
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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

Volume 97, Nos. 9-10

March 8, 2012

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DOCKET

New Case Filed Up to February 28, 2012

41-12-A

112-26 38th Avenue, 225' from the corner of 112th Street and 38th Avenue., Block 1785, Lot(s) 10, Borough of **Queens, Community Board: 3**. Appeal seeking a common law vested right to continue developemnt commenced under the prior R6 Zoning District . R5A Zoning District . district.

42-12-BZ

158 West 27th Street, south side of 27th Street, between Avenue of the Americas and Seventh Avenue., Block 802, Lot(s) 75, Borough of **Manhattan, Community Board: 5**. This application is filed pursuant to Sections 42-31 and 73-36 of the Zoning Resolution seeking a special permit to allow the operation of a physical culture establishment on a portion of the cellar, first and second floors of the existing twelve-story building at the premises. M1-6 district.

43-12-BZ

25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets., Block 530, Lot(s) 19, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to permit the construction of a residential development of approximately 30,792 square feet on a 25'8"x200'2" through lot which does not comply with the use or bulk regulations for the M1-5B zoning district. M1-5B district.

44-12-BZ

1024 Flatbush Avenue, west side of Flatbush Avenue between Regent Place and Beverly Road., Block 5125, Lot(s) 56, Borough of **Brooklyn, Community Board: 14**. This application is filed pursuant to ZR§73-36 seeking a special permit to allow the operation of a physical culture establishment within an existing four-story building that is locted in a C4-4A zoning district. C4-4A district.

45-12-BZ

1914 50th Street, 100' easterly from the corner formed by the easterly side of 19th Avenue and the south side of 50th Street., Block 5462, Lot(s) 12, Borough of **Brooklyn, Community Board: 12**. Propoed Synagogue (UG4) in an R5 zoning district. R5 district.

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

CALENDAR

MARCH 20, 2012, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 20, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

442-42-BZ

APPLICANT – Eric Palatnik, P.C., for Cropsey-20th Avenue Corp, owner.

SUBJECT – Application November 17, 2011 – Pursuant to (§11-412) an Amendment to enlarge the existing building and to legalize the conversion of the automotive repair bays of an existing gasoline service station (Shell) to an accessory convenience store. R-5 zoning district.

PREMISES AFFECTED – 2001/2011 Cropsey Avenue, northeast corner of 20th Avenue and Cropsey Avenue, Block 6442, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #11BK

1259-79-BZ

APPLICANT – Sheldon Lobel, P.C., for 29 West 26th Street, LLC c/o Madison Realty Capital, L.P., owner.

SUBJECT – Application December 15, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to convert the 4th and 6th floors of the existing building from manufacturing lofts to residential use which expired on April 27, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 27, 2011; waiver of the Board's Rules of Practice and Procedure. M1-6 zoning district.

PREMISES AFFECTED – 29 West 26th Street, north side of West 26th Street, 350' east of 6th Avenue, Block 828, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #5M

286-00-BZ

APPLICANT – Law Offices of Mitchell S. Ross, for Whitewall Properties II, LLC, owner; New York Health and Racquet Club, lessee.

SUBJECT – Application January 27, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Health and Racquet Club*) located on the first and second floors of a twenty story mixed-use building, which expired on March 27, 2011; waiver of the rules. C6-3A/C6-4M zoning district.

PREMISES AFFECTED – 60 West 23rd Street, northeast corner of Sixth Avenue and West 23rd Street, Block 824, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #5M

203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar Inc., owner.
SUBJECT – Application December 30, 2011 – This application is filed pursuant to ZR §§72-01 and 72-22 and seeks an amendment to the BSA-approved plans to permit changes to the interior layout of the proposed mixed-use building, including an increase in the number of dwelling units and parking spaces and to permit attended parking spaces that do not comply with the minimum 200sf per space per ZR §36-521.

PREMISES AFFECTED – 137-35 Elder Avenue, northwest corner of Main Street and Elder Avenue. Block 5140, Lot 40. Borough of Queens.

COMMUNITY BOARD #7Q

APPEALS CALENDAR

99-11-A

APPLICANT – Eric Palatnik, P.C., for Naila Aatif, owner.
SUBJECT – Application July 8, 2011 – Application seeking to legalize an alteration of a two family residence which does not front upon a legally mapped street, contrary to General City Law 36. R6 Zoning District.

PREMISES AFFECTED – 16 Brighton 7th Walk, between Brighton 7th Street and Brighton 8th Street. Block 8667, Lot 774, Borough of Brooklyn.

COMMUNITY BOARD #13BK

MARCH 20, 2012, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 20, 2012, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

102-11-BZ

APPLICANT – H. Irving Sigman, for S & I Property Management, LLC, owner.

SUBJECT – Application July 20, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (New York Spa). C4-4 zoning district.

PREMISES AFFECTED – 131-23 31st Avenue, northwest corner of the intersection of 31st Avenue & Whitestone Expressway (West Service Road). Block 4361, Lot 27. Borough of Queens.

COMMUNITY BOARD #7Q

CALENDAR

182-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 775 Broadway Acquisition LLC c/o The Jackson Group LLC, owner; 777 Broadway Fitness Group, lessee.

SUBJECT – Application December 5, 2011 – Special Permit (§73-36) to permit the operation of a physical culture establishment on a portion of the first, second and third floors of the existing three-story building. C4-3 zoning district.

PREMISES AFFECTED – 777 Broadway, located on the east corner of the intersection formed by Broadway and Summer Place. Block 3131, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #4BK

3-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Michael Weissman, owner.

SUBJECT – Application January 4, 2012 – Special Permit (§73-622) for the enlargement an existing single family home which exceeds the maximum floor area (§23-141(b)) and less than the minimum side yard requirement (§23-461(b)). R4 zoning district.

PREMISES AFFECTED – 1913 East 28th Street, east side of East 28th Street, 100' south of Avenue S. Block 7307, Lot 88, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 28, 2012
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

295-57-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Aranoff Family Limited Partnership, owners.

SUBJECT – Application September 7, 2011 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expired on August 7, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on February 7, 2002. C1-2/R4 zoning district.

PREMISES AFFECTED – 146-15 Union Turnpike, northwest corner of Union Turnpike and 147th Street, Block 6672, Lot 80, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening, an extension of term of a previously granted variance to permit the operation of a gas station, which expired on August 7, 2011 and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on January 10, 2012, after due notice by publication in *The City Record*, with a continued hearing on January 31, 2012, and then to decision on February 28, 2012; and

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

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

WHEREAS, the subject site is located on the northwest corner of Union Turnpike and 147th Street, within a C1-2 (R4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 1, 1957 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with car wash, lubrication, and minor repairs with hand tools for a term of 15

years; and

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

WHEREAS, most recently, on August 7, 2001, the Board granted a ten-year extension of term, which expired on August 7, 2011; and

WHEREAS, one of the conditions of the resolution was that a new certificate of occupancy be obtained by February 7, 2003 (18 months from the date of the August 7, 2001 approval); and

WHEREAS, the applicant states that it did not obtain a new certificate of occupancy due to change in management; and

WHEREAS, the applicant now requests an additional ten-year extension of term and time to obtain a certificate of occupancy; and

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

WHEREAS, at hearing, the Board raised concerns about the landscaping plan and compliance with C1 district signage regulations; and

WHEREAS, in response, the applicant stated that (1) it will complete landscaping during warmer weather; and (2) that it has removed signage on the light poles in order comply with C1 district signage regulations; and

WHEREAS, the applicant provided photographs that reflect the removal of the signage; and

WHEREAS, based upon the above, the Board finds the requested extension of term and extension of time to obtain a certificate of occupancy, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated October 1, 1957, so that as amended this portion of the resolution shall read: “to extend the term for ten years from August 7, 2011, to expire on August 7, 2021, and to grant a one-year extension of time to obtain a certificate of occupancy, to expire on February 28, 2013; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘January 20, 2012’-(3) sheets; and *on further condition*:

THAT the term of the grant will expire on August 7, 2021;

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

THAT landscaping will be maintained as reflected on the Board-approved plans;

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

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

THAT a new certificate of occupancy will be obtained by February 28, 2012;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

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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.” (N.B. 956/1957)

Adopted by the Board of Standards and Appeals February 28, 2012.

611-76-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Capitol One Bank, owner.

SUBJECT – Application November 15, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an off-site accessory parking facility for a bank (*Capitol One*) which expires on February 15, 2012. R4 zoning district.

PREMISES AFFECTED – 43-17/21 214th Place, east side 161.24’ north of Northern Boulevard, Block 6301, Lot 9, 10, 11, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a variance for an off-site accessory parking facility for a bank, which expired on February 15, 2012; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, and then to decision on February 28, 2012; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application with the following conditions that: (1) there be no parking on the sidewalk; (2) the premises be kept clean of debris and graffiti; (3) all conditions appear on the certificate of occupancy; (4) a new certificate of occupancy be obtained within one year from the date of the resolution; and (5) a sign be installed on the gate with an emergency contact number; and

WHEREAS, the site is located on the east side of 214th Place, 161 feet north of Northern Boulevard, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 15, 1977 when, under the subject calendar number, the Board granted a variance to permit the construction of an off-site accessory parking

facility for a bank, that extends into the R4 zoning district; and

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

WHEREAS, most recently, on May 21, 2002, the Board granted a ten-year extension of term to expire on February 15, 2012; and

WHEREAS, at hearing, the Board asked the applicant to address the Community Board’s concerns including the security of the parking lot after hours as well as its own observation about insufficient landscaping; and

WHEREAS, in response, the applicant stated that (1) it will comply with all of the Community Board’s conditions; (2) specifically, it will lock the gate after business hours and add a sign to the gate with an emergency phone number for access; and (3) it will complete landscaping during warmer weather; and

WHEREAS, based upon its review of the record, the Board finds the requested ten-year extension of term 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 February 15, 1977, so that as amended this portion of the resolution shall read: “to grant a ten-year extension of term from February 15, 2012 to February 15, 2022; *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 November 15, 2012’–(1) sheet; and *on further condition*:

THAT the term of the grant will expire on February 15, 2022;

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

THAT landscaping will be maintained as reflected on the Board-approved plans;

THAT there be no parking on the sidewalk;

THAT the gate be locked after business hours;

THAT a sign be installed and maintained on the gate, with an emergency contact telephone number;

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

THAT a new certificate of occupancy will be obtained by February 28, 2013;

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

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. 893-74)

Adopted by the Board of Standards and Appeals February 28, 2012.

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540-86-BZ

APPLICANT – Slater & Beckerman, LLP, for 148 Jamaica Avenue Co., LLC, owner.

SUBJECT – Application November 4, 2011 – Extension of Term of a Special Permit (§73-42) for the continued operation of a one story UG6 commercial building (*Key Food*); an amendment to eliminate the restriction on hours of operation. C4-2A/R6B zoning district.

PREMISES AFFECTED – 32-11/32-21 Newton Avenue, northwest corner of Newton Avenue and 33rd Street, Block 619, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Stefanie Marczzi.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a special permit for a supermarket, which will expire on June 23, 2012, and an amendment to remove the restriction on the hours of operation; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, and then to decision on February 28, 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 1, Queens, recommends approval of this application with the following conditions: (1) the applicant comply with the prior approval except the proposed new time of operation; (2) truck deliveries not take place from 7:00 to 10:00 a.m. and 4:00 to 7:00 p.m.; and (3) during deliveries truck engines be turned off; and

WHEREAS, the site is located on the northwest corner of Newton Avenue and 33rd Street, partially within a C4-2A and partially within an R6B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since July 23, 1957 when, under BSA Cal. No. 60-37-BZ, it granted a variance to allow, partially within a commercial district and partially within a residential district, a parking lot with more than three cars; and

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

WHEREAS, on June 23, 1987, under the subject calendar number, the Board granted a special permit to allow a one-story horizontal enlargement of a commercial building within what was then partially a C1-2 (R6) and partially an R6 zoning district; and

WHEREAS, subsequently, on October 22, 2002, the Board granted an extension of the term to expire on June 23, 2012; and

WHEREAS, the site is occupied by a supermarket (*Key Food*) with accessory parking; and

WHEREAS, as to the hours of operation, the applicant states that it intends to operate the supermarket from 7:00 a.m. to 11:00 p.m. Monday to Saturday and from 8:00 a.m. to 10:00 p.m. on Sunday; and

WHEREAS, however, the applicant seeks to eliminate the restriction on hours as the sole public entrance to the supermarket is on Newton Avenue, entirely within a C4-2A zoning district where the use is permitted as of right, and the use with extended hours is compatible with surrounding uses; and

WHEREAS, at hearing, the Board inquired about the condition and use of the parking lot, which is adjacent to residential use; and

WHEREAS, in response, the applicant stated that the parking lot is only used by employees, lights are pointed down and away from residential use, and there is an opaque fence which provides screening; and

WHEREAS, additionally, the applicant stated that there are no late night or early morning deliveries; and

WHEREAS, based upon its review of the record, the Board finds the requested ten-year extension of term and the elimination of the hours restriction 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 June 23, 1987, so that as amended this portion of the resolution shall read: “to grant a ten-year extension of term from June 23, 2012 to June 23, 2022; *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 November 4, 2011’-(4) sheets and ‘January 17, 2012’-(1) sheet; and *on further condition*:

THAT the term of the grant will expire on June 23, 2022;

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

THAT truck engines be turned off during deliveries;

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

THAT a new certificate of occupancy will be obtained by February 28, 2013;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB App. No. 420463581)

Adopted by the Board of Standards and Appeals February 28, 2012.

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290-03-BZ

APPLICANT – Patrick W. Jones, P.C., for Joseph Rosenblatt, owner; Graceful Services, Inc., lessee.

SUBJECT – Application September 15, 2011 – Extension of Term for a previously granted Special Permit (§73-36) for a Physical Culture Establishment (*Graceful Services*) which expired on September 26, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on April 20, 2005; and an Amendment to legalize an increase in floor area; and Waiver of the Rules. C2-8 (TA) zoning district.

PREMISES AFFECTED – 1097 Second Avenue, west side of Second Avenue, 40' south of East 58th Street, Block 1331, Lot 126, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Patrick W. Jones.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term for the continued operation of a physical culture establishment (PCE), which expired on September 26, 2011, and an extension of time to obtain a certificate of occupancy, which expired on April 20, 2005; and

WHEREAS, a public hearing was held on this application on November 22, 2011, after due notice by publication in *The City Record*, with a continued hearing on January 31, 2012, and then to decision on February 28, 2012; and

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

WHEREAS, the PCE is located on the west side of Second Avenue, south of East 58th Street, within a C2-8 zoning district within the Special Transit Land Use District (TA); and

WHEREAS, the subject site at 1097 Second Avenue is located adjacent to another PCE space at 1095 Second Avenue to which it is connected; a special permit for the adjacent space was granted by the Board in 2006 pursuant to BSA Cal. No. 40-05-BZ and follows the same term expiration as the subject case; the Board granted an extension of term for the companion application on the same date; and

WHEREAS, the PCE occupies approximately 952 sq. ft. on the second floor of a four-story mixed-use commercial/residential building; and

WHEREAS, the PCE is operated as Graceful Services; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 20, 2004 when, under the subject calendar number, the Board granted a special permit for the legalization of a PCE to expire on September 26, 2011; and

WHEREAS, a condition of the grant was that a certificate of occupancy be obtained by April 20, 2005; and

WHEREAS, the applicant now requests a ten-year extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, in consultation with the Fire Department, the applicant agrees to install hard-wired smoke detectors with battery backup; and

WHEREAS, accordingly, the applicant revised the plans to identify the location of the smoke detectors; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *re-opens* and *amends* the resolution, as adopted on April 20, 2004, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years from September 26, 2011 to September 26, 2021 and to extend the time to obtain a certificate of occupancy to February 28, 2013, *on condition* that all work shall substantially conform to drawings filed with this application marked ‘Received January 19, 2012’-(9) sheets; and *on further condition*:

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

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

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

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

THAT a certificate of occupancy must be obtained by February 28, 2013;

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. 103523457)

Adopted by the Board of Standards and Appeals, February 28, 2012.

40-05-BZ

APPLICANT – Patrick W. Jones, P.C., for 2nd Avenue, Property LLC, owner; Graceful Services, Inc., lessees.

SUBJECT – Application September 15, 2011 – Extension of Term for a previously granted Special Permit (§73-36) for a Physical Culture Establishment (*Graceful Services*) which expired on September 26, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on April 20, 2005; and an Amendment to legalize an increase in floor area; and Waiver of the Rules. C2-8 (TA) zoning district.

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PREMISES AFFECTED – 1095 Second Avenue, west side of Second Avenue 60.5’ south of East 58th Street, Block 1331, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Patrick W. Jones.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for an extension of term for the continued operation of a physical culture establishment (PCE), which expired on September 26, 2011, an amendment to legalize an increase in floor area, and an extension of time to obtain a certificate of occupancy, which expired on April 20, 2005; and

WHEREAS, a public hearing was held on this application on November 22, 2011, after due notice by publication in *The City Record*, with a continued hearing on January 31, 2012, and then to decision on February 28, 2012; and

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

WHEREAS, the PCE is located on the west side of Second Avenue, south of East 58th Street, within a C2-8 zoning district within the Special Transit Land Use District (TA); and

WHEREAS, the subject site at 1095 Second Avenue is located adjacent to another PCE space at 1097 Second Avenue to which it is connected; a special permit for the adjacent space was granted by the Board in 2004 pursuant to BSA Cal. No. 290-03-BZ and follows the same term expiration as the subject case; the Board granted an extension of term for the companion application on the same date; and

WHEREAS, the PCE occupies approximately 1,495 sq. ft. (which includes the enlargement to be legalized) on the second floor of a four-story mixed-use commercial/residential building; and

WHEREAS, the PCE is operated as Graceful Services; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 7, 2006 when, under the subject calendar number, the Board granted a special permit for the PCE to expire on September 26, 2011; and

WHEREAS, a condition of the grant was that a certificate of occupancy be obtained by February 7, 2007; and

WHEREAS, the applicant now requests a ten-year extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant also seeks to legalize the enlargement from approximately 1,075 sq. ft. to 1,495 sq. ft., which it completed pursuant to DOB approval; and

WHEREAS, in consultation with the Fire Department, the applicant agrees to install hard-wired smoke detectors with battery backup; and

WHEREAS, accordingly, the applicant revised the plans to identify the location of the smoke detectors; and

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

Therefore it is Resolved that the Board of Standards and Appeals *re-opens* and *amends* the resolution, as adopted on February 7, 2006, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years from September 26, 2011 to September 26, 2021, to allow an amendment to the approved plans, and to extend the time to obtain a certificate of occupancy to February 28, 2013, *on condition* that all work shall substantially conform to drawings filed with this application marked ‘Received January 19, 2012’-(9) sheets; and *on further condition*:

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

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

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; THAT the above conditions will appear on the Certificate of Occupancy;

THAT a certificate of occupancy must be obtained by February 28, 2013;

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. 103997837)

Adopted by the Board of Standards and Appeals, February 28, 2012.

118-53-BZ

APPLICANT – Issa Khorasanchi, for Henry R. Jenet, owner.

SUBJECT – Application October 24, 2011 – Extension of Term (§11-411) for continued operation of UG6 retail stores which expired on December 7, 2011. R4 zoning district.

PREMISES AFFECTED – 106-57/61 160th Street, east side of 160th Street, 25’ north of intersection of 107th Avenue and 160th Street, Block 10128, Lot 50, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Issa Khorasanchi.

THE VOTE TO CLOSE HEARING –

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

MINUTES

Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 27, 2012, at 10 A.M., for decision, hearing closed.

820-67-BZ

APPLICANT – Willy C. Yuin, R.A., for Rick Corio, Pres. Absolute Car, owner.

SUBJECT – Application October 28, 2011 – Extension of Term of an approved Variance (§72-21) for the operation of a automotive repair shop (UG16) which expired on November 8, 2011. R-3A zoning district.

PREMISES AFFECTED – 41Barker Street, east side of 414.19' south Woodruff Lane, Block 197, Lot 34, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Willy C. Yuin, R.A.

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

636-70-BZ

APPLICANT – Walter T. Gorman, P.E., for East River Petroleum Realty LLC, owner; Kings 108 Car Care, Inc. (Mobile S/S), lessee.

SUBJECT – Application January 24, 2012 – Amendment to an approved Special Permit (§73-211) for the operation of an automotive service station (UG 16B) with accessory uses. C2-2/R6 zoning district.

PREMISES AFFECTED – 105-45 to105-55 Horace Harding Expressway, northwest corner 108th Street, Block 1694, Lot 23. Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to March 27, 2012, at 10 A.M., for continued hearing.

188-78-BZ

APPLICANT – Eric Palatnik, P.C., for Anthony Berardi, owner.

SUBJECT – Application August 4, 2011 – Amendment (§11-413) to a previously granted Variance (§72-21) to add (UG16) automobile body with spray painting booth and automobile sales to an existing (UG16) automobile repair and auto laundry. R5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81st Street, Block 6313, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

172-86-BZ

APPLICANT – Sheldon Lobel, P.C., for Clearview Mortgage Bank Corporation, owner.

SUBJECT – Application November 4, 2011 – Extension of Term of an approved Variance (§72-21) which permitted the construction of a two-story UG6 professional office building which expires on March 31, 2012. R2 zoning district.

PREMISES AFFECTED – 256-10 Union Turnpike, south side of Union Turnpike between 256th and 257th Streets, Block 8693, Lot 14, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to March 27, 2012, at 10 A.M., for continued hearing.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Jovkiss Management, LLC, owner; East Manor Restaurant, lessee.

SUBJECT – Application November 1, 2011 – Extension of Time to obtain a Certificate of Occupancy for a UG6 Eating and Drinking Establishment (*Eastern Pavilion Chinese Restaurant*) which expired on October 5, 2011. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 46-45 Kissena Boulevard, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jordan Most.

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

11-01-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for P.J. Christy, Inc., owner.

SUBJECT – Application August 8, 2011 – Extension of Term for a gasoline service station (*BP British Petroleum*) which expired on August 7, 2011 and Extension of Time to obtain a Certificate of Occupancy which expired on July 26, 2006. C1-2/R5 zoning district.

PREMISES AFFECTED – 586/606 Conduit Boulevard, Pitkin Avenue and Autumn Avenue on the west, Block 4219, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

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

MINUTES

Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 20, 2012, at 10 A.M., for decision, hearing closed.

327-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Beth Gavriel Bukharian Congregation, owner.

SUBJECT – Application June 5, 2009 – Amendment to a Variance (§72-21) to increase the size of an existing Synagogue and School (*Beth Gavriel*) and alter the facade. R1-2 zoning district.

PREMISES AFFECTED – 66-35 108th Street, east side of 108th Street, east side of 108th Street, between 66th Road and 67th Avenue, Block 2175, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jordan Most.

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

248-08-BZ

APPLICANT – New York City Board of Standards

OWNER – Joseph Alexander/New Covenant Christian Church, Inc.

SUBJECT – Application October 6, 2008 – Dismissal for Lack of Prosecution - Variance (§72-21) to permit the development of a religious-based school and church, contrary to floor area and floor area ratio (§24-11), rear yard (§24-36), and parking (§25-31). R5 zoning district.

PREMISES AFFECTED – 3550 Eastchester Road, eastern side of Eastchester Road between Hicks Street and Needham Avenue, Block 4726, Lot 7, 36, 38, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Eric Palatnik and Bishop Alexander.

ACTION OF THE BOARD – Laid over to April 24, 2012, at 10 A.M., for dismissal calendar.

APPEALS CALENDAR

29-11-A & 30-11-A

APPLICANT – Randy M. Mastro-Gibson, Dunn & Crutcher LLP, for Win Restaurant Equipment & Supply Corporation, owner; Fuel Outdoor, lessee.

SUBJECT – Application March 24, 2011 – An appeal challenging the Department of Building's revocation of sign permits. M1-5B Zoning District.

PREMISES AFFECTED – 318 Lafayette Street, Northwest corner of Houston and Lafayette Streets. Block 522, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, February 28, 2012.

186-11-A

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for 170 Broadway NYC LP c/o Highgate Holdings, Inc., owner.

SUBJECT – Application December 8, 2011 – Application pursuant to Multiple Dwelling Law ("MDL") Section 310(2)(a) to waive the court and yard requirements of MDL Section 26 to facilitate the conversion of an existing office building to a transient hotel. C5-5/LM zoning district.

PREMISES AFFECTED – 170 Broadway, southeast corner of Broadway and Maiden Lane. Block 64, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Gary Tarnoff.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 10, 2011, acting on Department of Buildings Application No. 120824073 reads, in pertinent part:

Proposed to convert an 18-story office building to a Use Group 5 transient hotel is not permitted, as such conversion will not comply with the minimum width and area of inner court requirements of MDL Section 26(7). Legally required windows open onto an existing inner court that also does not comply with MDL Section 26(7).

Legally required windows open onto an existing rear yard that does not comply with MDL Section 26(5) and ZR Section 33-261; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law ("MDL") § 310, to vary court and rear yard requirements in order to allow for the proposed conversion of the subject building from office use (Use Group 6) to a transient hotel (Use Group 5), contrary to the court requirements of MDL § 26(7) and the rear yard requirements of

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MDL § 26(5) and ZR § 33-261; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, and then to decision on February 28, 2012; and

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

WHEREAS, the subject site is located on the southeast corner of Broadway and Maiden Lane, within a C5-5 zoning district within the Special Lower Manhattan District; and

WHEREAS, the site has 76.63 feet of frontage along Broadway, 110.88 feet of frontage along Maiden Lane, and a total lot area of 9,066 sq. ft.; and

WHEREAS, the site is occupied by an 18-story office building with ground floor retail space; and

WHEREAS, the applicant states that the existing building was constructed in 1903 and has a pre-existing non-complying floor area of 151,033.5 sq. ft. (16.6 FAR); the maximum permitted floor area is 135,988.5 sq. ft. (15.0 FAR); and

WHEREAS, the applicant proposes to convert the existing building to a transient hotel with 261 hotel units on the fourth through 18th floors, and retail uses on the first through third floors (the "Proposed Hotel"), which is a permitted use in the underlying zoning district but does not comply with the court requirements of MDL § 26(7) or the rear yard requirements of MDL § 26(5) and ZR § 33-261; and

WHEREAS, the applicant proposes to make extensive alterations to the interior of the building in order to provide the Proposed Hotel with 261 hotel units, but notes that all work will be carried out within the existing building envelope and will not result in any enlargement of the existing building or an increase in its floor area; and

WHEREAS, the Board notes that pursuant to MDL § 4(9), transient hotels are considered "class B" multiple dwellings; therefore the Department of Buildings ("DOB") has determined that the proposed hotel use must comply with the relevant provisions of the MDL; and

WHEREAS, pursuant to MDL § 30(2), every room in a multiple dwelling must have one window opening directly upon a street or upon a lawful yard, court or space above a setback located on the same lot as that occupied by the multiple dwelling; and

WHEREAS, the applicant states that, of the 261 hotel units in the Proposed Hotel, 171 units will have required windows that open onto a street, 75 units will have required windows that open onto an existing court with a width of 28.5 feet and a depth ranging from approximately 30 feet to 31.5 feet located at the rear of the building (the "Court"), and 15 units will have required windows that open onto an existing rear yard with a width of 7.5 feet and a depth of 39.5 feet located at the southeast corner of the site (the "Rear Yard"); and

WHEREAS, pursuant to MDL § 4(32), the Court is considered an "inner court;" and

WHEREAS, MDL § 26(7) states that, except as

otherwise provided in the Zoning Resolution, (1) an inner court shall have a minimum width of four inches for each one foot of height of such court and (2) the area of such inner court shall be twice the square of the required width of the court, but need not exceed 1,200 sq. ft. so long as there is a horizontal distance of at least 30 feet between any required living room window opening onto such court and any wall opposite such window; and

WHEREAS, the applicant states that the Court has a height of 214 feet and pursuant to MDL § 26(7), would therefore be required to have a width of at least 71.3 feet; consequently, the 28.5-ft. width of the Court does not comply with the minimum width requirement; and

WHEREAS, the applicant further states that the Court has an area of 886 sq. ft., which does not equal twice the square of the required width of a complying court and is less than 1,200 sq. ft., and, accordingly, will not comply with the applicable minimum area requirement of MDL § 26(7); and

WHEREAS, as to the Rear Yard, MDL § 26(5) sets forth requirements for rear yards "except as otherwise provided in the [Z]oning [R]esolution;" and

WHEREAS, ZR § 33-261 provides that, for corner lots such as the subject site, the portion of a side lot line beyond 100 feet from the street line that it intersects shall be considered a rear lot line and a rear yard with a minimum depth of 20 feet shall be provided where the rear lot line coincides with an adjoining rear lot line; therefore, a rear yard with a minimum depth of 20 feet and a minimum width of 10.5 feet is required at the southeast corner of the site; and

WHEREAS, the applicant states that the Rear Yard, with a depth of 39.5 feet and a width of 7.5 feet, complies with the required depth of 20 feet but does not comply with the required width of 10.5 feet under ZR § 33-261, and therefore violates MDL § 26(5); and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed in 1903; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL § 26(7) specifically relates to the minimum dimensions of courts and MDL § 26(5) specifically relates to the minimum dimensions of rear yards; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a)(3); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

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WHEREAS, the applicant notes that the proposed conversion of the existing building to hotel use will require extensive and costly interior alterations to the building in order to convert its existing office uses into a modern, code-compliant hotel, as well as the construction of a required loading dock; and

WHEREAS, the applicant states that, in order for all of the hotel units in the Proposed Hotel to have windows that open onto a street or a lawful yard or court, as required by MDL § 30(2), significant portions of the building would have to be demolished and significant modifications to the layout of the Proposed Hotel would have to be made; and

WHEREAS, the applicant submitted two alternate plans for a complying hotel (designated as Schemes B and C); and

WHEREAS, in the Scheme B design, portions of the existing building would have to be demolished in order to create a court with an area of 1,227 sq. ft. to comply with MDL § 26(7), and hotel units at the eastern end of the building would have to be reconfigured so that none of the hotel units have required windows that open onto the non-complying Rear Yard; and

WHEREAS, the applicant states that, under Scheme B, the demolished floor area would be offset through the construction of a new 19th floor at the top of the building, which would contain ten hotel units; however, the Scheme B design would still yield only 241 hotel units as compared to the 261 hotel units in the Proposed Hotel; and

WHEREAS, the Scheme C design is similar to the Scheme B design in that it would create a complying court through a significant amount of building demolition and it would reconfigure the hotel units so that none of the units have required windows that open onto the non-complying Rear Yard; however, in Scheme C a 19th floor would not be added to the existing building, and the resultant hotel building would yield only 231 hotel units as compared to the 261 hotel units in the Proposed Hotel; and

WHEREAS, the applicant submitted a letter from a consulting engineer describing the structural work that would be required in order to create the complying court shown in the Scheme B and Scheme C drawings; and

WHEREAS, specifically, the letter submitted by the applicant reflects that the work required to create the complying court would include (1) installation of new transfer and connecting beams at the underside of the fourth floor; (2) installation of new steel columns from the fourth floor to the roof; (3) welding stiffener plates to the existing beam webs at each floor; (4) demolition of existing floor slabs from the fifth floor to the roof; (5) installation of new steel beams at each floor; (6) installation of new floor slabs from the fifth floor to the roof; (7) demolition of existing exterior masonry walls from the fourth floor to the roof; (8) removal of the existing steel framing within the enlarged court and construction of a new exterior façade; and (9) shoring and bracing of the existing building throughout the construction; and

WHEREAS, the applicant also submitted a cost summary prepared by the construction manager, which estimates the total costs and costs per hotel unit for the Proposed Hotel and Schemes B and C; and

WHEREAS, the cost summary submitted by the applicant reflects that, due to the additional work required under Schemes B and C, the per-unit cost of Scheme B would exceed the per-unit cost of the Proposed Hotel by more than \$27,000, while the per-unit cost of Scheme C would exceed the per-unit cost of the Proposed Hotel by more than \$21,000; and

WHEREAS, the applicant also submitted an estimate of the revenues that would be generated by the Proposed Hotel and Schemes B and C, which reflects that the Scheme B and C designs, which provide fewer hotel units, would generate substantially lower annual revenues than the Proposed Hotel; and

WHEREAS, at hearing, the Board questioned whether there is a separate requirement that a minimum distance of 30 feet be maintained between a legally required window and an opposite facing window or wall and, if so, whether such a requirement would necessitate an additional waiver; and

WHEREAS, in response, the applicant states that apart from MDL § 26(7), there is no separate provision of the MDL that imposes a 30-ft. window-to-wall or window-to-window requirement for the subject building, and therefore MDL §§ 26(7) and 26(5) are the only sections of the MDL that need to be varied; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 26(7) and 26(5) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the existing building is more than 100 years old and is obsolete for modern office uses; and

WHEREAS, the applicant notes that the subject site is a corner lot and the majority of hotel units will have required windows that open onto either Maiden Lane or Broadway, thereby complying with the requirements of the MDL; and

WHEREAS, the applicant states that 75 hotel units will have windows that open onto the Court, which has an area of 886 sq. ft.; and

WHEREAS, the applicant represents that, although the Court does not meet the requirements of MDL § 26(7), the occupants of these hotel units will still receive ample light and air, as all of the required windows that open onto the Court will be located 28.5 feet from an opposite facing wall, which very nearly complies with the 30-ft. window-to-wall requirement of MDL § 26(7), and the Court lies directly adjacent to another three-sided court with an area of 479 sq. ft. that is formed by the 15-story building located immediately to the south, such that the two adjacent open areas, in effect, form a single court with an area of 1,364 sq. ft., which would exceed the 1,200 sq. ft. requirement of MDL § 26(7); and

WHEREAS, the applicant states that only 15 of the units in the Proposed Hotel, one on each hotel floor, will have required windows that open onto the Rear Yard, which has an area of 296 sq. ft.; and

WHEREAS, the applicant represents that, although the

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Rear Yard does not meet the requirements of MDL § 26(5) and ZR § 33-261, it has a greater than required depth of 39.5 feet and a minimally non-complying width of 7.5 feet, and as such the area of the Rear Yard is substantially greater than the area of a required rear yard; and

WHEREAS, the applicant further states that the southeast corner of the Rear Yard abuts a building with a height of only two stories, while the units in the Proposed Hotel will be located on floors four through 18; thus, a significant amount of light and air will reach the Rear Yard and the hotel units that face it; and

WHEREAS, based on the above, the Board finds that the proposed variance to the court requirements of MDL § 26(7) and the rear yard requirements of MDL § 26(5) and ZR § 33-261 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the court requirements of MDL § 26(7) and the rear yard requirements of MDL § 26(5) and ZR § 33-261 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Manhattan Borough Commissioner, dated November 10, 2011, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received December 8, 2011" - five (5) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2012.

659-76-A

APPLICANT –Walter T. Gorman, P.E., for Daniel and Lauren Mirkin, owners.

SUBJECT – Application November 15, 2011 – Amendment to an approved Appeal to the Building Code to continue a UG 4 second floor occupancy in a wood frame structure which expired on November 9, 2011. C1-3 /R5B zoning district.

PREMISES AFFECTED – 253 Beach 116th Street, west side, 240' south of Newport Avenue, Block 16212, Lot 19, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: John Ronan.

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

243-09-BZY

APPLICANT – Mirza M. Rahman, for South Jamaica Property, LLC, owner.

SUBJECT – Application December 2, 2011 – Extension of Time (§11-332) to complete construction of a minor development and obtain a Certificate of Occupancy commenced under the prior R6 Zoning district. R4-1 Zoning district.

PREMISES AFFECTED – 87-12 175th Street, corner of 175th Street and Warwick, Block 9830, Lot 32, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Mirza M. Rahman.

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

206-10-A thru 210-10-A

APPLICANT – Philip L. Rampulla, for Island Realty Associate, LLC, owner.

SUBJECT – Application November 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street, contrary to General City Law Section 35 and §72-01-(g). R1-2 zoning district.

PREMISES AFFECTED – 3399, 3403, Richmond Road and 14, 15, 17 Tupelo Court, Block 2260, Lot 24, 26, 64, 66, 68, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla and Philip Rampulla.

For Opposition: Carol Donovan and Richard Herb.

ACTION OF THE BOARD – Laid over to March 27, 2012, at 10 A.M., for continued hearing.

233-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Alco Builders Incorporated, owners.

SUBJECT – Application December 23, 2010 – Appeal seeking a common law vested right to continue development commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 90-22 176th Street, between

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Jamaica and 90th Avenues, Block 9811, Lot 61(tent),
Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

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

86-11-A

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

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

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

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Howard Hornstein and Dave Kissoon.

For Opposition: Lisa M. Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

125-11-A

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

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

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

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

For Opposition: Alice Baldwin.

ACTION OF THE BOARD – Laid over to March 27,
2012, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, FEBRUARY 28, 2012 1:30 P.M.

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

ZONING CALENDAR

47-11-BZ

CEQR #11-BSA-082Q

APPLICANT – Law Office of Fredrick A. Becker, for USA
Outreach Corp., by Shaya Cohen, owner.

SUBJECT – Application April 13, 2011 – Variance (§72-
21) to allow a three-story yeshiva (*Yeshiva Zichron Aryeh*)
with dormitories, contrary to use (§22-13), floor area (§§23-
141 and 24-111), side setback (§24-551) and parking
regulations (§25-31). R2 zoning district.

PREMISES AFFECTED – 1213 Bay 25th Street, west side
of Bay 25th Street, between Bayswater Avenue and Healy
Avenue. Block 15720, Lot 67, Borough of Queens.

COMMUNITY BOARD #14Q

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough
Commissioner, dated April 8, 2011, acting on Department of
Buildings Application No. 420166938, reads in pertinent part:

Proposed use is contrary to ZR 22-13.

Proposed floor area is contrary to ZR 23-141 and
24-111.

Proposed required side setback for tall buildings
in low bulk districts is contrary to ZR 24-551; and

WHEREAS, this is an application under ZR § 72-21, to
permit, within an R2 zoning district, the construction of a two-
and three-story yeshiva and dormitory building (Use Group 3)
which does not conform to the underlying use regulations and
does not comply with zoning requirements related to floor area
and side setback, contrary to ZR §§ 22-13, 23-141, 24-111, and
24-551; and

WHEREAS, a public hearing was held on this
application on September 20, 2011, after due notice by
publication in the *City Record*, with continued hearings on
October 25, 2011, December 6, 2011, and January 24, 2012,
and then to decision on February 28, 2012; and

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

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Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Queens, recommended disapproval of an earlier iteration of the application; and

WHEREAS, Queens Borough President Helen Marshall recommended disapproval of an earlier iteration of the application, citing concerns that the building would be out of scale with the character of the surrounding neighborhood and the increased pedestrian and vehicular traffic that would be generated by the community facility; and

WHEREAS, City Councilmember James Sanders, Jr. provided testimony expressing support for the yeshiva but opposition to the proposed dormitory use based on concerns with the number of beds in the facility, parking, and the impact on the rising water table in the surrounding area; and

WHEREAS, representatives of the Bayswater Civic Association and certain members of the community provided testimony in opposition to this application (hereinafter, the "Opposition"), raising the following primary concerns: (1) the incompatibility of the proposed facility with the surrounding neighborhood; (2) the potential for increased traffic; (3) insufficient parking in the area; (4) the potential for excessive noise generated by the students residing in the dormitory rooms; (5) the proposal otherwise does not satisfy the findings of ZR § 72-21; (6) the proposed use does not qualify for educational deference; and (7) there are problems with the Board's process; and

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

WHEREAS, the application is brought on behalf of Yeshiva Zichron Aryeh (the "Yeshiva"), a not for profit educational institution; and

WHEREAS the site is located on the west side of Bay 25th Street between Bayswater Avenue and Healy Avenue, within an R2 zoning district; and

WHEREAS, the site consists of an irregularly-shaped lot with approximately 95 feet of frontage on Bay 25th Street and a total lot area of 35,819 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed dormitory use is not permitted in the subject R2 zoning district and the proposed bulk exceeds the complying building envelope for a conforming use, thus the applicant seeks a variance for the proposed building; and

WHEREAS, the applicant proposes to construct a three-story yeshiva and dormitory building with the following complying parameters: lot coverage of 35.5 percent (a maximum lot coverage of 55 percent is permitted); a roof height of 39'-6" (as governed by sky exposure plane regulations); a front yard with a depth of 63'-8 11/16" (a front yard with a minimum depth of 15'-0" is required); two side yards with minimum widths of 13'-4" each (two side yards with minimum widths of 8'-0" each are required); a rear yard with a depth of 30'-0" (a rear yard with a minimum depth of 30'-0" is required); and 28 accessory off-street parking spaces (a minimum of 27 spaces are required); and

WHEREAS, however, the proposed building results in the following non-compliances: a floor area of 35,476 sq. ft. (the maximum permitted floor area is 17,909.6 sq. ft.); an FAR

of 0.99 (the maximum permitted FAR is 0.50); a side setback of 15'-0" above a height of 35'-0" along the northern side of the building (a minimum side setback of 24'-4 1/16" is required); and a side setback of 15'-0" above a height of 35'-0" along the southern side of the building (a minimum side setback of 25'-0 15/16" is required); and

WHEREAS, the applicant originally proposed a building with a floor area of 39,286 sq. ft. (1.1 FAR), side setbacks of 14'-6" each, a roof height of 44'-6", and 13 accessory off-street parking spaces, which would have necessitated an additional waiver for less than the minimum number of required parking spaces; and

WHEREAS, however, in response to concerns raised by the Board and the Opposition, the applicant revised the proposal several times during the course of the hearing process, ultimately reducing the degree of non-compliance as to floor area and side setback, reducing the roof height of the building to 39'-6", and providing a complying number of parking spaces; and

WHEREAS, the applicant states that the proposed building provides the following uses: (1) a gymnasium, dining room, pool, dairy kitchen, meat kitchen, and mechanical rooms at the sub-cellar level; (2) a synagogue, exercise room, music room, mechanical room, and storage at the cellar level; (3) a science laboratory, computer room, classrooms, and offices at the first floor; (4) a Bais Medrash, library, classrooms, and offices at the second floor; and (5) a student lounge, laundry room, and 15 dormitory rooms at the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Yeshiva: (1) accommodating the current enrollment while allowing for future growth; and (2) providing an on-site dormitory to allow for an integrated living and learning environment; and

WHEREAS, the applicant states that the Yeshiva provides education from high school (grades nine through 12) through graduate school and currently operates out of several separate buildings in the surrounding neighborhood, which combine to accommodate its enrollment of 135 students with 49 students in dormitory rooms, and approximately 30 staff members; and

WHEREAS, the applicant represents that there are also many students on a waiting list for the Yeshiva; and

WHEREAS, the applicant states that the Yeshiva's existing facilities have been unable to keep up with the needs of the student body and they have been renting additional space in a number of buildings in the surrounding neighborhood; and

WHEREAS, the applicant represents that for the past two years the existing dormitory buildings the Yeshiva rents have been at capacity, and the Yeshiva is in the process of finding additional space for dormitories for the current school year; and

WHEREAS, in addition to the difficulties posed by operating the Yeshiva out of multiple buildings scattered throughout the neighborhood, the applicant states that the existing facilities are deficient for the following reasons: the existing dining area is not large enough to accommodate the entire student body; the kitchen does not have adequate space to prepare the necessary amount of food; the main college study hall building is a rented facility that is shared with a

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synagogue, such that they do not always have access to the space; there is a lack of office space; and two classes currently have to meet in the hallway due to space constraints; and

WHEREAS, the applicant represents that the Yeshiva anticipates increasing its enrollment within the next two years to 220 students, with 45 associated staff members; and

WHEREAS, the applicant states that in order to accommodate the student population and provide a program that will meet their needs, the Yeshiva requires six high school classrooms, four undergraduate/graduate classrooms, a library, science laboratory, a computer room, prayer space, physical education space, and dormitory space; and

WHEREAS, during the hearing process, the Board asked the applicant to explain the need for the proposed dormitory rooms, which the applicant claims are a component of the programmatic needs; and

WHEREAS, in response, the applicant states that the dormitory rooms are necessary to meet the programmatic needs of the Yeshiva due to the rigorous and intensive course of study followed by the students; and

WHEREAS, specifically, the applicant states that the high school portion of the Yeshiva provides a dual curriculum in which each student must complete a full course load of secular studies and a full course load of religious studies, which extends into the evening hours and necessitates sleeping accommodations be provided for certain students; and

WHEREAS, the applicant further states that undergraduate students begin their day with morning prayers at 7:45 a.m., followed by a day filled with classes and studying until their final evening prayer begins at 10:00 p.m., with breaks only provided for meals; and

WHEREAS, the applicant states that between the end of evening prayers and the beginning of morning prayers is approximately nine hours, and in this limited time the students must sleep, complete any remaining studies, and prepare for their day; and

WHEREAS, the applicant represents that because of this schedule students require immediate access to their living areas in order to make effective use of the limited time they have outside of classes and study sessions; and

WHEREAS, the applicant further represents that locating the Yeshiva and the dormitories in the same building is integral to the students learning due to the unbroken continuance of focus that occurs when the students do not leave the facility, and this immersion allows the students to more fully devote themselves to both their religious and secular studies without distractions; and

WHEREAS, the applicant also submitted a list of other yeshivas that provide dormitory beds for their students in comparable facilities; and

WHEREAS, the applicant represents that a complying building at the site would not provide an adequate amount of space for the current number of students and faculty or for the anticipated growth in enrollment; and

WHEREAS, specifically, the applicant submitted plans for a complying building which would result in the elimination of two high school classrooms, one graduate classroom, the science laboratory, the Bais Medrash, and all 15 dormitory

rooms; and

WHEREAS, the applicant also submitted plans for a lesser variance scenario which would request the use waiver but comply with all bulk requirements; and

WHEREAS, the applicant states that the lesser variance scenario would result in the elimination of the Bais Medrash, all graduate classrooms, a science room and eight dormitory rooms, and would not provide a sufficient amount of space to meet the needs of the Yeshiva; and

WHEREAS, the applicant states that the requested floor area and side setback waivers are necessary to accommodate the space needs associated with the projected student body, and the use waiver is necessary to provide dormitory space within the proposed building; and

WHEREAS, as to the floor area, the applicant states that without the floor area waiver approximately half of the proposed floor area would be lost, and the resultant building would be inadequate to provide sufficient classroom or program space to meet the needs of the Yeshiva; and

WHEREAS, as to the side setbacks, the applicant states that the setback waivers are required to achieve floor plates that accommodate the necessary number of beds in the dormitory, as without such waivers the Yeshiva could not provide the 58 beds necessary to accommodate the projected enrollment; and

WHEREAS, as to the use waiver, the applicant notes that it could have applied for a special permit for the subject site pursuant to ZR § 73-122 which would authorize the proposed dormitory use in the subject R2 zoning district, but a variance would still be required to construct the proposed building due to the requested bulk waivers; and

WHEREAS, the applicant submitted evidence in support of its claim that it could satisfy the findings required for the special permit under ZR § 73-122, provided the Board allowed the dormitory FAR to be calculated independently of the FAR for the remainder of the building; and

WHEREAS, the applicant states that only the proposed variance building can accommodate the Yeshiva's projected enrollment and satisfy the programmatic needs and space requirements of its students; and

WHEREAS, based upon the above, the Board agrees that the cited programmatic needs are legitimate and have been documented with substantial evidence; and

WHEREAS, the Board acknowledges that the Yeshiva, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

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

WHEREAS, based upon the above, the Board finds that the limitations of the existing zoning, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in

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developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant notes that the use of the site as a yeshiva is permitted as-of-right in the subject R2 zoning district, and dormitory use is permitted in the subject R2 zoning district by special permit under ZR § 73-122, which the applicant states is an acknowledgment that the use itself can be compatible with surrounding uses in the R2 zoning district; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that the surrounding area is characterized predominantly by single-family homes ranging in height from one-and-one-half to three stories; and

WHEREAS, accordingly, the applicant states that the height of the proposed two- and three-story building complies with the underlying district regulations and will fit within the character of the surrounding neighborhood; and

WHEREAS, the applicant further states that the proposed building will comply with all yard requirements for a community facility building in the subject R2 district, and the building will be significantly set back from the street, providing a front yard with a depth of 63'-8 11/16", more than four times the depth required in the underlying zoning district; and

WHEREAS, the applicant notes that the building is also designed to be lower in the front, with a front setback of more than 30 feet above the second floor, to make the building more consistent with the character of the surrounding neighborhood; and

WHEREAS, the applicant further notes that the building will also be screened from surrounding residences by providing a significant amount of landscaping around the perimeter of the site and in the front yard to create a break in the façade; and

WHEREAS, as noted above, the Opposition made a number of arguments and observations regarding the instant application; and

WHEREAS, as to the Opposition's argument that the scale of the building is out of context with the surrounding neighborhood, the applicant notes that the subject site is larger than the surrounding developed properties and can support a building that is larger than other buildings in the immediate vicinity; and

WHEREAS, the applicant further states that the proposed building complies with all underlying bulk regulations aside from FAR and side setbacks, and that the complying height and yards, in conjunction with the buffering provided by the proposed landscaping result in a building that fits within the context of the surrounding neighborhood; and

WHEREAS, further, the Board finds that the applicant has credibly established that the proposed dormitory use and the requested bulk waivers are necessary to provide a facility that can satisfy the Yeshiva's programmatic needs; and

WHEREAS, as to the Opposition's concerns about traffic impact, the applicant notes that the proposed building will serve an existing yeshiva that already operates in the surrounding area, and states that the increased enrollment at the proposed building will not result in a significant impact on transit or pedestrian traffic; and

WHEREAS, the applicant provided a survey analyzing the anticipated difference in vehicle trips between the current operation of the Yeshiva and the operation under the proposed building, which indicates that of the 265 students and staff at the proposed facility, 58 students will live in the dormitory rooms and will not travel to or from the site, and it is anticipated that of the remaining 207 students and staff, 77 people will walk, 75 people will drive, 40 people will arrive by school van, 14 people will be dropped off/picked up, and one person will arrive by public transportation; and

WHEREAS, the applicant states that the anticipated transportation to and from the site does not exceed the thresholds listed in the CEQR manual, and therefore the proposed use will not result in a significant impact on traffic; and

WHEREAS, as to the Opposition's concerns regarding parking, the Board notes that the applicant revised its plans to provide 28 parking spaces, which complies with the requirements of the Zoning Resolution; and

WHEREAS, as to the Opposition's concern that the students residing at the proposed facility will create excessive noise in the predominantly residential area, the applicant states that noise attenuation will be achieved by insulating the exterior walls of the building and installing double pane low E windows equipped with shades; and

WHEREAS, the applicant states that the proposed building will also be screened from adjacent residences by providing landscaping around the perimeter and in front of the building, and minimizing exterior lighting by utilizing directional fixtures focused on the site and short post lighting in lieu of large pylon lighting when feasible; and

WHEREAS, the Opposition also made other arguments as to the Board's findings, process, and educational deference, which the Board has considered and does not find persuasive; 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 in conformance with zoning would meet the programmatic needs of the Yeshiva at the site; and

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

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to meet the programmatic needs of the Yeshiva and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, as noted above, the applicant originally

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proposed to construct a building with a floor area of 39,286 sq. ft. (1.1 FAR), a roof height of 44'-6", and 13 accessory off-street parking spaces; and

WHEREAS, in response to concerns raised by the Board and the Opposition during the course of the hearing process, the applicant reduced the size of the building in terms of FAR, height, and side setbacks, in order to create a more compatible building envelope, and revised the parking layout to provide a complying number of accessory parking spaces; and

WHEREAS, therefore, the Board agrees that the requested relief is the minimum necessary to allow the Yeshiva to fulfill its programmatic needs; and

WHEREAS, in sum, 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 Sections 617.6(h) and 617.2(h) of 6NYCRR; 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. 11BSA082Q, dated January 6, 2012; and

WHEREAS, the EAS documents show 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; 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 and grants a variance to permit, within an R2 zoning district, the construction of a three-story yeshiva and dormitory building which does not conform to the underlying use regulations and does not comply with zoning requirements related to floor area and side setback, contrary to ZR §§ 22-13, 23-141, 25-111, and 24-551, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 25, 2012" – (12)

sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a floor area of 35,476 sq. ft. (0.99 FAR); a side setback of 15'-0" above a height of 35'-0" along the northern side of the building; a side setback of 15'-0" above a height of 35'-0" along the southern side of the building; a roof height of 39'-6"; lot coverage of 35.5 percent; a front yard with a depth of 63'-8 11/16"; two side yards with minimum widths of 13'-4" each; a rear yard with a depth of 30'-0"; and 28 accessory off-street parking spaces, as reflected on the BSA-approved plans;

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

THAT no commercial catering is permitted within the building or on-site;

THAT the occupancy of the dormitory will be limited to 58 beds;

THAT landscaping will be provided and maintained as indicated on the BSA-approved plans;

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

THAT the exterior walls of the building will be insulated and double pane low E windows will be installed;

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 be completed in accordance with ZR §72-23;

THAT the approved plans 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, February 28, 2012.

66-11-BZ

CEQR #11-BSA-096K

APPLICANT – Jesse Masyr, Wachtel & Masyr LLP, for Whole Foods Market Group, owner.

SUBJECT – Application May 13, 2011 – Variance (§72-21) to permit a UG6 food store (*Whole Foods*) larger than 10,000 square feet, contrary to use regulations (§42-12). M2-1 zoning district.

PREMISES AFFECTED – 172-220 Third Street, block bounded by 3rd Street, 3rd Avenue, 4th Street Basin and Gowanus Canal, Block 978, Lot 1, 7, 16, 19, 23, 30, 32, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Jerry Johnson.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough
Commissioner, dated May 10, 2011, acting on Department of
Buildings Application No. 301923346, reads in pertinent part:

Food store (UG 6) greater than 10,000 sf in an M2-1
district is not permitted pursuant to Section ZR 42-
12, referred to the Board of Standards and Appeals
for determination; and

WHEREAS, this is an application under ZR § 72-21, to
permit, in an M2-1 zoning district, the construction of a two-
story food store (Use Group 6) in excess of 10,000 sq. ft.,
which does not conform to district use regulations, contrary to
ZR § 42-12; and

WHEREAS, a public hearing was held on this
application on December 13, 2011 after due notice by
publication in *The City Record*, with a continued hearing on
January 24, 2012, and then to decision on February 28, 2012;
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 6, Brooklyn,
recommends approval of this application, with the following
conditions: (1) a follow-up traffic study be conducted within
a three-quarter mile radius of the site one year after the store
opens; (2) the food store closes by 10:00 p.m.; and (3) the
Third Avenue and 3rd Street frontages be treated with
windows to create a more inviting design and encourage
pedestrian traffic; and

WHEREAS, City Council Member Sara M. Gonzalez
provided testimony in support of this application; and

WHEREAS, City Council Member Diana Reyna
provided testimony expressing concern about the effect of
the proposed development on industrial uses in the
surrounding area; and

WHEREAS, the applicant submitted a letter from
Borough President Marty Markowitz in support of the
proposed food store; and

WHEREAS, representatives of the Brooklyn Chamber
of Commerce and the Gowanus Alliance provided testimony
in support of this application; and

WHEREAS, representatives of the Gowanus Canal
Community Advisory Group provided testimony expressing
its concern that the proposal be executed in a manner that is
compatible with the Environmental Protection Agency’s
(“EPA”) Superfund cleanup process, and requesting that the
Board postpone its decision until the EPA releases its
decision for the Gowanus Canal cleanup program; and

WHEREAS, representatives of the Gowanus Canal
Conservancy provided testimony requesting that the
applicant take measures to ensure that the development of
the site is consistent with the character of the Gowanus
neighborhood and the goals the City has identified for the
development of the waterfront in its Vision 2020

Comprehensive Waterfront Plan; and

WHEREAS, representatives of the Gowanus Institute,
the Gowanus Canal Conservancy, the Friends and Residents
of Greater Gowanus, the Southwest Brooklyn Industrial
Development Corporation, the Sierra Club, and certain
members of the community provided oral and written
testimony in opposition to this proposal (hereinafter, the
“Opposition”); and

WHEREAS, the Opposition raised the following
primary concerns: (1) the proposal does not satisfy the
findings of ZR § 72-21, primarily because the site is not
unique, the site could realize a reasonable return without the
requested variance, and the proposed food store in excess of
10,000 sq. ft. would alter the character of the neighborhood;
(2) the proposed food store will be detrimental to the
surrounding manufacturing and artistic community; (3) the
proposed food store will not create the quantity or quality of
jobs that could be created by an as-of-right manufacturing
use; (4) the proposal will increase traffic in the surrounding
neighborhood; and (5) the proposal has the potential to
disrupt the EPA’s cleanup program for the Gowanus Canal;
and

WHEREAS, the subject site is located on an irregularly-
shaped lot comprising the entire block bounded by Third
Avenue to the east, 3rd Street to the north, the 4th Street Basin to
the south, and the Gowanus Canal to the west, within an M2-1
zoning district; and

WHEREAS, the site is a single zoning lot comprising
seven tax lots (tax lots 1, 7, 16, 19, 23, 30 and 32), with
approximately 337 feet of frontage along Third Avenue, 635
feet of frontage along 3rd Street, 666 feet of frontage along the
4th Street Basin, and 175 feet of frontage along the Gowanus
Canal, with a total lot area of 185,163 sq. ft.; and

WHEREAS, the site is currently a primarily vacant lot,
with the exception of a two-story former office building with a
floor area of 2,940 sq. ft. (.02 FAR) constructed in 1872-1873
which is designated as an individual New York City Landmark
(the “Landmark Building” or “the Landmark Building Site”) located on a portion of tax lot 7 at the corner of 3rd Street and
Third Avenue; and

WHEREAS, the applicant proposes to construct a two-
story building to be occupied by a food store (Use Group 6)
with a floor area of 56,470 sq. ft. (0.30 FAR) and a rooftop
greenhouse (Use Group 17) with a floor area of 19,400 sq. ft.
(0.10 FAR), for a total floor area of 75,870 sq. ft. (0.41 FAR),
and with 246 accessory off-street parking spaces; and

WHEREAS, the applicant states that the proposed
building will be located on the northeast corner of the site
adjacent to the east and south sides of the Landmark Building
Site; and

WHEREAS, the applicant further states that the proposed
building will provide loading docks on the Third Avenue
frontage and a waterfront public access area along the entire
waterfront edge of the property adjacent to the 4th Street
Basin/Gowanus Canal (the “Shore Public Walkway”), which
will require a separate application at the Department of City
Planning (“DCP”); and

WHEREAS, although the proposed building’s FAR

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would be permitted for a conforming use, the applicant seeks a use variance because food stores in excess of 10,000 sq. ft. are not permitted in the subject M2-1 zoning district; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site in conformance with the underlying zoning regulations: (1) there is significant soil contamination on the site; (2) the site consists of poor load bearing soils; (3) the site has a high water table; (4) there is a significant amount of water frontage on the site; and (5) there are varying elevations on the site; and

WHEREAS, as to the contamination on the site, the applicant states that the site was historically developed with noxious industrial uses which have resulted in significant soil contamination at the site; and

WHEREAS, the applicant notes that the subject site is the only property within the existing M2-1 district to be included within the New York State Department of Conservation's ("DEC") Brownfield Cleanup Program due to the prior contamination on the site, which is a clean-up program designed to ensure that contaminated sites are cleaned up under governmental oversight utilizing remedies that are protective of human health and the environment; and

WHEREAS, the applicant notes that the Gowanus Canal has been placed on the EPA's Superfund National Priorities List, which is a federal program designed to locate, investigate, and clean up the most environmentally hazardous sites nationwide; and

WHEREAS, the applicant states that the Phase I and Phase II Environmental Site Assessments found evidence of contamination and underground storage tanks on tax lots 1, 7, 16 and 19, with less severe soil contamination on tax lots 23, 30 and 32; and

WHEREAS, the applicant further states that due to the presence of contamination, significant remedial actions have been or will be undertaken at the site, including: (1) removal and off-site disposal of underground storage tanks; (2) excavation and off-site disposal of contaminated soil; (3) construction and maintenance of a composite cover system consisting of a demarcation barrier beneath a two-ft. thick cover layer of clean crushed rock to prevent human exposure to the remaining contaminated soil at the site; and (4) installation of a chemical vapor barrier and slab pressurization system for the proposed building; and

WHEREAS, the applicant states that it will execute and record an Environmental Easement to restrict land use and prevent future exposure to contamination remaining at the site by (1) limiting the use and development of the property to commercial/industrial use; (2) complying with a DEC-approved Site Management Plan; (3) restricting the use of ground water as a source of potable or process water; and (4) requiring the property owner to complete and submit a periodic certification of industrial and engineering controls to DEC; and

WHEREAS, the applicant further states that it will develop and implement a Site Management Plan for long term management of remaining contamination as required by the Environmental Easement, which includes plans for: (1) institutional and engineering controls; (2) monitoring; (3)

operation and maintenance; and (4) reporting; and

WHEREAS, the applicant represents that the above-mentioned remedial actions required to clean up the contamination on the site result in significant premium costs for any development on the site; and

WHEREAS, as to the poor load bearing soil on the site, the applicant submitted a geotechnical report stating that soil borings taken at the site reflect that the soil is composed of urban fill to depths of seven to 29 feet below the ground surface, with eight to 26 feet of organic deposits below the urban fill layer consisting of organic silt and clay with shells, fibers, and peat observed, and a layer of sand and silt and sand and gravel below the organic deposits; and

WHEREAS, the geotechnical report further states that bedrock was not encountered in any of the borings; and

WHEREAS, the applicant states that the uncontrolled fill and organic deposits are not suitable for support of the building loads, necessitating deep pile foundations which must penetrate the poor surface soils to transfer the building loads to the underlying sand and gravel; and

WHEREAS, the geotechnical report recommends a foundation system for the subject site that consists of driven friction piles extending into competent soils below the organic stratum, with drilled piles within 30 feet of the Landmark Building; and

WHEREAS, the applicant states that the specialized foundation system consisting that is necessitated by the poor soil conditions significantly increases the cost of any development on the site; and

WHEREAS, as to the high water table, the geotechnical report reflects that groundwater across the site ranges from an elevation of 4.8 feet to 7.1 feet, and the site is within the 100-year flood zone; and

WHEREAS, the applicant states that these conditions would result in significant dewatering costs associated with the as-of-right food store development, which consists of a building limited to 10,000 sq. ft. of food store floor area above grade with an additional 39,000 sq. ft. of floor space located below grade; and

WHEREAS, specifically, the geotechnical report states that the as-of-right design with a cellar at or below the flood zone would require waterproofing, floodproofing, and a foundation designed to resist uplift forces; and

WHEREAS, the geotechnical report further states that continuous dewatering would be necessary for the as-of-right food store in order to bring the groundwater down to a level sufficiently below subgrade and to permit proper compaction of the subgrade prior to the placement of foundation concrete, and that due to the subsurface contamination on the site, an on-site treatment system will be necessary to treat and remove groundwater before it is discharged to the Gowanus Canal/4th Street Basin; and

WHEREAS, the applicant notes that the proposed building will avoid the costs associated with the high water table and location within the 100-year flood zone by setting the building eight feet above the 100-year flood elevation; as a result, the applicant is unable to locate any floor space in the cellar, where it would not contribute to floor area calculations;

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and

WHEREAS, as to the amount of water frontage on the site, the applicant states that site is located immediately adjacent to the Gowanus Canal to the west and the 4th Street Basin to the south, with a total of 860 linear feet of water frontage; and

WHEREAS, the applicant states that there are increased development costs along the waterfront from Third Avenue to 3rd Street including the construction and maintenance of the required Shore Public Walkway, which provides public access to 860 linear feet of water frontage, and the removal of 300 linear feet of deteriorating bulkhead and its replacement with DEC-mandated soft shoreline (rip rap); and

WHEREAS, as to the need to replace a portion of the bulkhead, the applicant states that approximately 300 feet of the 4th Street Basin/Gowanus Canal frontage nearest the Third Avenue bridge contained a non-functioning bulkhead, and this portion of the site was determined to be a tidal wetlands adjacent area, requiring a DEC permit to develop the site; and

WHEREAS, the applicant further states that the DEC Tidal Wetlands Permit requires the creation of a 15-ft. rip rap slope to replace the non-functional bulkhead along the waterfront; the applicant notes that a temporary rip rap slope has already been created and the final slope will be constructed during the construction of the proposed building; and

WHEREAS, the applicant represents that the 15-ft. rip rap slope also restricts the development of the site by pushing the area where the southern side of the building can be located by an additional 15-ft. to the north, thus reducing the lot area for the footprint of the building; and

WHEREAS, accordingly, the applicant states that there are significant costs associated with any development on the site due to its large size and the extent of water frontage on the site; and

WHEREAS, as to the change in elevation across the site, the applicant states that there is a grade change of approximately 12 feet from the southeast corner of the site to the northwest corner of the site; and

WHEREAS, specifically, the applicant states that the elevations on the site range from approximately eight feet near the 3rd Street bridge to approximately 20 feet near the Third Avenue bridge; and

WHEREAS, the applicant states that the site is bounded by streets on the north and east sides and a public waterway on the south and west sides and it abuts two bridges, the Third Avenue bridge that spans above and over the end of the 4th Street Basin and the 3rd Street bridge and gatehouse, a drawbridge spanning over the Gowanus Canal, and that these bridges and the grade elevations along the streets abutting the site and the Gowanus Canal result in the substantial grade change of approximately 12 feet across the site; and

WHEREAS, the applicant states that the location of the bridges contributes to the unique grading of the site because the Third Avenue bridge (located to the southeast of the site) is high relative to the canal while the 3rd Street bridge (located to the northwest of the site) is low relative to the canal; and

WHEREAS, the applicant further states that the location of the bridges is significant due to the additional construction

costs associated with constructing near the bridge structures, and because the style of the bridge on Third Avenue is one of the reasons the elevations of the street at that location are so high relative to the surrounding area; and

WHEREAS, the applicant represents that the site conditions require that the building be located on the eastern end of the zoning lot, as the western end of the site cannot accommodate the building because loading and deliveries would not be permitted on the south and west sides due to water frontage, the 3rd Street bridge approach would preclude the use of the western end of 3rd Street, and loading and deliveries would conflict with the pedestrian and vehicular use if located in front of the building; and

WHEREAS, the applicant states that the 12-ft. elevation change also results in significant site planning and development challenges that contribute to the hardships on the site, as the building's finished floor elevation must be located near the high point of the site along Third Avenue to provide the required loading docks and proper deliveries, the site must then be graded appropriately to provide ADA compliant waterfront access for the Shore Public Walkway along the site's 860 feet of water frontage, and the interior of the site must also be graded to provide proper vehicular access to the parking area and pedestrian access to the front of the store; and

WHEREAS, the applicant states that the elevation differential is significant because it greatly increases the costs of the as-of-right food store development on the site; and

WHEREAS, specifically, the applicant states that the need to locate the building on the eastern side of the site requires the excavation of 16,712 cubic yards of soil for the as-of-right food store development because that scenario includes 39,000 sq. ft. of floor space located below grade while the other development scenarios do not locate floor space below grade; and

WHEREAS, the applicant further states that conducting the excavation on a site in the Brownfields Cleanup Program adds a significant premium to such work; and

WHEREAS, the applicant represents that the change in elevations on the site also results in the need for sheeting and shoring to support the surrounding streets, the cost of which is increased by the additional depth that results from locating the building on the eastern side of the site; and

WHEREAS, as to the uniqueness of the aforementioned physical conditions, the applicant submitted a land use map and chart which analyze the existing FAR, lot area, water frontage, occupancy, environmental contamination, groundwater elevation, adjacency to bridges, and elevation changes of 44 sites located along the canal in the subject M2-1 district; and

WHEREAS, the land use map reflects that, within the study area, the subject site is the only full block site that is primarily vacant, bounded on two sides by the Gowanus Canal/4th Street Basin, adjacent to two bridges with different elevations, occupied by a vacant landmark structure, and part of the Brownfields Cleanup Program; and

WHEREAS, the evidence submitted by the applicant reflects that 26 of the sites in the study area are underbuilt (defined by the study as sites developed with less than 25 percent of the permitted FAR); the subject site is significantly

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underbuilt with an FAR of .02; and

WHEREAS, the applicant states that of the 26 underbuilt sites analyzed, only one site had a greater percentage of its site perimeter occupied by water frontage than the subject site at 46.9 percent; and

WHEREAS, the applicant further states that the unusually high percentage of water frontage along the site's perimeter results in a high water table occupying a significant portion of the site; and

WHEREAS, the applicant represents that the high water table results in increased construction costs for the as-of-right food store, due to the dewatering costs associated with excavating for the below grade space; and

WHEREAS, in contrast, the proposed project would minimize construction costs related to the high water table as it would be located entirely above-grade, and its footprint is located at the northeast corner of the site, away from much of the water frontage; and

WHEREAS, as to the soil contamination on the site, the applicant represents that while other sites in the surrounding area have environmental contamination, the subject site is the only one in the M2-1 district that has been accepted into the Brownfield Cleanup Program due to prior contamination and has a cleanup that is regulated by DEC at significant expense; and

WHEREAS, the applicant further represents that the large size and the extent of water frontage exacerbate the hardships on the site due to the significant amount of lot area subject to environmental remediation and cleanup and the increased development costs along the waterfront from Third Avenue to 3rd Street; and

WHEREAS, as to the uniqueness of the elevation differentials and adjacency to bridges, the applicant provided an analysis of all the elevations applicable to properties abutting the canal and adjacent to bridges; and

WHEREAS, the analysis reflects that those properties abutting one bridge had differentiations in curb level averaging 2.5 feet while the only other property abutting two bridges had a differential of 1.2 feet, significantly less than the elevation differential of 12 feet on the subject site; 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) a seven-story as-of-right warehouse building with a floor area of 348,580 sq. ft.; (2) a two-story as-of-right warehouse building with a floor area of 196,716 sq. ft.; (3) an as-of-right food store with 10,000 sq. ft. of floor area located at the first floor, a 20,000 sq. ft. rooftop greenhouse, and an additional 39,000 sq. ft. of floor space located below grade, and with 258 accessory parking spaces; (4) a two-story as-of-right retail building with a floor area of 61,898 sq. ft. and with 224 accessory parking spaces; (5) a lesser variance scenario consisting of a one-story food store with 43,534 sq. ft. of floor area and 235 accessory parking spaces; and (6) the proposed two-story food store with 55,870 sq. ft. of floor area

located on the first and second floor, a 20,000 sq. ft. rooftop greenhouse, and with 246 accessory parking spaces; and

WHEREAS, the study concluded that the conforming and lesser variance scenarios would not result in a reasonable return, but that the proposed building would realize a reasonable return; and

WHEREAS, at hearing, the Board directed the applicant to analyze whether an as-of-right manufacturing use would be viable at the site; and

WHEREAS, in response, the applicant submitted a supplemental feasibility study which included (1) an as-of-right seven-story active manufacturing building with a floor area of 348,580 sq. ft.; and (2) an as-of-right two-story active manufacturing building with a floor area of 196,716 sq. ft.; and

WHEREAS, the revised study concluded that neither of the supplemental manufacturing scenarios would realize a reasonable return; and

WHEREAS, throughout the course of the hearing process, the Opposition contended that that the subject site is not unique and that the site could realize a reasonable return without the requested variance; and

WHEREAS, as noted above, the applicant has submitted sufficient evidence to establish that there are unique physical conditions on the site which result in unnecessary hardship and that development of the proposed food store is necessary to realize a reasonable return on the site; and

WHEREAS, accordingly, the Board has determined that because of the subject site'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 states that the subject site is located in the Gowanus section of Brooklyn, an industrial area located between the more residential neighborhoods of Park Slope to the east, Carroll Gardens to the west, and Boerum Hill to the north, and the subject area is currently characterized by industrial properties, old factory and storage buildings, and the Gowanus Canal and its series of basins/extensions; and

WHEREAS, the applicant represents that the Gowanus area has experienced development pressure to redevelop for mixed uses and outdoor recreation in recognition of the Gowanus Canal as a unique waterfront resource, and while the designation of the Gowanus Canal as a Federal Superfund Site has lessened development pressure, the overall outlook for the long term future of this area is as a mixed-use community; and

WHEREAS, the applicant notes that a food store (Use Group 6) is a permitted use in the subject M2-1 zoning district, and it is only the proposed size in excess of 10,000 sq. ft. that requires a variance; further, the proposed rooftop greenhouse (Use Group 17) complies with bulk and use regulations; and

WHEREAS, the applicant further notes that a similarly sized food store could be developed on the subject site as-of-right, however, a significant portion of the building would have to be located below grade which would significantly increase

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construction costs; and

WHEREAS, the Board notes that a conforming commercial or manufacturing use would be entitled to an as-of-right floor area of 370,326 sq. ft. (2.0 FAR) on the site; therefore, although the subject M2-1 zoning district limits the size of food stores to a maximum of 10,000 sq. ft. of floor area, the proposed building, with a total floor area of 75,870 sq. ft. (0.41 FAR), is significantly below the bulk that is permitted on the site; and

WHEREAS, the applicant states that the building is designed as a mix of one- and two-story components with a hydroponic greenhouse located on the roof, and that the proposed building will be faced with repurposed brick to provide a more natural aged patina that will be in context with the existing industrial area; and

WHEREAS, the applicant further states that the proposed building will be located on the northeast corner of the site adjacent to the east and south sides of the Landmark Building Site, and the portions of the building immediately adjacent to the Landmark Building Site are setback to provide more distinctive views of the landmark from the street; and

WHEREAS, the applicant notes that the Shore Public Walkway will provide public access to 860 feet of the Gowanus Canal and 4th Street Basin which was previously inaccessible; and

WHEREAS, although the applicant is not seeking any bulk waivers for the proposal, the applicant notes that if the underlying M2-1 district bulk regulations were applied to the proposal, the bulk parameters would be well below the district maximums (as discussed above), but additional zoning relief would be required for the proposed parking and parking area design; and

WHEREAS, as to the parking, the applicant states that the proposal provides 246 accessory off-street parking spaces, and that 292 spaces would be required for the proposed building if the food store was permitted as-of-right; and

WHEREAS, the applicant submitted a traffic analysis which demonstrates that at peak weekday hours a maximum demand of 204 spaces is anticipated and at peak weekend hours a maximum demand of 166 spaces is anticipated; thus, the proposed 246 parking spaces are sufficient to meet the projected parking demand; and

WHEREAS, as to the parking area design, the applicant notes that in 2007 the City Planning Commission (“CPC”) adopted regulations for parking lots designed for commercial and community facility developments, which require open parking areas to comply with special screening and planting requirements for sustainable drainage design and beautification measures; and

WHEREAS, the applicant states that the special features of the subject site, including the location in the waterfront area with a tidal wetlands adjacent area, the elevation differentials, and other design requirements such as the Shore Public Walkway make it infeasible to provide the parking lot design in strict compliance with the CPC regulations while maintaining the proposed number of parking spaces; and

WHEREAS, accordingly, the applicant states that certain aspects of the parking area design, such as the planter sizes, the

buffer area design with respect to drainage requirements, and the location of fencing deviate from the regulations, but that the modifications will not impact the viability of the planting areas for sustaining trees and shrubbery per the CPC guidelines; and

WHEREAS, the applicant notes that following the January 24, 2012 action of the Landmarks Preservation Commission (“LPC”) which modified the boundaries of its 2006 designation of the Landmark Building Site, LPC review and approval of the proposal is not required; and

WHEREAS, by letter dated January 25, 2012, LPC confirmed that its review and approval of the proposal is not required; and

WHEREAS, during the hearing process, the Opposition raised arguments that the proposed food store in excess of 10,000 sq. ft. will have a detrimental impact on existing uses in the surrounding area, will not maximize job creation, will increase traffic concerns, and will disrupt the EPA’s cleanup of the Gowanus Canal; and

WHEREAS, as to the Opposition’s arguments regarding job creation, the applicant states that the site is currently vacant and employs only security guards, that the application materials demonstrate that no new manufacturing developments are viable, and that the proposed food store will provide employment opportunities to the local population on a site that currently sits fallow; and

WHEREAS, specifically, the applicant states that the proposed food store will create 300 construction jobs and approximately 450 new jobs when complete and fully staffed, 80 percent of which will be full time; and

WHEREAS, in response to the concerns raised about the proposal’s impact on traffic, the applicant submitted a traffic analysis which identified a series of measures that will be implemented to ensure that the proposed food store will not have a negative impact on the surrounding traffic network; and

WHEREAS, specifically, the applicant states that the proposed improvements, which were approved by the New York City Department of Transportation (“DOT”) on January 9, 2012, include the installation of a traffic signal at the intersection formed by 3rd Street and the driveway to the site, signal timing shifts at surrounding intersections, lane restriping, and the addition of new directional signage; and

WHEREAS, as to the Opposition’s arguments regarding the proposal’s impact on the Gowanus Canal and the EPA’s cleanup of the site, the applicant states that the site is regulated by DEC, all development plans have been reviewed and approved by DEC and DEP, and all work will be performed in accordance with DEC permits; thus, the proposed development will have no impact on the EPA’s cleanup of the site; and

WHEREAS, finally, in response to the Opposition’s contention that the proposed food store will have a detrimental effect on the existing industrial and artistic communities in the area, the applicant notes that food stores are permitted as-of-right in the subject M2-1 district, and represents that development of the proposed food store will be a benefit to the surrounding area, as it will provide fresh produce, meat and other grocery items to an area experiencing mixed-use growth and will service the nearby established residential neighborhoods; and

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WHEREAS, the Board has considered the Opposition's concerns related to the proposal's effect on traffic, environmental cleanup, and the overall neighborhood character, but was not persuaded by these arguments given the measures taken by the applicant to address the traffic and environmental concerns and to otherwise ensure that the proposal will not have a negative impact on the surrounding area; 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, as noted above, food stores (Use Group 6) are permitted as-of-right in the subject M2-1 zoning district up to a floor area of 10,000 sq. ft., the proposed building is well below the maximum permitted FAR for a conforming use in the district, and the proposal would comply with all other bulk regulations for a conforming use aside from parking; and

WHEREAS, accordingly, 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 Type I Action pursuant to 6 NYCRR, Part 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 (EAS) CEQR No. 11-BSA-096K dated February 13, 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 has reviewed the project for potential hazardous materials, infrastructure and natural resources impacts; and

WHEREAS, DEP reviewed and accepted the September 2011 Remedial Action Plan and the Construction Health and Safety Plan for lots 23, 30 and 32 of the subject site; and

WHEREAS, DEP requested that a Remedial Closure Report for lots 23, 30 and 32 be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, the applicant entered into a Brownfield Cleanup Agreement with the DEC in March 2005 for the

remainder of the site (lots 16, 19 and a portion of lots 1 and 7); and

WHEREAS, the applicant has completed the remediation work described in the DEC-approved Remedial Work Plan and a final engineering report has been prepared; and

WHEREAS, DEP requires that the proposed project use Best Management Practices in designing and constructing the on-site stormwater management infrastructure as found in the New York Standards and Specifications for Erosion and Sediment Control, and the New York State Stormwater Management Design Manual; and

WHEREAS, the project site includes a classified DEC-regulated tidal wetland along the bank of the 4th Street Basin; and

WHEREAS, DEC issued a Tidal Wetlands and Protection of Waters permit in 2009 ("2009 DEC permit") for the proposed project; and

WHEREAS, the applicant will seek a minor modification to the 2009 DEC permit to conform the permit's scope of work with the proposal under the variance application; and

WHEREAS, as previously noted, the applicant has proposed traffic improvement measures, including the installation of a traffic signal at the intersection formed by 3rd Street and the driveway to the site, signal timing shifts at surrounding intersections, lane restriping, and the addition of new directional signage; and

WHEREAS, in a January 9, 2012 letter, DOT identifies all of the proposed measures and notes that the improvements appear reasonable and feasible; and

WHEREAS, DOT will participate in the review process relating to all future modifications to geometric alignment, striping and signage during the preliminary and final design phases as well as the design installation of the new traffic signal; and

WHEREAS, DOT notes in its January 9, 2012 letter that the applicant is committed to holding discussions with Verizon regarding resolving potential safety and operational issues with the existing entrance to the Verizon facility on Third Street and the proposed entrance to Whole Foods on Third Street; 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 Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, in an M2-1 zoning district, the construction of a two-story food store (Use Group 6) in excess of 10,000 sq. ft., which does not conform to district use regulations, contrary to ZR § 42-12; *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 February 8, 2012" – (19) sheets; and *on further condition*:

THAT the following are the bulk parameters of the

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proposed building: a maximum total floor area of 75,870 sq. ft. (0.41 FAR), with a Use Group 6 floor area of 56,470 sq. ft. (0.30 FAR) and a Use Group 17 floor area of 19,400 sq. ft. (0.10 FAR); and a minimum of 246 accessory parking spaces, as indicated on the BSA-approved plans;

THAT a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until the City Planning Commission has issued a certification for waterfront public access pursuant to ZR § 62-811;

THAT a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until the DEC has issued a modified Tidal Wetlands and Protections of Waters permit;

THAT a Temporary Certificate of Occupancy (“TCO”) shall not be issued until DEP has approved the Remedial Closure Report;

THAT a TCO shall not be issued until DEC has issued a Certificate of Completion for remediation under the Brownfield Cleanup Program;

THAT the applicant is responsible for all costs associated with the design and construction of all traffic improvement measures proposed in the EAS, including the new traffic signal, consistent with the customary and standard DOT practice;

THAT the applicant will submit to DOT at least six months in advance of completion of the project all of the required drawings/designs relating to the improvements identified in DOT’s January 9, 2012 letter;

THAT if the boundaries of the Landmark Building Site are changed by any action subsequent to the Board’s approval, the applicant must seek any required review and approval from the Landmarks Preservation Commission and any resultant requirement for modification to the plans from the Board;

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) 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, February 28, 2012.

137-11-BZ CEQR #12-BSA-023K

APPLICANT – Slater & Beckerman, LLP, for 455 Carroll Street LLC, owner.

SUBJECT – Application September 7, 2011 – Variance (§72-21) to allow the conversion of the second floor and second floor mezzanine from manufacturing and commercial

uses to residential use, contrary to §42-10. M1-2 zoning district.

PREMISES AFFECTED – 455 Carroll Street, mid-block on the north side of Carroll Street between Nevins Street and Third Avenue, Block 447, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Stefanie Marazzi.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 16, 2011, acting on Department of Buildings Application No. 320284385, reads in pertinent part:

Proposed UG 2 residential use in an M1-2 zoning district is contrary to Section 42-00 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-2 zoning district, the legalization of the residential use on the second floor and second floor mezzanine of a two-story manufacturing building, which is contrary to ZR § 42-00; and

WHEREAS, the building will maintain a conforming use on the first floor and has a total floor area of 9,580 sq. ft. (2.4 FAR) and a street wall and total height of 28 feet; and

WHEREAS, a public hearing was held on this application on November 22, 2011 after due notice by publication in the *City Record*, with a continued hearing on January 10, 2012, and then to decision on February 28, 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 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Carroll Street between Nevins Street and Third Avenue; and

WHEREAS, the site has a lot area of approximately 4,000 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story building; the first floor and first floor mezzanine are occupied by a conforming manufacturing use and the second floor and second floor mezzanine are occupied by non-conforming residential use; and

WHEREAS, because the applicant proposes to legalize the Use Group 2 dwelling unit, a variance is required; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject

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lot in conformity with applicable regulations: (1) the second floor is narrow and irregularly-shaped and has an inadequate live load; (2) the narrow staircase and the absence of an elevator; (3) the absence of a loading berth; and (4) the small size of the lot and its location on a narrow street among residential uses; and

WHEREAS, as to the second floor's configuration, the applicant asserts that it is irregularly-shaped with undersized floor plates and has an insufficient live load, which cannot accommodate modern manufacturing uses; and

WHEREAS, the applicant states that the 4,000 sq. ft. floor plate is an insufficient size, particularly since it is diminished by the staircase to the second floor mezzanine and surrounding partitions; and

WHEREAS, further, the applicant notes that the second floor has a live load capacity of 60 and therefore does not meet the live load capacity of 120 set forth in the Certificate of Occupancy; and

WHEREAS, the applicant submitted an engineer's statement that renovating the second floor to meet a live load capacity of 125 as required by the Building Code for light manufacturing would require significant expenditure; and

WHEREAS, as to the internal circulation, the applicant represents that the absence of an elevator and the narrow staircase do not accommodate the efficient transfer of materials and machinery between floors; and

WHEREAS, specifically, the applicant states that the stairway to the second floor has a width of only 5'-2" and opens onto the street by a standard-size door and that an interior door is oriented 90 degrees from the staircase; and

WHEREAS, the applicant states that if it were to change the second floor use to a conforming Use Group 6 commercial office, it would be required to install an elevator to meet ADA accessibility regulations; and

WHEREAS, as to the absence of a loading berth, the applicant states that Carroll Street is a one-way, narrow, primarily residential street with parking on both sides, which requires that loading must take place on the sidewalk and street and would thus obstruct vehicular and pedestrian traffic; and

WHEREAS, as to the location and size of the building, the applicant states that the subject block is occupied primarily by residential use in a neighborhood bounded by the Gowanus Canal and far from commercial office districts which support commercial use; and

WHEREAS, the applicant states that the floor area of the second floor (4,000 sq. ft.) and second floor mezzanine (1,200 sq. ft.), while too small for a manufacturing use would be a large amount of office space in what is predominantly a residential area and would therefore not be marketable; and

WHEREAS, as to the uniqueness of the conditions, the applicant performed a lot use and width analysis which reflects that the site is the only two-story completely conforming commercial or industrial building within a one to two block radius with a width of 40 feet or less, that is adjacent to residential use on both sides; and

WHEREAS, the applicant states that the analysis

evaluated the lot width and use of the 443 lots bounded by Sackett Street, Fourth Avenue, Bond Street, and Third Street, which is almost equivalent to the area in the Department of City Planning's Rezoning Proposal for the Gowanus; and

WHEREAS, the applicant represents that within the study area, there are only four similarly-situated two-story manufacturing buildings with a width of 40 feet or less, which amounts to 0.9 percent of the total buildings; and

WHEREAS, the applicant asserts that the four other buildings can be distinguished based on location on a wider street, being part of assemblage sites, adjacency to other conforming uses, and/or having better vehicular access; and

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

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no possibility that the use of the property in conformance with applicable use regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a conforming industrial use, a conforming mixed-use industrial/commercial use, and the existing/proposed mixed-use industrial/residential use; and

WHEREAS, the applicant concluded that only the proposed use would realize a reasonable return; and

WHEREAS, the applicant submitted evidence that the prior owner had unsuccessfully attempted to market the building for a conforming use; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable use requirements 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 states that the buildings surrounding the property are predominantly residential; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, including the adjacent residential buildings and others on the subject block; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, based upon its review of the submitted land use map and its site inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of one dwelling unit will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, the applicant notes that the existing

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building envelope and floor area will be maintained; 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 Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, the Board finds that the proposal to maintain the conforming use on the first floor and to legalize one dwelling unit on the second floor is the minimum necessary to afford the owner relief; 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 Sections 617.6(h) and 617.2(h) of 6 NYCRR; 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. 12BSA023K, dated February 22, 2012; and

WHEREAS, the EAS documents indicate 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 February 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, DEP reviewed and accepted the February 2012 Remedial Closure Report; 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 and grants a variance to permit the legalization of the residential use on the second floor and second floor mezzanine of a two-story manufacturing building, which is contrary to ZR § 42-00 *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 September 7, 2011" – four (4) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building total floor area of 9,580 sq. ft., with a maximum Use Group 2 floor area of 5,200 sq. ft. and one residential unit, as indicated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, February 28, 2012.

175-11-BZ

APPLICANT – Raymond H. Levin, for Clinton Park Holdings, LLC, owners.

SUBJECT – Application November 10, 2011 – Special Permit (§73-36) to permit a physical culture establishment (*Mercedes House*). C6-3X (Clinton Special District).

PREMISES AFFECTED – 550 West 54th Street, aka 770 11th Avenue, bounded by 11th Avenue, West 54th Street, 10th Avenue and West 53rd Street, Block 1082, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Raymond Levin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 4, 2012, acting on Department of Buildings Application No. 104856942, reads in pertinent part:

A Physical Culture Establishment is not a permitted as-of-right use in a C6-3X zoning

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district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-3X zoning district within the Special Clinton District (CL), the operation of a physical culture establishment (“PCE”) on the fourth floor of a 32-story mixed-use residential/commercial building, contrary to ZR § 32-30; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, and then to decision on February 28, 2012; and

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

WHEREAS, Community Board 4, Manhattan recommends approval of the application with the following conditions: (1) that there be a pricing structure which would make membership affordable to all residents of the subject building and (2) that the applicant provide community-based programming for community members; and

WHEREAS, the subject site located bounded by 11th Avenue, West 53rd Street, 10th Avenue, and West 54th Street in a C6-3X zoning district within the Special Clinton District (CL); and

WHEREAS, the subject site will be occupied by a 32-story mixed-use residential/commercial building, which is currently under construction and is known as Mercedes House; and

WHEREAS, the PCE will occupy 28,151 sq. ft. of floor space primarily on the fourth floor; and

WHEREAS, the PCE will be self-operated by the developer Two Trees Management Company; and

WHEREAS, the PCE is expected to operate Monday through Friday 5:30 a.m. to 11:00 p.m.; Saturday 7:00 a.m. to 9:00 p.m.; and Sunday from 8:00 a.m. to 8:00 p.m.; and

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

WHEREAS, the applicant states that the new construction will include noise abatement to ensure that the sound level does not exceed a maximum interior level of 45 dba, as established by the New York City Department of Environmental Protection; and

WHEREAS, the applicant proposes to install acoustical separation between the PCE and the residential use and to include a Sound Transmission Class and Impact Isolation Class rating of 50 between floors which will be achieved through an eight-inch concrete slab with resilient underlayment as well as other measures; and

WHEREAS, the applicant states that it is considering the potential to comply with the Community Board’s conditions, but cannot commit to any such plan currently; and

WHEREAS, the Board notes that it does not require the applicant to comply with the conditions that are beyond the scope of its review of the special permit application; and

WHEREAS, the Board finds that this action will

neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

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

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

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board adopts the findings of the Final Environmental Impact Statement (FEIS) (07DCP071M); and

WHEREAS, the FEIS 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, 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 adopts the FEIS’s findings prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in an C6-3X zoning district within the Special Clinton District (CL), the operation of a physical culture establishment on the fourth floor of a 32-story mixed-use residential/commercial building, contrary to ZR § 32-30; *condition* that all work shall substantially conform to drawings filed with this application marked “Received February 13, 2012”- (2) sheets and “Received January 6, 2012”-(1) sheet, and *on further condition*:

THAT the term of this grant will expire on February 28, 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;

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

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

THAT sound attenuation measures must be installed in the PCE as shown on the Board-approved plans;

THAT fire safety measures must 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, February 28, 2012.

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

APPEARANCES –

For Applicant: Lyra J. Altman and David Shtierman.

For Opposition: Assembly Member Barbara M. Clark, Council Member James Sanders, Jr., Joseph Goldbloom of Council Member Leroy Comrie, Eugene Falik, Kelli M. Singleton, Doris Bodine, Steven Taylor, Elaine Wallace, Phyllis Rudnick and Edgar Moore.

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

108-11-BZ thru 111-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Belett Holdings LLC, owner.

SUBJECT – Application August 8, 2011 – Variance (§72-21) to permit the construction of four semi-detached one-family dwellings that do not provide ground floor commercial use, contrary to §32-433. C1-1/R3-1 zoning district.

PREMISES AFFECTED – 10, 12, 14 & 16 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the

intersection of Hett Avenue and New Dorp Lane. Block 4065, Lots 27, 25, 24 & 21, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

120-11-BZ

APPLICANT – Goldman Harris LLC. for Borden LIC Properties, LLC, owner.

SUBJECT – Application August 17, 2011 – Special Permit (§73-44) to reduce the parking requirement for office use and catering use (parking requirement category B1) in a new commercial building. M1-3 zoning district.

PREMISES AFFECTED – 52-11 29th Street, corner of 29th Street and Review Avenue. Block 295, Lot 1. Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Vivien R. Krieger, Jay Valgora and James Hincmen.

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

129-11-BZ

APPLICANT – Jeffrey Chester, Esq. GSHLLP, for Carroll Street One LLC, owner.

SUBJECT – Application September 2, 2011 – Variance (§72-21) to allow for the construction of a residential building, contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 465 Carroll Street, north side of Carroll Street, 100' from the corner of 3rd Avenue. Block 447, Lot 43. Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Jeffrey Chester and Sebastian Giuliano.

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 April 3, 2012, at 1:30 P.M., for decision, hearing closed.

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158-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for C and A Capital, LLC, owner; Blink Nostrand, Inc., lessee.

SUBJECT – Application October 11, 2011 – Special Permit (§73-36) to allow a physical culture establishment (*Blink*). C4-4A zoning district.

PREMISES AFFECTED – 2166 Nostrand Avenue, east side of Nostrand Avenue, 180.76’ south of intersection of Nostrand Avenue and Flatbush Avenue, Block 7557, Lot 124, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

167-11-BZ

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application October 20, 2011 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) with an accessory drive-through facility. C1-2/R5 zoning district.

PREMISES AFFECTED – 1677 Bruckner Boulevard, Fiely Avenue through to Metcalf Avenue, Block 3721, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik and Eric Menn.

For Opposition: Zelma Torres Rosado and James Monero.

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

169-11-BZ

APPLICANT – Eric Palatnik, P.C., for Shlomo Vizgan, owner.

SUBJECT – Application October 27, 2011 – Special Permit (§73-622) to allow the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R-4 zoning district.

PREMISES AFFECTED – 2257 East 14th Street, between Avenue V and Gravesend Neck Road, Block 7375, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Jonathan Dagry.

ACTION OF THE BOARD – Laid over to April 3, 2012, at 1:30 P.M., for continued hearing.

197-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 329 Wyckoff Realty, LLC, owner; Wyckoff Fitness Group, LLC, lessee.

SUBJECT – Application December 30, 2011 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on a portion of the first and second floors of an existing two-story building. C4-3 zoning districts.

PREMISES AFFECTED – 329 Wyckoff Avenue, northeast corner of the intersection formed by Wyckoff and Myrtle Avenues and Palmetto Street, Block 3444, Lot 33, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Josh Rinesmith.

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on December 6, 2011, under Calendar No. 926-86-BZ and printed in Volume 96, Bulletin Nos. 49-50, is hereby corrected to read as follows:

926-86-BZ

APPLICANT – Sheldon Lobel, P.C., for Manes Bayside Realty LLC, owner.

SUBJECT – Application November 1, 2010 – Extension of Term of a variance for the operation of an automotive dealership with accessory repairs (UG 16B) which expired on November 4, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 6, 2006; Waiver of the Rules. C2-2/R6-B/R3X zoning district.

PREMISES AFFECTED – 217-07 Northern Boulevard, block front on the northerly side of Northern Boulevard between 217th Street and 218th Street, Block 6320, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term of a previously granted variance for an automotive dealership with accessory repairs (Use Group 16B), and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 12, 2011 after due notice by publication in *The City Record*, with continued hearings on August 23, 2011, September 27, 2011 and October 25, 2011, and then to decision on December 6, 2011; and

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) the term of the grant be limited to five years; (2) the lessee submit a report to the Community Board every six months detailing their compliance with the conditions of the grant; (3) lighting be installed; (4) all cars awaiting service be parked on-site and all work be performed on-site; (5) the fencing be repaired and graffiti removed; (6) the landscaping be maintained; (7) “grass” slats be installed in the chain link fence; (8) after-hour tow trucks turn off engines and flashing lights when on the property; (9) the hours of operation remain as previously approved; and (10) workers on the site not be allowed to barbecue or play excessively loud music; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application, with similar conditions as stipulated by the Community Board;

and

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

WHEREAS, the site is located on the north side of the Northern Boulevard between 217th Street and 218th Street, partially within a C2-2 (R6B) zoning district, and partially within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 24, 1962 when, under BSA Cal. No. 1875-61-BZ, the Board granted a variance to permit, in conjunction with the construction of a one-story and basement building for use as an authorized car agency, accessory auto repairs and the use of the open area for sales and service of new and used cars and the parking of more than five vehicles; and

WHEREAS, on November 4, 1987, under the subject calendar number, the Board granted a special permit pursuant to ZR § 11-412, to allow the expansion of the outdoor parking area of the automobile showroom and service facility, for a term of three years; and

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

WHEREAS, most recently, on December 13, 2005, the Board granted a five-year extension of the term and an amendment to permit an increase from a maximum of 72 parking spaces to a maximum of 82 parking spaces on the site, which expired on November 4, 2010; and

WHEREAS, the applicant now seeks a ten-year extension of term, and an extension of time to obtain a certificate of occupancy; and

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

WHEREAS, as to the conditions stipulated by the Community Board and the Queens Borough President, the applicant requests that the Board extend the term for a full ten years, and permit an extension of the hours of operation for the showroom portion of the site; and

WHEREAS, specifically, the applicant proposes to increase the hours of operation for the showroom to Monday through Friday, from 9:00 a.m. to 9:00 p.m., Saturday, from 9:00 a.m. to 6:00 p.m., and Sunday, from 9:00 a.m. to 5:00 p.m.; the hours of operation for the automotive service use would remain Monday through Thursday, from 8:00 a.m. to 7:00 p.m., Friday, from 8:00 a.m. to 6:00 p.m., Saturday, from 8:00 a.m. to 3:00 p.m., and closed on Sundays; and

WHEREAS, the applicant submitted a table reflecting the hours of operation for other automobile dealerships along Northern Boulevard, which reflects that the proposed extension of the hours of operation for the showroom is consistent with the hours for similar uses in the surrounding area; and

WHEREAS, the applicant agreed to comply with the remaining conditions proposed by the Community Board and the Borough President; and

WHEREAS, at the Board’s direction, the applicant submitted a contract with a fencing company for the removal

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and replacement of damaged fencing and cinder block walls on the site, and submitted photographs reflecting that said work has commenced on the site; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time 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, dated November 4, 1987, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from November 4, 2010, to expire on November 4, 2020, and to grant a one-year extension of time to obtain a certificate of occupancy, to expire on December 6, 2012; 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 September 14, 2011"-(1) sheet; and on further condition:

THAT the term of the grant shall expire on November 4, 2020;

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

THAT lighting shall be installed in accordance with the BSA-approved plans;

THAT all cars awaiting service shall be parked on-site and all work shall be performed on-site;

THAT fencing and landscaping shall be maintained as indicated on the BSA-approved plans;

THAT tow trucks arriving after business hours shall turn off engines and flashing lights while on the site;

THAT the hours of operation for the showroom shall be Monday through Friday, from 9:00 a.m. to 9:00 p.m., Saturday, from 9:00 a.m. to 6:00 p.m., and Sunday, from 9:00 a.m. to 5:00 p.m.; and the hours of operation for the automotive service use shall be Monday through Thursday, from 8:00 a.m. to 7:00 p.m., Friday, from 8:00 a.m. to 6:00 p.m., Saturday, from 8:00 a.m. to 3:00 p.m., and closed on Sundays;

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

THAT a certificate of occupancy shall be obtained by December 6, 2012;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 402140875)

Adopted by the Board of Standards and Appeals December 6, 2011.

***The resolution has been revised to add Approved Plans. Corrected in Bulletin Nos. 9-10, Vol. 97, dated March 8, 2012.**

*CORRECTION

This resolution adopted on October 25, 2011, under Calendar No. 230-10-BZ and printed in Volume 96, Bulletin No. 44, is hereby corrected to read as follows:

230-10-BZ

APPLICANT – Eric Palatnik, P.C., for Leonid Fishman, owner.

SUBJECT – Application December 17, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to open space, lot coverage and floor area (§23-141(b)) and perimeter wall height (§23-631(b)). R3-1 zoning district.

PREMISES AFFECTED – 177 Kensington Street, Oriental Boulevard and Kensington Street, Block 8754, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 19, 2010, acting on Department of Buildings Application No. 320202721, reads:

"The proposed horizontal and vertical enlargement of the existing one family residence in an R3-1 zoning district:

1. Creates a new non-compliance with respect to lot coverage and is contrary to Section 23-141(b) of the Zoning Resolution (ZR).
2. Creates a new non-compliance with respect to floor area and is contrary to Section 23-141(b) ZR.
3. Creates a new non-compliance with respect to open space and is contrary to Section 23-141(b) ZR.
4. Creates a new non-compliance with respect to perimeter wall height and is contrary to Section 23-631(b) ZR;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space, and perimeter wall height, contrary to ZR §§ 23-141 and 23-631; and

WHEREAS, a public hearing was held on this application on May 24, 2011, after due notice by publication in *The City Record*, with continued hearings on July 12, 2011, August 16, 2011 and September 27, 2011, and then to decision on October 25, 2011 and

WHEREAS, the premises and surrounding area had

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

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

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application; and

WHEREAS, certain members of the community provided written and oral testimony in opposition to this application; and

WHEREAS, collectively, the parties who submitted testimony in opposition to this application are the "Opposition;" and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposed FAR, perimeter wall height, and front yard depth are out of context with the surrounding area; and (2) the proposed side yard balcony along the northern side of the home is not permitted; and

WHEREAS, the subject site is located on the east side of Kensington Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 2,547 sq. ft. (0.42 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 2,547 sq. ft. (0.42 FAR) to 5,760 sq. ft. (0.96 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant initially proposed to increase the floor area to 6,114 sq. ft. (1.02 FAR); and

WHEREAS, in response to concerns raised by the Board and the Opposition, the applicant provided an interim proposal which reduced the proposed floor area to 5,974 sq. ft. (1.0 FAR); at the Board's direction the applicant further reduced the floor area to the current proposal of 5,760 sq. ft. (0.96 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 46 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide 3,234 sq. ft. of open space (3,900 sq. ft. of open space is the minimum required); and

WHEREAS, the applicant proposes to provide a perimeter wall height of 22'-1" (a maximum perimeter wall height of 21'-0" is permitted); and

WHEREAS, the Board notes that the special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height in an R3-1 zoning district, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, in support of the requested waiver for perimeter wall height, the applicant provided a

streetscape and a survey establishing that the adjacent home to the north, 173 Kensington Street, has a perimeter wall height of 23'-8"; and

WHEREAS, therefore, the applicant represents that the perimeter wall of the proposed home matches the existing non-complying perimeter wall height of the adjacent home and falls within the scope of the special permit; and

WHEREAS, the Board has determined that the applicant has submitted sufficient information to establish that the proposed home may match the pre-existing perimeter wall height of the adjacent home, which exceeds 21'-0"; and

WHEREAS, the Opposition contends that the proposed home is out of context with the surrounding neighborhood because the FAR is excessive; and

WHEREAS, as noted above, the applicant originally proposed a home with a floor area of 6,114 sq. ft. (1.02 FAR), but revised its plans to reflect the current floor area of 5,760 sq. ft. (0.96 FAR) in response to concerns raised by the Board and the Opposition; and

WHEREAS, the applicant submitted a survey of homes within a 400-ft. radius of the site, which indicates that there are at least ten homes within the surrounding area with FARs that exceed the proposed 0.96 FAR; and

WHEREAS, the applicant also submitted a survey of homes within an expanded study area bounded by Oriental Boulevard to the south, Falmouth Street to the west, Hampton Avenue/Shore Boulevard to the north and Pembroke Street to the east, which reflected that 57 homes within the study area have FARs which exceed 0.95 FAR, and 21 homes within the study area have floor areas which exceed 5,000 sq. ft.; and

WHEREAS, the Opposition contends that the methodology of the applicant's FAR study is flawed because it relies on the Primary Land Use Tax Lot Output ("PLUTO") for its FAR data, and there are inaccuracies in the PLUTO database; and

WHEREAS, the Board recognizes that the PLUTO data may have errors, however, it finds that the database can still be relied on to provide a general sense of the FARs in the surrounding neighborhood; and

WHEREAS, the Board notes that the PLUTO database is maintained by the Department of City Planning, and is relied upon for various land use studies; and

WHEREAS, the Opposition contends that the proposed front yard with a depth of 15'-0" is out of context with the surrounding area, which predominantly provides front yards with depths of at least 18'-0", and that the shallower front yard will block light and air to adjacent homes; and

WHEREAS, the Board notes that the proposed front yard depth of 15'-0" is in compliance with the underlying R3-1 zoning district regulations, and is therefore permitted as-of-right; and

WHEREAS, the Opposition also raised concerns about the proposed balcony along the northern side of the home; and

WHEREAS, in response, the applicant revised its

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plans to reflect the removal of the subject balcony; and

WHEREAS, at hearing, the Board questioned how much of the existing home is being retained; and

WHEREAS, in response, the applicant submitted revised plans which indicate that portions of the existing cellar, first floor, and second floor walls, and portions of the floor joists at the first floor and second floor will remain; 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 R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space, and perimeter wall height, contrary to ZR §§ 23-141 and 23-631; *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 October 12, 2011"-(13) sheets and "October 19, 2011"-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 5,760 sq. ft. (0.96 FAR); a maximum lot coverage of 46 percent; a minimum of 3,234 sq. ft. of open space; and a maximum perimeter wall height of 22'-8", as illustrated on the BSA-approved plans;

THAT no balconies shall be permitted along the north side of the home;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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, October 25, 2011.

***The resolution has been revised to correct the sq. ft. in the 17th WHEREAS which read: "4,466 sq. ft." now reads: "3,900 sq. ft.", and to amend the clause, in the 1st condition which read in part..: "42 percent..." now reads: "46 percent...". Corrected in Bulletin Nos. 9-10, Vol. 97, dated March 8, 2012.**