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DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*
DARA OTTLEY-BROWN
SUSAN M. HINKSON
EILEEN MONTANEZ
Commissioners

Jeffrey Mulligan, *Executive Director*
Becca Kelly, *Counsel*

OFFICE - 250 Broadway, 29th Floor, New York, N.Y. 10007
HEARINGS HELD - 22 Reade Street, Spector Hall, New York, N.Y. 10007
BSA WEBPAGE @ http://www.nyc.gov/html/bsa/home.html

TELEPHONE - (212) 386-0009
FAX - (646) 500-6271

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305-13-BZ
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306-13-BZ
3766 Bedford Avenue, West side of Bedford Avenue distant 350 feet south of corner of Bedford Avenue and Avenue p., Block 6787, Lot(s) 23, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home, seeking to extend the south side of an existing two family dwelling at first and second floors to be converted to a one family dwelling. R3-2 zoning district. R3-2 district.

307-13-A
96 Bell Street, East Side of Bell Street 72.09' South of Reynolds Street., Block 2989, Lot(s) 24, Borough of **Staten Island, Community Board: 01**. Proposed construction of a detached two family residence fronting upon a street that is not legally mapped, which is contrary to section 36 article3 of the general city law. R3A district.

308-13-A
100 Bell Street, East Side of Bell Street 105.42' South of Reynolds Street, Block 2989, Lot(s) 26, Borough of **Staten Island, Community Board: 01**. Proposed construction of a detached detached one family residence fronting upon a street that is not legally mapped, which is contrary to section 36 article3 of the general city law. R3A district.

309-13-BZ
965 East 24th Street, East side of East 24th Street between Avenue I and Avenue J., Block 7588, Lot(s) 17, Borough of **Brooklyn, Community Board: 14**. This application is filed pursuant to section 73-622 of the Zoning Resolution of the city of New York, as amended, to request a special permit to allow the enlargement of a single family residence located in a residential(R2) zoning district. R2 district.

310-13-BZ
459 East 149th Street, Northwest corner of Brook Avenue and East 149th Street., Block 2294, Lot(s) 60, Borough of **Bronx, Community Board: 1**. Variance (§72-21) the proposed college (UG 3))(MCNY) to occupy 816 square feet of floor area at the proposed second floor which falls within a manufacturing zoning district (M-1). M1-1/C4-4 district.

311-13-BZ
325 Avenue Y, N/E corner of Shell Road & Avenue Y., Block 7192, Lot(s) 45, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-36) to allow physical culture establishment (PCE). M1-1 zoning district. M1-1 district.

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

CALENDAR

DECEMBER 17, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 17, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

406-82-BZ
APPLICANT – Eric Palatnik, P.C., for Adolf Clause & Theodore Thomas, owner; Hendel Products, lessee.
SUBJECT – Application August 13, 2013 – Extension of term of a previously approved Special Permit (§73-243) permitting an Eating and Drinking Establishment (*McDonald's*) with accessory drive-thru which expired on January 18, 2013; Extension of time to obtain a Certificate of Occupancy which expires on September 11, 2013; Waiver of the Rules. C1-3/R5 zoning district.
PREMISES AFFECTED – 2411 86th Street, northeast corner of 24th Avenue and 86th Street, Block 6859, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #11BK

20-02-BZ
APPLICANT – Law office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co. LLC, owner; TSI East 23, LLC dba New York Sports Club, lessee.
SUBJECT – Application September 20, 2013 – Extension of term to allow the operation of a physical culture establishment (PCE) on portions of the cellar, first floor and second floor of the existing five story mixed use loft building expiration date August 21, 2013. C6-4 zoning district.
PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue south and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #5M

119-03-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for A/R Retail LLC, owner; Equinox Columbus Centre, LLC, lessee.
SUBJECT – Application October 1, 2013 – Extension of term of special permit allowing a physical culture establishment (PCE) in a C6-6 (MID) zoning district.
PREMISES AFFECTED – 10 Columbus Circle aka 301 West 58th Street and 303 West 60th Street, northwest corner of West 58th Street and Columbus Circle, Block 1049, Lot 1002, Borough of Manhattan.
COMMUNITY BOARD #4M

209-03-BZ
APPLICANT – Law Office of Fredrick A. Becker, for 150 Central Park South Incorporated, owner; Exhale Enterprises, Inc., lessee.
SUBJECT – Application September 23, 2013 – Extension of term of a previously granted variance (§72-21) for the continued operation of physical culture establishment (*Exhale Spa*) located in a portion of the cellar, first floor and second floor of a 37 story residential building which expires on October 21, 2013. R10-H zoning district.
PREMISES AFFECTED – 150 Central Park South, south side of Central Park South between Avenue of the Americas and Seventh Avenue, Block 1011, Lot 52, Borough of Manhattan.
COMMUNITY BOARD #5M

176-09-BZ
APPLICANT – Bryan Cave LLP/Margery Perlmutter, for NYC Fashion of Institute of Technology, owner.
SUBJECT – Application October 4, 2013 – Extension of time to complete construction of a previously granted Special Permit (73-64) to waive height and setback regulations (ZR 33-432) for a Community Use Facility (*Fashion Institute of Technology*) which expired on October 6, 2013. C6-2 zoning district.
PREMISES AFFECTED – 220-236 West 28th Street, south side of West 28th Street between Seventh Avenue and Eighth Avenue, Block 777, Lot 1, 18, 37, Borough of Manhattan.
COMMUNITY BOARD #5M

APPEALS CALENDAR

230-13-A
APPLICANT – Nikolaos Sellas, for L & A Group Holdings LLC, owners.
SUBJECT – Application August 8, 2013 – Proposed construction of a four story residential building located within the bed of a mapped street (29th Street) contrary to General City Law Section 35. R6A /R6B zoning district.
PREMISES AFFECTED – 29-19 Newtown Avenue, northeasterly side of Newtown Avenue 151.18' northwesterly from the corner formed by the intersection Newtown Avenue and 30th Street, Block 597, Lot 7, Borough of Queens.
COMMUNITY BOARD #4Q

231-13-A
APPLICANT – Nikolaos Sellas, for Double T Corp., owner.
SUBJECT – Application August 8, 2013 – Proposed construction of a six story residential building located within the bed of a mapped street (29th Street) contrary to General City Law Section 35 . R6A/R6B zoning district.

PREMISES AFFECTED – 29-15 Newtown Avenue, northeasterly side of Newtown Avenue, 203.19' northwesterly from the corner formed by the intersection of Newtown Avenue and 30th Street, Block 596, Lot 9, Borough of Queens.
COMMUNITY BOARD #4Q

ZONING CALENDAR

69-12-BZ
APPLICANT – Eric Palatnik, Esq., for Ocher Realty, LLC, owner.
SUBJECT – Application March 22, 2012 – Variance (§72-21) to allow for the construction of residential building contrary to use regulations §32-00. C8-2 zoning district.
PREMISES AFFECTED – 1 Maspeth Avenue, east side of Humboldt Street, between Maspeth Avenue and Conselyea Street, Block 2892, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #1BK

103-13-BZ
APPLICANT – Rothkrug Routhkrug & Spector LLP, for Blackstone New York LLC,owner.
SUBJECT – Application April 16, 2013 – Variance (§72-21) to permit the development of a cellar and four-story, eight-family residential building in an M1-1 zoning district contrary to §42-10 zoning resolution.
PREMISES AFFECTED – 81 Jefferson Street, north side of Jefferson Street, 256' west of intersection of Evergreen Avenue and Jefferson Street, Block 3162, Lot 42, Borough of Brooklyn.
COMMUNITY BOARD #3BK

124-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 95 Grattan Street, LLC, owner.
SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 95 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 39, Borough of Brooklyn.
COMMUNITY BOARD #1BK

125-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 97 Grattan Street, LLC, owner.
SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 97 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 38, Borough of Brooklyn.
COMMUNITY BOARD #1BK

128-13-BZ
APPLICANT – Sheldon Lobel, PC, for Zev and Renee Marmustein, owner.
SUBJECT – Application May 3, 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(b)); side yards (§23-461(a)); less than the required rear yard (§23-47) and perimeter wall height (§23-631(b)). R3-2 zoning district.
PREMISES AFFECTED – 1668 East 28th Street, west side of East 28th Street 200' north of the intersection formed by East 28th Street and Quentin Road, Block 6790, Lot 23, Borough of Brooklyn.
COMMUNITY BOARD #15BK

255-13-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 3560 WPR LLC & 3572 WPR LLC, owner; Blink Williamsbridge, Inc., lessee.
SUBJECT – Application September 5, 2013 – 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.
PREMISES AFFECTED – 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 Queens.
COMMUNITY BOARD #12BX

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, NOVEMBER 26, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

74-49-BZ
APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Avenue, LLC, owner.
SUBJECT – Application August 26, 2013 – Extension of Time to obtain a Certificate of Occupancy for an existing parking garage, which expired on January 11, 2012; Waiver of the Rules. M1-6 (*Garment Center*) zoning district.
PREMISES AFFECTED – 515 Seventh Avenue, southeast corner of 7th Avenue and West 38th Street, Block 813, Lot 64, Borough of Manhattan.
COMMUNITY BOARD #5M
ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for adjourned hearing.

182-69-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 227 East 19th Street Owner LCL, owner.
SUBJECT – Application September 4, 2013 – Amendment to previous special permit which allowed construction of a hospital building, contrary to height and setback, yards, distance between buildings, and floor area (§§ 23-145, ZR-23-711 and ZR23-89). Amendment proposes a residential conversion of existing buildings. R8B zoning district.
PREMISES AFFECTED – 211-235 3 East 19th Street aka 224-228 East 20th St & 2nd & 3rd Avenues, midblock portion of block bounded by East 19th and East 20th Street, Block 900, lot 6, Borough of Manhattan.
COMMUNITY BOARD #6M
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 December 17, 2013, at 10 A.M., for decision, hearing closed.

647-70-BZ
APPLICANT – Jeffrey A. Chester Esq/GSHLLP, for Channel Holding Company, Inc., owner; Cain Management II Inc., lessee.
SUBJECT – Application August 1, 2013 – Amendment of a previously approved Special Permit (§73-211) which permitted the operation an automotive service station and auto laundry (UG 16B). Amendment seeks to convert accessory space into an accessory convenience store. C2-3/R5 zoning district.
PREMISES AFFECTED – 59-14 Beach Channel Drive, Beach Channel Drive corner of Beach 59th Street, Block 16011, Lot 105, Borough of Queens.
COMMUNITY BOARD #
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 December 10, 2013, at 10 A.M., for decision, hearing closed.

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 January 14, 2014, at 10 A.M., for continued hearing.

380-01-BZ
APPLICANT – Law office of Fredrick A. Becker, for 230 West 41st St. LLC, owner;
TSI West 41 LLC dba New York Sports Club, lessee.
SUBJECT – Application April 17, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*), located in a 21-story commercial office building, which expired on April 9, 2012; Waiver of the Rules. C6-6.5 M1-6 (Mid) zoning district.
PREMISES AFFECTED – 230 West 41st Street, south side of West 41st Street, 320' west of Seventh Avenue, through block to West 40th Street, Block 1012, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #5M
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 December 17, 2013, at 10 A.M., for decision, hearing closed.

265-08-BZ
APPLICANT – Herrick, Feinstein LLP by Arthur Huh, for 70 Wyclkoff LLC, owner.
SUBJECT – Application October 23, 2013 – Extension of Time to Obtain a Certificate of Occupancy for a previously granted Variance (§72-21) for the legalization of residential units in a manufacturing building, which expired on September 27, 2013. M1-1 zoning district.
PREMISES AFFECTED – 70 Wyckoff Avenue, southeast corner of Wyckoff Avenue and Suydam Street, Block 3221, Lot 31, 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 January 14, 2014, at 10 A.M., for decision, hearing closed.

20-12-BZ
APPLICANT – Herrick Feinstein LLP.by Arthur Huh, for LNA Realty Holdings LLC, owner; Brookfit Ventures LLC, lessee.
SUBJECT – Application October 21, 2013 – Amendment to a previously granted Special Permit (§73-36) for the legalization of a physical culture establishment (*Retro Fitness*) to obtain additional time to obtain a public assembly license. M1-2/R6B Special MX-8 zoning district.
PREMISES AFFECTED – 203 Berry Street, northeast corner of N. 3rd Street and Berry Street, Block 2351, Lot 1087, Borough of Brooklyn.
COMMUNITY BOARD #1BK
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 January 14, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

126-13-A
APPLICANT – Sheldon Lobel, PC, for Woodmere Development LLC, owner.
SUBJECT – Application April 30, 2013 – Appeal of NYC Department of Buildings' determination that a rear yard is required at the boundary of a block coinciding with a railroad right-of-way. R7B Zoning District.
PREMISES AFFECTED – 65-70 Austin Street, 65th Road and 66th Avenue, Block 3104, Lot 101, Borough of Queens.
COMMUNITY BOARD # 6Q
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 appeal of a Department of Buildings ("DOB") final determination dated April 19, 2013, issued by the First Deputy Commissioner (the "Final Determination"); and

WHEREAS, the Final Determination reads in pertinent part:

> The request to confirm that the Long Island Railroad right-of-way that runs parallel to Austin Street meets the definition of a "street," as per the zoning definition in ZR 12-10, is hereby denied.
> Contrary to the ZR 12-10 "street" definition, the existing railroad right-of-way is not shown as a mapped street on the City Map, zoning maps, or the Department of Finance's tax maps. Therefore, the zoning lot for the proposed new building cannot be considered a "through lot," as per the definition in ZR 12-10, and requires a 30'-0" rear yard, as per ZR 23-47; and

WHEREAS, the appeal was brought on behalf of the owners of 65-70 Austin Street (the "Appellant"); and

WHEREAS, a public hearing was held on this application on August 20, 2013 after due notice by publication in *The City Record*, with a continued hearing on October 8, 2013, and then to decision on November 26, 2013; and

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

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

WHEREAS, the subject site is located on the south side of Austin Street between 65th Road and 66th Avenue, within an R7B zoning district and is currently occupied by a one-story commercial building; the site abuts a railroad right-of-way for the Long Island Railroad ("LIRR ROW"); and

WHEREAS, the Appellant seeks to build a six-story residential building at the site with a rear yard with a depth of

less than 30 feet; and

WHEREAS, the site has an average depth of approximately 80 feet and, based on the premise that the lot is a through lot, the Appellant proposes a yard with a depth of approximately 19 feet at the rear of the building adjacent to the LIRR ROW abutting the site; and

Relevant Zoning Resolution Provisions

WHEREAS, the following provisions read in pertinent part:

Street (ZR § 12-10 Definitions)

A "street" is:

(a) a way established on the City Map; or

(b) a way designed or intended for general public use, connecting two ways established on the City Map, that:

(1) performs the functions usually associated with a way established on the City Map;

(2) is at least 50 feet in width throughout its entire length; and

(3) is covenanted by its owner to remain open and unobstructed throughout the life of any #building# or #use# that depends thereon to satisfy any requirement of this Resolution; or

(c) any other open area intended for general public use and providing a principal means of approach for vehicles or pedestrians from a way established on the City Map to a #building or other structure#, that:

(1) performs the functions usually associated with a way established on the City Map;

(2) is at least 50 feet in width throughout its entirelength;

(3) is approved by the City Planning Commission as a "street" to satisfy any requirement of this Resolution; and

(4) is covenanted by its owner to remain open and unobstructed throughout the life of any #building# or #use# that depends thereon to satisfy any requirement of this Resolution; or

(d) any other public way that on December 15, 1961, was performing the functions usually associated with a way established on the City Map; or . . .

* * *

Lot, through (ZR § 12-10 Definitions)

A "through lot" is any zoning lot, not a corner lot, which adjoins two street lines opposite to each other and parallel or within 45 degrees of being parallel to each other. Any portion of a through lot which is not or could not be bounded by two such opposite street lines and two straight lines intersecting such street lines shall be subject to the regulations for an interior lot; and

* * *

ZR § 23-531

Excepted through lots

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

(a) In all districts, as indicated, no #rear yard# regulations shall apply to any #through lots# that extend less than 110 feet in maximum depth from #street# to #street#; and

The Appellant's Position

WHEREAS, the Appellant seeks for DOB to consider the site a "through lot" because it adjoins two "street lines" opposite to each other and parallel - Austin Street and the LIRR ROW; and

WHEREAS, the subject R7A zoning district regulations do not require a front yard and, thus, the Appellant proposes to construct its building to the front lot line and, based on the premise that it is a through lot with a depth less than 80 feet, the Appellant does not propose a rear yard, but proposes a building setback from the rear lot line of between approximately 19'-3 ½" and 38'-5 ¾"; and

WHEREAS, in support of its position, the Appellant makes the following primary arguments: (1) the LIRR ROW meets the ZR § 12-10 definition of street; (2) even if the LIRR ROW is not a "street," it functions like a street and should be viewed as such; and (3) the principles of Equal Protection and fairness require that the application be approved; and

WHEREAS, the Appellant asserts that the LIRR ROW is a street either pursuant to the ZR § 12-10(a) or § 12-10(d) definitions of "street" as it is "a way established on the City Map" and "any other public way that on December 15, 1961 was performing the functions usually associated with a way established on the City Map"; and

WHEREAS, additionally, the Appellant cites to Webster's Dictionary definition of "street" as "a public way, with buildings on one or both sides, in a city, town or village" and lists "road" as a synonym; and

WHEREAS, the Appellant posits that the inclusion of the word "road" as part of the term "railroad" by definition implies that the LIRR ROW is in effect a "street" for trains; and

WHEREAS, the Appellant notes that the ZR § 12-10(a) provision was changed by the February 2, 2011 Key Terms Text Amendment from the prior "a way shown on the City Map" to the current "a way established on the City Map"; and

WHEREAS, the Appellant asserts that the LIRR ROW is both a way *shown* and a way *established* on the City Map, so the revision to the text does not implicate its analysis; and

WHEREAS, additionally, the Appellant states that neither DOB nor the Board have limited the application of the definition of street to ways shown (or established) on the City Map; and

WHEREAS, specifically, the Appellant notes that the Corporation Counsel has declared streets not shown on the City May as Prescriptive Streets and the Board has waived the requirement for compliance with GCL § 36 for unmapped streets to facilitate construction fronting on such streets; and

WHEREAS, the Appellant notes that pursuant to BSA Cal. No. 229-06-A (Bayside Drive, Queens), the Board

determined that a private service road entirely on private property was a street for purposes of application of zoning yard requirements; and

WHEREAS, during the hearing process, the Appellant adopted the alternate approach that if the LIRR ROW did not meet the definition of street, it functions like a street and should, thus, be treated as one; and

WHEREAS, the Appellant states that DOB's formerly followed a reasonable interpretation that it recognized that the LIRR ROW could be "considered to be a street" for the purposes of applying ZR § 23-531(a) to other lots abutting the LIRR ROW; and

WHEREAS, the Appellant revised its position to assert that it is a technicality that the LIRR ROW does not meet the strict definition of "street" in ZR § 12-10; and

WHEREAS, the Appellant asserts that the LIRR ROW serves the purpose of a street in that it provides access to light and air for the benefit of the site similar to an established street for automobile traffic on the City Map, but which cannot be developed as-of-right; and

WHEREAS, as to DOB's history of approvals, the Appellant states that DOB issued approvals for the construction of two buildings adjacent to the site, which similarly abut the LIRR ROW; and

WHEREAS, the Appellant asserts that the first approval arose from DOB's Borough Commissioner Technical Meeting (BCTM) No. 168 on February 11, 1993 (the "1993 BCTM") in which DOB determined that the LIRR ROW can be considered a street with reference to 69-40 Austin Street; and

WHEREAS, second, the Appellant states that on July 26, 2006, the Borough Commissioner accepted the 1993 precedent for the adjacent property at 65-60 Austin Street, a decision that was upheld by the Borough Commissioner in Queens during an audit two years later; and

WHEREAS, the Appellant further notes that DOB approved the construction of two other multiple dwellings within the last two decades with rear yards with depths less than 30 feet at 65-84 and 66-08 Austin Street; and

WHEREAS, the Appellant notes that all four of the noted buildings on Austin Street have obtained certificates of occupancy; and

WHEREAS, as to the Constitutional arguments, the Appellant asserts that DOB's actions have limited the property owner's use and enjoyment of his property and caused financial hardship, in conflict with the U.S. Constitution's Fifth and Fourteenth Amendments; and

WHEREAS, specifically, the Appellant states that recent U.S. Supreme Court cases (including Koontz v. St. Johns River Waste Management District, 570 U.S. ___(2013)) uphold the Fifth Amendment's fundamental right to property and directs that land use agencies may not exercise unbridled discretion during decision-making processes; and

WHEREAS, additionally, the Appellant asserts that DOB has been arbitrary and inconsistent and that such practices raise a Constitutional issue under the Equal Protection Clause of the Fourteenth Amendment which provides that state government will not "deny to any person within its jurisdiction the equal protection of the laws" and provides protection to every person "against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by improper execution through duly constituted agents"; and

WHEREAS, the Appellant asserts that principles of Equal Protection require that the owner of the subject 65-70 Austin Street be afforded the same approval as the owners of the other four Austin Street sites; and

WHEREAS, further, the Appellant cites to Village of Willowbrook v. Olech, 528 U.S. 1071 (2000) (quoting Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 441 (1923)) to support its position and for the point that the local government's action cannot have been "irrational and wholly arbitrary"; and

WHEREAS, the Appellant states that it does not have any knowledge of intentional discrimination against it but it contends that DOB has been arbitrary in denying to approve the subject building yet choosing to remedy its mistake on the four approvals on similarly-situated properties; and

WHEREAS, the Appellant asserts that DOB has singled its building out and has selectively enforced against it; and

WHEREAS, finally, the Appellant asserts that in the event the appeal is denied, the Board has an obligation to conduct hearings pursuant to ZR § 72-11 and NYC Charter § 645 to consider revocation of the Certificates of Occupancy issued for the adjacent sites and that DOB is obliged to pursue appropriate actions as it cannot be estopped from correcting its erroneous issuance of Certificates of Occupancy for the other Austin Street sites; and

DOB's Position

WHEREAS, DOB states that the site is not a through lot because: (1) the LIRR ROW is not a street, as defined by ZR § 12-10; (2) there is no basis to approve the application even if the LIRR ROW functions as a street; and (3) the Constitutional claims are meritless; and

WHEREAS, DOB states that because the LIRR ROW is not a "street," and the site does not adjoin two "street lines," a rear yard of 30 feet is required; and

WHEREAS, DOB states that the "through lot" definition requires the lot to be between "street lines," not between something that is not a "street" but may have some similarities to a street (i.e. a railroad right-of-way) and the definition specifically states that if a lot is not bounded by street lines, the lot is an interior lot; and

WHEREAS, DOB states that while the LIRR ROW is depicted on the City Map, it does not meet the ZR § 12-10(a) definition of "street" because it is not "a way shown" or "established" on the City Map; and

WHEREAS, DOB acknowledges that on February 2, 2011, through its Key Terms Text Amendment, the Department of City Planning (DCP) amended the ZR § 12-10(a) definition of street to replace the word "shown" with "established;" and

WHEREAS, DOB and DCP, by separate letter, state that the change in text was a clarification and not a substantive change in that the wording was modified to be consistent with

the terminology for streets on the City Map; prior to the text change and now, the LIRR ROW would not satisfy the definition of street because it is not a way *shown* or *established* on the City Map; and

WHEREAS, DOB states that although the change in wording is subtle, this clarification was necessary in order to address confusion that may have been occurring from seeing certain depictions, such as railroads, on the City Map; and

WHEREAS, DOB notes that, according to DCP, the purpose of the change was to clarify the intent of the "street" definition by emphasizing that, while there are some features shown on the City Map for informational purposes, only specific map elements, such as streets, are "established" on the City Map; and

WHEREAS, DOB states that Chapter 1 of Title 25 of the Administrative Code of the City of New York governing DCP specifically defines what features are required to be "established" on the City Map; Administrative Code § 25-102 entitled "City map; what to include", states that "[t]here shall be located and laid out on the city map all parks, playgrounds, streets, courtyards abutting streets, bridges, tunnels and approaches to bridges and tunnels, and improvements of navigation in accordance with bulkhead and pierhead lines established pursuant to section seven hundred five of the charter…"; and

WHEREAS, DOB asserts that this list of legally established map elements that must be included on the City Map includes ways, such as streets, bridges, tunnels and approaches to bridges and tunnels, but does not include railroads; and

WHEREAS, DOB states that the legend on the City Map, indicates that streets and railroad rights of way are treated differently; specifically, the straight line indicates a street and the City Map legend states "street line heretofore established" or "street line hereby "established", while a broken line specifically identifies the "LIRR Right of Way" but leaves out the language "heretofore established" or "hereby established"; and

WHEREAS, DOB states that while streets are "established" on the City Map, railroads are not and are only included for informational purposes; and

WHEREAS, DOB also states that if a railroad right-of-way is a "street," other inconsistencies arise in the zoning such as the definition of "block" including "streets" and "railroad rights-of-way" as separate items; and

WHEREAS, in response to the Appellant's reliance on the 1993 BCTM which noted that the LIRR ROW did meet the ZR § 12-10 definition of "street" for construction of 69-40 Austin Street, the 2006 determination from Terrence Lin (then-Technical Compliance Unit Auditor in the Queens Borough Office), which accepted the LIRR ROW as a ZR § 12-10 "street" for construction at 65-60 Austin Street and the addresses for three other buildings with rear lot lines abutting the LIRR, DOB states that those permits were issued in error and cannot be relied on to support the Appellant's case; and

WHEREAS, DOB states that it is unclear whether the attendees at the 1993 BCTM thought that the LIRR ROW met the ZR § 12-10 definition of "street" or whether they thought the LIRR ROW was something similar to a "street" when adopting their conclusion; and

WHEREAS, DOB notes that the one sentence used in the 1993 BCTM notes stating "[t]he applicants request to consider the Rail Road right-of-way a street is granted per Section 12-10 (definition of Block and Street)" is not convincing one way or the other and more importantly, even if the 1993 BCTM decision was made on the basis that they thought the LIRR ROW was something similar to a "street," such a decision was erroneous and is not supported by the ZR § 12-10 definition of "street"; and

WHEREAS, accordingly, DOB states that it is irrelevant which rationale the 1993 BCTM used to come to their conclusion since their conclusion was erroneous and not supported by the text of the Zoning Resolution; and

WHEREAS, DOB states that it has described the reasons for reaching a different result in this case in that the LIRR ROW does not satisfy the definition of "street" and that any prior decision made by DOB finding that the LIRR is a "street" was erroneous, as it is not supported by the text of the Zoning Resolution; and

WHEREAS, DOB asserts that the statutory language is unambiguous and no interpretation is required; and

WHEREAS, in response to the Appellant's claims that DOB's application of the ZR § 12-10 definition of "street" in this case violates the Fourteenth Amendment, DOB states that it did not issue the Final Determination irrationally, arbitrarily or capriciously, nor is DOB denying the Appellant equal protection of the law; and

WHEREAS, further, DOB notes that the Appellant asserts that it "demonstrated inconsistent and unrestrained discretion in the granting of variances due to its inconsistent interpretation of relevant land use terms and definitions", citing to Koontz v. St. Johns River Waste Management District, 570 U.S. __ (2013), Nollan v. California Coastal Commission, 483 U.S. 825 (1987) and Dolan v. City of Tigard, 512 U.S. 374 (1994); and

WHEREAS, however, DOB finds that the Appellant fails to explain how these Fifth Amendment regulatory takings cases are relevant to the present case; in the three cited cases, the plaintiffs were deprived of use of their land because the government was essentially taking the plaintiff's property – by creating public easements on the property – without a legitimate state interest; and

WHEREAS, DOB asserts that there has been no such "taking" of Appellant's property; therefore discussion of these cases is irrelevant to the issues at hand; and

WHEREAS, DOB responds to the Appellant's invocation of Village of Willowbrook v. Olech, which states that an "irrational and wholly arbitrary" decision where "the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment" is a violation of the Fourteenth Amendment's Equal Protection Clause and to Burt v. City of New York, for the claim that the DOB has not offered a rational distinction for treating the Appellant

differently from the prior erroneous approvals; and

WHEREAS, DOB asserts that the Appellant does not include the fact that Burt v. City of New York also held that "unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of *intentional or purposeful discrimination*." Burt v. City of New York, 156 F.2d 791, 792 (2d Cir. 1946) (emphasis added) (holding that discrimination occurs when city officials deliberately misinterpret and abuse their statutory power in order to deny plaintiff's architectural applications or impose upon him unlawful conditions) referring to Snowden v. Hughes, 64 S.Ct. 397 (1944); and

WHEREAS, DOB asserts that it has thoroughly explained its reasoning and that the Appellant has not demonstrated any evidence of intentional or purposeful discrimination against the Appellant because none exists; and

WHEREAS, further, DOB states that if applicants file plans today or in the future to develop a zoning lot as a "through lot" that adjoins a "street" and a railroad right-of-way, DOB would disapprove the plans for the same reasons set forth in the Final Determination and throughout the appeal process; and

WHEREAS, DOB states that such treatment would act to treat similarly-situated properties in the same manner; and

WHEREAS, DOB states that therefore, in contrast to Willowbrook, its Final Determination has not been made to *intentionally* treat the Appellant differently from others similarly situated nor has DOB violated the Equal Protection Clause in issuing this Final Determination; and

WHEREAS, finally, DOB states that In The Matter of Charles A. Field Delivery Service, Inc., states that an agency is "free [like courts] to correct a prior erroneous interpretation of the law by modifying or overruling a past decision" Field Delivery Service, Inc., 66 N.Y.2d 516, 519 (1985) and that "when an agency determines to alter its prior stated course it must set forth its reasons for doing so." Id., at 520; and

WHEREAS, accordingly, DOB states that an agency only acts arbitrarily and irrationally if the agency "fails to adhere to its own prior precedent nor indicates its reason for reaching a different result." Id., at 516; and

WHEREAS, DOB contends that in this case, it has admitted to prior erroneous interpretations of the ZR § 12-10 definition of "street" and has provided sufficient explanation for doing so; therefore, DOB maintains that it has not acted arbitrarily or capriciously; and

The Department of City Planning's Letter

WHEREAS, DCP's counsel submitted a letter into the record on appeal, which states that the meaning of the term "way" in the ZR § 12-10(a) definition considered in the context of ZR § 12-10 as a whole, clearly refers to a thoroughfare which provides public vehicular and/or pedestrian passage, not railroad transportation use, consistent with the common understanding of a "street"; and

WHEREAS, DCP cites to the repeated reference to the concept of streets being "designed or intended for general public use" in the sections of the ZR § 12-10 definition and that private roads or driveways that provide only limited vehicular access are, under the final paragraph of the ZR § 12-10 definition, not considered a street; and

WHEREAS, DCP states that taken as a whole, the definition's framework makes clear that a railroad right of way that is not accessible to the public for vehicular or pedestrian use is not a "street"; and

WHEREAS, DCP also states that the Zoning Resolution treats railroad rights-of-way as distinct from streets in numerous provisions; and

WHEREAS, DCP adds that the LIRR ROW is not established on the City Map but is among the items noted for informational purposes only; and

Conclusion

WHEREAS, the Board agrees with DOB and DCP's position that the LIRR ROW is not a "street" as defined at ZR § 12-10 and, thus, the subject lot is not a through lot exempt from the rear yard requirement; and

WHEREAS, the Board does not find that the LIRR ROW satisfies the ZR § 12-10(a) requirement of "a way established on the City Map" as the LIRR ROW is included on the map for informational purposes but is not established there, nor is it a "way" in the sense that it is "designed or intended for general public use" consistent with the framework of the provision; and

WHEREAS, further, the Board does not find that the LIRR ROW satisfies the ZR § 12-10(d) condition of being "any other public way that on December 15, 1961, was performing the functions usually associated with a way established on the City Map" as the LIRR ROW is not a "public way" and does not function similarly to one of the limited kinds of "ways" that are established by law on the City Map; and

WHEREAS, the Board notes that railroad rights-of-way are not among the contents of the City Map listed in Administrative Code § 25-102 and are therefore intended to be for informational purposes only; and

WHEREAS, as far as the Appellant's Constitutional claims, the Board agrees with DOB's reading of the cited case law and notes that the Appellant is neither being deprived of its use of its property nor being treated un-equally in the sense contemplated by the noted Supreme Court decisions; and

WHEREAS, the Board does not find any basis to support a claim that DOB intentionally or purposefully discriminated against the Appellant as required by Burt v. City of New York to establish a claim for Equal Protection; and

WHEREAS, the Board acknowledges that DOB has failed to explain the reason for the four approvals on Austin Street, which are contrary to zoning, but none of the submissions have provided a legal or procedural basis for issuing an approval now that DOB (the permit-issuing body) and DCP (the drafters of the text) agree would be contrary to zoning regulations; and

WHEREAS, the Board continues to support DOB's position that it is not estopped from correcting its errors as per Matter of Charles A. Field Delivery Serv., Inc.; the case law requires that the agency explain its correction and does require the rationale for the disavowed erroneous approval in order to

correct itself; and

WHEREAS, the Board notes that DOB states that it will not grant any approvals for similarly-situated sites along the LIRR ROW that include rear yards with depths of less than 30 feet; and

WHEREAS, the Board also notes that the Appellant has not begun construction at the site and that it may be possible to redesign the project to include a rear yard with a depth of 30 feet and allow for a productive use of the site; however, the Board notes that no such plans have been proposed or reviewed by the Board or DOB; and

WHEREAS, the Board notes that the Appellant's current proposal reflects a setback from the rear lot line/LIRR ROW of depths ranging from approximately 19'-3 ½" to 38'-5 ¾"; and

WHEREAS, as to the Appellant's reliance on the summary of the 1993 BCTM, the Board notes that at the time of the other Austin Street approvals, the definition of street included ZR § 12-10(a) "a way shown on the City Map" and based on the BCTM summary – "the applicant's request to consider the Rail Road right-of-way a street is granted as per Section 12-10 (definition of Block and Street)" - it is unclear whether there was reliance on the concept of "*shown*" or if the meeting attendees understood "shown on the City Map" to mean "established on the City Map"; and

WHEREAS, accordingly, it is possible that the outcome of the BCTM would have been different if the 2011 Key Terms Text Amendment and the provision "established on the City Map" had been in effect; and

WHEREAS, the Board recognizes that DOB and DCP consider the Key Terms Text Amendment change from "shown" to "established" to be a clarification and not a substantive change; however, the Board finds that whether it was clarification or substantive change, there may be a more reasonable argument for the prior version of the text to be seen as ambiguous and thus prone to misreading that led to the four prior erroneous approvals; and

WHEREAS, the Board finds that to the extent that ambiguity may have existed under the pre-2011 text, such ambiguity no longer exists and the text is clear on its face that a way must be *established* on the City Map in order to satisfy the ZR § 12-10(a) definition of "street"; and

WHEREAS, the Board rejects the Appellant's revised argument that DOB's approval was based on the fact that the LIRR ROW functioned as a street or that being *like* a street would be a sufficient substitute to satisfy the Zoning Resolution definition; and

WHEREAS, the Board notes that the Appellant's remaining arguments, including a citation to a prior Board decision involving the ZR § 12-10(d) definition of "street" as "any other public way that on December 15, 1961, was performing the functions usually associated with a way established on the City Map," are without merit and do not address the issue of whether a railroad right-of-way is a street per the ZR § 12-10(a) definition of a "street" as a "way established on the City Map"; and

WHEREAS, as to the Board's duty to direct DOB to revoke the certificates of occupancy for the four other Austin Street buildings, the Board notes that the four other buildings and their certificates of occupancy have not been reviewed or considered within the appeal; and

WHEREVER, the Board also notes that DOB approved the construction of those buildings when the definition of "street" was less clear and finds that the change in the text may provide an explanation for the errors, notwithstanding DOB and DCP's position that there was not a substantive change; and

WHEREAS, accordingly, the Board does not see any basis to direct DOB to revoke the certificates of occupancy for the four other Austin Street buildings and notes that the current unambiguous text will ensure that there will be no other such erroneous approvals; and

WHEREAS, based on the above, the Board has determined, the Final Determination must be upheld and this appeal must be denied; and

Therefore it is Resolved that this appeal, which challenges a Department of Buildings final determination dated April 19, 2013, is denied.

Adopted by the Board of Standards and Appeals, November 26, 2013.

41-11-A

APPLICANT – Eric Palatnik, P.C., for Sheryl Fayena, owner.

SUBJECT – Application April 12, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R-6 zoning district. R4 Zoning District.

PREMISES AFFECTED – 1314 Avenue S, between East 13th and East 14th Streets, Block 7292, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

166-12-A

APPLICANT – NYC Department of Buildings,

OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.

SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to January 28, 2014, at 10 A.M., for continued hearing.

107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district. R7B zoning district.
PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.
COMMUNITY BOARD #3M
ACTION OF THE BOARD – Laid over to January 28, 2014, at 10 A.M., for continued hearing.

58-13-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Sylvaton Holdings LLC, owners.
SUBJECT – Application February 5, 2013 – Proposed construction of a twelve-family residential building located partially within the bed of a mapped but unbuilt street contrary to General City Law Section 35. R4/M3-1 zoning district.
PREMISES AFFECTED – 4 Wiman Place, west side of Wiman Place, south of Sylvaton Terrace and north of Church Lane, Block 2827, Lot 205, Borough of Staten Island.
COMMUNITY BOARD #1SI
ACTION OF THE BOARD – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

110-13-A
APPLICANT – Abrams Fensterman, LLP, for Laurence Helmarth and Mary Ann Fazio, owners.
SUBJECT – Application April 24, 2013 – Appeal challenging Department of Buildings' interpretation of the Building Code regarding required walkway around a below-grade pool. R6B zoning district.
PREMISES AFFECTED – 120 President Street, between Hicks Street and Columbia Street, Block 348, Lot 22, Borough of Brooklyn.
COMMUNITY BOARD #6BK
ACTION OF THE BOARD – Laid over to December 10, 2013, at 10 A.M., for adjourned hearing.

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 Street, 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 January 14, 2014, at 10 A.M., for continued hearing.

131-13-A & 132-13-A
APPLICANT – Sheldon Lobel, P.C., for Rick Russo, owner.
SUBJECT – Application May 10, 2013 – Proposed construction of a residence not fronting on a legally mapped street, contrary to General City Law Section 36. R2 & R1 (SHPD) zoning districts.
PREMISES AFFECTED – 43 & 47Cecilia Court, Cecilia Court off of Howard Lane, Block 615, Lot 210, Borough of Staten Island.
COMMUNITY BOARD #1SI
ACTION OF THE BOARD – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

191-13-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for McAllister Maritime Holdings, LLC, owner.
SUBJECT – Application June 28, 2013 – Proposed construction of a three-story office building within the bed of a mapped street, pursuant to Article 3 of General City Law 35. M3-1 zoning district.
PREMISES AFFECTED – 3161 Richmond Terrace, north side of Richmond Terrace at intersection of Richmond Terrace and Grandview Avenue, Block 1208, Lot 15, Borough of Staten Island.
COMMUNITY BOARD #1SI
ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

50-12-BZ
CEQR #12-BSA-085Q
APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.
SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building, contrary to use regulations (§22-00). R3-2 zoning district.
PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83' west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, Borough of Queens.
COMMUNITY BOARD #12Q
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 of the Department of Buildings, dated February 24, 2012, acting on Department of Buildings Application No. 410202221, reads, in pertinent part:

Proposed commercial use (retail Use Group 6) within an R3-2 district is contrary to ZR 22-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-2 zoning district, the construction of a one-story commercial building (Use Group 6), contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on February 5, 2013, after due notice by publication in the *City Record*, with continued hearings on May 14, 2013 and October 29, 2013, and then to decision on November 26, 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 13, Queens, recommends approval of the application; and

WHEREAS, the subject site is an interior lot located on the south side of South Conduit Avenue between Farmer's Boulevard and Guy R. Brewer Boulevard, within an R3-2 zoning district; and

WHEREAS, the site has 99.38 feet of frontage along South Conduit Avenue and a lot area of 7,819 sq. ft.; and

WHEREAS, the applicant states that the site is vacant and has never been developed; and

WHEREAS, the applicant proposes to construct a one-story commercial building (Use Group 6) with 2,346 sq. ft. of floor area (0.30 FAR) and parking for ten automobiles; and

WHEREAS, because Use Group 6 is not permitted within the subject R3-2 zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the shallowness and irregular shape of the site; (2) the site's location and sole frontage along South Conduit Avenue, a service road, and its proximity to multiple busy thoroughfares, including an exit ramp for the Belt Parkway; and (3) the adjacency of non-residential uses; and

WHEREAS, the applicant states that the shallow lot depth of the site (approximately 80 feet) and its irregular shape (it is approximately four feet wider along South Conduit Avenue than it is along the rear lot line) combined with the yard requirements of the R3-2 district result in impractical residential developments; and

WHEREAS, specifically, the applicant states that it must provide a rear yard with a depth of 30 feet, two side yards with widths of eight feet, and a front yard with a depth of 15 feet, it can only build a maximum of three single-family homes, which the applicant states is financially infeasible; and

WHEREAS, the applicant also states that the average lot depth of the residential sites along South Conduit Avenue is 117 feet, which is nearly 40 feet deeper than the subject site; and

WHEREAS, the applicant asserts that the community facility yard requirements, are fewer, similarly result in a financially infeasible development; and

WHEREAS, the applicant asserts that the site's location along South Conduit Avenue combined with its close proximity to an exit ramp for the Belt Parkway and the corner of South Conduit Avenue and Farmer's Boulevard make the site particularly undesirable for residential uses because of the heavy automobile traffic along these roadways; and

WHEREAS, the applicant represents that all residential developments on either South Conduit Avenue or North Conduit Avenue on lots that are similar in size to the site and have direct access from either service road also have access and frontage along more residential streets; and

WHEREAS, the applicant notes that although 16 semi-detached residences are located along South Conduit Avenue directly west of the site, such residences are screened from South Conduit Avenue by substantial vegetation, have significantly deeper lots, and are accessed by and front on Meadow Road, with their rear yards abutting South Conduit Avenue; and

WHEREAS, the applicant asserts that it is not feasible to extend Meadow Road east to provide access to homes on the site for the following reasons: (1) the neighboring school owns and uses the area as a parking lot; (2) the parking lot is not for sale; (3) even if the lot could be purchased, easement agreements would have to be executed among the applicant, the owners of the homes fronting on Meadow Road, and the school; and (4) any such alteration of the school's parking and traffic pattern would require the review of the Department of Transportation; and

WHEREAS, thus, the applicant states that because it is infeasible to extend Meadow Road, any homes at the site would—unlike all other lots in the area—have to front on and be exclusively accessed by South Conduit Avenue; and

WHEREAS, the applicant also asserts that the uses adjacent to the site make it unsuitable for conforming uses; and

WHEREAS, in particular, the applicant states that, directly south, the site abuts a large parking lot accessory to the school located on Lot 15, and, directly east, the site abuts a gasoline station service station and its accessory parking lot on Lot 1; in addition, as mentioned above, the site is directly across from an exit ramp of the Belt Parkway; the applicant represents that such adjacent uses significantly reduce the value of the site for conforming uses; and

WHEREAS, as to the adjacent gasoline service station, the applicant notes that it has a history of contamination as well as the potential for future contamination; as such, the subject site has the potential to become contaminated as well,

which further reduces its market value for conforming uses; and

WHEREAS, finally, the applicant notes that pedestrian access to the site is limited; while the gasoline service station has a sidewalk extending to Farmer's Boulevard, none of the residences to the west of the site have sidewalks along South Conduit Avenue; therefore, pedestrians would be unable to safely access the site from Guy R. Brewer Boulevard; and

WHEREAS, the Board finds that the proximity of the site to an exit from the Belt Parkway and the site's sole frontage along the service road create an unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in particular, in addition to the proposal, the applicant examined the economic feasibility of: (1) an as-of-right development with three, single-family homes and 4,686 sq. ft. of floor area (0.60 FAR); (2) an as-of-right multiple dwelling with four dwelling units and 4,688.25 sq. ft. of floor area (0.60 FAR); and (3) an as-of-right community facility (ambulatory diagnostic center) with 4,837.51 sq. ft. of floor area (0.62 FAR) and 12 at-grade parking spaces; and

WHEREAS, the applicant concluded that all three as-of-right scenarios resulted in negative rates of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return, making it the only economically viable scenario; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the immediate area is characterized by a mix of low- to medium-density residential and commercial uses with some manufacturing/industrial uses, including a school, a gasoline station, and a subdivision of one- and two-family dwellings; and

WHEREAS, in support of this statement, the applicant submitted surveys and photographs depicting the mixed-use nature of the neighborhood; and

WHEREAS, the applicant asserts that the proposal would serve as a buffer between the gasoline station and the heavily-trafficked and retail-oriented intersection of Farmer's Boulevard and South Conduit Avenue and the residential subdivision directly east of the site, and the residences directly west of the site; and

WHEREAS, in addition, the applicant states, as noted above, that the site is adjacent to or in close proximity to several major thoroughfares, including South Conduit Avenue, Guy R. Brewer Boulevard, Farmer's Boulevard, and the Belt Parkway; and

WHEREAS, accordingly, the proposed commercial use will be compatible with the surrounding neighborhood; and

WHEREAS, turning to bulk, the applicant represents that the following are the bulk parameters of the proposal: 2,346 sq. ft. of floor area (0.30 FAR); a front yard depth of approximately 49 feet; one side yard with a width of 20 feet; no rear yard; and parking for 12 automobiles; and

WHEREAS, the applicant states that the proposed FAR of 0.30 is half of the maximum FAR for a residence in the R3-2 district; and

WHEREAS, the applicant asserts that it far exceeds the front yard requirement for the subject R3-2 district (which requires a minimum depth of 15 feet) as well as for the nearest district where the use would be permitted as-of-right (C1-2, which does not require a front yard); and

WHEREAS, as to side yards, the applicant states that it complies with the C1-2 regulations, but does not comply with the R3-2 regulations (which require two side yards with minimum widths of eight feet), because it provides a 20-foot side yard along the west of the building, but reduced its side yard along the east of the building in order to create the maximum distance between the nearby residences and the commercial building; and

WHEREAS, as to rear yard, the proposal complies with neither the R3-2 regulation, nor the C1-2 regulations; however, as noted above, the rear of the site abuts a parking lot for a school; and

WHEREAS, finally, the applicant represents that all parking lot lighting at the site will be directed away from residences; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of a one-story commercial building and parking lot will not impact nearby conforming uses; and

WHEREAS, at hearing, the Board expressed concern regarding the following: (1) the sufficiency of the proposed plantings and sidewalks; (2) the proposed hours of operation; and (3) the location of refuse storage and the hours of its removal from the site; and

WHEREAS, in response, the applicant submitted a statement that: (1) certified that the plantings and sidewalks were in compliance with applicable provisions of the Zoning Resolution and Building Code; (2) indicated that the hours of operation would be limited to seven days per week, from 6:00 a.m. to 11:00 p.m.; and (3) certified that refuse pickup would occur between the hours of 9:00 a.m. and 8:00 p.m. and submitted an amended plan showing that refuse storage would be located on the far east side of the property; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or

development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's unique physical conditions; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in 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 an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA085Q, dated March 5, 2012; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an R3-2 zoning district, the construction of a one-story commercial building (Use Group 6), contrary to ZR § 22-00, *on condition* that any and all work will substantially conform to drawings filed with this application marked "Received November 12, 2013"–(4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: 2,346 sq. ft. of floor area (0.30 FAR); a minimum front yard depth of 49 feet; one side yard with a minimum width of 20 feet; no rear yard; and parking for 12 automobiles;

THAT the hours of operation will be limited to seven days per week, from 6:00 a.m. to 11:00 p.m.;

THAT signage will comply with C1 regulations;

THAT refuse pickup will be limited to seven days per week, from 9:00 a.m. to 8:00 p.m.;

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

THAT substantial construction will be completed in accordance with ZR § 72-23;

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

THAT the approved plans 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, November 26, 2013.

106-13-BZ
CEQR #13-BSA-126K

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

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

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 April 25, 2013, acting on Department of Buildings Application No. 320711128, reads in pertinent part:

> The proposed enlargement of the existing one family residence in an R3-2 zoning district:
>
> 1. creates non-compliance with respect to floor area by exceeding the allowable floor area ratio . . . contrary to Section 23-141 of the Zoning Resolution;
> 2. creates non-compliance with respect to lot coverage and open space . . . contrary to Section 23-141 of the Zoning Resolution;
> 3. creates non-compliance with respect to the side yard by not meeting the requirements of Section 23-461 of the Zoning Resolution;
> 4. creates non-compliance with respect to rear yard by not meeting minimum requirements of Section 23-47 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622, 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, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in *The City Record*, and then to decision on November 26, 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, a member of the surrounding community testified in opposition to the application, citing concerns about the size of the enlargement; and

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

WHEREAS, the site has a total lot area of 4,000 sq. ft. and is occupied by a single-family home with a floor area of 2,409 sq. ft. (0.60 FAR); and

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

WHEREAS, the applicant now seeks an increase in the floor area from of 2,409 sq. ft. (0.60 FAR) to 4,216 sq. ft. (1.05 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to decrease the open space from 65 percent to 54 percent (the minimum required open space is 65 percent) and increase the lot coverage from 35 percent to 46 percent (the maximum permitted lot coverage is 35 percent); and

WHEREAS, the applicant also seeks to maintain the width (3'-1¼") of one existing, non-complying side yard and decrease the width of the other existing side yard from 10'-6 ½" to 8'-0" (the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each); and

WHEREAS, in addition, the applicant seeks to decrease its rear yard depth from 28'-1½" to 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the Board notes that, initially, the applicant sought to maintain its existing non-complying perimeter wall height of 22'-1"; however, the proposal has since been modified to provide a complying 21'-0" perimeter wall height; and

WHEREAS, the applicant asserts 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, in particular, the applicant represents that the proposed 1.05 FAR is consistent with the bulk in the surrounding area and notes that there are four homes in the vicinity (on Blocks 7299, 7300, and 7301) with FARs of 1.0 or greater on lots that are smaller and narrower than the subject site; and

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

WHEREAS, at hearing, the Board requested clarification regarding the percentage of the existing building to be retained; and

WHEREAS, in response, the applicant submitted amended drawings clarifying the amount of the building to be retained; 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, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

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, 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, 23-461, 23-631, 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 October 16, 2013"- Twelve (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,216 sq. ft. (1.05 FAR), a minimum open space of 54 percent, a maximum lot coverage of 46 percent, side yards with minimum widths of 3'-1¼" and 8'-0", 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);

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, November 26, 2013.

129-13-BZ
CEQR #13-BSA-135K
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 – 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 April 23, 2013, acting on Department of Buildings Application No. 320728502, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio exceeds the permitted 50 percent;
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio is less than the required 150 percent;
3. Plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than 5'-0";
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0"; and

WHEREAS, this is an application under ZR § 73-622, 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 ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in *The City Record*, with a continued hearing on October 29, 2013, and then to decision on November 26, 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 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 22nd Street, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the site has a total lot area of 3,000 sq. ft. and is occupied by a single-family home with a floor area of 2,035.6 sq. ft. (0.68 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 now seeks an increase in the floor area from of 2,035.6 sq. ft. (0.68 FAR) to 2,885.2 sq. ft. (0.96 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to decrease the open space ratio from 86 percent to 57 percent (the minimum required open space ratio is 150 percent); and

WHEREAS, the applicant also seeks to maintain the width (7'-3") of one existing side yard and increase the width of the other existing side yard from 1'-8" to 3'-1" (the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each); and

WHEREAS, in addition, the applicant seeks to decrease its non-complying rear yard depth from 20'-4" to 20'-0" (a minimum rear yard depth of 30'-0" is required); and

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

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, 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 ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 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 October 15, 2013"-Twelve (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,885.2 sq. ft. (0.96 FAR), a minimum open space ratio of 57 percent, side yards with minimum widths of 3'-1" and 7'-3", 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);

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, November 26, 2013.

168-13-BZ
CEQR #13-BSA-148K
APPLICANT – Lewis E Garfinkel, for Dovie Minzer, owner.
SUBJECT – Application June 4, 2013 – Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(a); side yard (§23-461(a); less than the required rear yard; (§23-47) and perimeter wall height (§23-631. R3-2 zoning district.
PREMISES AFFECTED – 1323 East 26th Street, east side of East 26th Street, 180' south of Avenue M, Block 7662, Lot 39, 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 May 21, 2013, acting on Department of Buildings Application No. 320756776, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio exceeds the permitted 50 percent;
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio is less than the required 150 percent;
3. Plans are contrary to ZR 23-461(a) in that the proposed side yards are less than the required 5'-0" and 8'-0";
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0"; and

WHEREAS, this is an application under ZR § 73-622, 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 ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in *The City Record*, and then to decision on November 26, 2013; and

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

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

WHEREAS, the subject site is located on the east side of East 26th Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the site has a total lot area of 3,000 sq. ft. and is occupied by a single-family home with a floor area of 1,992 sq. ft. (0.66 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 now seeks an increase in the floor area from of 1,992 sq. ft. (0.66 FAR) to 3,000 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to decrease the open space ratio from 102 percent to 55 percent (the minimum required open space ratio is 150 percent); and

WHEREAS, the applicant also seeks to maintain the width (3'-4") of one existing side yard and decrease the width of the other existing side yard from 7'-0" to 6'-4" (the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each); and

WHEREAS, in addition, the applicant seeks to decrease its rear yard depth from 31'-4" to 20'-0" (a minimum rear yard depth of 30'-0" is required); and

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

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

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

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, 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, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 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 October 2, 2013"- Eleven (11) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,000 sq. ft. (1.0 FAR), a minimum open space ratio of 55 percent, side yards with minimum widths of 3'-4" and 6'-4", 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);

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, November 26, 2013.

173-13-BZ
CEQR #13-BSA-152M

APPLICANT – Greenberg Traurig, LLP, for 752 UWS, LLC, owner; 752 Paris Gym LLC, lessee.

SUBJECT – Application June 14, 2013 – Variance (§72-21) to legalize the existing Physical culture establishment (*Paris Health Club*), which occupies the cellar, first floor and the first floor mezzanine of a 24-story residential building, contrary to use regulations (§22-00). R10A zoning district.

PREMISES AFFECTED – 752-758 West End Avenue aka 260-268 West 97th Street, southeast corner of West End Avenue and West 97th Street, Block 1868, Tentative Lot 1401 (f/k/a part of 61), Borough of Manhattan.

COMMUNITY BOARD #7M

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 of the Department of Buildings ("DOB"), dated June 3, 2013, acting on DOB Application No. 110443841, reads, in pertinent part:

> Proposed physical culture establishment . . . is not a permitted use in (an) R10A district (and) commercial uses are not permitted; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R10A zoning district, the legalization of an existing physical culture establishment ("PCE") within portions of the cellar, first floor, and first-floor mezzanine of a 24-story residential building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in the *City Record*, and then to decision on November 26, 2013; and

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

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

WHEREAS, the subject site is located at the southeast corner of the intersection of West End Avenue and West 97th Street, within an R10A zoning district; and

WHEREAS, the site has 100.92 feet of frontage along West End Avenue, 100 feet of frontage along West 97th Street, and a lot area of 10,074 sq. ft.; and

WHEREAS, the site is occupied by a 24-story building with approximately 100,740 sq. ft. of floor area (10.0 FAR) (the "Building"); and

WHEREAS, the applicant represents that the Building is occupied by the Paris Health Club (the "Health Club"), a facility classified as a PCE pursuant to ZR § 12-10, in portions of the cellar, first floor, and first-floor mezzanine, and that the remainder of the Building is occupied by residential use (Use Group 2); and

WHEREAS, the applicant states that the Health Club occupies approximately 8,096 sq. ft. of floor area on the first floor and first-floor mezzanine and 11,890 sq. ft. of floor space in the cellar for a total Health Club floor space of 19,986 sq. ft., and includes a swimming pool, exercise and yoga rooms, approximately 1,100 lockers, and 18 showers; the applicant notes that the hours of operation for the Health Club are Monday through Thursday, from 5:30 a.m. to 11:00 p.m., Friday, from 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, from 7:30 a.m. to 9:00 p.m.; and

WHEREAS, the applicant states that, according to the original certificate of occupancy for the Building (No. 17926, issued October 19, 1931), the cellar was occupied by a gymnasium, a swimming pool, and lockers, and the rest of the Building was occupied by hotel uses; subsequent certificates of occupancy (No. 37387, issued June 29, 1950, and No. 69811, issued December 1, 1970) indicate that the swimming pool was maintained in the cellar and that the first floor and first floor mezzanine were occupied by various commercial uses, including a bar, a dining room, a barber shop, a beauty salon and hotel offices; and

WHEREAS, subsequently, in 1977, the Building was converted to residential use and the portions of the Building comprising the Health Club were re-classified on Certificate of Occupancy No. 78621, issued July 21, 1978, as "accessory" to the residences; however, the applicant states that such classification was in error, and despite the Health Club's designation as accessory, the Health Club has never been restricted to residents of the Building; and

WHEREAS, the applicant states that, twice in 2010, the prior owner of the Building submitted to DOB a request for a

determination that the accessory designation for the Health Club was in error, and that the Health Club was permitted to continue to operate as separate, non-accessory, non-conforming commercial health club use1; and

WHEREAS, the applicant states that DOB denied both requests; and

WHEREAS, in addition, the applicant states that on June 12, 2012, DOB issued a notice of violation to the Health Club for operating as a commercial club contrary to the certificate of occupancy; the violation was sustained by an administrative law judge of the Environmental Control Board on September 13, 2012; and

WHEREAS, accordingly, the applicant now seeks a variance to permit the Health Club to continue to operate as a commercial PCE in the subject R10A zoning district, contrary to ZR § 22-00; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the existing Building's configuration on the site, which renders it unsuitable for a conforming use at the first floor and mezzanine level; and (2) the historic commercial use at the site; and

WHEREAS, the applicant states that the first floor's full lot coverage, which does not allow for a rear yard or central court, makes it unsuitable for conforming uses at the first floor and mezzanine level because required light and ventilation cannot be provided; and

WHEREAS, the applicant notes that, on the contrary, the upper floors enjoy the benefit of a courtyard for light and ventilation; and

WHEREAS, the applicant asserts that such lack of rear yard or large court on the first floor is a unique burden within the neighborhood; and

WHEREAS, in support of this assertion, the applicant submitted the results of a study of the 158 buildings in the area three blocks north and south of the Building, between Riverside Drive and 100 feet west of Broadway; and

WHEREAS, the applicant states that of the 158 buildings examined, only five, including the Building, lack a rear yard or large ground floor court; further, the applicant states that one of the five buildings has commercial uses on the first floor, and another has more than half its perimeter fronting a street, giving its first-floor apartments abundant light and ventilation; as such, the Building is one of only three buildings in the study area (approximately two percent) that lack a rear yard or large court on the first floor; and

WHEREAS, in addition, the applicant states that it examined the uses of the 153 buildings within the study area that do provide a rear yard or a large court, and found that of 104 buildings that have certificates of occupancy, 96 have ground floor residential units; the remaining eight buildings are distinguishable from the Building in that: five buildings are either wholly or partially within a commercial district and have commercial use on the first floor; two buildings are entirely community facilities (a school and a Salvation Army); and one building is occupied by an accessory parking garage; and

WHEREAS, based on its analysis of the 153 buildings that do have a rear yard or large court, the applicant asserts that, in the neighborhood, where a residential building has sufficient first-floor light and ventilation, such light and ventilation allow for first floor residential units; and

WHEREAS, thus, the applicant states that because the Building is only one of three buildings out of 158 that is adversely affected by not having first-floor light and ventilation, the site is uniquely disadvantaged; and

WHEREAS, the applicant also contends that the historic commercial use at the site is a unique physical condition; and

WHEREAS, specifically, the applicant states, as noted above, that the cellar, first floor, and first floor mezzanine have been used for commercial purposes since the Building was constructed in 1930; thus, for more than 80 years, the cellar has been occupied by a commercial health club, and the first floor and first-floor mezzanine have been used only for commercial purposes, first by the hotel prior to 1978, and thereafter by the Health Club; and

WHEREAS, the applicant also asserts, as noted above, that the 1978 Certificate of Occupancy classifying the Health Club as accessory was issued in error, and that the club has always operated independently of the residential portion of the Building; and

WHEREAS, accordingly, unlike buildings without a history of commercial use, the Building's cellar, first floor, and first-floor mezzanine were designed, arranged, and intended for commercial use; and

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

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in particular, in addition to the proposal, the applicant examined the economic feasibility of demolishing the Health Club and constructing conforming medical offices at the cellar, first floor, and first-floor mezzanine of the Building; and

WHEREAS, the applicant concluded that the medical offices resulted in a negative rate of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return; and

WHEREAS, based upon its review of the applicant's

1 The applicant believes that the 2010 determination requests did not include reference to the plans for the building's 1978 public assembly permit, which indicated that 1,100 lockers, three sales offices, 18 showers, and a separate entrance to the street would be maintained. The applicant notes that such a configuration is customarily found with a commercial rather than an accessory health club.

economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the continued operation of the Health Club 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the Health Club complements and strengthens the surrounding residential environment by providing a unique and quality recreational facility for its approximately 2,200 members, most of whom reside in the neighborhood; and

WHEREAS, the applicant represents that the loss of the Health Club would damage its members, who rely on it for a safe, convenient facility for physical exercise and recreational activities; and

WHEREAS, finally, the applicant states that the Health Club has existed in its current form for more than 30 years without incident or detriment to the public welfare, and that the site as originally developed included a swimming pool, a gymnasium, and lockers at the cellar level; accordingly, the applicant states that some form of exercise facility has existed at the site for more than 80 years; and

WHEREAS, the applicant also states, as noted, that this application has the full endorsement of Community Board 7; and

WHEREAS, as to the effect of the Health Club on the residents of the Building, the applicant submitted a letter from a long-time employee of the Health Club and letters from the tenants of the two first-floor mezzanine apartments; the employee's letter indicated that no noise complaints have been received during her ten-year tenure, and both tenants' letters attested to the lack of noise emanating from the Health Club; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the configuration of the existing building at the site and the history of commercial use within such building; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in 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 Board notes that because the use authorized herein is classified as a PCE, the variance will be granted for a term of ten years, to expire on November 26, 2023; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13-BSA-152M, dated May 23, 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an R10A zoning district, the legalization of an existing PCE within portions of the cellar, first floor, and first floor mezzanine of a 24-story residential building, contrary to ZR § 22-00, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 26, 2013"- Eight(8) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on November 26, 2023;

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

THAT the hours of the PCE will be limited to Monday through Thursday, from 5:30 a.m. to 11:00 p.m., Friday, from 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, from 7:30 a.m. to 9:00 p.m.;

THAT all signage at the site will be limited to C1 zoning district regulations;

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

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

THAT a new certificate of occupancy will be obtained within two years of the date of this grant, on November 26, 2015;

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

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

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

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

Adopted by the Board of Standards and Appeals, November 26, 2013.

229-13-BZ
CEQR #14-BSA-017K

APPLICANT – Rothkrug Rothrug & Spector LLP, for Country Leasing Limited Partnership, owner; Blink Nostrand Avenue, Inc., lessee.

SUBJECT – Application August 6, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 3779-3861 Nostrand Avenue, 2928/48 Ave Z, 2502/84 Haring Street, Block bounded by Nostrand Avenue, Avenue Z, Haring Street and Avenue Y, Block 7446, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 2, 2013, acting on Department of Buildings Application No. 320591267, reads in pertinent part:

> Proposed Physical Culture Establishment is contrary to ZR 32-10 and requires a special permit; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C2-2 (R3-2) zoning district, the operation of a physical culture establishment ("PCE") in portions of the cellar and basement of an existing one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in *The City Record*, and then to decision on November 26, 2013; and

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

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

WHEREAS, the subject site is the entire block bounded by Nostrand Avenue, Avenue Y, Haring Street, and Avenue Z; the block is located within a C2-2 (R3-2) zoning district; and

WHEREAS, the site has 700 feet of frontage along both Avenue Y and Avenue Z, 190 feet of frontage along both Nostrand Avenue and Haring Street, and 133,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story commercial building; atop the building is parking for 106 automobiles; and

WHEREAS, the PCE is proposed to occupy 15,723 sq. ft. of floor area in the first floor and second floor of the building; and

WHEREAS, the PCE will be operated as Blink Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; the applicant states that massages will not be performed at the PCE; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:00 a.m. to 10:00 p.m., and Sunday, from 7:00 a.m. to 9:00 p.m.; 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, 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 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. 14-BSA-017K, dated

August 3, 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 in a C2-2 (R3-2) zoning district, the operation of a physical culture establishment ("PCE") in portions of the cellar and basement of an existing 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 September 13, 2013" – three (3) sheets; and *on further condition*:

THAT the term of this grant will expire on November 26, 2023;

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

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 DOB 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, November 26, 2013.

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 January 14, 2014, at 10 A.M., for deferred decision.

262-12-BZ

APPLICANT – Patrick W. Jones, P.C., for Canyon & Cie LLC c/o Mileson Corporation, owner; Risingsam Management LLC, lessee.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit a hotel (UG 5), contrary to use regulations (§42-00). M2-1 zoning district.

PREMISES AFFECTED – 132-10 149th Avenue aka 132-35 132nd Street, bounded by 132nd Street, 149th Avenue and Nassau Expressway Service Road, Block 11886, Lot 12 and 21, Borough of Queens.

COMMUNITY BOARD #10Q

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 January 14, 2014, at 10 A.M., for decision, hearing closed.

299-12-BZ

APPLICANT – Goldman Harris LLC, for 544 Hudson Street, owner.

SUBJECT – Application October 18, 2012 – Variance (§72-21) to permit the construction of a 12-story commercial building, contrary to floor area (§43-12), height and setback (§43-43), and rear yard (§43-311/312) regulations. M1-5 zoning district.

PREMISES AFFECTED – 40-56 Tenth Avenue, east side of Tenth Avenue between West 13th and West 14th Streets, Block 646, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

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
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 December 10, 2013, at 10 A.M., for decision, hearing closed.

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
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 January 14, 2014, at 10 A.M., for decision, hearing closed.

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, contrary to use regulations (§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
ACTION OF THE BOARD – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

171-13-BZ
APPLICANT – Law Office of Fredrick A. Becker, for 1034 East 26th Street, LLC, owner.
SUBJECT – Application June 6, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.
PREMISES AFFECTED – 1034 East 26th Street, west side of East 26th Street between Avenue J and Avenue K, Block 7607, Lot 63, Borough of Brooklyn.
COMMUNITY BOARD #14BK
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 January 14, 2014, at 10 A.M., for decision, hearing closed.

187-13-BZ
APPLICANT – Sheldon Lobel, P.C., for 1030 Southern Boulevard LLC, owner; 1030 Southern Boulevard Fitness Group, LLC, lessee.
SUBJECT – Application June 21, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*), and Special Permit (§73-52) to extend commercial use into the portion of the lot located within a residential zoning district. C4-4/R7-1 zoning district.
PREMISES AFFECTED – 1024-1030 Southern Boulevard, east side of Southern Boulevard approximately 134' north of the intersection formed by Aldus Street and Southern Boulevard, Block 2743, Lot 6, Borough of Bronx.
COMMUNITY BOARD #2BX
ACTION OF THE BOARD – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

192-13-BZ
APPLICANT – Jesse Masyr, Esq., Fox Rothschild, LLP, for AP-ISC Leroy, LLC, Authorized Representative, owner.
SUBJECT – Application July 2, 2013 – Variance (§72-21) to permit the construction of a residential building with accessory parking, contrary to use regulations (§42-10). M1-5 zoning district.
PREMISES AFFECTED – 354/361 West Street aka 156/162 Leroy Street and 75 Clarkson Street, West street between Clarkson and Leroy Streets, Block 601, Lot 1, 4, 5, 8, 10, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

213-13-BZ
APPLICANT – Rothrug Rothkrug & Spector LLP, for Ridgeway Abstracts LLC, owner.
SUBJECT – Application July 12, 2013 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3A zoning district.
PREMISES AFFECTED – 3858-60 Victory Boulevard, east corner of intersection of Victory Boulevard and Ridgeway Avenue, Block 2610, Lot 22 & 24, Borough of Staten Island.
COMMUNITY BOARD #2SI
ACTION OF THE BOARD – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

223-13-BZ
APPLICANT – Stroock & Stroock & Lavan LLP by Ross F. Moskowitz, for NYC Department of Citywide Adminstrative Services, owner.
SUBJECT – Application July 24, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Kingsbridge National Ice Wellness Center*) in an existing building. C4-4/R6 zoning district.
PREMISES AFFECTED – 29 West Kingsbridge Road aka Kingsbridge Armory Building, Block 3247, Lot 10 part of 2, Borough of Bronx.
COMMUNITY BOARD #7BX
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 January 14, 2014, at 10 A.M., for decision, hearing closed.

228-13-BZ
APPLICANT – Herrick, Feinstein LLP by Arthur Huh, for 45 W 67th Street Development Corporation, owner; CrossFit NYC, lessee.
SUBJECT – Application August 1, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Cross Fit*) located in the cellar level of an existing 31-story building. C4-7 zoning district.
PREMISES AFFECTED – 157 Columbus Avenue, northeast corner of West 67th Street and Columbus Avenue, Block 1120, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #7M
ACTION OF THE BOARD – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

243-13-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Henry II Thames LP c/o of Fisher Brothers, owners.
SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit construction of a mixed use building, contrary to setback requirements (§91-32). C5-5 (LM) zoning district.
PREMISES AFFECTED – 22 Thames Street, 125-129 Greenwich Street, southeast corner of Greenwich Street and Thames Street, Block 51, Lot 13, 14, Borough of Manhattan.
COMMUNITY BOARD #1M
ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

249-13-BZ
APPLICANT – Eric Palatnik, P.C., for Reva Holding Corporation, owner; Crunch LLC, lessee.
SUBJECT – Application August 26, 2013 – Special Permit (§73-36) to allow a physical cultural establishment (*Crunch Fitness*) within portions of existing commercial building. C4-3 zoning district.
PREMISES AFFECTED – 747 Broadway, northeast corner of intersection of Graham Avenue, Broadway and Flushing Avenue, Borough of Brooklyn.
COMMUNITY BOARD #1BK
ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on October 22, 2013, under Calendar No. 606-75-BZ and printed in Volume 98, Bulletin Nos. 42-43, is hereby corrected to read as follows:

606-75-BZ
APPLICANT – Sheldon Lobel, P.C., for Printing House Condominium, owners.
SUBJECT – Application July 3, 2013 – Amendment of a previously approved variance (§72-21) which allowed the residential conversion of a manufacturing building; amendment seeks to permit a reallocation of floor area between the maisonette and townhouse units, resulting in a reduction of total units and no net change in total floor area. 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
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 residential use within a manufacturing district; the amendment proposes the relocation of floor area from maisonette units to townhouse units, with no net change in floor area, and a reduction in the total number of dwelling units on the zoning lot; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, and then to decision on October 22, 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 2, Manhattan, recommends approval of this application; and

WHEREAS, certain members of the surrounding community testified in support of the application; and

WHEREAS, certain members of the surrounding community testified in opposition to the application; and

WHEREAS, the subject site spans the full length of Hudson Street between Leroy Street and St. Luke's Place, within an M1-5 zoning district; and

WHEREAS, the site has approximately 200 feet of frontage along Hudson Street, 150 feet of frontage along Clarkson Street, 125 feet of frontage along Leroy Street, and a lot area of 27,584 sq. ft.; and

WHEREAS, the site is occupied by a ten-story mixed residential and commercial building (the "Main Building") and five, two-story residential buildings (the "Townhouses"), with a total of 184 dwelling units; the ground floor and mezzanine of the Main Building contains eight residential units (the "Maisonettes"); and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 20, 1976 when, under the subject calendar number, the Board granted a use variance authorizing the conversion of an existing eight-story industrial building to a mixed commercial and residential building (Use Group 2) within an M1-5 zoning district; on that same day, under BSA Cal. No. 607-75-A, the Board granted an appeal pursuant to New York State Multiple Dwelling Law § 310 waiving compliance with certain provisions of the MDL governing rear yard, egress, living room depth from a window, and flue projections; and

WHEREAS, on April 5, 2011, under BSA Cal. No. 226-10-BZ, the Board granted a special permit pursuant to ZR § 73-36 to permit a physical culture establishment ("PCE") on the first, ninth and tenth stories of the building; simultaneously, the Board granted an amendment to the subject variance to reflect the floor plan changes associated with the PCE; and

WHEREAS, subsequently, in 2011 and in 2012, the Board issued letters of substantial compliance authorizing various reconfigurations of the residential units, resulting in an overall reduction in the number of units from 184 to 154; and

WHEREAS, the applicant now seeks to amend the grant to decrease the floor area of the mezzanine levels within the Maisonettes by 1,425 sq. ft., increase the floor area of the Townhouses by 1,425 sq. ft. and to alter certain other dwelling units within the Main Building; the proposed relocation of floor area and Main Building alterations will result in a decrease in the number of Maisonette dwelling units from eight to three and a decrease in the number of Townhouse dwelling units from five to two; the alterations not related to the Maisonettes or the Townhouses will result in a decrease in the number of dwelling units from 141 to 138; and

WHEREAS, the applicant states that the amendment will increase the height of the Townhouses from 26'-1" to 30'-1" and will result in new landscaping, walkways and drainage; and

WHEREAS, the applicant asserts that the proposed reduction in the number of dwelling units at the site will decrease the scope of the use variance and will have no adverse effects on the surrounding community; and

WHEREAS, at hearing, the Board requested amended drawings clearly delineating the relocation of the floor area; and

WHEREAS, in response, the applicant submitted amended drawings; 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 20, 1976, to permit the relocation of floor area from the Maisonettes to the Townhouses and the reduction in the number of dwelling units at 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 October 8, 2013'- seventeen (17) sheets and 'July 3, 2013'-seven (7) sheets; and *on further condition*:

THAT there will be no increase in the floor area at the site;

THAT Multiple Dwelling Law compliance will be reviewed and approved by DOB;

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

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. 121326145)

Adopted by the Board of Standards and Appeals, October 22, 2013.

***The resolution has been Amended. Corrected in Bulletin No. 48, Vol. 98, dated December 4, 2013.**