTED – Long Island Expressway, East of 25<sup>th</sup> Street, Block 110, Lot 1. Borough of Queens.

### COMMUNITY BOARD #2Q

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

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## 127-12-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. R4, M1-1 zoning district.

PREMISES AFFECTED – Northern Boulevard and BQE, Block 1163, Lot 1. Borough of Queens.

### COMMUNITY BOARD #2Q

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

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## 128-12-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. C2-3, R7X, R5B zoning district.

PREMISES AFFECTED – Queens Boulevard and BQE, Block 1343, Lot 129 & 139, Borough of Queens.

### COMMUNITY BOARD #2Q

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

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## 129-12-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 zoning district.

PREMISES AFFECTED – Queens Boulevard and 74<sup>th</sup> Street, Block 2448, Lot 213. Borough of Queens.

### COMMUNITY BOARD #4Q

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

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## 130-12-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. M3-1 zoning district.

PREMISES AFFECTED – Skillman Avenue, b/t 28<sup>th</sup> and 29<sup>th</sup> Street, Block 72, Lot 250. Borough of Queens.

### COMMUNITY BOARD #2Q

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

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## 131-12-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. C4-4 (WP) zoning district.

PREMISES AFFECTED – Van Wyck Expressway n/o Roosevelt Avenue, Block 1833, Lot 230. Borough of Queens.

### COMMUNITY BOARD #1Q

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

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## 132-12-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. C4-4 (WP) zoning district.

PREMISES AFFECTED – Van Wyck Expressway n/o Roosevelt Avenue, Block 1833, Lot 230. Borough of Queens.

### COMMUNITY BOARD #1Q

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

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## 133-12-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. R3A, R4, R7A zoning district.

PREMISES AFFECTED – Woodhaven Boulevard N/O Elliot Avenue, Block 3101, Lot 9. Borough of Queens.

### COMMUNITY BOARD #6Q

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

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# MINUTES

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## 134-12-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. M3-1, M1-1, R4 zoning district.

PREMISES AFFECTED – Long Island Expressway & 74<sup>th</sup> Street, Block 2814, Lot 4. Borough of Queens.

### COMMUNITY BOARD #5Q

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

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## 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. M3-1, M1-1, R4 zoning district.

PREMISES AFFECTED – Long Island Expressway & 74<sup>th</sup> Street, Block 2814, Lot 4. Borough of Queens.

### COMMUNITY BOARD #5Q

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

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## 171-12-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. R7-1 zoning district.

PREMISES AFFECTED – Cross Bronx Expressway E/O Sheridan Expressway. Borough of Bronx.

### COMMUNITY BOARD #9BX

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

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## 172-12-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. C8-1 zoning district.

PREMISES AFFECTED – Cross Bronx Expressway & Bronx River, Block 3904, Lot 1. Borough of Bronx.

### COMMUNITY BOARD #6BX

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

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## 173-12-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. C8-1 zoning district.

PREMISES AFFECTED – Cross Bronx Expressway E/O Bronx River & Sheridan Expressway, Block 3904, Lot 1. Borough of Bronx.

### COMMUNITY BOARD #6BX

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

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## 174-12-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. R3-2 zoning district.

PREMISES AFFECTED – I-95 & Hutchinson Parkway, Block 4411, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #11BX

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

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## 175-12-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.

PREMISES AFFECTED – I-95 & Hutchinson Parkway, Block 4411, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #11BX

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

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# MINUTES

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## 176-12-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. M1-2 (HP) zoning district.

PREMISES AFFECTED – Bruckner Boulevard & Hunts Point Avenue, Block 2734, Lot 30. Borough of Bronx.

### COMMUNITY BOARD #2BX

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

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## 177-12-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. M1-2 (HP) zoning district.

PREMISES AFFECTED – Bruckner Boulevard & Hunts Point Avenue, Block 2734, Lot 30. Borough of Bronx.

### COMMUNITY BOARD #2BX

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

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## 178-12-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. M1-2 zoning district.

PREMISES AFFECTED – Bruckner Expressway N/O 156<sup>th</sup> Street, Block 2730, Lot 101. Borough of Bronx.

### COMMUNITY BOARD #2BX

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

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## 179-12-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. M1-2 (HP SD) zoning district.

PREMISES AFFECTED – Bruckner Expressway N/O 156<sup>th</sup> Street, Block 2730, Lot 101. Borough of Bronx.

### COMMUNITY BOARD #2BX

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

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## 180-12-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 zoning district.

PREMISES AFFECTED – Major Deegan Expressway S/O Van Cortland, Block 3269, Lot 70. Borough of Bronx.

### COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Ross Markowitz.

For Opposition: Mark Davis, Department of Buildings.

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

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## 273-12-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. R7-1, M1-1 zoning district.

PREMISES AFFECTED – Major Deegan @ 167<sup>th</sup> Street, 2539, Lot 502. Borough of Bronx.

### COMMUNITY BOARD #4BX

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

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## 274-12-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. R7-1, M1-1 zoning district.

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

### COMMUNITY BOARD #4BX

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

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## 182-12-A

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

OWNER OF PREMISES – Metropolitan Transportation Authority.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan Expressway and 161<sup>st</sup> Street. Borough of Bronx.

### COMMUNITY BOARD #4BX

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

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## 183-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – Department of Ports and Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that six signs located on railroad properties are subject to the NYC Zoning Resolution. M1-1 zoning district.

PREMISES AFFECTED – 476 Exterior Street, E. 149<sup>th</sup> Street to North Major Deegan Expressway to East Harlem River to West, Block 02349, Lot 0112, Borough of Bronx.

### COMMUNITY BOARD #1BX

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

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## 184-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – Department of Ports and Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that six signs located on railroad properties are subject to the NYC Zoning Resolution. M1-1 zoning district.

PREMISES AFFECTED – 477 Exterior Street, E. 149<sup>th</sup> Street to North Major Deegan Expressway to East Harlem River to West, Block 02349, Lot 0112, Borough of Bronx.

### COMMUNITY BOARD #1BX

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

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## 185-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – Department of Ports and Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that six signs located on railroad properties are subject to the NYC Zoning Resolution. M1-1 zoning district.

PREMISES AFFECTED – 475 Exterior Street, E. 149<sup>th</sup>

Street to North Major Deegan Expressway to East Harlem River to West, Block 02349, Lot 0112, Borough of Bronx.

### COMMUNITY BOARD #1BX

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

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## 186-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that six signs located on railroad properties are subject to the NYC Zoning Resolution. M1-1 zoning district.

PREMISES AFFECTED – Major Deegan Expressway, Borough of Bronx.

### COMMUNITY BOARD #1BX

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

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## 187-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that six signs located on railroad properties are subject to the NYC Zoning Resolution. M1-1 zoning district.

PREMISES AFFECTED – Major Deegan Expressway, Borough of Bronx.

### COMMUNITY BOARD #1BX

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

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## 188-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that six signs located on railroad properties are subject to the NYC Zoning Resolution. M1-1 zoning district.

PREMISES AFFECTED – Major Deegan Expressway, Borough of Bronx.

### COMMUNITY BOARD #1BX

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

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# MINUTES

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## \*CORRECTION

This resolution adopted on September 25, 2012, under Calendar No. 149-05-A and printed in Volume 97, Bulletin Nos. 39-40, is hereby corrected to read as follows:

### 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 – 32-29 211<sup>th</sup> Street, east of the corner of 32<sup>nd</sup> Street and 211<sup>th</sup> Street, Block 6061, Lot 10, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: 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 Montanez .....5

Negative:.....0

**THE RESOLUTION** –

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 211<sup>th</sup> Street, between 32<sup>nd</sup> Avenue and 33<sup>rd</sup> 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.

**\*The resolution has been revised to correct the Premises Affected No. which read: ...32-09 211<sup>th</sup> Street... now reads: ...32-29 211<sup>th</sup> Street.... Corrected in Bulletin Nos. 41-43, Vol. 97, dated October 25, 2012.**

# MINUTES

## \*CORRECTION

This resolution adopted on August 14, 2012, under Calendar No. 294-06-BZ and printed in Volume 97, Bulletin No. 34, is hereby corrected to read as follows:

### 294-06-BZ

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

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

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

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Nadia Alexis.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for a physical culture establishment (“PCE”), to permit a correction to the calculation of the floor area and to permit a 4,700 sq. ft. enlargement of the cellar; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, with a continued hearing on July 17, 2012, and then to decision on August 14, 2012; and

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

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

WHEREAS, the site is located on the north side of Broadway, between 31<sup>st</sup> Street and 32<sup>nd</sup> Street, partially within a C4-2A zoning district and partially within a C4-3 zoning district; and

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

WHEREAS, the PCE occupies a total of 28,434 sq. ft. of floor area on the first, second, and third floors; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 20, 1921 when, under BSA Cal. No. 628-21-BZ, the Board granted a variance to permit the construction of a movie theater in what was formerly a residential district; the theater has since been demolished; and

WHEREAS, on October 17, 1967, under BSA Cal.

No. 97-67-BZ, the Board granted a variance to permit the use of the cellar to include an eating and drinking establishment with cabaret; this establishment is still operating at the site; and

WHEREAS, most recently, on April 10, 2007, the Board granted a special permit for the establishment of a PCE at portions of the cellar level and first floor, and the entire second and third floors; and

WHEREAS, the applicant states that the prior approval showed the PCE as occupying 27,271 sq. ft. of floor area, however, the plans have since been corrected to include an additional 1,163 sq. ft. of floor area which had been unintentionally omitted; and

WHEREAS, the applicant now seeks an amendment to permit an expansion of the PCE to include an additional 4,700 sq. ft. of floor space at the cellar level; and

WHEREAS, at hearing, the Board questioned whether the proposed signage was in compliance with the C4 district signage regulations; and

WHEREAS, in response, the applicant submitted a revised signage analysis reflecting that the signage at the site complies with the underlying district signage regulations; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 10, 2007, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the approved plans; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received February 8, 2012”-(6) sheets and “Received May 18, 2012”-(1) sheet; and *on further condition*:

THAT signage on the site will comply with C4 district regulations;

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT all conditions from the prior resolution 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. 402278600)

Adopted by the Board of Standards and Appeals, August 14, 2012.

**\*The resolution has been revised to correct the Plans date, which read: ...'February 8, 2012'-(4) sheets. now reads: ...'February 8, 2012'-(6) sheets. Corrected in Bulletin Nos. 41-43, Vol. 97, dated October 25, 2012.**

# MINUTES

## \*CORRECTION

This resolution adopted on November 22, 2011, under Calendar No. 2-11-BZ and printed in Volume 96, Bulletin No. 48, is hereby corrected to read as follows:

### 2-11-BZ

#### CEQR #11-BSA-049M

APPLICANT – Cozen O’Connor, for 117 Seventh Avenue South Property Company, LP, owner.

SUBJECT – Application January 4, 2011 – Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to setback (§33-432) and open space regulations (§23-14). C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, southeast corner of Seventh Avenue South and West 10<sup>th</sup> Street, Block 610, Lot 16, Borough of Manhattan.

#### COMMUNITY BOARD #2M

#### APPEARANCES –

For Applicant: Anthony Bartolacci.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 6, 2010, acting on Department of Buildings Application No. 110408513, reads in pertinent part:

ZR 23-632: Proposed front setback does not comply.

ZR 23-142: Proposed open space ratio does not comply; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C4-5 zoning district within the Greenwich Village Historic District, a residential/community facility enlargement to an existing commercial building, which does not comply with front setback and open space ratio requirements, contrary to ZR §§ 23-632 and 23-142; and

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in the *City Record*, with continued hearings on August 23, 2011 and November 1, 2011, and then to decision on November 22, 2011; and

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

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

WHEREAS, the site is located on the southeast corner of Seventh Avenue South and West 10<sup>th</sup> Street; and

WHEREAS, the site has a triangular shape with 135 feet

of frontage along Seventh Avenue and 16 feet of frontage along West 10<sup>th</sup> Street, with a lot area of approximately 5,786 sq. ft.; and

WHEREAS, the site is occupied by three-story commercial building, which was constructed in the early 1990s in accordance with Landmarks Preservation Commissions’ (LPC) approvals; and

WHEREAS, a portion of the building is occupied by a PCE, pursuant to the Board’s approval associated with BSA Cal. No. 1-95-BZ and the remainder is occupied by a grocery store; and

WHEREAS, the building has a floor area of approximately 17,505 sq. ft. (3.02 FAR), a streetwall and total height of 52’-4”, and no open space; and

WHEREAS, the applicant now proposes to add a fourth, fifth, and partial sixth floor to be occupied by a residential and community facility space on the fourth floor and residential use on the two upper floors; and

WHEREAS, the applicant proposes the following non-complying conditions: (1) a streetwall with a height of 74’-4” (a 15-ft. setback is required at a height of 60 feet); and no open space (the minimum open space ratio is 48 percent); and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the site’s irregular shape and (2) the constraints of the existing building; and

WHEREAS, the applicant states that the site’s shape approximates that of a right triangle with a notch carved out of the 90 degree angle at the rear with six distinct zoning lot lines; and

WHEREAS, the applicant states that the required setback from Seventh Avenue South shifts the building’s bulk away from the long end of the triangle into the right angle where the two sides of a triangle would come together; and

WHEREAS, the applicant states that the site’s irregular shape, including the notch in the rear presents practical difficulties in complying with the relevant zoning regulations; and

WHEREAS, the applicant notes that if the site were a perfect triangle, without the notch, a residential enlargement could be designed with internal circulation at the rear of the site, allowing for a more efficient floor; and

WHEREAS, the applicant represents that a design with the required 15-ft. initial setback would result in residential units with depths limited to 20 feet; and

WHEREAS, the applicant represents that the difference in leasable floor area attributed to the irregular shape would be from 3,829 sq. ft. of leasable residential floor area (subtracting community facility floor area and circulation space) to 2,025 sq. ft. of leasable space, with the setback; and

WHEREAS, the applicant states that the notch at the back of the building limits the potential uses for that area to non-residential or non-habitable accessory residential uses as it is bound by two lot lines and lacks the requisite access

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to light and air; and

WHEREAS, the applicant states that a regularly-shaped site would have less exterior perimeter, eliminate unnecessary circulation space, and provide more and better usable, residential floor area; and

WHEREAS, the applicant provided evidence to support a claim that the inclusion of a setback would also require increased structural engineering costs such as a transfer platform above the existing roof to support the new floor 15 feet back from the streetwall; and

WHEREAS, the applicant represents that the site's shape is a unique condition; and

WHEREAS, specifically, the applicant states that when the Westside IRT (2/3 subway) was built in 1917, Seventh Avenue was extended south through the Greenwich Village street grid, leaving irregularly-shaped lots along Seventh Avenue South; and

WHEREAS, the applicant asserts that it is unique from other seemingly similar sites in that (1) many others include contributing buildings in the historic district and thus are eligible for relief from the City Planning Commission pursuant to ZR § 74-711, which the subject noncontributing building is not; (2) few of the other nearby buildings on similarly shaped sites can structurally sustain enlargements; or (3) others are too small to accommodate residential additions, which are only permitted on zoning lots with a total lot area greater than 1,700 sq. ft.; and

WHEREAS, the applicant provided an analysis of all zoning lots bisected by the extension of Seventh Avenue South, which reflects that there are 32 bisected lots out of a much greater number of lots in the study area and only eight (25 percent) of the bisected sites are similar to the subject site with a basically triangular shape, underdeveloped, and non-contributing in the historic district; and

WHEREAS, the applicant cites to Douglaston v. Klein, 51 N.Y.2d 963 (1960) for the principle that a uniqueness finding "does not require that only the parcel of land in question and none other be affected by the condition which creates the hardship" but that the hardship condition not be so generally applicable such that the a series of potential variances be tantamount to a zoning change; and

WHEREAS, the Board agrees that Douglaston does not require that in order to satisfy the uniqueness finding that a site must be the only one with a particular set of conditions leading to hardship; and

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

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) the complying mixed-use building with a floor area of 26,388 sq. ft.; and (2) the proposed mixed-use building with floor area of approximately 34,287 sq. ft.; and

WHEREAS, the study concluded that the complying scenario would not result in a reasonable return, but that the proposed enlargement would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

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

WHEREAS, the applicant states that the proposed use is conforming and is consistent with the surrounding area and that the existing building with a height of 52'-4" is a full lot coverage building; although 1,041 sq. ft. of open space is required on the first residentially occupied floor, the creation of open space as part of the enlargement above the third floor would not benefit the surrounding area; and

WHEREAS, the applicant asserts that there is a range of building sizes and types in the surrounding area such that there is not a defined building form or profile, thus the absence of the setback and the sky exposure plane encroachment will not be out of character; and

WHEREAS, the applicant notes that the proposed FAR of 5.93 is less than the maximum 6.5 permitted and thus, the bulk is contemplated by zoning district regulations; and

WHEREAS, lastly, because the site is within the Greenwich Village Historic District, the applicant obtained approval of the design from the LPC in the form or a Certificate of Appropriateness, dated June 8, 2010 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 is a result of the historic street mapping and was not self-created; and

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

WHEREAS, the Board notes that the proposal requires waivers for setback and for open space, and that all other zoning conditions are complying; and

WHEREAS, the Board notes that the proposal reflects a setback with a depth between 18 and 20 feet above the fifth floor height of 74'-4"; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the applicant to enlarge the existing building to accommodate the available floor area; 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 a Type I action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

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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. 11BSA049M, dated November 12, 2010; 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, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, within a C4-5 zoning district within the Greenwich Village Historic District, a residential/community facility enlargement to an existing commercial building, which does not comply with front setback and open space ratio requirements, contrary to ZR §§ 23-632 and 23-142, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 18, 2011"- fourteen (14) sheets; and *on further condition*:

THAT the total building floor area post-enlargement shall not exceed 34,287 sq. ft. (5.93 FAR) and the front wall height shall not exceed 74'-4", 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 substantial construction shall be completed pursuant to ZR § 72-23;

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, November 22, 2011.

**\*The resolution has been revised to correct the sq. ft. in the 30<sup>th</sup> WHEREAS, the FAR in the 36<sup>th</sup> WHEREAS and the sq. and FAR in the 1<sup>st</sup> Condition. Corrected in Bulletin Nos. 41-43, Vol. 97, dated October 25, 2012.**

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## \*CORRECTION

This resolution adopted on May 1, 2012, under Calendar No. 195-11-BZ and printed in Volume 97, Bulletin No. 19, is hereby corrected to read as follows:

### 195-11-BZ

#### CEQR #12-BSA-059K

APPLICANT – Law Office of Fredrick A. Becker, for Harriet Mandalaoui and David Mandalaoui, owners.

SUBJECT – Application December 22, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(b)); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2070 East 21<sup>st</sup> Street, west side of East 21<sup>st</sup> Street, between Avenue S and Avenue T, Block 7299, Lot 39, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

#### APPEARANCES –

For Applicant: Lyra J. Altman.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 7, 2011, acting on Department of Buildings Application No. 320310230, reads in pertinent part:

1. Proposed enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio, which is contrary to ZR Section 23-141(b)
2. Proposed enlargement increases the degree of non-compliance of an existing building with respect to open space and lot coverage, which are contrary to ZR Section 23-141(b)
3. Proposed enlargement increases the degree of non-compliance of an existing building with respect to a side yard less than 5'-0", which is contrary to ZR Section 23-461(a) & 23-48;
4. Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; and

WHEREAS, a public hearing was held on this application on March 6, 2012 after due notice by publication

in *The City Record*, with a continued hearing on April 3, 2012, and then to decision on May 1, 2012; and

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

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

WHEREAS, the subject site is located on the west side of East 21<sup>st</sup> Street, between Avenue S and Avenue T, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 1,505 sq. ft. (0.60 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 1,505 sq. ft. (0.60 FAR) to 2,625 sq. ft. (1.05 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 44.5 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 55.5 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 2'-6 1/2" (a minimum width of 5'-0" is required for each side yard) and to provide a side yard with a width of 5'-5 1/2" along the southern lot line; 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, the applicant submitted a study of FARs in the area which reflects that there are at least two homes within two blocks of the site in the subject R3-2 zoning district with FARs in excess of 1.0, and concludes that the proposed FAR is compatible with the neighborhood character; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the proposed bay windows on the south side of the home would provide sufficient clearance for automobiles driving to and from the parking space at the rear of the site; and

WHEREAS, in response, the applicant submitted revised plans which reflect that there will be at least six feet of clearance below each of the bay windows on the south side of the proposed home, which the applicant represents is sufficient clearance for passing automobiles; 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

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# MINUTES

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impair the future use and development of the surrounding area; and

October 25, 2012.

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received March 20, 2012”-(10) sheets and “April 16, 2012”-(3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,625 sq. ft. (1.05 FAR); an open space of 44.5 percent; lot coverage of 55.5 percent; a side yard with a minimum width of 2’-6 ½” along the northern lot line; a side yard with a minimum width of 5’-5 ½” along the southern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, May 1, 2012.

**\*The resolution has been revised to correct the CEQR No. which read: ...12-BSA-055K... now reads: ...12-BSA-059K... Corrected in Bulletin Nos. 41-43, Vol. 97, dated**