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# BULLETIN

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

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Volume 98, Nos. 35-37

September 18, 2013

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### DIRECTORY

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<b>OFFICE -</b>	<b>250 Broadway, 29th Floor, New York, N.Y. 10007</b>
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**MINUTES of Regular Meetings,  
Tuesday, September 10, 2013**

Morning Calendar .....763

**Affecting Calendar Numbers:**

228-00-BZ	28/32 Locust Street, Brooklyn
378-04-BZ	94 Kingsland Avenue, Brooklyn
107-11-BZ	1643 East 21 <sup>st</sup> Street, Brooklyn
699-46-BZ	224-01 North Conduit Avenue, Queens
615-57-BZ	154-11 Horace Harding Expressway, Queens
274-59-BZ	3356 & 3358 Eastchester Road, aka 1510-151 Tillotson Avenue, Bronx
723-84-BZ	241-02 Northern Boulevard, Queens
327-88-BZ	136-36 39 <sup>th</sup> Avenue, aka 136-29 & 136-35A Roosevelt Avenue, Queens
161-99-BZ & 162-99-BZ	349 & 353 East 76 <sup>th</sup> Street, Manhattan
200-10-A, 203-10-A thru 205-10-A	1359, 1365, 1367 Davis Road, Queens
246-12-A	515 East 5 <sup>th</sup> Street, Manhattan
245-12-A	515 East 5 <sup>th</sup> Street, Manhattan
66-13-A	111 East 161 <sup>st</sup> Street, Bronx
67-13-A	945 Zerega Avenue, Bronx
123-13-A	86 Bedford Avenue, Manhattan
338-12-BZ	164-20 Northern Boulevard, Queens
83-13-BZ	3089 Bedford Avenue, Brooklyn
97-13-BZ	1848 East 24 <sup>th</sup> Street, Brooklyn
109-13-BZ	80 John Street, Manhattan
170-13-BZ	25-10 30 <sup>th</sup> Avenue, Queens
78-11-BZ, 33-12-A thru 37-12-A	78-70 Winchester Boulevard, Queens
16-12-BZ	184 Nordstrom Avenue, Brooklyn
43-12-BZ	25 Great Jones Street, Manhattan
54-12-BZ	65-39 102 <sup>nd</sup> Street, Queens
199-12-BZ	1517 Bushwick Avenue, Brooklyn
236-12-BZ	1487 Richmond Road, Staten Island
259-12-BZ	5241 Independence Avenue, Bronx
263-12-BZ & 264-12-A	232 & 222 City Island Avenue, Bronx
301-12-BZ	213-11/19 35 <sup>th</sup> Avenue, Queens
303-12-BZ	1106-1108 Utica Avenue, Brooklyn
94-13-BZ	11-11 40 <sup>th</sup> Avenue, aka 38-78 12 <sup>th</sup> Street, Queens
120-13-BZ	1815 Forest Avenue, Staten Island
129-13-BZ	1010 East 22 <sup>nd</sup> Street, Brooklyn

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# DOCKETS

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New Case Filed Up to September 10, 2013

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**243-13-BZ**

22 Thames Street, Southeast corner of Greenwich Street and Thames Street, Block 51, Lot(s) 13-14, Borough of **Manhattan, Community Board: 1**. Variance (§72-21) to permit construction of a mixed use building that does not comply with the setback requirements §91-32. C5-5 (LM) zoning district. C5-5(LM) district.

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**244-13-A**

210 East 86th Street, 150 East 86th Street East the Southwest corner of 3rd Avenue east 86th Street, Block 1531, Lot(s) 40, Borough of **Manhattan, Community Board: 8**. Waiver of the requirement of the Building Code 27-305 Table 4-1.and the building requires a sprinkler system through out the building because of the height of the building. C2-8A/R8B district.

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**245-13-BZ**

2660 East 27th Street, between Voorhies Avenue and Avenue Z, Block 7471, Lot(s) 30, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141) and less than the required rear yard (ZR 23-47). R4 zoning district. R4 district.

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**246-13-BZ**

514 55th Street, South side of 49th Street, 90' east of intersection of 5th Avenue and 49th Street, Block 784, Lot(s) 10, Borough of **Brooklyn, Community Board: 7**. Variance (§72-21) to permit enlargement of an existing ambulatory diagnostic treatment health facility( UG4) in R6B and C4-3A zoning districts that exceeds maximum permitted floor area per ZR 24-11 and does not provide required rear yard per ZR 24-36. R6B district.

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**247-13-A**

123 Beach 93rd Street, Located on Western side of Beach 93rd Street with frontage on Shore Front Parkway and Cross Bay Parkway, Block 16139, Lot(s) 11, Borough of **Queens, Community Board: 14**. Common Law Vested Right to continue development of proposed six-story residential building under prior R6 zoning district. R5A zoning district. R5A district.

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**248-13-BZ**

1179 East 28th Street, Located on the east side of East 28th Street, approximately 127 feet north of Avenue L, Block 7628, Lot(s) 13, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single-family home contrary to floor area and open space (ZR 23-141a); side yards (ZR 23-461). R2 zoning district. R2 district.

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**249-13-BZ**

747 Broadway, Northeast corner of intersection of Graham Avenue, Broadway and Flushing Avenue, Block 3127, Lot(s) 1, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit a Physical Cultural Establishment (Crunch Fitness) within portions of existing commercial building. C4-3 zoning district. C4-3 district.

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**250-13-BZ**

3555 White Plains Road, Located on the west side of White Plains Road approximately 100 feet south of the intersection formed by East 213 Street and White plains Road., Block 4643, Lot(s) 43, Borough of **Bronx, Community Board: 12**. Special Permit (§73-36) to permit the operation of a physical culture establishment (fitness center) on the cellar, first and second floors. R7A/C2-4 zoning district. R7A/C2-4 district.

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**251-13-BZ**

1240 Waters Place, east side of Marconi Street, approximately 1678 ft. north of intersection of Water ers Place and Marconi Street, Block 4226, Lot(s) 35, Borough of **Bronx, Community Board: 11**. Special Permit (§73-49) to allow roof top parking in M1-1 zoning contrary to §44-11. M1-1 district.

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**252-13-BZ**

1221 Easa6t 22nd Street, East side of East 22nd Street between Avenue K and Avenue L, Block 7622, Lot(s) 21, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (ZR 23-47). R-2 zoning district. R2 district.

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# DOCKETS

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**253-13-BZ**

66-31 Booth Street, North side of Booth Street between 66th and 67th Avenue, Block 3158, Lot(s) 96, Borough of **Queens, Community Board: 6.** Special Permit (§73-621) to enlarge a two story two family home in a residential zoning district (RAB) contrary to §23-141B floor area and floor area ratio requirements. R4B zoning district. R4B district.

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**254-13-BZ**

2881 Nostrand Avenue, East side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot(s) 91, Borough of **Brooklyn, Community Board: 18.** Variance (§72-21) to permit a bulk variance to allow for the residential development of the property. R3-2 zoning district. R3-2 district.

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**255-13-BZ**

3560/84 White Plains Road, East side of White Plains Road at southeast corner of intersection of White Plains Road 213th Street, Block 4657, Lot(s) 94, 96, Borough of **Bronx, Community Board: 12.** Special Permit (§73-36) to permit the operation of a physical culture (blink fitness) establishment within an existing commercial building. C2-4 (R7-A) zoning district. C2-4(R7-A) district.

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**256-13-BZ**

25, 27, 31, 33, Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot(s) 22, Borough of **Staten Island, Community Board: 2.** VARIANCE 72-21: to request a variance of Section 23-45(sat), 23-461(a) and Section 23-892(a) for a proposed residential scheme on what is not and has historically been a series of vacant lots. R3-2 district.

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**257-13-BZ**

27 Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid Transit Right of way., Block 3162, Lot(s) 23, Borough of **Staten Island, Community Board: 2.** VARIANCE 72-21 proposed new buildings has bulk non-compliances resulting from the location, pursuant Section ZR23-45, ZR23-462, and ZR23-891 zoning resolution. R3-2 district.

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**258-13-BZ**

25 Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot(s) 22, Borough of **Staten Island, Community Board: 2.** VARIANCE 72-21 to proposed new buildings has bulk non-compliance resulting from the location, pursuant Section ZR23-45, ZR23-462 and ZR23-891 zoning

district. R3-2 district.

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**259-13-BZ**

33 Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid transit right of way, Block 3162, Lot(s) 25, Borough of **Staten Island, Community Board: 2.** VARIANCE 72-21 to proposed new buildings has bulk non-compliance resulting from the location, pursuant ZR23-45, ZR23-462 and ZR23-891 zoning resolution. R3-2 district.

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**260-13-A**

25 Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot(s) 22, Borough of **Staten Island, Community Board: 2.** GCL 35 to permit construction of residential building development within the bed of a mapped street of Article 3 of the General City GCL 35 unmapped street district.

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**261-13-A**

27 Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot(s) 23, Borough of **Staten Island, Community Board: 2.** GCL 35 to permit construction of residential building development within the bed of mapped street of Article 3 the General City Law R3-2 district.

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**262-13-A**

31 Sheridan Avenue, Sheridan Avenue between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot(s) 24, Borough of **Staten Island, Community Board: 2.** GCL 35 to permit construction residential building development within the bed of a unmapped street of Article 3 of the General City Law GCL35. R3-2 district.

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**263-13-A**

33 Sheridan Avenue, Sheridan Avenue, Block 3162, Lot(s) 25, Borough of **Staten Island, Community Board: 2.** GCL 35 to permit construction of residential building development within the bed of mapped street of Article 3 of the General City Law. R3-2 district.

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**264-13-BZ**

257 West 17th Street, North side, West 17th Street, between 7th & 8th Avenues, Block 767, Lot(s) 6, Borough of **Manhattan, Community Board: 4.** Special Permit (§73-36) to permit the operation of a physical culture (health club) on the ground floor and cellar of an existing ten (10) story building. C6-2A zoning district. C6-2A district.

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# DOCKETS

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**265-13-BZ**

118-27/47 Farmers Boulevard, east side of Farmers Boulevard, 217.39 feet north of intersection of Farmers Boulevard and 119th Avenue, Block 12603, Lot(s) 58 & 63, Borough of **Queens, Community Board: 12**. Variance (72-21) to permit a proposed community facility and residential building contrary to zoning bulk regulations. R3A zoning district. R3-A district.

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**266-13-BZ**

515 East 5th Street, North side of East 5th Street between Avenue A and B, Block 401, Lot(s) 56, Borough of **Manhattan, Community Board: 3**. Variance (§72-21) to legalize the enlargement of a now six story family dwelling contrary to §23-145 (maximum floor area). R7B zoning district. R7B district.

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**267-13-BZ**

689 5th Avenue, North East corner of 5th Avenue and East 54th Street, Block 1290, Lot(s) 1, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture (blink fitness) establishment on the ninth floor the space of the building. C5-3 (MID) zoning district C5-3 MID district.

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

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# CALENDAR

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**SEPTEMBER 24, 2013, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 24, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**SPECIAL ORDER CALENDAR**

**360-65-BZ**

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Dalton Schools, Inc., owner.

SUBJECT – Application July 19, 2013 – Amendment of a previously approved Variance (§72-21) and Special Permit (§73-64) to allow the construction of a two-story addition to the roof of the existing building on the property (*Dalton School*), increase floor area (§24-11) and height, base height and front setback (§24-522 and (§24-522)(b) zoning resolution. R8B zoning district.

PREMISES AFFECTED – 108-114 East 89th Street, midblock between Park and Lexington Avenues, Block 1517, Lot 62, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**606-75-BZ**

APPLICANT – Sheldon Lobel, P.C., for Printing House Condominium, owners.

SUBJECT – Application July 3, 2013 – Amendment to permit a reduction in the floor area of the existing maisonette units at the site and reallocation of floor to the townhouse units resulting in no net change in total floor area and a reduction of the units. M1-5 zoning district.

PREMISES AFFECTED – 421 Hudson Street, corner through lot with frontage on Hudson Street, Leroy Street and Clarkson Street, Block 601, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**APPEALS CALENDAR**

**131-13-A & 132-13-A**

APPLICANT – Sheldon Lobel, P.C., for Rick Russo, owner.  
SUBJECT – Application May 10, 2013 – Proposed construction of family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R2 & R1 (SHPD) zoning district.

PREMISES AFFECTED – 43 & 47 Cecilia Court, Cecilia Court off of Howard Lane, Block 615, Lot 210, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**224-13-A**

APPLICANT – Slater and Beckerman, P.C., for Michael Pressman, owner.

SUBJECT – Application July 25, 2013 – Appeal challenging the determination by the Department of Buildings that an automatic sprinkler system is required in connection with the conversion of the three family dwelling (J-2 occupancy) to a two-family (J-3 occupancy). R6B zoning district.

PREMISES AFFECTED – 283 Carroll Street, north side of Carroll Street between Smith Street and Hoyt Street, Block 443, Lot 61, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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**ZONING CALENDAR**

**339-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Lion Bee Equities, LLC., owner.

SUBJECT – Application December 12, 2012 – Variance (§72-21) to permit accessory commercial parking to be located in a residential portion of a split zoning lot, contrary to §22-10. R2A & C1-2/R3-1 zoning districts.

PREMISES AFFECTED – 252-29 Northern Boulevard, southwest corner of the intersection formed by Northern Boulevard and Little Neck Parkway, Block 8129, Lot p/o 53, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**100-13-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Zipporah Farkas and Zev Farkas, owners.

SUBJECT – Application April 10, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R-2 zoning district.

PREMISES AFFECTED – 1352 East 24th Street, west side of East 24th Street between Avenue M and Avenue N, Block 7659, Lot 69, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**106-13-BZ**

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

SUBJECT – Application April 18, 2013 – Special Permit 73-622, to permit the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yard (ZR 23-461) and perimeter wall height (ZR 23-631); R3-2 zoning district.

PREMISES AFFECTED – 2022 East 21st Street, west side of East 21st Street between Avenue S and Avenue T, Block 7299, Lot 18, Borough of Brooklyn.

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# CALENDAR

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## COMMUNITY BOARD #15BK

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### 162-13-BZ

APPLICANT – Margery Perlmutter/Bryan Cave LLP, for Sullivan Condo LLC/Triangle Parcel LLP, owner.

SUBJECT – Application May 28, 2013 – Variance (§72-21) to permit the construction of a residential and commercial building with 31 dwelling units ground floor retail and 11 parking spaces contrary to zoning regulations. M1-5B zoning district.

PREMISES AFFECTED – 120-140 Avenue of the Americas aka 72-80 Sullivan street, 100' south of Spring street, Block 490, Lot 27, 35, Borough of Manhattan.

## COMMUNITY BOARD #2M

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### 167-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Michael Calabrese, owner.

SUBJECT – Application June 4, 2013 – Variance (§72-21) to permit the enlargement of an existing one-story automobile sales establishment in a use group R5 district contrary to §22-10. R5 zoning district.

PREMISES AFFECTED – 1614/26 86th Street and Bay 13 Street, southwest corner of 86th Street and Bay 13 Street, Block 6363, Lot 42, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, SEPTEMBER 10, 2013  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**228-00-BZ**

APPLICANT – Sheldon Lobel, P.C. for Hoffman &  
Partners LLC, owner.

SUBJECT – Application August 10, 2012 – Extension of  
time to complete construction of a previously approved  
variance (§72-21) which permitted the conversion of a  
vacant building in a manufacturing district for residential use  
(UG 2), which expired on May 15, 2005; Amendment for  
minor modifications to approved plans; Waiver of the Rules.  
M1-1 zoning district.

PREMISES AFFECTED – 28/32 Locust Street,  
southeasterly side of Locust Street between Broadway and  
Beaver Street. Block 3135, Lot 16. Borough of Brooklyn.

**COMMUNITY BOARD #4BK**

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure, an extension of time to  
complete construction and obtain a certificate of occupancy  
in accordance with a variance, which expired on May 15,  
2005, and an amendment to permit partition changes,  
removal of the garbage chute and freight elevator, and other  
minor modifications to the approved plans; and

WHEREAS, a public hearing was held on this  
application on July 16, 2013, after due notice by publication  
in *The City Record*, with a continued hearing on August 20,  
2013, and then to decision on September 10, 2013; and

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

WHEREAS, the subject site is located on the east side  
of Locust Street between Beaver Street and Broadway, within  
an M1-1 zoning district; and

WHEREAS, the site is occupied by a four-story  
building with 26,392 sq. ft. of floor area and 19 dwelling  
units; and

WHEREAS, the Board has exercised jurisdiction over  
the subject site since May 15, 2001 when, under the subject  
calendar number, the Board granted a variance to permit the

conversion of an existing industrial building to residences  
(Use Group 2), contrary to ZR § 42-00; and

WHEREAS, as of May 15, 2005, substantial  
construction had not been completed; accordingly, on that  
date, per ZR § 72-23, the variance lapsed; and

WHEREAS, the applicant represents that substantial  
construction was not achieved within the permitted time  
period because the owner suffered from financial difficulties  
and health problems; and

WHEREAS, the applicant states that construction is  
approximately 80 percent complete and that a two-year  
extension will allow enough time to complete construction and  
remove outstanding violations; and

WHEREAS, as to the proposed amendment to the  
variance, the applicant proposes the following modifications  
to the approved plans: (1) removal of the garbage chute and  
freight elevator and expansion of the exiting open metal  
staircase (fire escape); (2) addition of room partitions in  
several residential units; (3) reconfiguration of the meter  
room, mechanical rooms, and refuse storage at the basement  
level; (4) addition of corridors in the basement; and (5)  
installation of three skylights within the existing pitched roof;  
and

WHEREAS, at hearing, the Board raised concerns about  
the proposed interior layouts within the apartments and  
requested clarification regarding the sprinkler system; and

WHEREAS, in response, the applicant submitted  
amended plans including the standard note indicating that  
interior layouts are subject to Department of Buildings’  
approval; in reference to the sprinkler system, the applicant  
submitted: (1) a letter from the sprinkler company confirming  
that the sprinkler system is operational and regularly  
maintained; (2) confirmation that the Fire Department inspects  
the sprinkler system at least annually; and (3) photographs of  
the sprinkler system; and

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

*Therefore it is Resolved*, that the Board of Standards and  
Appeals *waives* the Rules of Practice and Procedure, *reopens*,  
and *amends* the resolution, dated May 15, 2001, so that as  
amended this portion of the resolution shall read: “to extend  
the time to complete construction for a period of two years  
from September 10, 2013, to expire on September 10, 2015,  
and to permit partition changes, removal of the garbage  
chute and freight elevator, and other minor modifications, as  
noted above; on condition that all work will substantially  
conform to drawings as they apply to the objections above  
noted, filed with this application marked ‘Received August 13,  
2013- (12) sheets; and on further condition:

THAT substantial construction will be completed by  
September 10, 2015;

THAT the interior layouts within the dwelling units  
will be as approved by DOB;

THAT the sprinkler system will be maintained and  
tested in accordance with all applicable laws;

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# MINUTES

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

Adopted by the Board of Standards and Appeals, September 10, 2013.

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## **378-04-BZ**

APPLICANT – Sheldon Lobel, PC, for Krzysztof Ruthkoski, owner.

SUBJECT – Application May 16, 2013 – Extension of time to complete construction of a previously granted variance (§72-21) for the construction of a four-story residential building with an accessory four-car garage, which expired on December 11, 2011 and an Amendment to reduce the scope and non-compliance of the approval; waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection formed by Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

## **COMMUNITY BOARD #1BK**

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

## **THE VOTE TO GRANT –**

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

## **THE RESOLUTION –**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to complete construction of a previously granted variance for a three-story residential building (Use Group 2) in a manufacturing district, which expired on December 11, 2011, and an amendment to reduce the number of stories and total floor area, and to allow a conforming warehouse use (Use Group 17) on the first story; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in *The City Record*, and then to decision on September 10, 2013; and

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

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application, provided that the first story is not used for an eating and drinking establishment; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Kingsland Avenue and

Richardson Street, within an M1-1 zoning district; and

WHEREAS, the site has a lot area of approximately 2,733 sq. ft. and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 11, 2007 when, under the subject calendar number, the Board granted a variance authorizing the construction of a three-story residential building with 5,317 sq. ft. of floor area (1.95 FAR), six dwelling units and four accessory off-street parking space within an M1-1 zoning district, contrary to ZR § 42-00; and

WHEREAS, the applicant now seeks to amend the variance as follows: (1) reduce the number of stories from three to two; (2) reduce the total floor area from 5,317 sq. ft. (1.95 FAR) to 4,405 sq. ft. (1.60); (3) reduce the number of dwelling units from six to three; (4) reduce the number of accessory off-street parking spaces from four to two; and (5) change the use of the proposed first story from residential to conforming warehouse and accessory office uses (Use Group 17); and

WHEREAS, at hearing, the Board raised the following concerns: (1) whether the proposed dwelling units satisfy the minimum size requirements; and (2) whether the first floor use would be compatible with the residential use on the upper floors and the Community Board’s request that no eating and drinking establishment be permitted on the first story; and

WHEREAS, in response, the applicant submitted an amended statement confirming that the proposed dwelling units satisfy the requirement for minimum dwelling unit size in an R6 district; as to the first floor use, the applicant represents that it will be used for office and storage use which will be compatible with the residential use above; further, the applicant had no objection to a prohibition on an eating and drinking establishment at the site; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on December 11, 2007, so that as amended this portion of the resolution shall read “to extend the time to complete construction for a period of two years from September 10, 2013, to expire on September 10, 2015, and to permit the noted modifications to the site; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received May 16, 2013’- (9) sheets and ‘July 16, 2013’-(1) sheet; and *on further condition*:

THAT the first story use will be restricted to office, storage and/or warehouse uses;

THAT substantial construction will be completed by September 10, 2015;

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;

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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. 320751218)

Adopted by the Board of Standards and Appeals, September 10, 2013.

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## 107-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Yeshiva Bais Yitzchok, owners.

SUBJECT – Application March 8, 2013 – Amendment of a previously granted variance (§72-21) to waive bulk regulations for the enlargement of a synagogue and rabbi’s residence (*Congregation Yeshiva Bais Yitzchok*); amendment classifies the enlargement as a new building, which requires a waiver of parking regulations (§25-31). R4-1 zoning district.

PREMISES AFFECTED – 1643 East 21st Street, east side of 21st Street, between Avenue O and Avenue P, Block 6768, Lot 84, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

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

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance permitting the enlargement of an existing building occupied by a synagogue (Use Group 4) and rabbi’s apartment contrary to the R4-1 bulk regulations; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in *The City Record*, and then to decision on September 10, 2013; and

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

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

WHEREAS, the subject site is located on the east side of East 21st Street, between Avenue O and Avenue P, within an R4-1 zoning district; and

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

WHEREAS, the Board has exercised jurisdiction over the subject site since July 10, 2012 when, under the subject calendar number, the Board granted a variance authorizing the enlargement of an existing building occupied by a synagogue (Use Group 4) and rabbi’s apartment, which does not comply with the underlying zoning district regulations for lot

coverage, height and setback, front yard, side yards, rear yard, and distance between windows and lot lines, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, 24-36, and 24-651; and

WHEREAS, the applicant now seeks to amend the variance to include a parking waiver, the introduction of a sub-cellar and other modifications that do not alter the envelope of the building or increase the total floor area proposed; and

WHEREAS, as to the parking waiver, the applicant represents that although the original proposal was for an enlargement, the nature and scope of the enlargement made substantive re-use of the existing walls for load-bearing purposes impractical; as such, must be analyzed as a new building (development), which changes the parking requirements; and

WHEREAS, specifically, the applicant states that due to the change from enlargement to development, the number of parking spaces required for the building will be calculated based on the largest room in the building and that such calculation gives rise to a parking requirement of 16 spaces; and

WHEREAS, the applicant notes that it is ineligible for the parking waiver for locally oriented houses of worship pursuant to ZR § 25-33 because the site generates 16 required spaces and the number of spaces that may be waived must be less than ten in the subject R4-1 district; and

WHEREAS, however, the applicant represents that it satisfies the criteria for a waiver under ZR § 25-35 (City Planning Certification for Locally Oriented Houses of Worship); specifically, the applicant submitted evidence that demonstrates that 76 percent of the congregants live within ¼ mile of the site; applying the 76 percent figure to the 235 persons rated capacity (“PRC”) produces a reduced PRC of 56, which results in a parking requirement of four spaces (five fewer than the nine that may be waived pursuant to ZR § 25-33); and

WHEREAS, accordingly, the applicant asserts that waiver of the required parking is appropriate; and

WHEREAS, the applicant also proposes the following site modifications, which the applicant represents do not alter the envelope of the building or increase the total floor area proposed: (1) the introduction of a sub-cellar to accommodate a larger mikvah; (2) the enlargement of the cellar multipurpose room; (3) the relocation of the first floor level to curb level; (4) the elimination of a vestibule in the first story; (5) the relocation of administrative space; (6) a minor increase in the size of the Rabbi’s residence; and (7) a more uniform façade without the originally-approved staggered heights; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on July 10, 2012, to permit the noted modifications to the site; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received July 2, 2013’ - Seventeen (17)

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sheets; and *on further condition*:

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

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

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

(DOB Application No. 320333590)

Adopted by the Board of Standards and Appeals, September 10, 2013.

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## 699-46-BZ

APPLICANT – Eric Palatnik, P.C., for Gurcharan Singh, owner.

SUBJECT – Application September 17, 2012 – Amendment (§11-412) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with accessory use. The amendment seeks to convert existing service bays to a convenience store, increase the number of pump islands, and permit a drive-thru to the proposed convenience store. R3X zoning district.

PREMISES AFFECTED – 224-01 North Conduit Avenue, between 224th Street and 225th Street, Block 13088, Lot 44, Borough of Queens.

### COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

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## 615-57-BZ

APPLICANT – Sheldon Lobel, P.C. for Cumberland farms,INC., owner.

SUBJECT – Application May 10, 2013 – Extension of term (§11-411) of a previously granted variance for the continued operation of a (UG 16B) automotive service station (*Gulf*) with accessory uses, which expired on June 5, 2013. C1-3/R5B zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, Located on the north side of Horace Harding Expressway between Kissena Boulevard and 154th Place. Block 6731, Lot 1. Borough of Queens.

### COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to October 8, 2013, at 10 A.M., for decision, hearing closed.

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## 274-59-BZ

APPLICANT – Laurence Dalfino, R.A., for Richard Naclerio, Member, Manorwood Realty, LLC, owner.

SUBJECT – Application September 18, 2012 – Extension of term (§11-411) of a previously granted variance for the continued operation of a private parking lot accessory to a catering establishment, which expired on September 28, 2011; Waiver of the Rules. R-4/R-5 zoning district.

PREMISES AFFECTED – 3356-3358 Eastchester Road aka 1510-151 Tillotson Avenue, south side of Tillotson Avenue between Eastchester Road & Mickle Avenue, Block 4744, Lot 1, 62, Borough of Bronx.

### COMMUNITY BOARD #12BX

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to October 8, 2013, at 10 A.M., for decision, hearing closed.

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## 723-84-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Alameda Project Partners Ltd/Cristine Briguglio, owners.

SUBJECT – Application June 6, 2013 – Extension of term of a previously approved variance (§72-21) which permitted a medical office, which expired on October 30, 2012. R1-2 zoning district.

PREMISES AFFECTED – 241-02 Northern Boulevard, southeast corner of intersection Northern Boulevard and Alameda Avenue, Block 8178, Lot 1, Borough of Queens.

### COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to October 8, 2013, at 10 A.M., for decision, hearing closed.

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## 327-88-BZ

APPLICANT – Eric Palatnik, P.C., for George Hui, owner.

SUBJECT – Application October 4, 2012 – Amendment to a previously granted variance (§72-21) to legalize the addition of a 2,317 square foot mezzanine in a UG 6 eating and drinking establishment (*Jade Asian Restaurant*). C4-3 zoning district.

PREMISES AFFECTED – 136-36 39th Avenue aka 136-29 & 136-35A Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 14, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over to October 22, 2013, at 10 A.M., for adjourned hearing.

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## 161-99-BZ & 162-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Banner Garage LLC, owner; TSI East 76 LLC dba New York Sports Club, lessee.

SUBJECT – Application January 25, 2012 – Extension of term of a previously granted Special Permit (§73-36) which permitted the operation of a physical culture establishment which expired on June 28, 2010; Amendment to permit a change in the hours of operation; Extension of time to obtain a Certificate of Occupancy which expired on June 28, 2004; Waiver of the Rules. C2-5 (R8B) zoning district.

PREMISES AFFECTED – 349 & 353 East 76th Street, northerly side of East 76th Street between 2nd Avenue and 1st Avenue, Block 1451, Lot 4 & 16, Borough of Manhattan.

### COMMUNITY BOARD #8M

#### THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to October 8, 2013, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 200-10-A, 203-10-A thru 205-10-A

APPLICANT – Sheldon Lobel, PC, for William Davies LLC, owner.

SUBJECT – Application June 21, 2013 – Extension of time to complete construction and obtain a Certificate of Occupancy of a previous vested rights approval, which expires on June 21, 2013. Prior zoning district R5. R4-1 zoning district.

PREMISES AFFECTED – 1359, 1365, 1367 Davies Road, southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lot 15, 13, 12 Borough of Queens.

### COMMUNITY BOARD #14Q

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION –

WHEREAS, this is an application requesting a Board determination that the owner of the premises has obtained the right to complete construction on four attached single-family homes under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in *The City Record*, and then to decision on September 10, 2013; and

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

Hinkson; and

WHEREAS, the subject site is located on the southwest corner of Davies Road and Caffrey Avenue, in an R4-1 zoning district; and

WHEREAS, the site consists of Tax Lots 12 and 14 (Tentative Lots 12, 13, 14 and 15) and has 100 feet of frontage along Davies Road, 75 feet of frontage along Caffrey Avenue, and a total lot area of 7,500 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with four attached single-family homes; the homes on Lots 12 and 15 (the end lots) each have a floor area of 2,329 sq. ft., and the homes on Lots 13 and 14 (the middle lots) each have a floor area of 2,125 sq. ft. (the “Homes”); and

WHEREAS, the subject site is currently located within an R4-1 zoning district, but was formerly located within an R5 zoning district; and

WHEREAS, the Homes comply with the former R5 zoning district parameters, specifically with respect to floor area ratio (“FAR”) and use; and

WHEREAS, however, on August 14, 2008 (the “Enactment Date”), the City Council voted to adopt the Rockaway Neighborhoods Rezoning, which rezoned the site to R4-1, as noted above; and

WHEREAS, the Homes do not comply with the R4-1 zoning district parameters as to FAR, and attached homes are not permitted in R4-1 districts; and

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

WHEREAS, the applicant states that New Building Permit Nos. 402607345-01-NB, 402607390-01-NB and 402607407-01-NB were issued on August 30, 2007, and New Building Permit No. 402607504-01-NB was issued on September 13, 2007 (collectively, the “Permits”), authorizing the development of four attached single-family homes pursuant to R5 zoning district regulations; and

WHEREAS, however, the applicant states that the Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new R4-1 zoning district regulations and the Department of Buildings (“DOB”) determined that the Homes’ foundations were not complete; and

WHEREAS, on June 21, 2011, under the subject calendar numbers, the Board recognized a vested right to continue construction under the Permits based on its determination that the owner had performed substantial work, made substantial expenditures, and would suffer serious loss if the Homes were required to comply with the R4-1 district regulations; and

WHEREAS, the 2011 grant allowed two years from the date of the June 21, 2011 grant to complete construction and obtain a certificate of occupancy; and

WHEREAS, as of June 21, 2013, construction had not been completed and a certificate of occupancy had not been obtained; and

WHEREAS, accordingly, the applicant now seeks an

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additional two years to complete construction and obtain a certificate of occupancy; and

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

WHEREAS, as noted in the prior grant, by letter dated December 23, 2010, DOB stated that the Permits were validly issued, authorizing construction of the Homes prior to the Enactment Date; and

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

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

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

WHEREAS, as to substantial construction, the applicant states that prior to the Enactment Date, the owner had completed the following: 100 percent of site preparation work; installation of 84 wooden timber piles, accounting for 100 percent of pile installation; 25 percent of excavation work; installation of 30 percent of the pile caps; and the pouring of ten cubic yards of concrete required for the foundation, accounting for 32 percent of footing installation; and

WHEREAS, the applicant states that, since the Board's 2011 grant, very little work has been performed, owing in part to delays at DOB, and that such work amounts to: rebuilding the construction fence, excavation and soil removal; accordingly, with respect to its claim of substantial construction, the applicant relies primarily on the work performed prior to the Enactment Date; and

WHEREAS, the applicant submitted the following evidence: photographs of the site showing the amount of work completed as of the Enactment Date, concrete pour tickets, a foundation plan, an affidavit from the contractor, a TR5 Technical Report related to the installation of piles, vibration monitoring field inspection reports, a letter from

the engineer, and concrete inspection and testing reports; and

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

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

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

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$149,921.29, including hard and soft costs and irrevocable commitments, out of \$1,248,856.24 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and work orders; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$102,186 for the work performed at the site as of the Enactment Date, representing 47 percent of the foundation-related hard costs; and

WHEREAS, the applicant further states that the owner paid an additional \$47,735 in soft costs related to the work performed at the site as of the Enactment Date; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 12 percent of the projected total cost; and

WHEREAS, the applicant further represents that since the Board's 2011 grant, the owner has incurred approximately \$11,530 in new expenditures and incurred costs; accordingly, with respect to its claim of substantial expenditures, the applicant relies primarily on the expenditures made prior to the Enactment Date; and

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

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

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

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WHEREAS, the applicant states that if vesting were not permitted, the site's permissible FAR would be reduced from 1.25 to 0.90, and attached homes would not be permitted; therefore, if required to construct pursuant to R4-1 district regulations, the applicant would be required to eliminate one of the homes from the site and redesign the entire site plan for the development; and

WHEREAS, the applicant submitted a complying site plan for the R4-1 district reflecting that the development would be reduced to three detached single-family homes with 2,250 sq. ft. of floor area each; and

WHEREAS, the applicant represents that the complying scenario would reduce the project value by approximately \$540,000, resulting in a project loss of \$170,000 under the complying scenario; and

WHEREAS, the applicant states that only 28 of the 84 timber piles installed at the site could be utilized in a complying development, resulting in a loss of approximately \$42,175 in pile installation costs alone; and

WHEREAS, the applicant further states that the existing southeastern foundation wall is unusable in the complying development because the first floor extends over the wall by approximately three feet; therefore, approximately 22 cubic yards of concrete would also be lost under the complying development; and

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

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

*Therefore it is Resolved*, that this appeal made pursuant to the common law of vested rights requesting a reinstatement of the New Building Permits associated with DOB Application Nos. 402607345-01-NB, 402607390-01-NB, 402607407-01-NB, and 402607504-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, September 10, 2013.

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## 246-12-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 515 East 5th Street, LLC, owner.

SUBJECT – Application August 9, 2012 – Application seeking a determination that the owner of the property has acquired a common law vested right to complete construction under the prior R7-2 zoning. R7B zoning district.

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.

### COMMUNITY BOARD #3M

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

THE VOTE TO GRANT –

Affirmative: .....0

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

THE RESOLUTION –

WHEREAS, this is an application requesting a Board determination that the owner of the premises has obtained the right to vest the enlargement to a five-story residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on May 21, 2013, after due notice by publication in *The City Record*, with a continued hearing on July 23, 2013, and then to decision on September 10, 2013; 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 3, Manhattan, recommends disapproval of this application; and

WHEREAS, City Council Member Rosie Mendez, Manhattan Borough President Scott Stringer, State Assemblymember Brian Kavanagh, and State Senator Brad Hoylman submitted testimony in opposition to the application; and

WHEREAS, the Greenwich Village Society for Historic Preservation submitted testimony in opposition to the application; and

WHEREAS, the Tenants Association of 515 East 5<sup>th</sup> Street (the "Opposition"), represented by counsel provided testimony in opposition to the application; and

WHEREAS, the site is located on the north side of East 5<sup>th</sup> Street, between Avenue A and Avenue B; and

WHEREAS, the site has a width of approximately 25 feet, a depth of approximately 97 feet, and a lot area of 2,425 sq. ft.; and

WHEREAS, the site is occupied by a non-fireproof multiple dwelling building built prior to 1901 (the "Building"); prior to being enlarged, the building was five stories (a height of 49'-0") and contained 7,000 sq. ft. of floor area including ground floor retail use and 17 apartments; and

WHEREAS, the applicant seeks to vest its permits under the common law doctrine of vested rights; alternatively, the applicant seeks (1) recognition that it has obtained a statutory

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vested right pursuant to ZR § 11-332 or (2) reversal of DOB's decision that construction must comply with the current R7B zoning district regulations; and

WHEREAS, the applicant states that in 2007, it constructed a sixth floor and partial seventh floor as well as a ground floor extension; and

WHEREAS, the sixth floor includes 1,400 sq. ft. of floor area; the partial seventh floor includes 419 sq. ft. of floor area; and the ground floor enlargement includes 275 sq. ft. of floor area; and

WHEREAS, the floor area with all the enlargements would be 9,194 sq. ft. or 8,775 sq. ft. without the partial seventh floor; and

WHEREAS, the proposal with the enlargement includes 17 units, which are reconfigured from the original and include four duplexes on the sixth and seventh floors; and

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

WHEREAS, the applicant represents that the Building complies with the former R7-2 zoning district parameters, specifically with respect to floor area and density; and

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

WHEREAS, the Building does not comply with the R7B zoning district parameters for floor area and density; and

WHEREAS; the applicant now seeks to proceed pursuant to R7-2 zoning regulations; and

## Procedural History

WHEREAS, the applicant states that Application No. 104368845 (the "Permit"), an Alteration Type 1 permit for the construction of the Building's enlargement, was issued by the Department of Buildings ("DOB") on March 7, 2006; and

WHEREAS, the applicant states that the Permit was filed in conjunction with Application No. 104316063, an Alteration Type 2, which included the removal of partitions, mechanical vents, and replacement of defective wood joists and was originally issued on December 22, 2005; and

WHEREAS, according to DOB records, the Building's sixth and seventh floor apartments were occupied as of December 2006, absent a Certificate of Occupancy; and

WHEREAS, such occupancy has been the subject of at least seven violations for illegal occupancy, including the one served on December 6, 2006 which reads in pertinent part:

ALTERED BUILDING OCCUPIED WITHOUT  
A VALID CERTIFICATE OF OCCUPANCY:  
NOTE UNDER ALT#104368845 SIXTH FL  
AND PENTHOUSE OCCUPIED WITHOUT A  
VALID C OF O.

REMEDY: DISCONTINUE ILLEGAL USE.

OBTAIN VALID C OF O; and

WHEREAS, the applicant represents that construction of the enlargement and renovation of the Building was completed in 2007; and

WHEREAS, on December 4, 2008, DOB issued a stop

work order; and

WHEREAS, the Building is the subject of two prior Board cases and associated proceedings pursuant to Article 78; and

WHEREAS, on September 11, 2007, pursuant to BSA Cal. No. 67-07-A, the Board granted an appeal filed by the Opposition and reversed DOB's determination that the enlargement complied with ZR § 23-692 (the "Sliver Law Appeal"); and

WHEREAS, the applicant appealed the Board's decision in Matter of 515 East 5<sup>th</sup> Street v. BSA, S. Ct. New York Co. Index No. 113745/07 and the court upheld the Board's decision to reverse DOB; and

WHEREAS, in Matter of 515 East 5<sup>th</sup> Street, the court found that "[t]he fact that DOB had concluded otherwise and had previously approved the construction of similar penthouses was neither binding on the BSA nor dispositive of the issues before the court. Since the BSA's interpretation of the Sliver Law was rational, it must be upheld. See *Matter of Toys "R" Us. V. Silva*, 89 N.Y.2d 411, 418-19 (1996);" and

WHEREAS, on November 25, 2008, pursuant to BSA Cal. No. 82-08-A, the Board granted a second appeal filed by the Opposition seeking the revocation of the Permit due to a failure to comply with the applicable provisions of the MDL absent the Board's waiver (the "MDL Appeal"); and

WHEREAS, the applicant appealed the Board's decision in Matter of 515 East 5<sup>th</sup> Street, 514 East 6<sup>th</sup> Street, and 516 East 6<sup>th</sup> Street, S. Ct. New York Co. Index No. 117203/08 and the court determined that the case was not ripe for review because the property owner's purported injury resulting from the Board's overturning DOB's approval could potentially be cured by seeking the MDL waivers from the Board; and

WHEREAS, accordingly, in July 2009 the court marked the case off calendar pending the outcome of the applicant's application for MDL waivers from the Board, and the applicant's opportunity to appeal the Board's November 2008 decision remains; and

WHEREAS, by letter dated July 10, 2012, DOB issued a letter denying the applicant's request to reinstate the Permit because it lacks the authority to reinstate the revoked permit under the prior zoning; and

WHEREAS, on August 9, 2012, the applicant filed the subject application and a companion application to the subject application, pursuant to BSA Cal. No. 245-12-A seeking the Board's waiver of certain MDL provisions; and

WHEREAS, on September 6, 2013, the applicant filed a variance application under ZR § 72-21 seeking a waiver of the zoning non-compliance, pursuant to BSA Cal. No. 266-12-BZ; and

WHEREAS, on September 10, 2013, the Board removed the companion MDL application from its calendar pending the outcome of the variance application; and Common Law Vesting

WHEREAS, the applicant asserts that it has a vested right to proceed pursuant to the common law doctrine of vested rights; and

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WHEREAS, the applicant asserts that it has (1) completed substantial construction in that the enlargement is complete; (2) has made substantial expenditures of 100 percent of the total cost of the enlargement; and (3) would incur serious loss if required to comply with the R7B zoning regulations; and

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

WHEREAS, the applicant states that the Permit was issued based upon an approved application which showed complete plans and specifications authorizing the complete construction, and it was issued prior to the Enactment Date, thus it was lawfully issued; and

WHEREAS, the applicant also represents that the plans were subject to DOB review and approval, which affirms the permit's validity; and

WHEREAS, the applicant requests that the Board determine that the permit was valid by invoking its authority pursuant to Section 666(7) of the New York City Charter "to vary or modify any rule or regulation or the provisions of any law relating to the construction . . . of buildings or structures"; and

WHEREAS, specifically, the applicant asks that the Board determine that the Sliver Law non-compliance at the time of permit issuance does not render the permit invalid because a prospective application of the Sliver Law interpretation in the Sliver Law Appeal is consistent with the spirit of the law; and

WHEREAS, the applicant asserts that by approving the vesting application and the companion MDL application, the Board would not be endorsing or sustaining the zoning error that led to the construction of the partial seventh floor since the removal of the partial seventh floor and the MDL waivers will cure the height violation and a grant of prospective application will meet the legislative intent of the Zoning Resolution; and

WHEREAS, the applicant asserts that (1) if the Board does not grant an approval that will allow him to continue construction, substantial justice will not be done; (2) the application of the Sliver Law under which the approval was made was reasonable; and (3) the Board's reversal of DOB's approval leads to a harsh result; and

WHEREAS, as to substantial justice, the applicant asserts that, pursuant to Charter Section 666(7), the Board has a duty to modify the application of "the strict letter of the law, so that the spirit of the law shall be observed" and to do "substantial justice"; and

WHEREAS, the applicant asserts that to enforce the Sliver Law and deem the permit unlawful so that the R7B zoning regulations must be applied is unjust; and

WHEREAS, the applicant asserts that a prospective application of the Sliver Law is consistent with the spirit of the law because it is not asking to maintain the partial seventh floor that was the subject of the Sliver Law Appeal; and

WHEREAS, the applicant asserts that DOB's erroneous

approval of the Sliver Law non-compliance can be remedied by the Board; and

WHEREAS, the applicant also notes that the Board did not direct the Permit to be revoked in the Sliver Law Appeal decision and contends that the decision to revoke permits must be considered consistently and with reason; and

WHEREAS, the applicant cites to the Board's decision in BSA Cal. No. 125-11-A (the "East 6<sup>th</sup> Street Vesting Case") and the Board's and the court's decision in BSA Cal. No. 140-07-A and Golia v. Srinivasan, 95 A.D.3d 628 (2d Dep't 2012) (the "Breezy Point Case"); and

WHEREAS, the applicant asserts that the Board's determination that the permit in the East 6<sup>th</sup> Street Vesting Case was valid must be applied to the subject case, which, like the East 6<sup>th</sup> Street building, was also the subject of the MDL Appeal and whose permit the Board directed DOB to revoke on November 25, 2008; and

WHEREAS, the applicant states that (1) the circumstance in the East 6<sup>th</sup> Street Vesting Case are the same in that the objections are for MDL noncompliance and DOB's erroneous assumption of authority because the partial seventh floor will be removed (and with it the Sliver Law non-compliance) so what remains is the same MDL non-compliance; (2) because the Board directed DOB to revoke the East 6<sup>th</sup> Street and East 5<sup>th</sup> Street buildings' permits on the same day, through the same November 25, 2008 resolution in the MDL Appeal, they must have been revoked for the same reason, which is the MDL non-compliance; and (3) DOB is inconsistent as to what is correctable error and what is not and thus the absence of its statement that there are correctable errors in the subject case is not meaningful; and

WHEREAS, the applicant states that the error in DOB granting the Permit was due to its long-standing and plausible policy of interpreting the Sliver Law, the Board's resolution in the Sliver Law Appeal did not include direction to revoke the Permit, and the height violates the MDL and zoning; and

WHEREAS, the applicant states that the Breezy Point Case instructs the Board to apply a prospective application of its zoning interpretation and to not require that subsequently discovered zoning non-compliance renders a permit invalid retroactively; and

WHEREAS, the applicant states that the Breezy Point Case supports the reinstatement of a permit by the Board when DOB makes a mistake in interpreting the Zoning Resolution; and

WHEREAS, the applicant asserts that the Sliver Law is sufficiently ambiguous such that DOB's interpretation is reasonable in the same way it found it to be in the Breezy Point Case; and

WHEREAS, accordingly, the applicant asserts that the Permit was valid and should be deemed valid notwithstanding the fact that it did not comply with the zoning in effect at the time of its issuance at any time before or after the Enactment Date; and

## Supplementary Arguments

WHEREAS, the applicant submits the following two supplementary arguments: (1) that it can vest the Building

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pursuant to ZR § 11-33 *et seq* and that (2) DOB can reinstate the Permit pursuant to the prior zoning; and

WHEREAS, first, the applicant asserts that it has obtained a statutory vested right, pursuant to ZR § 11-332(a) because it finds that the proposal is “other construction” as defined by ZR 11-31(c)(3) and the construction was completed by the Enactment Date; and

WHEREAS, secondly, the applicant seeks to overturn DOB’s July 10, 2012 determination that it could not reinstate the Permit pursuant to the prior zoning, but did not pursue this claim; and

## DOB’s Position

WHEREAS, DOB states that the Permit is not valid and cannot form the basis for a vested right to proceed; and

WHEREAS, DOB states that the claim of a valid permit at the time of the zoning change fails because the Board determined that the Permit was not valid for reasons unrelated to the zoning change, by its Sliver Law Appeal and its MDL Appeal, which each render the Permit invalid and not entitled to vested rights; and

WHEREAS, DOB cites to the Board’s Sliver Law Appeal in which it stated that the Board does not have the authority “simultaneously to determine that the building permits for the expansion of the Building were issued unlawfully and to permit DOB to ignore that fundamental fact; and . . . furthermore, as an administrative body, the Board does not have the equitable powers of a court to address any alleged unfairness to the Owner that may result from its decision in the instant appeal;” and

WHEREAS, DOB disagrees with the applicant’s position that the distinctions between the East 6<sup>th</sup> Street Vesting Case and the subject case are not meaningful because it states that the Board exercised its authority under MDL Section 310 to cure the East 6<sup>th</sup> Street MDL non-compliance but the Board does not have power to cure the Sliver Law non-compliance through the vesting application; and

WHEREAS, additionally, at the Board’s request, DOB performed an audit, dated April 15, 2013, to review the plans it approved on November 13, 2006 for compliance with the prior R7-2 zoning regulations, as if the partial seventh floor were removed (to eliminate Sliver Law non-compliance); and

WHEREAS, DOB submitted the audit results which includes objections for Building Code and MDL non-compliance as well as zoning non-compliances: (1) due to the removal of 75 percent of the floor area, the Building must comply with district bulk regulations and not exceed 12 dwelling units; (2) because the density is exceeded, the Building cannot be enlarged pursuant to Quality Housing bulk regulations and therefore exceeds maximum floor area; (3) insufficient size of first floor dwelling unit, required to be established as pre-existing; and (4) the plans do not specify proposed community facility (Use Group 4) on first floor and cellar; and

WHEREAS, DOB states that even if the Board grants the vested rights application and waiver to the MDL, the remaining objections will need to be addressed; and

WHEREAS, accordingly, DOB states that the

application to reinstate the Permit pursuant to vested rights must fail; and

## The Opposition’s Position

WHEREAS, the Opposition states that the Board and DOB have stated that the Permit was invalid and it should be declared invalid on two separate grounds: (1) the Permit improperly allowed an enlargement which did not comply with the Sliver Law and (2) in issuing the permit, DOB waived applicable MDL provisions without the legal authority to do so; and

WHEREAS, the Opposition cites to Jayne Estates v. Raynor, 22 N.Y.2d 417, 422 (1968) for the principle that “one does not acquire vested rights where one builds in reliance on an invalid permit;” and to Parkview Associates v. City of New York, 71 N.Y.2d 274, 281 (1988), in which the court stated that the “building permit was invalid when issued, vesting no rights”; and

WHEREAS, the Opposition adds that even where DOB erroneously issues a permit as a result of its own failure, vested rights are not acquired, citing Perrotta v. City of New York, 71 N.Y.2d 274 (1985), *aff’d* 66 N.Y.2d 859 (1985); and

WHEREAS, accordingly, the Opposition states that because the applicant’s construction was completed pursuant to an invalid permit, the vested rights claim must fail; and

WHEREAS, the Opposition asserts that to reinstate the Permit would be to (1) act contrary to prior Board determinations that have been affirmed by the Supreme Court; (2) reverse the Board’s stated position of deference to DOB on the question of permit validity; (3) overlook the applicant’s bad faith toward the Board, the Supreme Court, and the Building’s tenants; and (4) retroactively amend the permit to eliminate the portions that allowed the partial seventh floor in violation of the Sliver Law; and

WHEREAS, the Opposition states that the applicant who has acted in bad faith cannot benefit from equitable relief and cites to the applicant’s failure to bring the Building into compliance with applicable laws and regulations while occupying the Building; and

WHEREAS, the Opposition notes that the Enactment Date was more than a year after the Board invalidated the Permit for failure to comply with the Sliver Law and nearly six months after the Board’s determination was affirmed by the Supreme Court but that at no time in the intervening months did the applicant take any measures to revise its plans to demonstrate compliance with the Sliver Law through removal of the Building’s partial seventh floor; and

WHEREAS, the Opposition notes that the applicant also failed to pursue a zoning variance application but rather in contravention to DOB orders, it maintained the non-complying seventh floor and continued to occupy and collect rent for the four new apartment units; and

WHEREAS, the Opposition notes that more than three years passed between the Supreme Court’s determination that the MDL Appeal was not ripe for review on July 24, 2009 and the applicant’s filing the subject application and the companion MDL application and all during that time, the Building has been occupied and the applicant has collected

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revenue; and

WHEREAS, the Opposition also asserts that the Building's enlargement does not comply with either the current or prior zoning; and

WHEREAS, additionally, the Opposition asserts that the statutory vested rights claim is untimely based on the clear language of the text; and

## Conclusion

WHEREAS, the Board first notes that it ruled on the validity of the Permit in 2007 in the Sliver Law Case in which it determined that the Permit, issued contrary to the Sliver Law, was unlawful; and

WHEREAS, the Board notes that the facts and circumstances surrounding the Permit have not changed since that determination except that the Supreme Court upheld the Board's decision; and

WHEREAS, accordingly, the Board declines to reconsider or reverse its decision and maintains that the Permit, issued contrary to the Sliver Law, is unlawful; and

WHEREAS, the Board finds that the threshold vesting requirement that there be a valid permit prior to the Enactment Date is not met; and

WHEREAS, the Board distinguishes the East 6<sup>th</sup> Street Vesting Case and the Breezy Point Case; and

WHEREAS, as to the comparison to the East 6<sup>th</sup> Street Vesting Case, the Board notes that, in the MDL Appeal, it directed DOB to revoke the Permit due to MDL-noncompliance, which was a jurisdictional issue that was subsequently resolved, by the East 6<sup>th</sup> Street MDL Case; and

WHEREAS, the Board notes that the Permit and the East 6<sup>th</sup> Street permit had actually lapsed by operation of law on November 19, 2008 before it directed their revocation on November 25, 2008; and

WHEREAS, the Board notes that in the East 6<sup>th</sup> Street Vesting Case, DOB stated (by its January 10, 2012 submission) that the reinstatement of the East 6<sup>th</sup> Street permit "would not present a correctable error issue" as long as the Board granted the vested rights application and its pending audit review concluded favorably for the property owner; and

WHEREAS, the Board enumerates certain other distinctions between the East 6<sup>th</sup> Street Vesting Case and other permit validity cases which include that in East 6<sup>th</sup> Street: (1) the MDL non-compliance had been resolved at DOB to a great extent prior to the rezoning in 2008, but the property owner had to re-apply to the Board, the appropriate authority, for additional modifications after the rezoning; (2) the flaw relates to the jurisdiction of the permit-issuing entity first and secondarily to the substance of the non-compliance; (3) the revocation was only intended to prevent the application from moving forward until the MDL issues were resolved; and (4) the revocation was by the Board in the context of an interpretive appeal, rather than by DOB; and

WHEREAS, as to the Breezy Point Case, the Board finds that the Appellate Division accepted the Board's conclusion that the new interpretation and the old

interpretation were both rational and the Board had the authority to accept both; and

WHEREAS, in contrast, the Board finds that in the Sliver Law Appeal, it concluded that DOB's interpretation was not reasonable and explicitly stated that it could not find that DOB's interpretation was erroneous and also find that the Permit was valid; and

WHEREAS, the Board does not find any basis to re-evaluate the Sliver Law Appeal in light of the Breezy Point Case since it finds the two to be distinct; and

WHEREAS, the Board disagrees with the applicant that the Breezy Point Case requires it to accept an erroneous interpretation and only apply the correct interpretation prospectively; and

WHEREAS, the Board notes that courts defer to buildings departments and zoning boards for determinations about the validity of building permits; as the Appellate Division explained in Matter of Perrotta:

[a] determination as to whether [there can be] vested rights under [a] building permit must, of necessity, involve *an examination of the validity of the permit*, as well as compliance with technical provisions of the Zoning Resolution, and this is *clearly an appropriate inquiry for agency expertise*. (emphasis added); and

WHEREAS, the Board notes that for statutory vested rights cases, the requirement for a valid permit is forth at ZR § 11-33, which states that "[t]he provisions of this Section shall apply to minor developments, major developments or other construction authorized by building permits lawfully issued before the effective date of an applicable amendment of this Resolution;" and

WHEREAS, further, the Board notes that New York State courts also have stated repeatedly that vested rights can only be obtained where there is reliance on a valid permit. Perrotta; Village of Asharoken v. Pitassy, 119 A.D.2d 404, 417 (N.Y. App. Div. 2<sup>nd</sup> Dept. 1986); and Natchev v. Klein, 41 N.Y.2d 834, 834 (1977); and

WHEREAS, the Board notes that in Perrotta, DOB erroneously issued a permit due to its own initial failure to notice that a builder's plans did not comply with zoning regulations, the court agreed with DOB that the permit was not valid and stated that "[a] determination as to whether [a] petitioner had vested rights under [its] building permit must, of necessity, involve an examination of the validity of the permit, as well as compliance with technical provisions of the Zoning Resolution, and this is clearly an appropriate inquiry for agency expertise" (107 A.D.2d at 324); and

WHEREAS, the Board notes that recently, the Supreme Court remanded a common law vested rights application to the Board (Bibi Lieberman v. City of New York et al., S.Ct. N.Y. Co. Index No. 27201/10 (September 5, 2012) arising from BSA Cal. No. 10-10-A, 1882 East 12<sup>th</sup> Street, Brooklyn) to examine the question of permit validity; and

WHEREAS, the Board also cites to the Supreme Court's recent decision in 339 West 29<sup>th</sup> Street v. City of

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New York et al, S.Ct. N.Y. Co. Index No. 10459/13 (August 6, 2013) (arising from BSA Cal. No. 145-12-A, 339 West 29<sup>th</sup> Street, Manhattan) in which it upheld the Board's decision that a permit was not valid absent the required Landmarks Preservation Commission approval; and

WHEREAS, as to the applicant's request for equitable relief, the Board notes that during the Sliver Law Case, the applicant sought a hardship waiver pursuant to New York City Charter Section 666(7), and the Matter of 515 East 5<sup>th</sup> Street court disagreed with the applicant that the Board's refusal to consider its request for a hardship waiver was erroneous or an abuse of discretion; and

WHEREAS, the court, by its May 6, 2008 decision, noted that the Board identified the appropriate process for a waiver to the zoning was through a zoning variance rather than a prospective application of a zoning interpretation; it said "Although the hardship waiver process may be more advantageous to the [applicant] than the process for obtaining a variance, it has failed to show that the BSA's refusal to entertain a hardship application as irrational;" and

WHEREAS, accordingly, the Board concludes that the Permit was not valid when issued nor was it valid on the Enactment Date; and

WHEREAS, the Board recognizes that the applicant presented evidence on the common law vesting criteria, however it declines to analyze it since the threshold requirement of a valid permit is not met; and

WHEREAS, as to the applicant's supplemental argument that it has a statutory vested right under ZR § 11-33, the Board concludes that such claims are untimely; and

WHEREAS, specifically, the Board notes that ZR § 11-332(a) requires that if construction "has not been completed and a certificate of occupancy, including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment, the building permit shall automatically lapse and the right to continue construction shall terminate;" and

WHEREAS, accordingly because a certificate of occupancy was not issued by November 19, 2010 (two years from the effective date of the rezoning), the permit automatically lapsed on that date and vested rights pursuant to ZR § 11-33 are not available to the applicant regardless of the amount of completed work; and

WHEREAS, further, under ZR § 11-331, once a permit subject to a rezoning automatically lapses "an application to renew the building permit may be made to the Board, not more than 30 days after the lapse of such building permit;" and

WHEREAS, the Board notes that the applicant did not make an application within 30 days of November 19, 2010, thus by the clear language of the text, the Permit automatically lapsed; and

WHEREAS, as to DOB's authority to reinstate the Permit pursuant to the prior zoning, the Board notes that the applicant has not provided any basis for DOB's authority to reinstate permits under the subject circumstances and supports DOB's position that it may only reinstate the Permit pursuant

to current regulations; and

WHEREAS, the Board cites to Building Code § 28-105.9 Expiration, which states that "[a]ll permits issued by the commissioner shall expire by limitation and become invalid if the permitted work or use . . . if commenced, is suspended or abandoned for a period of 12 months thereafter . . . The commissioner may, however, upon good cause shown, reinstate a work permit at any time within a period of two years from the date of issuance of the original permit, provided that the work shall comply with all the requirements of this code and other applicable laws and rules in effect at the time application for reinstatement is made;" and

WHEREAS, the Board notes that, by the applicant's admission, work has not been performed at the site for approximately six years and that it thus does not comply with Building Code § 28-105.9 and is far beyond the time period for reinstatement; and

*Therefore it is Resolved*, that this application made pursuant to the common law doctrine of vested rights requesting a reinstatement of Permit No. 104568845, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is denied.

Adopted by the Board of Standards and Appeals, September 10, 2013.

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## **245-12-A**

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 515 East 5th Street, LLC, owner.

SUBJECT – Application August 9, 2012 – Appeal pursuant to (§310(2)) of the Multiple Dwelling Law.

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.

### **COMMUNITY BOARD #3M**

**ACTION OF THE BOARD** – Off Calendar.

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## **66-13-A**

APPLICANT – OTR Media Group, Inc., for Wall & Associates, owner; OTR 161 Street, LLC, lessee.

SUBJECT – Application February 13, 2013 – Appeal challenging Department of Buildings' determination that pursuant to §122-20 advertising signs are not permitted regardless of non-conforming use status. R8/C1-4 Grand Concourse Preservation zoning district.

PREMISES AFFECTED – 111 E. 161 Street, between Gerard and Walton Avenues, Block 2476, Lot 57, Borough of Bronx.

### **COMMUNITY BOARD #4BX**

**ACTION OF THE BOARD** – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

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## 67-13-A

APPLICANT – Bryan Cave LLC, for ESS-PRISAII LLC, owner; OTR 945 Zerega LLC, lessee.

SUBJECT – Application February 12, 2013 – Appeal challenging Department of Buildings’ determination that the existing roof sign is not entitled to non-conforming use status. M1-1 zoning district.

PREMISES AFFECTED – 945 Zerega Avenue, Zerega Avenue between Quimby Avenue and Bruckner Boulevard, Block 3700, Lot 31, Borough of Bronx.

### COMMUNITY BOARD #9BX

**ACTION OF THE BOARD** – Laid over to September 24, 2013, at 10 A.M., for deferred decision.

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## 123-13-A

APPLICANT – Bryan Cave, for Speakeasy 86 LLC c/o Newcastle Realty Services, owner; TSI West 41 LLC dba New York Sports Club, lessee.

SUBJECT – Application April 29, 2013 – Appeal challenging the determination of the Department of Buildings’ to revoke a permit on the basis that (1) a lawful commercial use was not established and (2) even assuming lawful establishment, the commercial use discontinued in 2007. R6 zoning district.

PREMISES AFFECTED – 86 Bedford Avenue, northeastern side of Bedford Street between Barrow and Grove Streets, Block 588, Lot 3, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to November 19, 2013, at 10 A.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## ZONING CALENDAR

## 338-12-BZ

### CEQR #13-BSA-066Q

APPLICANT – Eric Palatnik, P.C., for 164-20 Northern Boulevard, LLC, owner; Northern Gym, Corp., lessee.

SUBJECT – Application December 13, 2012 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Metro Gym*) located in an existing one-story and cellar commercial building. C2-2/R5B zoning district.

PREMISES AFFECTED – 164-20 Northern Boulevard, west side of the intersection of Northern Boulevard and Sanford Avenue, Block 5337, Lot 17, Borough of Queens.

### COMMUNITY BOARD # 7Q

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 15, 2013, acting on Department of Buildings Application No. 420618978, reads in pertinent part:

Proposed Physical Culture Establishment in an R5B (C2-2) zoning district requires a special permit; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C2-2 (R5B) zoning district, the legalization of an existing physical culture establishment (“PCE”) located in the cellar and first story of a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 19, 2013, after due notice by publication in *The City Record*, with continued hearings on July 9, 2013, and August 13, 2013, and then to decision on September 10, 2013; 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 7, Queens, recommends approval of the application; and

WHEREAS, the Queens Borough President recommends approval of the application on condition that the parking lot lighting be improved and that traffic be restricted so that it enters only from Northern Boulevard and exits only onto Sanford Avenue; and

WHEREAS, the subject site is an irregularly-shaped corner lot located at the intersection of Sanford Avenue, Northern Boulevard and 165th Street, with 143.54 feet of frontage along Sanford Avenue, 32.69 feet of frontage along 165th Street and 97.64 feet of frontage along Northern

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Boulevard; and

WHEREAS, the site has a lot area of 7,536 sq. ft., and is occupied by a one-story commercial building with 4,154 sq. ft. of floor area (0.55 FAR) and a parking lot for eight automobiles; and

WHEREAS, the PCE occupies the entire building, including the cellar level; and

WHEREAS, the PCE is operated as MetroGym; the applicant represents that the PCE has been in operation since August 1, 2010; and

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

WHEREAS, the hours of operation for the PCE are Monday through Saturday, from 6:00 a.m. to 11:00 p.m., and Sunday, from 6:00 a.m. to 10:00 p.m.; and

WHEREAS, at hearing, the Board expressed concerns about the calculation of the occupant load and the lack of sprinklers in the cellar; the Fire Department also submitted a letter recommending sprinklers in the cellar; and

WHEREAS, in response, the applicant submitted amended plans showing: (1) the revised cellar occupant load; and (2) the installation of sprinklers in the cellar; and

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

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

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

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

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

WHEREAS, the Board notes that the PCE has operated since August 1, 2010 without a special permit and thus the term will be reduced for the period between August 1, 2010 and the date of this grant; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA066Q, dated December 12, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C2-2 (R5B) zoning district, the legalization of an existing PCE located in the cellar and first story of a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 28, 2013" – Six (6) sheets and *on further condition*:

THAT the term of this grant will expire on August 1, 2020;

THAT the cellar will be fully-sprinklered;

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

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, September 10, 2013.

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## 83-13-BZ

### CEQR #13-BSA-107K

APPLICANT – Boris Saks, Esq., for David and Maya Burekhovich, owners.

SUBJECT – Application March 4, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district. PREMISES AFFECTED – 3089 Bedford Avenue, Bedford Avenue and Avenue I and Avenue J, Block 7589, Lot 18, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 26, 2013 acting on Department of Buildings Application No. 320704877, reads in pertinent part:

The proposed enlargement of the existing one family residence:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141;
2. Creates non-compliance with respect to the open space ratio and is contrary to Section 23-141;
3. Creates non-compliance with respect to rear yard by not meeting the minimum requirements of Section 23-47; and

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

WHEREAS, a public hearing was held on this application on July 16, 2013, after due notice by publication in *The City Record*, with a continued hearing on August 13, 2013, and then to decision on September 10, 2013; and

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

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

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the site has a lot area of 6,000 sq. ft. and is occupied by a single-family home with a floor area of 2,393 sq. ft. (0.4 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 2,393 sq. ft. (0.40 FAR) to 5,994 sq. ft. (1.0 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant also proposes to increase its non-complying rear yard depth from 19’-8¾” to 20’-0” (a minimum rear yard depth of 30’-0” is required) and reduce its open space from 177 percent to 54 percent (a minimum open space of 150 percent is required); and

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

WHEREAS, the Board agrees with the applicant that the proposed bulk is in keeping with the character of the neighborhood; and

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

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received June 19, 2013”- (2) sheets and “July 29, 2013”-(10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 5,994 sq. ft. (1.0 FAR), a minimum open space of 54 percent, and a minimum rear yard depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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cellar;

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

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

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

Adopted by the Board of Standards and Appeals, September 10, 2013.

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## 97-13-BZ

### CEQR #13-BSA-118K

APPLICANT – Lewis E. Garfinkel, for Elky Ogorek Willner, owner.

SUBJECT – Application April 8, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1848 East 24th Street, west side of East 24th St, 380’ south of Avenue R, Block 6829, Lot 26, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 8, 2013 acting on Department of Buildings Application No. 320728496, reads in pertinent part:

The proposed enlargement of the existing one family residence:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed floor area ratio exceeds the permitted 0.50;
2. Proposed plans are contrary to ZR 23-141(b) in that the proposed open space is less than the required 65%;
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage exceeds 35%;
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’-0”;
5. Proposed plans are contrary to ZR 23-461(a) in that the proposed side yard is less than 3’-0”;

WHEREAS, this is an application under ZR §§ 73-622

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

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in *The City Record*, and then to decision on September 10, 2013; and

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

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

WHEREAS, the subject site is located on the east side of East 24th Street, between Avenue R and Avenue S, within an R3-2 zoning district; and

WHEREAS, the site has a lot area of 3,000 sq. ft. and is occupied by a single-family home with a floor area of 2,013.6 sq. ft. (0.67 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 2,013.6 sq. ft. (0.67 FAR) to 2,214.7 sq. ft. (0.74 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant also proposes to decrease its non-complying rear yard depth from 27’-10” to 20’-0” (a minimum rear yard depth of 30’-0” is required), maintain its existing non-complying side yard widths of 6’-8” and 3’-1” (the requirement in this district is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each), reduce its open space from 62.5 percent to 55.9 percent (a minimum open space of 65 percent is required), and increase its lot coverage from 37.4 percent to 44.1 percent (a maximum lot coverage of 35 percent is permitted); and

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

WHEREAS, the Board agrees with the applicant that the proposed bulk is in keeping with the character of the neighborhood; 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

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community; and

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-47, and 23-461; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 10, 2013"-(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,214.7 sq. ft. (0.74 FAR), a minimum rear yard depth of 20'-0", side yards with minimum widths of 6'-8" and 3'-1", a minimum open space of 55.9 percent and a maximum lot coverage of 44.1 percent, as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, September 10, 2013.

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## 109-13-BZ

### CEQR #13-BSA-128M

APPLICANT – Goldman Harris LLC, for William Achenbaum, owner; 2nd Round KO, LLC, lessee.

SUBJECT – Application April 22, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*UFC Gym*). C5-5 (Special Lower Manhattan) zoning district.

PREMISES AFFECTED – 80 John Street, Lot bounded by John Street to the north, Platt Street to south, and Gold Street to the west, Block 68, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #1M

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

## THE VOTE TO GRANT –

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

## THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 28, 2013, acting on Department of Buildings Application No. 121539665, reads in pertinent part:

Proposed Physical Culture Establishment in C5-5 zoning district is not permitted as-of-right per ZR Section 32-31; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C5-5 zoning district within the Special Lower Manhattan District, the operation of a physical culture establishment ("PCE") located in a portion of the first story of a 26-story mixed residential and commercial building, contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on July 16, 2013, after due notice by publication in *The City Record*, with a continued hearing on August 20, 2013, and then to decision on September 10, 2013; and

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

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

WHEREAS, the subject site is a corner lot spanning the west side of the full length of Gold Street between John Street and Platt Street, with 94 feet of frontage along John Street, 119 feet of frontage along Gold Street and 88.33 feet of frontage along Platt Street; and

WHEREAS, the site has a lot area of 10,237 sq. ft., and is occupied by a 26-story mixed residential and commercial building with approximately 153,555 sq. ft. of floor area (15.0 FAR); and

WHEREAS, the PCE will occupy 5,319 sq. ft. of floor area (0.52 FAR) on the first story; and

WHEREAS, the PCE will be operated as 2nd Round KO; and

WHEREAS, the applicant notes that the Board previously granted a special permit for the operation of a PCE at the site under BSA Cal. No. 312-00-BZ; the prior PCE special permit was issued on June 5, 2001, expired on January 1, 2011, and was operated by a different entity; and

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

WHEREAS, the hours of operation for the PCE are Monday through Friday, from 5:00 a.m. to 11:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 8:00 p.m.; and

WHEREAS, at hearing, the Board expressed concerns about the adequacy of the proposed means of egress from the PCE and the sound attenuation measures; in addition, the

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Board requested clarification on the floor-to-ceiling height of the space, which was not provided on the proposed plans; and

WHEREAS, in response, the applicant submitted a statement demonstrating the code-compliance of the proposed egress and amended plans showing rubberized matting for sound attenuation and a floor-to-ceiling height of 14'-4 3/8"; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA128M, dated June 24, 2013; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and

makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C5-5 zoning district within the Special Lower Manhattan District, the operation of a PCE located in a portion of the first story of a 26-story mixed residential and commercial building, contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 25, 2013" – Five (5) sheets and "Received August 16, 2013" – One (1) sheet and *on further condition*:

THAT the term of this grant will expire on September 10, 2023;

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

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, September 10, 2013.

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## **170-13-BZ**

### **CEQR #13-BSA-150Q**

APPLICANT – Venable LLP, for The Mount Sinai Hospital, owner.

SUBJECT – Application June 6, 2013 – Variance (§72-21) to allow the enlargement of Mount Sinai Hospital of Queens contrary to §24-52 (height & setback); §24-11 (lot coverage); §24-36 (rear yard); and §§24-382 & 33-283 (rear yard equivalents). R6 & C1-3 zoning districts.

PREMISES AFFECTED – 25-10 30th Avenue, block bounded by 30th Avenue, 29th Street, 30th Road and Crescent street, Block 576, Lot 12; 9; 34; 35, Borough of Queens.

### **COMMUNITY BOARD #1Q**

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

THE VOTE TO GRANT –

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

## THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings’ Executive Zoning Specialist, dated May 30, 2013, acting on Department of Buildings Application No. 420606053, reads in pertinent part:

1. Proposed lot coverage of corner lot in R6 portion exceeds maximum permitted; contrary to ZR section 24-11;
2. Proposed building exceeding 23’ in height in the required rear yard within the interior lot of the R6 portion is not a permitted obstruction and thus contrary to ZR section 24-36;
3. Proposed rear yard at through lot portion in zoning districts R6 and C1-3/R6 is contrary to ZR sections 24-382 and 33-283 (Required Rear Yard Equivalents);
4. Height and setback limitations for the R6 district portion, above both wide (Crescent) and narrow streets (30th Road) are both contrary to ZR section 24-522; and

WHEREAS, this is an application under ZR § 72-21, to permit, partially within an R6 zoning district and partially within an R6 (C1-3) zoning district, the construction of a six-story addition, renovation and reconfiguration of existing hospital and administration buildings to create an integrated hospital building (Use Group 4) for The Mount Sinai Hospital and Icahn School of Medicine at Mount Sinai (“Mount Sinai”) that does not comply with zoning regulations for lot coverage, rear yard, rear yard equivalents, and height and setback, contrary to ZR §§ 24-11, 24-36, 24-382, 24-522, and 33-283; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in the *City Record*, and then to decision on September 10, 2013; and

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

WHEREAS, Community Board 1, Queens, recommends approval of this application, subject to the following conditions: (1) all fencing, including masonry walls at the property line with adjacent property owners, is to be 100 percent opaque with shrubbery to screen the ambulance parking area from adjacent properties; (2) all lighting in ambulance parking, including access and egress areas, is to be directed away from neighboring residents’ windows; (3) that contractors will coordinate with, and be considerate, to adjacent residences and business owners during the construction process, including the removal of graffiti as it appears; (4) that Mount Sinai will make every effort to seek, procure and provide adequate parking facilities for the existing and proposed expansion and should be provided with a multilevel parking garage, which should be built at the

existing parking; and (5) that Mount Sinai will provide traffic control and mitigation at the ambulance access and egress locations of the property, where there is a high pedestrian traffic flow on the sidewalk; and

WHEREAS, the Queens Borough President recommends approval of this application, provided that the conditions expressed by Community Board 1 are satisfied; and

WHEREAS, the application is brought on behalf of Mount Sinai, a non-profit educational institution and hospital; and

WHEREAS, the subject site spans the west side of Crescent Street between 30th Avenue and 30th Road and is a single zoning lot that comprises Tax Lots 9, 12, 34, and 35; and

WHEREAS, the site has a lot area of 49,098 sq. ft. with 221.1 feet of frontage along 30th Avenue, 204.67 feet of frontage along Crescent Street, and 269.49 feet of frontage along 30th Road; and

WHEREAS, the site is partially located within an R6 zoning district and partially located within an R6 (C1-3) zoning district; and

WHEREAS, the site is currently occupied by a six-story, approximately 65,641 sq. ft. main hospital building (the “Main Building”), a two-story, approximately 9,951 sq. ft. administration building (the “Administration Building”), a three-story, approximately 16,720 sq. ft. annex building on Lot 12 (the “Annex”), a two-story, approximately 8,788 sq. ft. ambulatory surgery building on Lot 9 (the “Ambulatory Building”), and two two-story, approximately 3,740 sq. ft. vacant buildings on Lots 34 and 35; in addition, the site is occupied by several smaller structures that the applicant proposes to remove or relocate, including: a one-story brick storage building and two vinyl storage sheds on Lot 9, and an oxygen tank farm and an air conditioning unit that straddle Lots 9 and 12; and

WHEREAS, the applicant proposes to construct a six-story addition (the “New Building”), renovate the Main Building, renovate and integrate the Administration Building, and demolish the Annex, the Ambulatory Building, and the two-story buildings on Lots 34 and 35 (as well as various small storage structures) to create an access driveway and service yard to accommodate emergency and service vehicles (collectively, the “Project”); the fully-integrated building will have a total floor area of 176,707 sq. ft. (3.60 FAR); and

WHEREAS, the applicant states that the New Building will contain: (1) at the cellar level, mechanical space, a laboratory, a morgue, a sterile processing department, storage and an ambulatory care entrance pavilion; (2) at the first floor, a state-of-the-art emergency department capable of accommodating 36 treatment positions as well as an imaging scanner and x-ray for dedicated emergency use, a walk-in public entrance and an ambulance entrance; (3) at the second floor, outpatient ambulatory care services including an urgent care department, endoscopy department, pre-admission testing, and imaging department (with new MRI, CT Scan, x-ray, mammography, ultrasound and bone density imaging equipment and facilities); (4) at the third floor, seven

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operating rooms, pre-op holding beds, a post-anesthesia holding unit, isolation rooms, and required support space; and (5) at the fourth, fifth, and sixth floors, primary and preventive outpatient care facilities, with at least 40 examination rooms per floor and supporting spaces; and

WHEREAS, the applicant states that the Project includes the following renovations of existing buildings: (1) renovation of the existing emergency department on the first floor of the Main Building; (2) installation of a new HVAC system on the first through sixth floors of the Main Building; (3) replacement of existing windows on the first through sixth floors of the Main Building and the first and second floors of the Administration Building with new energy efficient windows; (4) renovation and expansion of the existing inpatient and visitor waiting area off 30th Avenue on the first floor of the Main Building; (5) elimination of dead-end corridors throughout the first through fifth floors of the Main Building; (6) the creation of connections between the Main Building and the New Building on the first through fifth floors; (7) demolition of egress stairs within the Administration Building and replacement with connections to the New Building at the cellar, first and second floors of the Administration Building; (8) alignment and integration of the second floor of the existing buildings and fifth floor of the Main Building with the first and third floors of the New Building; and (9) stone cladding of the façade of all existing buildings; and

WHEREAS, the applicant states that the Project also includes the construction of a new driveway and ambulance entrance between 30th Avenue and 30th Road, which will provide a covered drop-off area and ambulance parking and maneuvering space for improved patient flow and access for emergency vehicles, an oxygen tank farm, required dumpsters and space for the dumpsters to be emptied without obstructing ambulance flow, and an enclosed bicycle shed with 18 spaces; and

WHEREAS, the applicant states, as noted above, that the Project will result in a total floor area of 176,707 sq. ft. (3.60 FAR), which is well below the maximum permitted FAR for a community facility at the site (4.80 FAR); and

WHEREAS, the applicant represents that the Project will create the following non-compliances on the site: (1) the New Building will have maximum street wall height of 97.34 feet and a maximum building height of 101.34 feet with no setback on Crescent Street (wide street) or on 30th Road (narrow street) (a maximum street wall height of 60 feet or 6 stories (whichever is less) is permitted, after which the initial setback is 15 feet on a wide street or 20 feet on a narrow street; there is no maximum building height), and penetrate the sky exposure plane (the required sky exposure plane from a height of 60 feet above the street line is 5.6:1 on a wide street or 2.7:1 on a narrow street); (2) the Project will result in a lot coverage of 99.7 percent on the corner lot portion in an R6 district (the maximum permitted lot coverage is 70 percent for a corner lot); (3) the portions of the site where a 30-foot rear yard is required (on the two interior lot portions of the site) contain a portion of the New Building and an oxygen tank

farm, which are not permitted obstructions within a required rear yard; and (4) finally, where 20- and 30-foot rear yard equivalents are required (on the two through lot portions of the site), they are not provided; and

WHEREAS, the applicant notes that Mount Sinai is one of the country's oldest and largest voluntary teaching hospitals, and is internationally acclaimed for excellence in clinical care, education, and scientific research in nearly every aspect of medicine; Mount Sinai bought the 100-year-old hospital now known as Mount Sinai Queens in 1999, continuing a tradition of providing hospital services to the residents of western Queens; and

WHEREAS, the applicant states that Mount Sinai has done all it can to improve and expand Mount Sinai Queens' operations within the confines of the existing buildings, including expansion of the emergency department; expansion and upgrade of the imaging equipment; construction of a new endoscopy suite; and implementation of an electronic health record system to enhance and integrate patient care across Mount Sinai hospital campuses and medical practices; nevertheless, the applicant states that Mount Sinai Queens must further expand in order to meet the needs of its growing patient population; and

WHEREAS, the applicant represents that since the time Mount Sinai acquired the facility, the borough of Queens has lost five hospitals, and Mount Sinai Queens is currently the only hospital and the leading provider of care in its primary service area, an area with a population of approximately a quarter of a million people; when combined with its secondary service area, which only includes one other hospital, Mount Sinai Queens services three-quarters of a million people; the applicant notes that the importance of a local hospital cannot be overstated as for many people the cost and difficulty of traveling to Manhattan, except for highly specialized care, is a barrier to treatment and can delay or forego timely diagnosis and treatment, resulting in otherwise unnecessary and expensive hospitalization; finally, the applicant represents that the community surrounding the site is made up of an ethnically and culturally diverse population, which suffers from several persistent health problems including increased heart disease, obesity, and diabetes; and

WHEREAS, as to the educational component of Mount Sinai, the applicant states that Mount Sinai Queens is a key training site for students of Mount Sinai's medical school, the Icahn School of Medicine at Mount Sinai; medical students do primary care and pediatrics rotations at the Family Health Center, emergency medicine rotation in the emergency department, are introduced to clinical medicine in the Medicine Department, and take elective training in obstetrics, gynecology and reproductive surgery; Mount Sinai Queens also provides resident training in podiatry in the hospital, the Emergency Department, and outpatient clinics; and

WHEREAS, in addition to training medical students, the applicant states that Mount Sinai Queens provides essential health education to the community through local faith-based organizations and community groups, and also, in partnership with its affiliates, holds lectures, health fairs, and open houses,

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which offer information and screenings on a wide variety of health care issues; and

WHEREAS, the applicant states that its existing facilities are extremely undersized given the need and size of the surrounding community (particularly due to the recent closure of health care providers in the Queens area) and outdated, in that the Main Building was built more than 60 years ago, and the Annex—the original hospital building—was built more than 100 years ago; and

WHEREAS, the applicant states that the proposed expansion is critical to Mount Sinai's ability to provide high quality medical care and education in up-to-date medical facilities; the applicant asserts that the rapidly changing nature of health care delivery in New York, and around the country, necessitates building new program spaces and improving upon existing ones; the applicant also notes that with the adoption of the Affordable Care Act at the federal level and efforts at the State level around Medicaid Redesign, Mount Sinai Queens must redesign its programs in order to successfully deliver 21st Century medical care and medical education; further, improved facilities would allow an increase in the presence of medical students and faculty, and expand teaching opportunities; and

WHEREAS, the applicant states that the requested waivers are required so that it may construct a building that accommodates Mount Sinai's programmatic needs, which the applicant articulated as follows: (1) large, uniform floor plates to accommodate state-of-the-art equipment and maximize the efficiency of the space; and (2) adequate floor-to-floor heights to allow for alignment and integration with floors of the existing buildings to create a single facility; and

WHEREAS, thus, the applicant states that there is a direct nexus between the need for large, uniform floor plates and high ceilings, and the requested relief from compliance with the regulations regarding maximum street wall height, sky exposure plane, lot coverage, rear yards and rear yard equivalents, (which collectively result in smaller floor plates and lower floor-to-floor heights); and

WHEREAS, as to large, uniform floor plates, the applicant asserts that they will allow for the creation of: an integrated, state-of-the-art operating room floor with ten rooms spanning the entire third floor of the New Building and one wing of the Main Building, a sterile core between the third floor of the New Building and the fifth floor of the Main Building (which will allow safe movement of physicians, staff, and supplies) an expanded and highly efficient emergency department with a connection to inpatient imaging and patient rooms on the second floor of the Main Building, an outpatient ambulatory care floor with nearby complimentary services (which will allow the sharing of support services such as reception and waiting areas, thereby reducing redundancies), an integrated primary and preventive outpatient care space, grouped into practice area suites, with at least 40 exam rooms per floor to accommodate multi-specialty Mount Sinai clinical practical facilities, separation of inpatient and outpatient circulation, double-sided elevator and fire stairs that access all floors

and connect the New Building with all other buildings by bridging the offset in elevation, minimizing of mechanical space; and

WHEREAS, as to adequate floor-to-floor heights, the applicant represents that they will allow for: alignment and integration of the first and third floors of the New Building with the second floor of the Administration Building and Main Building and fifth floor of the Main Building, respectively, which requires floor-to-floor heights of approximately 17 feet on the first and second floors of the New Building, space to accommodate the structure, ductwork, conduit, and plumbing required between floors, which requires floor-to-floor heights of at least 15 feet on the third through sixth floors of the New Building, and an entrance pavilion that is easily identifiable to patients approaching along 30th Avenue and which aligns with and leads into the cellar level of the remainder of the New Building; and

WHEREAS, the applicant states that through extensive programming studies and a multi-year planning process, Mount Sinai determined the need for expanded and improved state-of-the-art medical care and teaching facilities to fulfill the needs of the Queens community; further, the applicant represents that the design of the New Building is critically important to the fulfillment of Mount Sinai's mission and the provision of comprehensive and efficient medical services and medical education, as well as the recruitment of high-quality physicians, medical school faculty members, students, and residents; and

WHEREAS, the applicant represents that the proposed design represents the only possible place on the site to locate the approximately 18,891 sq. ft. floor plates of the New Building in an arrangement that achieves the required opportunities for integration of certain departments with existing facilities in the existing buildings, convenient access to shared laboratory and medical support facilities and other support services, effective and efficient staffing of the facility, distinct inpatient and outpatient circulation, efficient mechanical systems, and appropriate placement of loading and service functions; and

WHEREAS, the applicant also notes that the New Building design is constrained by the fact that Mount Sinai has a programmatic need to maintain services within the Ambulatory Building until the New Building is operational; accordingly, the New Building cellar cannot be expanded eastward to accommodate mechanical and support facilities; and

WHEREAS, in addition to the programmatic needs, the applicant states that the building design is constrained by the following unique conditions of the site: (1) irregular shape of the site; and (2) subsurface conditions; and

WHEREAS, the applicant states the site has an irregular shape due to the existence of three out-parcel lots along 30th Avenue, which limit the size and shape of the New Building and prevent an as-of-right design that provides large, uniform floor plates that are integrated with existing buildings; and

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WHEREAS, as to subsurface conditions, the applicant submitted a report that indicates the existence of a high water table at the site, which increases the cost of construction and makes construction of multiple sub-cellars infeasible; and

WHEREAS, thus, the applicant states that the requested modifications of the lot coverage, rear yard, rear yard equivalents, and height and setback regulations are due in part to the irregular shape of the site and the subsurface conditions; and

WHEREAS, the applicant explored the feasibility of an alternative configuration of the New Building that would strictly comply with the applicable zoning requirements, and it found that the as-of-right building fails to satisfy its programmatic needs; and

WHEREAS, specifically, the applicant determined that the as-of-right building: (1) fails to provide the necessary floor plate size for all but one floor in the New Building; and (2) would need to rise to twelve stories in order to accommodate the programming in the proposed New Building, and include a sub-cellar to accommodate program area and mechanical equipment displaced from the upper floors due to the required setbacks; and

WHEREAS, the applicant represents that the smaller, non-uniform floor plates undercut the departmental layouts, efficiencies and adjacencies that drive the design of the proposed New Building, resulting in an inefficient use of space, inefficient patient circulation, duplication of programs and staffing, and higher operating costs, as well as a reduction in services and medical school training; and

WHEREAS, the applicant states that the smaller floor plates would force the operating rooms to be split between two floors in order to maintain the necessary operating room size, creating a tremendous loss of efficiency and duplication of program spaces and staffing and resulting in the loss of one of the proposed operating rooms; the additional operating room floor would not connect to the Main Building, and the primary connection of the primary operating room floor between the third floor of the New Building and the fifth floor of the Main Building would be lost due to the relocation of the fire stairs necessitated by the required setback and compliance with Building Code requirements; and

WHEREAS, the applicant also states that the changes necessitated by the as-of-right design would eliminate the proposed sterile core, causing physicians and staff to continually move between sterile and non-sterile areas, which would severely impact the efficiency of the operating rooms; further, the rear yard setbacks would force the relocation of the visitor elevators and adjacent fire stairs to the center of the emergency department, which would displace four treatment positions and compromise the functionality and operating efficiency of the emergency department layout, representing a significant loss to a vital department which had already been compressed in the proposed New Building to the minimum space necessary; and

WHEREAS, additionally, the applicant represents that the progressively smaller floor plates starting on the second floor and the very small floor plates on the ninth through eleventh floors would also necessitate the following changes: relocation of the morgue, storage, sterile processing department and mechanical equipment from the cellar to an added sub-cellar; relocation of the urgent care department, pre-admission testing and imaging department to the cellar and endoscopy to the fourth floor, thereby splitting up the outpatient ambulatory care service and resulting in a loss of efficiency and redundancy of support services and staffing, and creating patient circulation issues as ambulatory care patients move between floors; and distribution of the outpatient care facilities over eight floors rather than three, making it impossible to provide the recommended 40 exam rooms per floor, to locate symbiotic practice groups in close proximity to one another, and to provide outpatient medical training in a model faculty practice setting; and

WHEREAS, the applicant notes that elevator service would suffer in the as-of-right building, because the five proposed elevators would need to serve six additional floors, and additional elevators could not be added due to the smaller upper floor plates; and

WHEREAS, the applicant also notes that an as-of-right building, with its narrow floor plates, limited space for mechanical equipment and shafts, and 15- to 17-foot floor-to-ceiling heights (a key programmatic requirement, as noted), would require the inclusion of a sub-cellar, which, as noted above, would be below the water table; as such, a double pressure slab, extensive waterproofing, and substantial additional support of excavation would be required, including sheeting and shoring at the perimeter of the site and underpinning of the existing buildings; and

WHEREAS, the applicant asserts that, overall, the as-of-right building would increase construction time by approximately five to six months and increase construction costs by approximately \$12,000,000 to \$13,500,000; and

WHEREAS, the Board acknowledges that Mount Sinai, 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, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the site, when considered in conjunction with the programmatic needs of Mount Sinai, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Mount Sinai is a non-profit

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institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant states that the proposed building would be in keeping with the character of the surrounding neighborhood, which is defined by medium density residential neighborhood, light commercial uses, and numerous medical and other institutional uses; and

WHEREAS, the applicant states that the six-story New Building, with its street wall height of 97.34 feet and building height of 101.34 feet on Crescent Road, will be compatible with the directly-adjacent Main Building, which is also six stories and has a building height of 94.73 feet; in contrast, the 12-story, tiered as-of-right building (with a maximum street wall height of 60 feet and total building height of approximately 235 feet) would be out of context with the existing buildings at the site and the neighborhood in general; and

WHEREAS, further, the applicant states that the site comprises nearly half of the block, and the remainder of the block is fully developed with several medium density five- or six-story apartment buildings, many of which contain individual doctors' offices on the ground floors; and

WHEREAS, as to the nearby buildings on adjacent blocks, the applicant states that: (1) uniform three-story mixed residential and commercial buildings characterize the north side of 30th Avenue; (2) a mix of one- and three-story residential, community facility, and commercial uses, and open space are found on the west side of Crescent Street; and (3) across 30th Road are several six-story apartment buildings; and

WHEREAS, in support of its representations regarding the New Building's compatibility with the residential buildings along 30th Road, the applicant submitted a streetscape showing building heights ranging from 52 feet to 146 feet, with the majority of buildings being six stories and between 67 and 83 feet in height; and

WHEREAS, the applicant notes that the contemporary design of the New Building is compatible with newer residential and community facility buildings in the vicinity, including the steel-and-glass arched atrium of the tile-clad Astoria Medical Plaza located at 27-47 Crescent Street, the glass-and-steel façade of the six-story Olympic Open MRI building located at 23-08 30th Avenue, and the masonry-clad P.S. 234 with an abstract gable element at the roofline located at 30-15 29th Street; and

WHEREAS, the applicant states that the creation of a continuous street wall with new street trees, removal of existing chain link fencing and mechanical gates, and replacement of the vertically-oriented oxygen tank (with a height of 31 feet) with a horizontally-oriented oxygen tank

(with a height of nine feet) improves the pedestrian experience along the frontages and reduce the site's impact on its residential neighbors; and

WHEREAS, the applicant notes that its proposal does not alter street orientation or street patterns, is designed to improve emergency and commercial vehicle traffic on 30th Avenue, Crescent Street, and 30th Road, and pedestrian and vehicular circulation, and will reduce the parking and idling of vehicles around the site; the applicant also represents that the proposed service yard will be substantially similar in terms of impact on the adjacent property as the as-of-right design, except that the proposed design will have a reduced visual impact due to the reorientation of the oxygen tank; and

WHEREAS, as to the impact of the Project on the low-rise mixed residential and commercial buildings along 30th Avenue, the applicant states that it will be minimal, because the New Building will be situated to the rear of the site, behind the existing Main Building and across 30th Avenue, which is a wide street; additionally, the as-of-right building would be much more visible to the 30th Avenue neighbors and cast significantly longer shadows than the New Building; and

WHEREAS, to address the concerns of Community Board 1, the applicant responds that it will: (1) appropriately screen the proposed service yard from the neighboring properties to the east by an opaque wall, which will match the appearance of the New Building, be eight feet tall along the southern portion of the project (near 30th Road) and four feet tall along the northern portion of the project site (near 30th Avenue), and be covered with plantings from planters on top or from plantings within the wall itself; (2) explore the possibility of an automatic gate at the ambulance exit on 30th Road to further screen the service yard; (3) illuminate the service yard and ambulance driveway with lights installed low and directed away from the adjacent properties; (4) hold quarterly meetings with its neighbors during construction and post a 24-hour telephone number for reporting of concerns; (5) remove graffiti that appears at the site; (6) expand its off-site parking facilities at 23-11 30th Road from 46 parking spaces to 96; and (7) continue to investigate options for ensuring pedestrian safety at the site, particularly around the 30th Avenue vehicle entrance and 30th Road vehicle exit, including the placement of enhanced signage and other visual and tactile markings along the sidewalk; and

WHEREAS, at hearing, the Board raised concerns regarding the hours of deliveries and collection, hours of waste compacting, and the proposed screening, lighting, and landscaping of the service yard; in addition, the Board requested clearer depictions of the neighborhood character and bulk along 30th Road; and

WHEREAS, in response, the applicant submitted an amended statement, which indicated that deliveries, collection, and waste compacting will be limited to daily between the hours of 7:00 a.m. and 9:00 p.m.; in addition, the applicant submitted additional drawings showing

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adequate screening, lighting and landscaping along the perimeter of the service yard and streetscapes and photographs sufficiently depicting all frontages of the site in context; and

WHEREAS, accordingly, the Board finds that, consistent with ZR § 72-21(c), this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(d), the hardship was not self-created and that no development that would meet the programmatic needs of Mount Sinai could occur on the existing site; and

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

WHEREAS, the applicant represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow Mount Sinai to fulfill its programmatic needs, per ZR § 72-21(e); and

WHEREAS, accordingly, 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 conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13BSA150Q, dated June 27, 2013; and

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

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials; and

WHEREAS, DEP reviewed and accepted the July 2013 Remedial Action Work Plan and site-specific Construction Health and Safety Plan; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a negative declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, partially within an R6 zoning district and partially within an R6 (C1-3), the construction of a six-story addition, renovation and reconfiguration of existing hospital and administration buildings to create an integrated hospital building (Use Group 4) for Mount Sinai that does not comply with zoning regulations for lot coverage, rear yard, rear yard equivalents, and height and setback, contrary to ZR §§ 24-11, 24-36, 24-382, 24-533, and 33-283, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 27, 2013" – twenty-five (25) sheets; and *on further condition*:

THAT the bulk parameters of the New Building will be in accordance with the approved plans and be limited to 176,707 sq. ft. (3.60 FAR), a maximum street wall height of 97.34 feet, a maximum building height of 101.34 feet, and a maximum lot coverage of 99.7 percent on the corner lot portion in the R6 district, as reflected on the BSA-approved plans;

THAT the hours of delivery, collection, and waste compacting within the service yard will be as reflected in the BSA-approved plans and limited to daily, from 7:00 a.m. to 9:00 p.m.;

THAT lighting will be directed away from the adjacent residential buildings;

THAT the site will be maintained free of graffiti;

THAT traffic control and mitigation will be provided at the ambulance entrance and exit;

THAT landscaping and screening will be in accordance with the approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals,

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September 10, 2013.  
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## **78-11-BZ & 33-12-A thru 37-12-A**

APPLICANT – Sheldon Lobel, P.C., for Indian Cultural and Community Center, Incorporated, owner.

SUBJECT – Applications May 27, 2011 and February 9, 2012 – Variance (§72-21) to allow for the construction of two assisted living residential buildings, contrary to use regulations (§32-10).

Proposed construction of two mixed use buildings that do not have frontage on a legally mapped street, contrary to General City Law Section 36.

C8-1 Zoning District.

PREMISES AFFECTED – 78-70 Winchester Boulevard, Premises is a landlocked parcel located just south of Union Turnpike and west of 242nd Street, Block 7880, Lots 550, 500 Borough of Queens.

## **COMMUNITY BOARD #13Q**

**ACTION OF THE BOARD** – Laid over to November 19, 2013, at 10 A.M., for continued hearing.  
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## **16-12-BZ**

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

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

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

## **COMMUNITY BOARD #4BK**

**ACTION OF THE BOARD** – Laid over to September 24, 2013, at 10 A.M., for deferred decision.  
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## **43-12-BZ**

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

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

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

## **COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Laid over to November 19, 2013, at 10 A.M., for deferred decision.  
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## **54-12-BZ**

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Llana Bangiyev, owner.

SUBJECT – Application March 9, 2012 – Variance (§72-21) to permit for the construction of a community facility and residential building, contrary to lot coverage (§23-141), lot area (§§23-32, 23-33), front yard (§§23-45, 24-34), side yard (§§23-46, 24-35) and side yard setback (§24-55) regulations. R5 zoning district.

PREMISES AFFECTED – 65-39 102nd Street, north side of 102nd Street, northeast corner of 66th Avenue, Block 2130, Lot 14, Borough of Queens.

## **COMMUNITY BOARD #6Q**

**ACTION OF THE BOARD** – Laid over to October 22, 2013, at 10 A.M., for continued hearing.  
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## **199-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Delta Holdings, LLC, owner.

SUBJECT – Application June 25, 2012 – Variance (§72-21) to construct a self-storage facility, contrary to maximum permitted floor area regulations. C8-1 and R6 zoning districts.

PREMISES AFFECTED – 1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street, Block 3467, Lot 5, Borough of Brooklyn.

## **COMMUNITY BOARD #4BK**

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to October 22, 2013, at 10 A.M., for decision, hearing closed.  
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## **236-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.

SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office, contrary to use ((§ 22-10) and side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, Borough of Staten Island.

## **COMMUNITY BOARD #2SI**

**ACTION OF THE BOARD** – Laid over to October 8, 2013, at 10 A.M., for continued hearing.  
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## 259-12-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for 5239 LLC, owner.

SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the development of a single-family house, contrary to lot width requirement (§23-32). R1-1, NA-2 zoning district.

PREMISES AFFECTED – 5241 Independence Avenue, west side of Independence Avenue between West 252nd and 254th Streets, Block 5939, Lot 458, Borough of Bronx.

### COMMUNITY BOARD #8BX

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 8, 2013, at 10 A.M., for decision, hearing closed.

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## 263-12-BZ & 264-12-A

APPLICANT – Sheldon Lobel, P.C., for Luke Company LLC, owner.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit senior housing (UG 2), contrary to use regulations (§42-00).

Variance (Appendix G, Section BC G107, NYC Administrative Code) to permit construction in a flood hazard area which does not comply with Appendix G, Section G304.1.2 of the Building Code. M1-1 zoning district.

PREMISES AFFECTED – 232 & 222 City Island Avenue, site bounded by Schofield Street and City Island Avenue, Block 5641, Lots 10, 296, Borough of Bronx.

### COMMUNITY BOARD #10 & 13BX

**ACTION OF THE BOARD** – Laid over to October 29, 2013, at 10 A.M., for adjourned hearing.

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## 301-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Jam Realty of Bayside LLC, owner.

SUBJECT – Application October 22, 2012 – Special permit (§73-52) to allow a 25 foot extension of an existing commercial use into a residential zoning district, and §73-63 to allow the enlargement of a legal non-complying building. C2-2(R4) and R2A zoning districts.

PREMISES AFFECTED – 213-11/19 35th Avenue, Block 6112, Lot 47, Borough of Queens.

### COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 8, 2013, at 10 A.M., for decision, hearing closed.

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## 303-12-BZ

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, Inc., owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a sub-cellar, cellar and three story church, with accessory educational and social facilities (*Tabernacle of Praise*), contrary to rear yard setback (§33-292), sky exposure plane and wall height (§34-432), and parking (§36-21) regulations. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, between Beverly Road and Clarendon Road, Block 4760, Lot 15, Borough of Brooklyn.

### COMMUNITY BOARD #17BK

**ACTION OF THE BOARD** – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

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## 94-13-BZ

APPLICANT – Vinod Tewari, for Peachy Enterprise, LLC, owner.

SUBJECT – Application March 25, 2013 – Special Permit (§73-19) to allow a school, contrary to use regulation (§42-00). M1-3 zoning district.

PREMISES AFFECTED – 11-11 40<sup>th</sup> Avenue aka 38-78 12<sup>th</sup> Street, Block 473, Lot 473, Borough of Queens.

### COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 8, 2013, at 10 A.M., for decision, hearing closed.

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## 120-13-BZ

APPLICANT – Eric Palatnik, P.C., for Okun Jacobson & Doris Kurlender, owner; McDonald's Corporation, lessee.

SUBJECT – Application April 25, 2013 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (*McDonald's*) with an accessory drive-through facility. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, north side of Forest Avenue, 100' west of intersection of Forest Avenue and Morningstar Road, Block 1180, Lots 6 and 49, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to October 22, 2013, at 10 A.M., for continued hearing.

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**129-13-BZ**

APPLICANT – Lewis E. Garfinkel, for Tammy Greenwald, owner.

SUBJECT – Application May 7, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(a)); side yards (§23-461(a)); less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1010 East 22nd Street, west side of East 22nd Street, 264' south of Avenue I, Block 7585, Lot 61, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to October 8, 2013, at 10 A.M., for postponed hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*