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# BULLETIN

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

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### DIRECTORY

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<b>BSA WEBPAGE @</b>	<b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b>

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Tuesday, December 17, 2013**

Morning Calendar .....1020

**Affecting Calendar Numbers:**

774-55-BZ	2155-2159 Newbold Avenue, Bronx
182-69-BZ	211-235 East 19 <sup>th</sup> Street, Manhattan
380-01-BZ	230 West 41 <sup>st</sup> Street, Manhattan
17-02-BZ	445-455 Fifth Avenue, aka 453 Fifth Avenue, Brooklyn
406-82-BZ	2411 86 <sup>th</sup> Street, Brooklyn
20-02-BZ	303 Park Avenue South, Manhattan
119-03-BZ	10 Columbus Circle, aka 301 West 58 <sup>th</sup> Street, Manhattan
209-03-BZ	150 Central Park South, Manhattan
176-09-BZ	220-236 West 28 <sup>th</sup> Street, Manhattan
90-12-A	111 Varick Street, Manhattan
58-13-A	4 Wiman Place, Staten Island
127-13-A	332 West 87 <sup>th</sup> Street, Manhattan
131-13-A & 132-13-A	43 & 47 Cecillia Court, Staten Island
156-13-A	450 West 31 <sup>st</sup> Street, Manhattan
230-13-A	29-19 Newtown Avenue, Queens
231-13-A	29-15 Newtown Avenue, Queens
206-13-BZ	605 West 42 <sup>nd</sup> Street, Manhattan
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69-12-BZ	1 Maspeth Avenue, Brooklyn
254-12-BZ	850 Third Avenue, aka 509/519 Second Avenue, Brooklyn
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303-12-BZ	1106-1108 Utica Avenue, Brooklyn
92-13-BZ & 93-13-BZ	22 and 26 Lewiston Street, Staten Island
103-13-BZ	81 Jefferson Street, Brooklyn
124-13-BZ	95 Grattan Street, Brooklyn
125-13-BZ	97 Grattan Street, Brooklyn
128-13-BZ	1668 East 28 <sup>th</sup> Street, Brooklyn
167-13-BZ	1614/26 86 <sup>th</sup> Street, Brooklyn
187-13-BZ	1024-1030 Southern Boulevard, Bronx
213-13-BZ	3858-60 Victory Boulevard, Staten Island
228-13-BZ	157 Columbus Avenue, Manhattan
255-13-BZ	3560/84 White Plains Road, Queens
292-13-BZ	2085 Ocean Parkway, Brooklyn

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# DOCKETS

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New Case Filed Up to December 17, 2013

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**318-13-BZ**

74 Grand street, North side of Grand Street, 25 feet east of Wooster Street., Block 425, Lot(s) 60, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to permit construction of a 12,493 square foot, 5 FAR building containing Use Group 6 retail and Use group 2 residential uses on a vacant lot in an M1-5B zoning district. M1-21 district.

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**319-13-BZ**

1800 Park Avenue, Park Avenue, East 124th street, East 125 Street., Block 1749, Lot(s) 33(air rights 24), Borough of **Manhattan, Community Board: 11**. Variance (§72-21) to waive the parking requirements of §25-23 to permit the construction of a new, mixed used building on the subject site. C4-7 zoning district. C4-7 district.

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**320-13-BZ**

906 Prospect Place, Located on the South Side of Prospect Place between Brooklyn and New York Avenues, Block 1235, Lot(s) 17, Borough of **Brooklyn, Community Board: 8**. Special Permit (§73-452) proposed development of an off site accessory parking lot for the Brooklyn Children's Museum contrary to the maximum allowable distance permitted by §25-52. R6 zoning district. R6 district.

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

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# CALENDAR

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**JANUARY 28, 2014, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 28, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**SPECIAL ORDER CALENDAR**

**427-71-BZ**

APPLICANT – Carl A. Sulfaro, Esq. for Beach Channel, LLC, owner; Masti, Inc. lessee.

SUBJECT – Application May 21, 2012 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B). The application seeks to legalize the erection of a one story accessory convenience store at an existing Automotive Service Station. C2-2/R4 zoning district.

PREMISES AFFECTED – 38-01 Beach Channel Drive, southwest corner of Beach 38th Street and Beach Channel Drive. Block 15828, Lot 30. Borough of Queens.

**COMMUNITY BOARD #14Q**  
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**799-89-BZ**

APPLICANT – Law Office of Jay Goldstein, PLLC, for 1470 Bruckner Boulevard Corp., owner.

SUBJECT – Application September 24, 2013 – Extension of Term of a previously granted Variance (ZR §72-21) for the continued operation of a UG-17 Contractor's Establishment (Colgate Scaffolding) which expired on December 23, 2013. C8-1/R6 zoning district.

PREMISES AFFECTED – 1460-1470 Bruckner Boulevard, On the South side of Bruckner Blvd between Colgate Avenue and Evergreen Avenue. Block 3649, Lot 27 & 30. Borough of Bronx.

**COMMUNITY BOARD #9BX**  
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**331-04-BZ**

APPLICANT – Sheldon Lobel, P.C., for Blue Millennium Realty LLC, owner; Century 21 Department Stores LLC, lessee.

SUBJECT – Application October 24, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the expansion of floor area in an existing commercial structure (Century 21). The amendment seeks to permit a rooftop addition above the existing building which exceeds the maximum floor area permitted. C5-5 (LM) zoning district.

PREMISES AFFECTED – 26 Cortlandt Street, located on Cortlandt Street between Church Street and Broadway. Block 6911, Lot 6 & 3. Borough of Manhattan.

**COMMUNITY BOARD #1M**  
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**APPEALS CALENDAR**

**300-13-A**

APPLICANT – Goldman Harris LLC, for LSG Fulton Street LLC, owner.

SUBJECT – Application November 7, 2013 – Proposed construction of a Mixed use development to be located partially within the bed of a mapped but unbuilt portion of Fulton Street in Manhattan contrary to General City law Section 35 .C5-5/C6-4 Zoning District.

PREMISES AFFECTED – 112,114 & 120 Fulton Street, Three tax lots fronting on Fulton Street between Nassau and Dutch Streets in lower Manhattan. Block 78, Lot(s) 49, 7501 & 45. Borough of Manhattan.

**COMMUNITY BOARD #1M**  
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**214-13-A**

APPLICANT – Slater & Beckerman, P.C., for Jeffrey Mitchell, owner.

SUBJECT – Application July 15, 2013 – Appeal seeking a determination that the owner has acquired a common law vested right to complete construction under the prior zoning. R3-X Zoning District

PREMISES AFFECTED – 219-08 141st Avenue, south side of 141st Avenue between 219th Street and 222nd Street, Block 13145, Lot 15, Borough of Queens.

**COMMUNITY BOARD #13Q**  
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**ZONING CALENDAR**

**76-13-BZ**

APPLICANT – Eric Palatnik, P.C., for Victor Pometko, owner.

SUBJECT – Application February 21, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to lot coverage and floor area (ZR §23-141); side yards (§23-461) and less than the minimum required rear yard (ZR §23-47). R3-1 zoning district.

PREMISES AFFECTED – 176 Oxford Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**  
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**157-13-BZ**

APPLICANT – Sheldon Lobel, P.C., for 1368 23rd Street, LLC, owner.

SUBJECT – Application May 17, 2013 – Special Permit (§73-622) to the enlargement of an existing single home contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1368 & 1374 East 23rd Street, west side of East 23rd Street, 180' north of Avenue N, Block

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# CALENDAR

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7658, Lot 78 & 80, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**193-13-BZ**

APPLICANT – Eric Palatnik, Esq., for Centers FC Realty LLC, owner.

SUBJECT – Application July 2, 2013 – Special Permit (§73-44) seeking to vary §36-21 to permit a reduction in the required parking for the proposed use group 6 office use in parking requirement category B1. C2-2/R6A & R-5 zoning districts.

PREMISES AFFECTED – 4770 White Plains Road, White Plains Road between Penfield Street and East 242nd Street, Block 5114, Lot 14, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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**207-13-BZ**

APPLICANT – Harold Weinberg, P.E., for Harold Shamah, owner.

SUBJECT – Application July 3, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-141); and less than the required rear yard (ZR §23-47), R3-1 zoning district.

PREMISES AFFECTED – 177 Hastings Street, east side of Hastings Street, between Oriental Boulevard and Hampton Avenue, Block 8751, Lot 456, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**236-13-BZ**

APPLICANT – Warshaw Burstein, LLP by Joshua J. Rinesmith, for 423 West 55th Street, LLC, owner; 423 West 55th Street Fitness Group, LLP, lessee.

SUBJECT – Application August 13, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on the first and the mezzanine floors of the existing building; Special Permit (§73-52) to allow the fitness center use to extend twenty-five feet into the R8 portion of a zoning lot that is spilt by district boundaries. C6-2 & R8 zoning district.

PREMISES AFFECTED – 423 West 55th Street, north side of West 55th Street, 275' east of the intersection formed by 10th Avenue and West 55th Street, Block 1065, Lot 12, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, DECEMBER 17, 2013  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**774-55-BZ**

APPLICANT – Sahn Ward Coschignano & Baker, for FGP  
West Street, LLC, owner.

SUBJECT – Application July 31, 2013 – Extension of Term  
(§11-411) of a previously granted variance for the continued  
operation of a (UG8) parking lot for the employees and  
customers of an existing bank (*Citibank*), which expire d on  
January 31, 2013; Waiver of the Rules. R5/C1-2 & R5/C2-2  
zoning district.

PREMISES AFFECTED – 2155-2159 Newbold Avenue,  
north side of Newbold Avenue, between Olmstead Avenue  
and Castle Hill Avenue, Block 3814, Lot 59, Borough of  
Bronx.

**COMMUNITY BOARD #9BX**

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure and an extension of term for a  
previously granted special permit for the operation of a  
parking lot, which expired on January 31, 2013; and

WHEREAS, a public hearing was held on this  
application on November 19, 2013, after due notice by  
publication in *The City Record*, and then to decision on  
December 17, 2013; and

WHEREAS, Community Board 9, Bronx, recommends  
approval of this application; and

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

WHEREAS, the subject site is located on the north side  
of Newbold Avenue, between Olmstead Avenue and Castle  
Hill Avenue; and

WHEREAS, the site is located partially within an R5  
zoning district and partially within a C1-2 (R5) zoning district,  
and is occupied by a parking lot with 30 spaces; and

WHEREAS, the Board has exercised jurisdiction over  
the subject site since October 8, 1957, when, under the subject  
calendar number, the Board granted a special permit for the

continued operation of a parking lot for more than five cars for  
use by a bank on the adjacent site in what was then a  
residential district, for a term of five years; and

WHEREAS, subsequently, the grant has been amended  
and the term extended several times; and

WHEREAS, most recently, on June 24, 2008, the Board  
renewed the term, to expire on January 31, 2013; and

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

WHEREAS, the applicant notes that 16 parking spaces  
remain partially or entirely within the R5 zoning district and  
require the special permit, and 14 parking spaces are located  
entirely within the C1-2 (R5) zoning district; and

WHEREAS, at hearing, the Board directed the applicant  
to submit photographs demonstrating that the screening of the  
site and striping of the parking lot comply with the previously-  
approved BSA plans; and

WHEREAS, in response, the applicant submitted  
photographs depicting the screening of the site and striping of  
the parking lot; and

WHEREAS, pursuant to ZR § 11-411, the Board may  
permit an extension of term for a previously granted variance;  
and

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

*Therefore it is Resolved*, that the Board of Standards  
and Appeals *waives* the Rules of Practice and Procedure,  
*reopens*, and *amends* the resolution, as adopted on October 8,  
1957, and as subsequently extended and amended, so that as  
amended this portion resolution reads: “to extend the term for  
ten years from January 31, 2013, to expire on January 31,  
2023, *on condition* that any and all work shall substantially  
conform to drawings filed with this application marked  
“Received July 31, 2013”-(1) sheet; and *on further condition*:

THAT the term of this grant will expire on January 31,  
2023;

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

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

THAT this approval is limited to the relief granted by the  
Board in response to specifically cited and filed DOB/other  
jurisdiction objection(s); 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. 210028548)

Adopted by the Board of Standards and Appeals,  
December 17, 2013.

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## 182-69-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 227 East 19<sup>th</sup> 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 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

**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 special permit pursuant to ZR §§ 73-641 and 73-49, which authorized, on the campus of the Cabrini Hospital, the construction of a new building contrary to the bulk regulations, and roof parking on an existing building; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in the *City Record*, and then to decision on December 17, 2013; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is a through lot located mid-block on the north side of East 19th Street and the south side of East 20th Street between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the site has 334 feet of frontage along East 19th Street, 309 feet of frontage along East 20th Street, and 59,813 sq. ft. of lot area; and

WHEREAS, the site is the campus of the former Cabrini Hospital; it is occupied by five buildings, which are designated on the most recent certificate of occupancy (Certificate of Occupancy No. 75029, dated October 9, 1974), as buildings A, B, C and C1, D, and E, and 48 accessory parking spaces at grade and in the cellar; and

WHEREAS, the applicant states that Building A is a 16-story building with 220,123 sq. ft. of floor area; Building A was developed pursuant to a June 24, 1969 grant from the Board under the subject calendar number and pursuant to ZR § 73-641, which waived compliance with the regulations regarding front setback, rear yard equivalent, sky-exposure

plane, permitted obstructions within a front setback; the grant also included a special permit pursuant to ZR § 73-49, which allowed roof parking on an existing building at the site; and

WHEREAS, the applicant notes that the site first came under the Board’s jurisdiction on July 3, 1956, when the Board, under BSA Cal. No. 378-56-A, authorized a waiver of the fire-tower stair requirements for the extension of an existing stair to an eighth-floor addition to Building C; subsequently, on July 18, 1967, under BSA Cal. No. 555-67-BZ, the Board granted a special permit pursuant to ZR § 73-641 waiving compliance with the regulations regarding FAR, lot coverage, front setback, sky-exposure plane, rear yard equivalent, and parking; on that same date, under BSA Cal. No. 556-67-A, the Board denied an appeal seeking waiver of the requirement for a fire-tower stair; and

WHEREAS, the applicant states that Buildings B (six stories), C (eight stories) and C1 (one story), D (nine stories), and E (three stories) were constructed as-of-right prior to 1961 and contain a total of 143,972 sq. ft. of floor area; as noted above, Building A has 220,123 sq. ft. of floor area; thus, the site contains a total floor area of 364,095 sq. ft. (6.15 FAR); and

WHEREAS, the applicant notes that at the time of the special permit and until 1995, the site was located in an R7-2 zoning district, which allowed a maximum community facility FAR of 6.50, therefore, until the 1995 rezoning, a maximum of 384,689 sq. ft. of community facility floor area was permitted at the site; however, in 1995, the site was rezoned R8B, reducing the maximum permitted community facility floor area permitted at the site to 236,732 sq. ft. (4.0 FAR); accordingly, the site is non-complying with respect to floor area; likewise, the site does not comply with the R8B height and setback requirements; and

WHEREAS, the applicant states that the building authorized under the 1967 special permit was not constructed and that the 1967 grant was superseded by the 1969 grant described above; and

WHEREAS, the applicant states that Cabrini Hospital ceased operating in March 2008 after being designated for closure in 2006 by the New York State Commission on Health Care Facilities a/k/a the Berger Commission; and

WHEREAS, the applicant represents that it extensively marketed the site to find a new hospital tenant without success; and

WHEREAS, accordingly, the applicant now requests an amendment to permit the conversion of the hospital to residential use (Use Group 2); and

WHEREAS, in particular, the applicant proposes to demolish Buildings B and C1, convert Buildings A, C, D, and E to residential use, create 287 dwelling units, and retain all 48 accessory off-street parking spaces; and

WHEREAS, the applicant represents that: (1) all pre-1961 non-residential floor area on the lot may be converted to residential floor area pursuant to Article I, Chapter 5 of the Zoning Resolution without regard to the floor area restrictions of the underlying district; and (2) the post-1961 floor area, including the non-occupiable space (such as mechanical

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space) within the pre-1961 buildings may be converted to occupiable space and count as zoning floor area; and

WHEREAS, the applicant further represents that the proposed conversion of mechanical space within Building A to residential use will increase its floor area from 220,123 sq. ft. to 253,103 sq. ft.; correspondingly, the floor area within the pre-1961 buildings will decrease from 143,972 sq. ft. to 127,601 sq. ft., for a total floor area on the lot of 380,704 sq. ft. (6.43 FAR); and

WHEREAS, the applicant notes that Buildings B, C, and E will be reconfigured to comply with the R8B envelope and that the degree of non-compliance with respect to rear yard equivalent will be decreased as a result of the proposal; and

WHEREAS, the applicant represents that the proposal does not introduce any new non-compliances and does not trigger the need for any further relief from the Board but is required due to the prior action regarding Building A; and

WHEREAS, the applicant represents that all changes to the existing buildings, including Building A, is as-of-right under the Zoning Resolution; and

WHEREAS, as to the effect on the neighborhood character, the applicant represents that the proposal will result in a reduction in neighborhood impacts, as compared to the prior hospital use; specifically, the applicant represents that the proposal results in no urban design or shadow impacts, no significant impact on schools, libraries, day care facilities, open space or other public services and neighborhood resources, and a net reduction in the number of vehicle and pedestrian trips; and

WHEREAS, in support of these representations, the applicant submitted its environmental study, which analyzed (with particular emphasis on traffic and air quality) the neighborhood effect of the proposal in comparison to the as-of-right R8B development and the prior hospital use; and

WHEREAS, at hearing, the Board requested clarification regarding the proposed increase in floor area and the proposed landscaping of the site; and

WHEREAS, in response, the applicant represented that the Department of Buildings (“DOB”) reviewed and approved the proposed increase in floor area; in addition, the applicant submitted amended plans clarifying the proposed landscaping of the site; and

WHEREAS, the Board takes no position on the floor area calculations, which are subject to DOB review and approval; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals reopens and amends the resolution, dated June 24, 1969, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received December 11, 2013’ - (31) sheets; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed

DOB/other jurisdiction objection(s);

THAT DOB will review and approve compliance with the Zoning Resolution, including floor area calculations;

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

Adopted by the Board of Standards and Appeals, December 17, 2013.

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## **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**

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of term of a physical culture establishment (“PCE”), which expired on April 9, 2012; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in *The City Record*, and then to decision on December 17, 2013; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is an interior lot located on the block bounded by Seventh Avenue, West 40th Street, Eighth Avenue, and West 41st Street, partially within an M1-6 zoning district and partially within a C6-6.5 zoning district, within the Special Midtown District; and

WHEREAS, the site is occupied by a 21-story

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commercial building; and

WHEREAS, the PCE is located on portions of the cellar, first floor, and second floor of the building, and occupies approximately 21,814 sq. ft. of total floor space; and

WHEREAS, on April 9, 2002, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36 to permit the operation of the PCE on portions of the cellar, first floor, and second floor of the 21-story building at the site; and

WHEREAS, the term of the original grant expired on April 9, 2012; and

WHEREAS, the applicant now seeks an extension of the term; and

WHEREAS, the PCE will continue to be operated as the New York Sports Club; and

WHEREAS, the applicant notes that the hours of operation of the PCE were not established in the original grant; and

WHEREAS, at hearing, the Board directed the applicant to add the standard PCE notes to the proposed plans; and

WHEREAS, in response, the applicant submitted an amended plan including the required notes; and

WHEREAS, based on its review of the record, the Board finds that the proposed ten-year extension of term is appropriate, with the conditions set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on April 9, 2002, and as subsequently extended and amended, so that as amended this portion of the resolution reads: “to extend the term for ten years from April 9, 2012, to expire on April 9, 2022, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received December 11, 2013”- (6) sheets; and *on further condition*:

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

THAT this grant will be limited to a term of ten years, to expire on April 9, 2022;

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

THAT a certificate of occupancy will be obtained within one year of the date of this grant;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 103031924)

Adopted by the Board of Standards and Appeals, December 17, 2013.

## 17-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Abrams Holding LLC, owner; Town Sports International dba New York Sports Club, lessee.

SUBJECT – Application August 7, 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*) which expired June 4, 2012; Waiver of the Rules. C4-3 zoning district.

PREMISES AFFECTED – 445-455 Fifth Avenue, aka 453 Fifth Avenue, between 9th Street and 10th Street, Block 1011, Lot 5, 8, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of term of a physical culture establishment (“PCE”), which expired on June 4, 2012; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, and then to decision on December 17, 2013; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on Fifth Avenue between Ninth Street and Tenth Street, within a C4-3A zoning district; and

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

WHEREAS, the PCE is located on portions of the first floor, second floor, and third floor of the building, and occupies approximately 20,521 sq. ft. of floor area; and

WHEREAS, on June 4, 2002, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36 to permit the operation of the PCE on portions of the first floor, second floor, and third floor of the three-story building at the site; and

WHEREAS, the term of the original grant expired on June 4, 2012; and

WHEREAS, the applicant now seeks an extension of the term; and

WHEREAS, the operator will continue to be operated as the New York Sports Club; and

WHEREAS, the applicant notes that the hours of operation of the PCE were not established in the original grant, but are as follows: Monday through Thursday, from

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5:30 a.m. to 11:00 p.m., Friday, from 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, at hearing, the Board requested clarification regarding the installation of a fire alarm system, which was, among other things, required under the prior Board grant; and

WHEREAS, in response, the applicant submitted documentation from the Department of Buildings confirming the installation of the system; and

WHEREAS, based on its review of the record, the Board finds that the proposed ten-year extension of term is appropriate, with the conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, as adopted on June 4, 2002, and as subsequently extended and amended, so that as amended this portion of the resolution reads: "to extend the term for ten years from June 4, 2012, to expire on June 4, 2022, on condition that any and all work shall substantially conform to drawings filed with this application marked "Received December 11, 2013"- (7) sheets; and on further condition:

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

THAT this grant will be limited to a term of ten years, to expire on June 4, 2022;

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

THAT a certificate of occupancy will be obtained within one year of the date of this grant;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 301136367)

Adopted by the Board of Standards and Appeals, December 17, 2013.

## 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 special permit (§73-243) allowing 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 expired 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

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

## 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 of a special permit (§73-36) to allow the operation of a physical culture establishment (*New York Sports Club*) in a five story mixed use loft building, which expired on 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

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

## 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 a special permit (§73-36) to allow the continued operation of a physical culture establishment (*Equinox*), which expired on September 16, 2013. 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

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 28, 2014, at 10 A.M., for decision, hearing closed.

## 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 variance (§72-21) for the continued operation of physical culture establishment (*Exhale Spa*) located in a portion of a 37-story residential building which expired 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.

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## 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 January 28, 2014, at 10 A.M., for decision, hearing closed.

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## 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 Special Permit (§73-64) to waive height and setback regulations (§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

### 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 28, 2014, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

## 90-12-A

APPLICANT – New York City Board of Standards and Appeals

SUBJECT – Application September 11, 2013 – Reopening by court remand for supplemental review of whether the subject wall was occupied by an art installation or an advertising sign. M1-6 zoning district.

PREMISES AFFECTED – 111 Varick Street, Varick Street between Broome and Dominick Street, Block 578, Lot 71, Borough of Manhattan.

## COMMUNITY BOARD #2M

**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, the underlying case is an appeal requesting a Board determination that the owner has not lost the right to maintain a non-conforming advertising sign at the site; and

WHEREAS, the subject site is located at the northwest

corner of Varick Street and Broome Street, within an M1-6 zoning district; and

WHEREAS, the site is occupied by a six-story parking garage with a 58'-0" high by 78'-3" wide sign structure located on the south wall (the "Sign Structure"); and

WHEREAS, the Sign faces Broome Street and is located approximately 57'-0" from the northern boundary of the Holland Tunnel approach, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Manhattan Borough Commissioner of the Department of Buildings ("DOB"), dated March 12, 2012, denying registration for a sign at the site (the "Final Determination"), which reads, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit. As evidence related to the sign points to its having been of various sizes, orientations, and even removed, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS, the appeal is brought on behalf of the owner of the sign structure (the "Appellant"); and

WHEREAS, on April 11, 2012, the Appellant filed an application with the Board seeking recognition of a right to continue its use of the wall at the subject premises for an advertising sign; and

WHEREAS, on January 15, 2013, under the subject calendar number, the Board upheld DOB's Final Determination and found that advertising sign had been discontinued for a period of greater than two years, contrary to ZR § 52-61; specifically, that for the period of 1979 to 1989 when the Sign was occupied by an installation by artist Terry Fugate-Wilcox entitled "the Holland Tunnel Wall," the advertising sign use was discontinued; and

WHEREAS, on February 14, 2013, the property owner appealed the Board's determination in New York State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules; and

WHEREAS, by decision and order in Van Wagner v. Board of Standards and Appeals, dated June 18, 2013, Supreme Court, New York County, Justice Rakower "remanded [the matter] back to the agency for a fuller record" and "granted the petition to the extent stated in the record"; and

WHEREAS, the record from the oral argument includes the following:

[the Board has] to figure out why this art installation, which was later dismantled and sold, which bore the name of the artist and served to perpetuate those sales that came later, was less than an advertising sign, and establish how it was that that is a departure from the non-conforming use that was in place.

So, I'm going to send it back and I'm not

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directing that they grant the permit, but there is an insufficient record here for me to – for anyone to know when it is that an art installation would be different from an advertising sign. And I think they have to clarify that issue; and

WHEREAS, a public hearing was held on the remand on October 29, 2013, after due notice by publication in *The City Record*, and then to decision on December 17, 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, the Board re-adopts the analysis and determination it made in its January 15, 2013 decision on the matter; and

WHEREAS, this resolution reflects the parties' supplemental arguments and the Board's associated analysis; it includes a summary of the parties' original arguments, which are presented in full in the January 15, 2013 resolution; and

WHEREAS, the Appellant and DOB appeared and, pursuant to the remand, made a total of six additional submissions on the question of whether the Sign constituted an advertising sign from the years of 1979 to 1989 when the wall was occupied by the "Holland Tunnel Wall"; the Board held one executive review session and one public hearing; and

## Background

WHEREAS, the Appellant contends that DOB's Final Determination should be reversed because (1) an advertising sign was established on the building prior to June 1, 1968, as required under ZR § 42-55, and may therefore be maintained as a legal non-conforming advertising sign pursuant to ZR § 52-11, and (2) an advertising sign has occupied the Sign Structure with no discontinuance of two years or more since its establishment; and

WHEREAS, as to the establishment of an advertising sign prior to June 1, 1968, DOB has stated that it does not contest the Appellant's claim that an advertising sign existed on May 31, 1968; however, DOB asserts that the use was discontinued and must terminate per ZR § 52-61 because the wall was used to display an art installation for a period of approximately ten years; and

WHEREAS, the Appellant contends that the art installation at the site from approximately 1979 to 1989 constituted an "advertising sign" within the meaning of ZR § 12-10, and therefore the use of the Sign Structure from an advertising sign was continuous during that period; and

WHEREAS, accordingly, the sole question in dispute is whether the Sign Structure was occupied by an advertising sign, as defined by the Zoning Resolution, from 1979 to 1989 when the "Holland Tunnel Wall" art installation (the "Holland Tunnel Wall" or the "Art Installation") occupied it; and

WHEREAS, the Appellant notes that ZR § 12-10 defines the term "sign" as follows:

ZR § 12-10 *Definitions*

Sign

A "sign" is any writing (including letter, word, or

numeral), pictorial representation (including illustration or decoration), emblem (including device, symbol, or trademark), flag, (including banner or pennant), or any other figure of similar character, that:

- (a) Is a structure or any part thereof, or is attached to, painted on, or in any other manner represented on a #building# or other structure#;
- (b) Is used to announce, direct attention to, or advertise; and
- (c) Is visible from outside a #building#. A #sign# shall include writing, representation or other figures of similar character, within a #building#, only when illuminated and located in a window...

\* \* \*

Sign, advertising

An "advertising sign" is a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a #use# located on the #zoning lot#; and

## The Appellant's Original Arguments

WHEREAS, in sum, the Appellant contended that the Final Determination should be reversed because (1) an advertising sign was established prior to June 1, 1968, as required under ZR § 42-55, and may therefore be maintained as a legal non-conforming use pursuant to ZR § 52-11, and (2) the Sign Structure has been occupied by an advertising sign with no discontinuance of two years or more since its establishment; and

WHEREAS, the Appellant argued that the art installation met the ZR § 12-10 definition of a "sign," in that (1) it was a pictorial representation (including illustration or decoration), (2) it was attached to the building; (3) it was used to direct attention to and advertise the artist Terry Fugate-Wilcox and his works; and (4) it was visible from outside the building; and

WHEREAS, the Appellant also contended that the context and circumstances applicable to the Sign make it clear that the Art Installation was simultaneously used for artistic and advertising purposes; and

WHEREAS, specifically, the Appellant asserted that the Sign Structure has a long history of use as an advertising sign from as early as the 1920's, the Art Installation was affixed in the exact same position and location as advertising signs that had been posted on the Building for six decades prior, and that it met all of the elements of the definition of a "sign," and based on this context the Art Installation may properly be construed as an advertising sign for the purposes of establishing a history of continuous use under the Zoning Resolution; and

## The Appellant's Position on Remand

WHEREAS, the Appellant asserts that the Board should reconsider its prior denial and order DOB to accept its sign registration for the following primary reasons: (1) the plain

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language of the ZR § 12-10 definitions controls; (2) sale of the pieces is indicative of an advertising signage and the inclusion of the artist's signature and; (3) any ambiguity in the text must be read in favor of the property owner; and (4) there are unique conditions surrounding the Sign Structure and location that will not allow it to set a precedent; and

WHEREAS, the Appellant asserts that the art installation was a "sign" and an "advertising sign" under the plain language of the Zoning Resolution; and

WHEREAS, the Appellant asserts that to affirm DOB's position that the Art Installation did not constitute an "advertising sign" during the time it was displayed, the Board would be taking a narrow reading of the statute that departs from its plain language; and

WHEREAS, the Appellant asserts that the installation was clearly a "sign," because it satisfies all elements of the definition that it was a pictorial representation (including illustration or decoration), that was (a) was attached to the building, (b) used to direct attention to and advertise the artist Fugate-Wilcox and his works, and (c) visible from the outside of the building; and

WHEREAS, the Appellant asserts that as with any other types of business, an artist must develop his or her brand, and that the Art Installation served that purpose by directing attention to the artist and his work by attracting attention to the installation itself; thus, element (b) of the "sign" definition is satisfied; and

WHEREAS, the Appellant asserts that the Art Installation also satisfies the definition of an "advertising sign" in that it "direct[ed] attention to a business, profession, commodity, service or entertainment" by directing attention to the artist and his work, which can be construed as a "business" (the business of creating artwork), a "profession" (being an artist), a "service" (providing commissioned works) or "entertainment" (the viewing and enjoyment of artwork); and

WHEREAS, the Appellant submitted an affidavit from the vice-president of the property owner of the site from 1973 to 2010 which states that Mr. Fugate-Wilcox leased the space on the Sign Structure and thus paid for the right to advertise his work and display his signature by posting the Art Installation on the Sign Structure; and

WHEREAS, the Appellant asserts that the Art Installation was posted as an opportunity to promote the brand and the work of the artist Terry Fugate-Wilcox and that the aesthetic and creative aspects of the Art Installation do not preclude its function as an advertising sign; and

WHEREAS, the Appellant asserts that such an interpretation is not found within the Zoning Resolution, which does not include anything in the statutory definition of "advertising sign" to suggest that it must exclude signs that also have independent aesthetic value; and

WHEREAS, further, the Appellant asserts that the Art Installation, while displayed on the Sign Structure, functioned as advertising for the artist Terry Fugate-Wilcox because (1) after the Fugate-Wilcox installation was removed from the Sign Structure, it was broken apart and sold as individual

pieces of artwork; and (2) the signature of the artist appeared on the corner of the installation; and

WHEREAS, the Appellant assert that in effect, the signature, and what the literature regarding Mr. Fugate-Wilcox's works describes as his "artistic voice" in a genre known in the art community as "Actual Art," which included an entire series of "weathering" art installations which directed attention to the artist and his unique works, thus satisfying the definition of "advertising sign"; and

WHEREAS, the Appellant asserts that, though not required by the statute, the fact that the installation functioned as advertising was then confirmed by the fact that patrons purchased pieces of the weathering wood as "works of art" after the installation was dismantled; and

WHEREAS, the Appellant asserts that the Art Installation served to draw attention to Mr. Fugate-Wilcox and became a source of commercial revenue for him, as pieces of the art were sold to the public due to the attention the art installation had garnered; and

WHEREAS, the Appellant assert that there is no requirement in the statute that an advertising sign have a "discernible message" as DOB contends; and

WHEREAS, the Appellant rejects DOB's inclusion of the requirement that there be a discernible message, but, asserts, that even if there were such a requirement, the installation would satisfy it because the art community at the time recognized the work as an expression of Mr. Fugate-Wilcox's "artistic voice"; and

WHEREAS, as to the artist's signature, the Appellant asserts that it is not relevant that the signature was not "prominently featured" as there is no requirement in the Zoning Resolution that a signature be the "focal point"; and

WHEREAS, the Appellant asserts that it also does not matter that the signature of the artist may have worn away over time because whether the signature lasted for one year or ten, its initial presence created an association between the artist and the weathering wood that would have persisted even after the signature eroded; and

WHEREAS, the Appellant reiterated its position that a sign bearing the Target brand logo of a target is analogous because it is similarly abstract and similarly fails to convey a discernible message; and

WHEREAS, the Appellant asserts that the Art Installation constituted advertising because it was a sign that directed attention to the artist, Terry Fugate-Wilcox, and his works and it is immaterial that only those most familiar with the art world and its community, understood and reacted to the advertisement by knowing that the artwork of Mr. Fugate-Wilcox was commercially available for purchase elsewhere; and

WHEREAS, the Appellant asserts that the statutory language is ambiguous and thus should be construed in favor of the property owner; and

WHEREAS, the Appellant asserts that if the Board or DOB believes the statutory language is too broad, and that applying its plain meaning as urged by Appellant would yield unusual or undesirable results, the appropriate remedy would

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be to amend the statute through the proper legislative channels; and

WHEREAS, finally, the Appellant asserts that the Subject Sign represents a unique circumstance of a long-grandfathered signage location that does not set a precedent for all artistic displays to be advertising signs; and

WHEREAS, the Appellant asserts that the sign was a legal “non-conforming” advertising use prior to the Art Installation and it should be seen as a continuation of a non-conforming advertising use of the Sign Structure in that the installation was in the same format and location as advertising signs that had been at this location since the 1920s; and

WHEREAS, the Appellant asserts that additional unique features include that the artist leased the space from the property owner; the artist was identified on the installation; and the pieces were subsequently sold; and

WHEREAS, finally, the Appellant asserts that the Court has already found that there were insufficient findings in the record to support the Board’s prior decision and that DOB has presented no new evidence or arguments that would support new findings by the Board; and

## DOB’s Original Arguments

WHEREAS, in sum, during the original case, DOB stated that it did not contest the Appellant’s claim that an advertising sign existed prior to June 1, 1968; however, DOB asserted that during the time the building wall was used to display the Art Installation, the non-conforming advertising sign use was discontinued, and therefore the use must terminate pursuant to ZR § 52-61; and

WHEREAS, DOB stated that pursuant to ZR § 12-10, a non-conforming “sign” must continue to be used to “announce, direct attention to or advertise,” and a non-conforming “advertising sign” must continue to be used as a sign that “directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same zoning lot”; and

WHEREAS, DOB concluded that painted plywood, whether visible in solid colors or eroded into patterns, does not announce, direct attention to or advertise a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same zoning lot, and therefore, does not constitute a “sign” or “advertising sign” pursuant to the ZR § 12-10 definitions of those terms; and

## DOB’s Position on Remand

WHEREAS, DOB maintains its position that the “Holland Tunnel Wall” displayed at the site from 1979 to 1989 did not meet the ZR § 12-10 definition of “sign” or “advertising sign” because: (1) the “Holland Tunnel Wall” did not “announce, direct attention to, or advertise” as per the sign definition’s requirement (b); and (2) the “Holland Tunnel Wall” did not direct attention to a business, profession, commodity, service or entertainment conducted, sold, or offered off the zoning lot as per the advertising sign definition’s requirement; and

WHEREAS, DOB cites to requirement (b) of the definition of “sign” which provides that a sign “announce, direct attention to, or advertise” a particular message because

the threshold requirement that there be an exhibition of any writing, picture, emblem, flag or other figure does not alone satisfy the other three elements of the ZR § 12-10 definition; and

WHEREAS, DOB states that the enumerated forms of expression must communicate a commonly understood message that is readily discernible by the viewer because otherwise the statute would include all forms of expression that met the sign definition’s requirements (a) and (c) and paragraph (b) would be without meaning; and

WHEREAS, DOB asserts that the “Holland Tunnel Wall” did not announce, direct attention to, or advertise because there was no particular message being conveyed; and

WHEREAS, in support of the assertion that the Art Installation failed to meet the definition of sign, DOB cites to historic records regarding the wall including copies of a Department of Finance photograph dated 1982-1987 and other photographs of the art installation posted on the Wikipedia website, which described the different layers of paint the artist used and the process of their degradation; and

WHEREAS, DOB notes that the article states that “[t]he artist’s intention was to use paints that were incompatible with each other so that as the work weathered, all the different colors would merge, in natural patterns;” and

WHEREAS, DOB also cites to a New York Times article dated August 7, 1981 titled “An Outdoor-Sculpture Safari Around New York” which described Fugate-Wilcox’s work at 111 Varick Street as “sheets of plywood painted yellow” covering the façade and noted that the artist felt that “[t]ime and the weather...will give [the display] esthetic appeal;” and

WHEREAS, accordingly, DOB asserts that the Art Installation was used to show changing paint patterns caused by exposure to the outdoors and not to “announce, direct attention to, or advertise” or (2) convey any message and, thus, was comparable to a display of colorful lights on a building, which also does not deemed to be a “sign” per zoning; and

WHEREAS, DOB asserts that in order to announce, direct attention to or advertise, as required by the definition’s (b), a sign must communicate a commonly understood message that is readily discernible by the viewer; and

WHEREAS, DOB states that the “Holland Tunnel Wall” did not “announce, direct attention to, or advertise” the artist, his artwork, or anything else; and

WHEREAS, first, DOB notes that there is no evidence that Mr. Fugate-Wilcox’s name was prominently identified such that the display was used for the purpose of promoting the artist and the work does not express any particular message about the artist or the artwork; and

WHEREAS, DOB notes that the artist’s signature was initially visible in the lower right hand corner of the Art Installation, but by the third year on display, the signature had worn away and was no longer legible; and

WHEREAS, DOB submitted an image from the Wikipedia article showing the “Holland Tunnel Wall” in years one, two and three to support the point that for approximately

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seven of the ten years of the work's installation, no signature was visible so if any message had ever been conveyed, it was certainly not during that period; and

WHEREAS, further, DOB asserts that for the life of the work, it did not contain identification of a museum exhibit, studio or gallery at which to view or buy the artist's artwork, and so there was no basis to conclude that the Art Installation was used to direct attention to the artist, his profession, or his artistic product as none of that information included on advertising signs was present; and

WHEREAS, DOB cites to the Wikipedia article, which states that "[w]hen the sub-structure of the plywood billboard eventually gave way to the effects of weathering [and] had to be dismantled, the artist was able to reclaim many of the weathered plywood panels which, in turn became individual works of art;" and

WHEREAS, however, DOB notes that there was no information displayed on the art installation that offered it for sale and it cannot be concluded that the art installation was used to promote its purchase simply because the artist was able to sell the art installation segments after it was taken down; and

WHEREAS, DOB states that even if the Art Installation were a sign, it was not an advertising sign; and

WHEREAS, DOB asserts that it would be overly restrictive to interpret the work as an advertising sign because it would render every display an "advertising sign" directing attention to itself as a commodity for sale; and

WHEREAS, DOB notes that, contrary to the Appellant's assertion, the Wikipedia article on the artist states that the wall space was not leased, but donated by the owner of the building; and

WHEREAS, further, the article states that the installation was painted by riggers of the Apollo Painting Company who donated their services and was sponsored by the Lower Manhattan Cultural Council (LMCC), which identifies itself as a non-profit art organization that produces cultural events and promotes the arts through grants, services, advocacy, and cultural development programs; and

WHEREAS, DOB asserts that regardless of whether the artist paid the building's owner for the right to display his artwork or whether the project was funded by either a non-profit or commercial organization, the installation was not a sign, or advertising sign, regulated by the ZR because the face of the installation did not communicate a commonly understood message readily discernible by the viewer about the artist's business or artwork; and

WHEREAS, DOB concludes that the Holland Tunnel Wall does not meet the definition of a "sign;" and

WHEREAS, DOB notes that an "advertising sign" per ZR § 12-10 is a "sign" that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered on another zoning lot and that, accordingly, to be an advertising sign under the ZR, the Appellant must show that this installation communicated a commonly understood message readily discernible by the viewer about the artist's business or artwork sold elsewhere; and

WHEREAS, DOB disagrees with the Appellant's position that the installation was not an advertising sign that directed attention to the artist's business conducted on another zoning lot and artwork as a commodity sold on another zoning lot because the artist's signature on the installation drew attention to the artist and the sale of the "Holland Tunnel Wall" generated revenue; and

WHEREAS, DOB asserts that the artist's signature and sale of the installation do not satisfy the terms of the ZR "sign" or "advertising sign" definitions; and

WHEREAS, first, DOB notes that the artist's name was not prominently featured in the display and that the overall effect of the small signature that wore away after three years in the context of the large display of changing paint colors did not direct attention to the artist; and

WHEREAS, DOB asserts that an artist's signature is customarily used to show that a work is finished and authentic and is typically shown, as it was on the "Holland Tunnel Wall," in a neutral color in the lower right hand corner of the work in order to not distract the viewer's eye; and

WHEREAS, DOB asserts that given a signature's conventional use on artwork, it would be unreasonable to consider the artist's signature the focal point of the installation particularly given that the artist's signature was no longer legible or even visible after the third year, therefore the signature was not an important element of the display during its ten year long use; and

WHEREAS, DOB finds that the temporary and incidental presence of the artist's signature did not communicate a commonly understood message about the artist or his works and did not render the installation an advertising sign; and

WHEREAS, further, DOB asserts that how a display is used once it is removed from the premises is not a criterion for determining whether it was a sign or an advertising sign regulated by the ZR; and

WHEREAS, specifically, DOB states that the handling of the "Holland Tunnel Wall" after it was removed from the premises (to the extent it was dismantled and sold in pieces) does not support a finding that while it was displayed it promoted itself as a commodity that could be purchased; and

WHEREAS, DOB states that had the installation identified a museum exhibit, studio or gallery at which to view or buy the artist's artwork, it would have been an advertising sign that directed attention to the artist's business and products offered on another zoning lot; and

WHEREAS, DOB states that here, there is no evidence of contemporaneous publicity to demonstrate that the installation was installed to encourage its sale or other artwork of the artist generally; and

WHEREAS, DOB states that the installation with abstract paint patterns on it does not direct attention to anything but itself as it exists on-site at the premises and does not meet the definition's standard for an advertising sign; and

WHEREAS, DOB disagrees with the Appellant's assertion that since the City does not have a policy with respect to whether art could constitute advertising, an art

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installation that does not meet the ZR sign definition should nevertheless be regulated as an advertising sign if it is located in the same wall space formerly used to display advertising signs; and

WHEREAS, DOB asserts that this argument misses the point because the only relevant question is whether the display meets the ZR's definition of a sign, not what the historic use of the Sign Structure has been; and

WHEREAS, moreover, DOB asserts that the Appellant's proposal to treat artwork as an advertising sign based only on the former use of the billboard space is incompatible with ZR § 52-61, which recognizes that once a non-conforming use ceases for a continuous period of two years, the right to the non-conforming use is lost; and

WHEREAS, DOB notes that the ZR does not make exception to allow the reactivation of a non-conforming advertising sign use following a ten year-long display of an art installation that did not meet the sign definition; and

### The Board's Original Conclusion

WHEREAS, as noted, the Board re-adopts its prior resolution dated January 15, 2013 and re-affirms its position to uphold DOB's determination that the advertising sign use at the site was discontinued for a ten-year period between 1979 and 1989 when the "Holland Tunnel Wall" occupied the building and, thus, the advertising sign use must terminate pursuant to ZR § 52-61; and

WHEREAS, in sum, the Board found that the art installation, which consisted of sheets of plywood painted in layers of solid colors, did not meet the ZR § 12-10 definition of a "sign" or an "advertising sign" because it did not "announce, direct attention to, or advertise" a business, profession, commodity, service, or entertainment conducted, sold, or offered elsewhere than upon the same zoning lot; and

WHEREAS, the Board agreed with DOB that the Art Installation is a creative expression that attracts attention to itself rather than directing attention to a use or product off the site, and therefore it lacks requirement (b) of the ZR § 12-10 definition of "sign"; and

WHEREAS, the Board found the fact that the Art Installation is similar to many other murals displayed throughout the City, which DOB noted are not subject to the sign regulations of the Zoning Resolution, to be further evidence that an artist's signature is not sufficient to transform a piece of art into an advertising sign, since it is standard practice for artists to sign their work; and

### The Board's Conclusion on Remand

WHEREAS, in consideration of all the supplemental points made in the record on remand, the Board is not persuaded by the Appellant's position that the "Holland Tunnel Wall" satisfies the definition of "sign" but that even if it were a "sign," by definition, it is not an "advertising sign," which is the regulated use subject to the discontinuation provisions of ZR § 52-61; and

WHEREAS, specifically, the Board does not find that the Art Installation created from paint and plywood satisfies requirement (b) of the ZR § 12-10 definition of "sign" for announcing, directing attention to, or advertising; and

WHEREAS, the Board finds that the inclusion of the requirement that a sign "announce, direct attention, or advertise" acknowledges that there are examples of writing, pictorial representation, emblems, flags or other characters which announce, direct attention to, or advertise and there are those that do not do any of those things yet may satisfy the other elements of the definition; and

WHEREAS, the Board finds that if every form of representation within the definition's list that is attached to a building (requirement (a)) and visible from outside the building (requirement (c)) "announce[d], directe[d] attention to, or advertise[d]" then there would not be any reason to include requirement (b); and

WHEREAS, the Board finds that the complete criteria for signs is enumerated so as to make clear that writing or pictorial representation along with being located on a wall alone do not meet the criteria for a sign and would fit into some other category not regulated by DOB; and

WHEREAS, the Board notes that there may be a pictorial representation that announces or advertises (requirement (b)) and is attached to a wall (requirement (a)) but is not visible from the outside of a building (requirement (c)) and therefore not a sign; and

WHEREAS, the Board notes that such a representation may have many qualities of a "sign" and even be referred to as a sign outside of the zoning context, but would not be a "sign" as per the Zoning Resolution and would not be regulated by DOB or the sign provisions; and

WHEREAS, the Board finds that the Appellant's interpretation of requirement (b) is overly broad, would lead to the conclusion that requirement (b) is unnecessary to state, and does not have any basis in either the statute or common sense; and

WHEREAS, the Board asserts that there are many forms of representation that would satisfy elements (a) and (c) but do not include (b) in any reasonable sense; and

WHEREAS, the Board cites to graffiti, which often includes a signature, would satisfy (a) and (c) but not (b) in any reasonable sense but, by the Appellant's reading, it would be a sign as it may direct attention to the graffiti artist's work there and elsewhere or to the graffiti artist; and

WHEREAS, additionally, the Board posits that, under the Appellant's interpretation, an architectural feature or piece of art attached to a building wall (such as a cornice or a metal sculptural relief on an exterior wall at Pace University) would be deemed a sign because it directs attention to itself and to the artist, like the "Holland Tunnel Wall" or ubiquitous graffiti; and

WHEREAS, the Board notes that if an architect imprinted her name on a building's exterior wall that had some form of decoration on it, by the Appellant's reasoning, that wall would be a sign because it announces, directs attention to, or advertises the architect; and

WHEREAS, in fact, the Board notes that it is difficult to imagine any visual representation that does not announce something, and would therefore not be a sign, if announcing its own presence or the identity of its creator alone would

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satisfy the (b) requirement; and

WHEREAS, the Board does not find that the statute's text is overly broad and leads to absurd results; and

WHEREAS, the Board notes that there are many examples of a representation fitting several of the definitional requirements, but not all, and thus may not be a "sign" in the zoning context and subject to the limitations and benefits of such use; and

WHEREAS, the Board finds that the plain reading of the text does not result in a conclusion that the "Holland Tunnel Wall" is a sign, because it does not announce, direct attention to, or advertise and the Board does not find the language to be ambiguous if the concepts in requirement (b) are given their plain meaning; and

WHEREAS, the Board does not see any requirement in the text that there be a discernible message, as DOB asserts, but finds that for the definition to have any meaning, there must be (1) a reasonable nexus between the sign and the business, profession, commodity, service or entertainment conducted, sold, or offered *offsite*, or else every "sign" would be an "advertising sign"; and

WHEREAS, furthermore, the Board questions whether the "Holland Tunnel Wall" satisfies the threshold requirement of being a "writing (including letter, word, or numeral), pictorial representation (including illustration or decoration), emblem (including device, symbol, or trademark), flag, (including banner or pennant), or any other figure of similar character" as the subject installation without any pictorial representation arguably does not satisfy even the threshold element of the "sign" definition; and

WHEREAS, the Board finds that the Appellant's repeated example of the Target brand logo is completely distinguishable as the Target logo is a pictorial representation (an illustration) of a target sign and it is an emblem (a symbol and a trademark); and

WHEREAS, the Board finds that, contrary to the Appellant's assertions, there is nothing abstract about the Target brand logo and no question that it satisfies requirement (b) that it announces, directs attention to, and advertises the brand; and

WHEREAS, the Board finds that even if the Holland Tunnel Wall were a "sign," by definition, it is not an "advertising sign" by definition because it does not "direct[ ] attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere"; and

WHEREAS, again, the Board finds that every sign has a connection to something offsite and in most every case the person who actually installed the sign is offsite, so, by the Appellant's reasoning, graffiti and decorative reliefs or architectural features, would be "advertising signs"; and

WHEREAS, the Board finds that the requirement is actually that "sign" direct attention to one of the enumerated endeavors *off* the zoning lot; so that, if the Holland Tunnel Wall were a "sign," it could only be so in the sense that it directs attention to itself as there is no perceptible nexus between it and an endeavor off of the zoning lot; and

WHEREAS, similarly, the Board does not find that the

inclusion of a signature has any bearing on whether or not the Holland Tunnel Wall was an advertising sign, but notes that for approximately seven years no signature was visible, so finding the nexus between the installation and the "business," "profession," or "service" offsite is even more strained; on the contrary, the installation draws attention to something *on* the site, itself; and

WHEREAS, the Board notes that there is not any compelling evidence to refute the unbiased reporting that the Lower Manhattan Culture Council (LMCC) sponsored the project and secured the space, including the affidavit from someone affiliated with the building during the relevant period, which does not provide any evidence to establish that Mr. Fugate-Wilcox himself leased the space or that the LMCC did not lease the space on behalf of Mr. Fugate-Wilcox; and

WHEREAS, the Board notes that the distinctions between art and advertising are made to the benefit of art and that the exclusion of art installations from the definitions of "sign" and "accessory sign" protects the rights of artists and their expression thus, DOB routinely exempts murals and other art displays, which satisfy requirements (a) and (c) from sign regulations, but not (b); and

WHEREAS, the Board finds that the Appellant's argument that the Holland Tunnel Wall is an advertisement undermines the protections in place (including through the First Amendment and the Zoning Resolution) for art and the greater freedom it enjoys than advertising signs; and

WHEREAS, the Board notes that murals and other art installations on building walls are not regulated by the Zoning Resolution, or, indeed, any other local law, rule, or regulation except to the extent that the *process* of installing or maintaining such works requires agency approval; for example, scaffolds 40 feet or more in height require a work permit from the Department of Buildings pursuant to Building Code Section 3314.2; and

WHEREAS, the Board finds that an installation by an artist that was conceived of as art, according to reporting on the matter and which was completed using donated labor, materials, and through the support of a non-profit cultural organization that supports public art, fails to have any nexus to a commercial endeavor off of the zoning lot; and

WHEREAS, the Board notes that the Appellant looks to the unique history of the subject wall at 111 Varick Street, including that it has been occupied by a sign and sign structure for 80 or 90 years and that it is highly visible such that there is an expectation for an advertising sign to be there; and that the Holland Tunnel Wall occupied a former billboard space; and

WHEREAS, the Board finds such suppositions to be conclusory given that a high degree of visibility is not a requirement in zoning and that the shape and degree of visibility of an installation is not relevant to the analysis of whether it is advertising; and

WHEREAS, the Board notes that a flat rectangular form, such as that occupied by billboards, is a traditional and very natural backdrop for a painting and that any artist would prefer a location with optimal visibility; further, the fact that the Sign replaced a historic billboard is irrelevant to the

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question of whether it satisfies the definition of an advertising sign; and

WHEREAS, the Board concludes that through this decision, it does not have a basis to establish the distinction between all art and all advertising, but, based on the record before it, the Board determines that the the subject installation of plywood and layers of weathering paint was not an advertising sign and, thus, for the period between 1979 and 1989, the advertising sign use on the subject wall at 111 Varick Street discontinued to an extent that such use is no longer permitted pursuant to ZR § 52-61; and

*Therefore it is resolved*, that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated March 12, 2012, on remand is hereby denied.

Adopted by the Board of Standards and Appeals, December 17, 2013.

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

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## 127-13-A

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Brusco Group, Inc., owner.

SUBJECT – Application May 1, 2013 – Appeal under Section 310 of the Multiple Dwelling Law to vary MDL Sections 171-2(a) and 2(f) to allow for a vertical enlargement of a residential building. R8 zoning district.

PREMISES AFFECTED – 332 West 87th Street, south side of West 87th Street between West end Avenue and Riverside Drive, Block 1247, Lot 48 Borough of Manhattan.

## COMMUNITY BOARD #7M

**ACTION OF THE BOARD** – Laid over to January 28, 2014, at 10 A.M., for deferred decision.

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## 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 & 47 Cecilia Court, Cecilia

Court off of Howard Lane, Block 615, Lot 210, 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 28, 2014, at 10 A.M., for decision, hearing closed.

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## 156-13-A

APPLICANT – Bryan Cave LLP, for 450 West 31 Street Owners Corp, owner; OTR Media Group, Inc., lessee.

SUBJECT – Application May 17, 2013 – Appeal of DOB determination that the subject advertising sign is not entitled to non-conforming use status. C6-4/HY zoning district.

PREMISES AFFECTED – 450 West 31<sup>st</sup> Street, West 31<sup>st</sup> Street, between Tenth Avenue and Lincoln Tunnel Expressway, Block 728, Lot 60, Borough of Manhattan.

## COMMUNITY BOARD #10M

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 28, 2014, at 10 A.M., for decision, hearing closed.

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## 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

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

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## 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

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Newtown Avenue and 30<sup>th</sup> Street, Block 596, Lot 9, Borough of Queens.

**COMMUNITY BOARD #4Q**

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

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## ZONING CALENDAR

### 206-13-BZ

APPLICANT – Fried Frank Harris Shriver and Jacobson LLP, for 605 West 42nd Owner LLC, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-36) to allow a physical culture establishment within an existing building. C6-4 zoning district.

PREMISES AFFECTED – 605 West 42nd Street, eastern portion of the city block bounded by West 42nd St, West 43rd Street, 11th Avenue and 12th Avenue, Block 1090, Lot 29, 23, 7501, Borough of Manhattan.

**COMMUNITY BOARD #4M**

**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 Executive Zoning Specialist of the Department of Buildings (“DOB”), dated June 6, 2013, acting on DOB Application No. 121331120, reads in pertinent part:

Proposed physical culture establishment, as defined by ZR 12-10, is contrary to ZR 32-10 and ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in C6-4 zoning district within the Special Clinton District, the operation of a physical culture establishment (“PCE”) in portions of the cellar, first, and third floor of a 60-story mixed residential and commercial building, contrary to ZR §§ 32-10 and 32-31; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, and then to decision on December 17, 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 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Eleventh Avenue between West 42nd Street and West 43rd Street, within a C6-4 zoning district, within the Special Clinton District; and

WHEREAS, the site has 575 feet of frontage along West 43rd Street, 200.84 feet of frontage along Eleventh Avenue, 579 feet of frontage along West 42nd Street, and 115,881 sq. ft. of lot area; and

WHEREAS, under construction at the site is a 60-story mixed residential and commercial building; and

WHEREAS, the PCE is proposed to occupy a total of 59,680 sq. ft. of floor space, 20,457 sq. ft. of floor space in the cellar, 2,166 sq. ft. on the first floor, 19,268 sq. ft. of floor area on the third floor, and 17,788 sq. ft. of outdoor space with two swimming pools at the third floor above the second floor roof; and

WHEREAS, the PCE will be operated by the owner of the building, 605 West 42nd Owner, LLC; 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 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, the Board also finds that the PCE supports the general purposes of the Special Clinton District, which include strengthening the residential character of the community, in accordance with ZR § 96-00; and

WHEREAS, in accordance with ZR § 73-36(b), the Board may permit outdoor PCE uses, provided that additional findings are made; and

WHEREAS, at hearing, the Board requested additional information regarding the uses adjacent to the proposed outdoor swimming pools and directed the applicant to identify limited hours for such use; and

WHEREAS, in response, the applicant submitted an amended statement and a site plan detailing the adjacent uses, which includes two street frontages, terraces, and common residential spaces (tenant lounge and recreation area) within the building; and

WHEREAS, in addition, the applicant states that use of the pools will be limited to daily from 6:00 a.m. to 7:00 p.m.

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from Columbus Day to Memorial Day, and daily from 6:00 a.m. to 9:00 p.m. from Memorial Day to Columbus Day; the applicant notes that it does not propose to limit the hours of use of the outdoor areas adjacent to the pools when the PCE is closed; and

WHEREAS, the applicant represents that its proposed outdoor pools are consistent with the findings required under ZR § 73-36(b); and

WHEREAS, the Board agrees that the proposed outdoor PCE use is in accordance with ZR § 72-36(b); 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. 14BSA002M, dated September 23, 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 C6-4 zoning district within the Special Clinton District, the operation of a physical culture establishment (“PCE”) in portions of the cellar, first, and third floor of a 60-story mixed residential and commercial building, contrary to ZR §§ 32-10 and 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received September 23, 2013” – Five (5) sheets; and *on further condition*:

THAT the term of this grant will expire on December 17, 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 operation for the outdoor pools will be limited to daily from 6:00 a.m. to 7:00 p.m. from Columbus Day to Memorial Day, and daily from 6:00 a.m. to 9:00 p.m. from Memorial Day to Columbus Day; however, the hours of use of the outdoor areas adjacent to the pools will not be limited under this grant;

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, December 17, 2013.

## 219-13-BZ

### CEQR #14-BSA-012M

APPLICANT – Eric Palatnik, P.C., for 2 Cooper Square LLC, owner; Crunch LLC, lessee.

SUBJECT – Application July 19, 2013 – Special Permit (§73-36) to allow physical culture establishment (*Crunch Fitness*) within a portions of an existing mixed use building contrary to §42-10. M1-5B zoning district.

PREMISES AFFECTED – 2 Cooper Square, northwest corner of intersection of Cooper Square and East 4th Street, Block 544, Lot 65, 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, the decision of the Manhattan Borough Commissioner, dated July 8, 2013, acting on Department of Buildings (“DOB”) Application No. 121694345, reads in pertinent part:

Proposed use as a physical culture establishment, as defined by ZR 12-10, is contrary to ZR 42-10; and

WHEREAS, this is an application under ZR §§ 73-36

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and 73-03, to permit, on a site located in an M1-5B zoning district, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first floor of an existing 15-story mixed residential and commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, and then to decision on December 17, 2013; and

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

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

WHEREAS, the subject site is located at the northwest corner of the intersection of Cooper Square and East Fourth Street, within an M1-5B zoning district; and

WHEREAS, the site has 142.62 feet of frontage along Cooper Square, 114.12 feet of frontage along East Fourth Street, and 5,335 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 15-story mixed residential and commercial building; and

WHEREAS, the PCE is proposed to occupy 8,998 sq. ft. of floor space in the cellar and 9,410 sq. ft. of floor area on the first floor for a total PCE floor space of 18,408 sq. ft.; and

WHEREAS, the PCE will be operated as Crunch; 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 11:00 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, at hearing, the Board directed the applicant to submit additional information regarding the sound attenuation measures to be taken; and

WHEREAS, in response, the applicant submitted an amended plan detailing the full extent of the sound attenuation measures; 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. 14BSA012M, dated July 17, 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 an M1-5B zoning district, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first floor of an existing 15-story mixed residential and commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 29, 2013” – Seven (7) sheets; and *on further condition*:

THAT the term of this grant will expire on December 17, 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 operation will be limited to Monday through Saturday, from 5:00 a.m. to 11:00 p.m., and Sunday, from 7:00 a.m. to 9:00 p.m.;

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;

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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, December 17, 2013.

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## 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

**ACTION OF THE BOARD** – Laid over to February 25, 2014, at 10 A.M., for continued hearing.

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## 254-12-BZ

APPLICANT – Patrick W. Jones, P.C., for Salmar Properties, LLC, owner.

SUBJECT – Application August 20, 2013 – Variance (§72-21) to permit Use Group 10A uses on the first and second floors of an existing eight-story building, contrary to use regulations (§42-00). M3-1 zoning district.

PREMISES AFFECTED – 850 Third Avenue aka 509/519 Second Avenue, bounded by Third Avenue, unmaped 30th Street, Second Avenue, and unmaped 31st Street, Block 671, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

**ACTION OF THE BOARD** – Laid over to January 14, 2014, at 10 A.M., for deferred decision.

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## 279-12-BZ

APPLICANT – Akerman Senterfitt LLP, for Bacele Realty, owner.

SUBJECT – Application September 20, 2012 – Variance (§72-21) to permit a bank (UG 6) in a residential zoning district, contrary to §22-00. R4/R5B zoning district.

PREMISES AFFECTED – 27-24 College Point Boulevard, northwest corner of the intersection of College Point Boulevard and 28th Avenue, Block 4292, Lot 12, Borough of Queens.

### COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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## 303-12-BZ

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

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

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

### COMMUNITY BOARD #17BK

**ACTION OF THE BOARD** – Laid over to January 28, 2014, at 10 A.M., for deferred decision.

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## 92-13-BZ & 93-13-BZ

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

SUBJECT – Application March 21, 2013 – Variance (§72-21) to permit the construction of two semi-detached one-family dwellings, contrary to required rear yard regulation (§23-47). R3-1(LDGMA) zoning district.

PREMISES AFFECTED – 22 and 26 Lewiston Street, west side of Lewiston Street, 530.86 feet north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

### COMMUNITY BOARD #2SI

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

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## 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, contrary to §42-10 zoning resolution. M1-1 zoning district.

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

**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for continued hearing.

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# MINUTES

## 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

**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for continued hearing.

## 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

**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for continued hearing.

## 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)) regulations. 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

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

## 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

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 28, 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

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.

## 213-13-BZ

APPLICANT – Rothkrug 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 January 28, 2014, at 10 A.M., for continued hearing.

## 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*

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# MINUTES

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*Fit*) located in the cellar level of an existing 31-story building. C4-7 zoning district.

*Adjourned: P.M.*

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 January 28, 2014, at 10 A.M., for continued hearing.

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**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**

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 28, 2014, at 10 A.M., for decision, hearing closed.

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**292-13-BZ**

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

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow the development of a Use Group 4A house of worship (*Congregation Bet Yaakob*), contrary to floor area, open space ratio, front, rear and side yards, lot coverage, height and setback, planting, landscaping and parking regulations. R5, R6A and R5/OP zoning districts.

PREMISES AFFECTED – 2085 Ocean Parkway, northeast corner of the intersection of Ocean Parkway and Avenue U, Block 7109, Lots 56 & 50 (Tentative Lot 56), Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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 28, 2014, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*