
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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

Volume 98, No. 7

February 20, 2013

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DOCKETS

New Case Filed Up to February 12, 2013

60-13-A

71 & 75 Greene Avenue, northwest corner of Greene and Clermont Avenues., Block 2121, Lot(s) 44,41,36,39,105, Borough of **Brooklyn, Community Board: 2**. Appeal seeking to revoke Certificate of OccupancyNos. 147007 & 172308 as they were issued in error .

61-13-BZ

1385 Broadway, west side Broadway between West 37th and West 38th Streets, Block 813, Lot(s) 55, Borough of **Manhattan, Community Board: 5**. This application seeks a special permit under Section 73-36ZR to legalize the operation of a physical culture establishment.

62-13-BZ

2703 East Tremont Avenue, property fronts on St. Raymond's Avenue to the northwest, Williamsbridge Road to the northeast, and East Tremont Avenue to the southwest., Block 4076, Lot(s) 12, Borough of **Bronx, Community Board: 10**. Application is filed pursuant to ZR§73-243, as amended, seeking to legalize the existing Wendy's eating and drinking establishment with an accessory drive-through facility at the premises. C1-2/R6 zoning district.

63-13-BZ

11-11 44th Drive, north side of 44th Drive between 11th Street and 21st Street., Block 447, Lot(s) 13, Borough of **Queens, Community Board: 2**. Application filed pursuant to ZR§§42-31 and 73-36, as amended, seeking a special permit to allow the operation of rock climbing gymnasium, which is considered a physical culture establishment, within the building at the premises.

64-13-BZ

712 Avenue W, south side of Avenue W between East 7th Street and Coney Island Avenue., Block 7184, Lot(s) 5, Borough of **Brooklyn, Community Board: 15**. Application filed pursuant to ZR§73-622, as amended, to request a special permit to allow the enlargement of a single family residence located in a residential (R4) zoning district in the Special Ocean Parkway District.

65-13-BZ

123 Franklin Avenue, between Park and Myrtle Avenues., Block 1899, Lot(s) 108, Borough of **Brooklyn, Community Board: 3**. Variance pursuant to ZR§72-21 to permit a residential development, contrary to use regulations, ZR§42-00. M1-1 zoning district.

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

CALENDAR

MARCH 5, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 5, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

364-82-BZ

APPLICANT – Troutman Sanders LLP, for Little Neck Commons LLC, owner; Bally's Total Fitness of Greater New York, lessee.

SUBJECT – Application December 13, 2012 – Extension of term of a previously granted Variance (§72-21) for the continued operation of a physical culture establishment (Bally's Total Fitness) which expired on January 18, 2013. C1-2/R3-2 zoning district.

PREMISES AFFECTED –245-24 Horace Harding Expressway, Horace Harding Expressway, 140' west of Marathon Parkway, Block 8276, Lot 100, Borough of Queens.

COMMUNITY BOARD #11Q

62-99-BZ

APPLICANT – Akerman Senterfitt LLP, for Starlex LP, owner; Bliss World LLC, lessee.

SUBJECT – Application June 19, 2012 –Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a physical cultural establishment (Bliss) which expired on January 31, 2009; Extension of Time to obtain a Certificate of Occupancy which which expired on February 1, 2004; Waiver of Rules. C6-6 zoning district.

PREMISES AFFECTED – 541 Lexington Avenue, east side of Lexington Avenue, between E. 49th Street and E. 50th Streets, Block 1304, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEALS CALENDAR

292-12-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Marie & Kenneth Fuchs, lessees.

SUBJECT – Application October 10, 2012 –Proposed reconstruction and enlargement of the existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law. The proposed upgrade of the existing private disposal system in the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law. R4 zoning district.

PREMISES AFFECTED – 19 Marion Walk, east side of

Marion Walk, 125' north of Breezy Point, Block 16350, Lot p/o400, Borough of Queens.

COMMUNITY BOARD #14Q

326-12-A thru 337-12-A

APPLICANT – Gibson Dunn, for Contest Promotions-NY LLC by Jessica Cohen

OWNER OF PREMISES: Lily Fong, Michael A. Maidman, Thomas Young, George Aryeh, Lily Fong, Vincent J. Ponte, Hung Ling Yung, David R. Acosta, James B. Luu, Fred G. Eng.

SUBJECT – Applications December 11, 2012 – Appeals challenging the Department of Buildings determination to revoke 12 permits previously issued permitting business accessory signs on the basis that they appear to be advertising signs.

PREMISES AFFECTED –

52 Canal Street, Block 294, Lot 22, C6-2 zoning district, Manhattan

1560 2nd Avenue, Block 1543, Lot 49, C1-9 zoning district, Manhattan

2061 2nd Avenue, Block 1655, Lot 28, R8A zoning district, Manhattan

2240 1st Avenue, Block 1709, Lot 1, R7X zoning district, Manhattan

160 East 25th Street, Block 880, Lot 50, C2-8 zoning district, Manhattan

289 Hudson Street, Block 594, Lot 79, C6-2A zoning district, Manhattan

127 Ludlow Street, Block 410, Lot 17, C4-4A zoning district, Manhattan

1786 3rd Avenue, Block 1627, Lot 33, R8A zoning district, Manhattan

17 Avenue B, Block 385, Lot 1, R7A zoning district, Manhattan

173 Bowery, Block 424, Lot 12, C6-1 zoning district, Manhattan

240 Sullivan Street, Block 540, Lot 23, R7-2 zoning district, Manhattan

361 1st Avenue, Block 927, Lot 25, C1-6A zoning district, Manhattan

COMMUNITY BOARD #2/3/6/8/9/11M

CALENDAR

ZONING CALENDAR

284-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Jack Cayre, owner.
SUBJECT – Application September 25, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary to floor area (ZR 23-141) and perimeter wall height (ZR 23-631) requirements. R2X (OP) zoning district.

PREMISES AFFECTED – 2047 East 3rd Street, eastern side of East 3rd Street, between Avenue S and Avenue T, Block 7106, Lot 122, Borough of Brooklyn.

COMMUNITY BOARD #15BK

313-12-BZ

APPLICANT – Troutman Sanders LLP, for Flatbush Delaware Holding LLC, owner; Bally's Total Fitness of Greater New York, lessee.

SUBJECT – Application November 20, 2012 – Special permit (§73-36) to permit the continued operation by Bally's Total Fitness of the existing physical culture establishment. C4-2/C4-4A zoning district.

PREMISES AFFECTED – 1009 Flatbush Avenue, block bounded by Flatbush Avenue, Albermarle Road, Bedford Avenue and Tilden Avenue, Block 5126, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

314-12-BZ

APPLICANT – Troutman Sanders LLP, for New York Communications Center Associates, L.P. c/o George Comfort & Sons Inc., owner; Bally's Total Fitness of Greater New York, lessee.

SUBJECT – Application November 20, 2012 – Special permit (§73-36) to permit the continued operation by Bally's Total Fitness of Greater New York of the existing physical culture establishment. C6-4 (CL) zoning district.

PREMISES AFFECTED – 350 West 50th Street, block bounded by West 49th Street, Ninth Avenue, West 50th Street and Eighth Avenue, Block 1040, Lot p/1 Condo Lot 1003, Borough of Manhattan.

COMMUNITY BOARD #4M

325-12-BZ

APPLICANT – Bryan Cave LLP by Margery Perlmutter, for Royal Charter Properties, Inc., for New York Presbyterian Hospital, owner.

SUBJECT – Application December 10, 2012– Variance (§72-21) to permit a modification of height and setback, lot coverage, rear yard, floor area and parking to facilitate development of a Use Group 4 maternity hospital and ambulatory diagnostic or treatment health care facilities (*New York Presbyterian Hospital*). R10/R9/R8 zoning

districts.

PREMISES AFFECTED – 1273-1285 York Avenue, west side of York Avenue bounded by East 68th and 69th Streets, Block 1463, Lot 21, 31, Borough of Manhattan.

COMMUNITY BOARD #8M

341-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 403 Concord Avenue, Inc., owner.

SUBJECT – Application December 17, 2012 – Special Permit (§73-19) to permit a Use Group 3 school to occupy an existing building contrary to §42-00 of the zoning resolution. M1-2 zoning district.

PREMISES AFFECTED – 403 Concord Avenue, southwest corner of the intersection formed by Concord Avenue and East 144th Street, Block 2573, Lot 87, Borough of Bronx.

COMMUNITY BOARD #1BX

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 12, 2013
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

173-99-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for LaGuardia Center, owner; LaGuardia Fitness Center LLC, Matrix Fitness Club, lessee.

SUBJECT – Application July 9, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Matrix Fitness Club*) which expired on March 6, 2011; Amendment for an increase in floor area at the cellar level; waiver of the Rules, M-1 zoning district.

PREMISES AFFECTED – 43-60 Ditmars Boulevard, southeast side of Ditmars Boulevard on the corner formed by Ditmars Boulevard and 43rd Avenue, Block 782, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on March 6, 2011, and an amendment to expand the PCE use at the cellar level; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in *The City Record*, with continued hearings on October 23, 2012, November 20, 2012 and January 15, 2013, and then to decision on February 12, 2013; and

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

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

WHEREAS, the site is located on the southeast corner of Ditmars Boulevard and 43rd Street, within an M1-1 zoning district; and

WHEREAS, the zoning lot has a total area of approximately 110,000 sq. ft. and is occupied by a shopping

mall; and

WHEREAS, the PCE occupies approximately 17,960 sq. ft. of floor space located in the cellar of a portion of the 60,666 sq. ft. commercial building on the site; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 6, 2001 when, under the subject calendar number, the Board granted a special permit for the establishment of a PCE in the subject building for a term of ten years, to expire on March 6, 2011; and

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

WHEREAS, the applicant also requests an amendment to permit a 2,635.72 sq. ft. expansion of the PCE at the cellar level, from a total of 17,960 sq. ft. of floor space to a total of 20,595.72 sq. ft. of floor space; and

WHEREAS, at hearing, the Board raised concerns about the impact of the proposed expansion of the PCE on the parking spaces at the cellar level of the subject building; and

WHEREAS, in response, the applicant states that while the certificate of occupancy and approved plans indicate that there is accessory parking for 150 spaces on the site (84 spaces on the first floor and 66 spaces at the cellar level), the applicant states that the parking layout was never constructed pursuant to the proposed plans and the actual existing parking layout consists of a total of 136 parking spaces (84 spaces on the first floor and 52 spaces at the cellar level); and

WHEREAS, the applicant further states that the proposed expansion of the PCE floor space at the cellar will not affect the existing parking layout or the existing number of parking spaces; and

WHEREAS, additionally, the applicant represents that the parking provided at the site is not required parking, and therefore complies with the Zoning Resolution, because the original manufacturing building at the site was constructed prior to 1961, and pursuant to ZR § 44-21 there is no parking required for conversions that do not increase the floor area of the building; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on March 6, 2001, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from March 6, 2011, to expire on March 6, 2021, and to permit the noted modifications to the site; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received July 9, 2012’-(3) sheets and ‘January 7, 2013’-(1) sheet; and *on further condition*:

THAT the term of this grant will expire on March 6, 2021;

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

THAT the above conditions will appear on the

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certificate of occupancy;

THAT a new certificate of occupancy will be obtained by February 12, 2014;

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

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

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

(DOB Application No. 400913302)

Adopted by the Board of Standards and Appeals, February 12, 2013.

189-03-BZ

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

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

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

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to March 12, 2013, at 10 A.M., for deferred decision.

551-37-BZ

APPLICANT – Eric Palatnik, P.C., for Manocher M. Mehrfar, owner.

SUBJECT – Application October 12, 2012 – Extension of Term (§11-411) of approved variance for the continued operation of an automobile repair shop (*Red's Auto Repair*) which expired on July 15, 2012; Waiver of the Rules. R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, between 234th and 233rd Street, Block 8166, Lot 20, Borough of Queens.

COMMUNITY BOARD #11Q

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

68-91-BZ

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

SUBJECT – Application August 24, 2012 – Extension of Term (§11-411) of an approved variance which permitted

the operation of an automotive service station (UG 16B) with accessory uses, which expired on May 19, 2012; Amendment §11-412) to permit the legalization of certain minor interior partition changes and a request to permit automotive repair services on Sundays; Waiver of the Rules.

R5D/C1-2 & R2A zoning district.

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

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 12, 2013, at 10 A.M., for decision, hearing closed.

18-02-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 8610 Flatlands Realty, LLC, owner.

SUBJECT – Application August 17, 2012 – Extension of Term (§11-411) of an approved variance for the continued operation of an automotive laundry (UG 16B) which expired on August 13, 2012. C2-3/R5D zoning district.

PREMISES AFFECTED – 8610 Flatlands Avenue, southwest corner of intersection of Flatlands Avenue and 87th Street, Block 8023, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to March 12, 2013, at 10 A.M., for continued hearing.

141-06-BZ

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

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

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

COMMUNITY BOARD #12BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 12, 2013, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

145-12-A

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal challenging the determination of the Department of Buildings requiring the owner to obtain approval from the Landmarks Preservation Commission, prior to reinstatement and amendments of the permits. R8B zoning district.

PREMISES AFFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #4M

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 Montanez5

THE RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a determination, dated April 3, 2012, signed by the Borough Commissioner of the Department of Buildings (DOB) with respect to DOB Application No. 103907337 (the “Final Determination”); and

WHEREAS, the Final Determination states, in pertinent part:

Because the permit has already been revoked pursuant to the letter dated December 22, 2010, any reinstatement and amendment must comply with all current laws, including the requirement to obtain Landmarks Preservation Commission approval; and

WHEREAS, a public hearing was held on this appeal on September 25, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 20, 2012, and then to decision on February 12, 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, State Assembly Member Richard Gottfried, State Senator Tom Duane, New York City Council Speaker Christine Quinn, and Manhattan Borough President Scott Stringer provided testimony or made submissions in opposition to the appeal asserting that the permit was invalid, and that the construction was performed illegally and in bad faith; specifically, the officials assert that the permits were obtained, in part, based on inaccurate self-certified plans and that they were properly revoked and work continued despite violations and stop-work orders prior to Landmarks Preservation Commission (LPC) historic district designation; and

WHEREAS, the Historic Districts Council, the Society for Architecture of the City, the West 29th Street Block Association, several historians, and other community members provided written and oral testimony in opposition to the

appeal, citing primary concerns about the historic significance of the building; and

WHEREAS, Friends of the Hopper-Gibbons Underground Railroad and Lamartine Place Historic District provided written and oral testimony raising primary concerns that: (1) the building is subject to the jurisdiction of the LPC because the 2005 permit is not valid; (2) the permit cannot be cured; and (3) the Appellant does not have any vested rights to continue construction because it has misrepresented the amount of work performed; and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the Appellant filed a companion Multiple Dwelling Law (MDL) waiver application under BSA Cal. No. 144-12-A, which is scheduled for decision April 23, 2013, pending LPC approval; and

WHEREAS, the site is located on the north side of West 29th Street, between Eighth Avenue and Ninth Avenue, within an R8B zoning district within the Lamartine Place Historic District; and

WHEREAS, the site has been occupied by a four-story and basement converted dwelling with ten units (two per floor); and

WHEREAS, the Appellant’s proposal reflects the enlargement of the building to include extensions at the third and fourth floors, and a new fifth floor; an earlier iteration of the plans reflected a partial sixth floor (penthouse), which is no longer proposed; and

WHEREAS, the construction has been partially completed; and

WHEREAS, the enlargement required several waivers of MDL regulations; and

Procedural History

WHEREAS, in June 2004, the Appellant filed plans at DOB to vertically and horizontally enlarge the building – to horizontally enlarge the third and fourth floors and to construct a fifth floor and partial sixth floor; and

WHEREAS, on March 25, 2005, DOB issued a permit pursuant to the Professional Certification process; and

WHEREAS, the Appellant asserts that the alterations have not been completed but that the structural work for the horizontal and vertical enlargements was largely completed by 2006; the Appellant states that no structural work has been performed since 2009; and

WHEREAS, on May 29, 2007, DOB granted approval for plans that reflect MDL measures and include the partial sixth floor (which was later subject to an objection for failure to comply with the “Sliver Law” at ZR § 23-692); and

WHEREAS, on October 21, 2008, DOB issued a letter of intent to revoke because several outstanding objections had not been resolved; and

WHEREAS, on November 25, 2008, the Board decided companion appeals, pursuant to BSA Cal. Nos. 81-08-A and 82-08-A, which concluded that the Board, not DOB, has jurisdiction to waive requirements of the MDL (the “MDL Appeal”); and

WHEREAS, on March 11, 2009, DOB approved plans

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for an enlargement with a fifth floor, but without the partial sixth floor; this proposal also requires MDL waivers; and

WHEREAS, on March 13, 2009, DOB issued a bulletin related to MDL issues, in light of the MDL Appeal; and

WHEREAS, on May 27, 2009, DOB issued a letter of intent to revoke based on MDL non-compliance; and

WHEREAS, on July 23, 2009, DOB revoked the permit based on MDL non-compliance; and

WHEREAS, on October 13, 2009, the LPC designated the site and the area surrounding the site as the Lamartine Place Historic District; and

WHEREAS, on March 24, 2010, DOB approved revised plans, which address the MDL issues, but did not issue the permit; and

WHEREAS, on April 6, 2010, DOB rescinded its permit revocation; DOB later stated the rescission of the revocation was erroneous as the basis for the rescission was an application for a post approval amendment to remove the fifth floor and partial sixth floor, which was never issued and does not reflect the current proposal; and

WHEREAS, on December 22, 2010, DOB revoked the permit based on MDL non-compliance; and

WHEREAS, on May 30, 2011, DOB audited the permit and issued objections including those related to MDL non-compliance, the requirement for obtaining LPC approval, and Sliver Law non-compliance; and

WHEREAS, on April 3, 2012, DOB reissued the May 2011 objections which form the basis of the appeal; and

WHEREAS, additionally, throughout the DOB review process, DOB issued a series of violations including those related to construction safety, construction contrary to plan, and work without a permit; and

The Landmarks Law

Administrative Code § 25-305(b)(1) Landmarks Preservation and Historic Districts - Regulation of construction, reconstruction, alterations and demolition

Except in the case of any improvement mentioned in subdivision a of section 25-318 of this chapter and except in the case of a city-aided project, no application shall be approved and no permit or amended permit for the construction, reconstruction, alteration or demolition of any improvement located or to be located on a landmark site or in an historic district or containing an interior landmark shall be issued by the department of buildings . . . until the commission shall have issued either a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed pursuant to the provisions of this chapter as an authorization for such work; and

The Appellant's Position

WHEREAS, the Appellant appeals DOB's decision that the permit was improperly revoked because LPC approval is not required and requests that the Board direct reinstatement of the 2005 permit, last renewed on April 30, 2009, based

upon plans approved on March 11, 2009, which allowed for the enlargement of the building; and

WHEREAS, the Appellant's primary arguments are that (1) because the permit was issued prior to LPC's designation of the Lamartine Place Historic District, the proposal is not subject to LPC approval; (2) DOB improperly revoked the permit in 2009 and in 2010; (3) the absence of MDL waivers is a curable error that does not impair the permit's validity; (4) DOB and, in the alternate, the Board can reinstate the permit not subject to LPC approval; and (5) the amount of construction performed and expenditures satisfies the criteria for common law vested rights and allows for the continuation of construction; and

- LPC Approval is Not Required and DOB Improperly Revoked the Permit

WHEREAS, the Appellant asserts that LPC approval is not required because the permit was issued in 2005, before the LPC designation; and

WHEREAS, the Appellant asserts that the Landmarks Law is clear and that the issuance of a permit prior to landmark designation is the only requirement for exempting a site, that is later designated by LPC, from LPC review; and

WHEREAS, the Appellant asserts that the undisputed fact that its permit was first issued in 2005, prior to the October 13, 2009 date that the designation of the Lamartine Place Historic District was finalized, is controlling and satisfies the Landmarks Law exemption; and

WHEREAS, the Appellant asserts that LPC did not designate the historic district until October 13, 2009, four and one-half years after the issuance of the permit; and

WHEREAS, the Appellant asserts that, per the Administrative Code (AC), even if the permit had been issued one day prior to LPC designation, that would be sufficient to exempt the project from LPC jurisdiction; and

WHEREAS, the Appellant asserts that permit issuance prior to LPC designation alone establishes the right to continue construction without LPC review, and the amount of work performed is irrelevant; and

WHEREAS, further, the Appellant asserts that DOB improperly revoked the permit on July 23, 2009 for failure to obtain MDL approval and on December 22, 2010 for failure to obtain LPC approval in accordance with AC § 25-305(b)(1) because (1) it had other remedies than revocation and (2) the permit was issued in 2005, before the LPC designation; and

WHEREAS, the Appellant asserts that the permit revocation was an abuse of discretion and DOB could have issued a Stop Work Order rather than a revocation; and

- Permit Validity and Reinstatement

WHEREAS, the Appellant asserts that the permit was valid as it can be corrected consistent with prior examples of permits being corrected; and

WHEREAS, the Appellant contends that DOB has been inconsistent with regard to its position on what is a correctable error in the context of permit validity and that DOB, within the scope of its powers and consistent with its prior positions, may deem the permit cured by the Board's

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grant of waivers under MDL § 310, and allow for its reinstatement; and

WHEREAS, the Appellant asserts that the failure to obtain MDL waivers from the Board prior to permit issuance is a correctable error and that permit issuance prior to designation establishes the right to continue without LPC review, even if no work is performed pursuant to the permit; and

WHEREAS, the Appellant asserts that DOB took a different position about permit validity and correctable errors in BSA Cal. No. 125-11-A (“East 6th Street”), a common law vesting case for a site that had been the subject of an earlier MDL waiver case (under BSA Cal. No. 217-09-A); and

WHEREAS, specifically, the Appellant cites to a DOB letter associated with East 6th Street in which DOB said that “such reinstatement would not present a correctable error issue for DOB as long as the Board also granted the applicant vested rights under the old R7-2 zoning”; and

WHEREAS, the Appellant asserts that DOB’s analysis in East 6th Street is applicable here in that if the Board were to approve the companion MDL § 310 application, the error of the permit would be correctable; and

WHEREAS, the Appellant asserts that the intervening rezoning at issue in East 6th Street is analogous to the intervening LPC designation here in that both are changes in law that can be resolved subsequent to a retroactive MDL approval; and

WHEREAS, the Appellant asserts that the infirmity caused by DOB’s prior policy of granting MDL waivers is correctable by application to the Board pursuant to MDL § 310, which the Appellant is pursuing by companion application (BSA Cal. No. 144-12-A); and

WHEREAS, the Appellant cites to the Board’s decision in East 6th Street for the point that it was “within DOB’s and the Board’s authority to determine that the corrected permit is valid;” and

WHEREAS, the Appellant also cites to the Board’s decisions in two vested rights cases, which went on to litigation – BSA Cal. No. 85-06-BZY/Menachem Realty v. Srinivasan, Index No. 9054/07 (2d Dept. 2009) and BSA Cal. No. 17-05-A/GRA V v. Srinivasan, 12 N.Y.3d 863 (2009); and

WHEREAS, the Appellant asserts that in Menachem, the court reversed the Board’s decision, which had supported DOB’s determination that certain permit errors were not correctable and in GRA, the Board accepted DOB’s position that plans can be amended to correct zoning defects after zoning changes; and

WHEREAS, the Appellant asserts that DOB may reinstate the revoked permit and that, in the alternate, the Board may reinstate the permit *nunc pro tunc*, without requiring LPC approval; and

WHEREAS, the Appellant asserts that DOB’s position that reinstatement of the permit, after a successful MDL waiver application before the Board still triggers LPC review is erroneous; and

WHEREAS, the Appellant states that DOB’s position is not supported by the AC, is contrary to fundamental fairness, and inconsistent with the litigation associated with 515 East 5th Street v. Board of Standards and Appeals, Index No. 117203/08; and

WHEREAS, the Appellant asserts that the Board’s position is that if an MDL application is granted, the original permit is “reinstated” and a new permit is neither requested nor necessary; and

WHEREAS, specifically, the Appellant cites to the City’s answer in East 5th Street, which stated that:

Pursuant to MDL § 310 Petitioners [site owners] may appeal this determination [to issue objections relating to the MDL] to the BSA and seek a hardship waiver from the BSA that would allow them to use the fire safety mechanisms they have installed or plan to install. If the BSA grants the hardship waivers, Petitioners’ permits may be reinstated, their construction will be deemed lawful, and the instant proceeding will be deemed moot; and

WHEREAS, the Appellant concludes that once the MDL waivers are granted, the permit will become valid and DOB and the Board can both reinstate without the requirement for LPC review; and

WHEREAS, further, the Appellant asserts that Charter § 666(7) gives the Board authority to modify the application “of the strict letter of the law, so that the spirit of the law shall be observed” and to do “substantial justice” and, thus, the Board can direct the reinstatement; and

- A Common Law Vested Right to Continue Construction

WHEREAS, the Appellant asserts that the permit should be reinstated under the theory of substantial justice and the common law doctrine of vested rights; and

WHEREAS, the Appellant cites to the criteria set forth in New York State case law that the Board has followed in common law vested rights cases: (1) substantial construction has been completed; (2) substantial expenditures have been made; and (3) serious loss to the owner would result under the new requirements; and

WHEREAS, the Appellant submitted an analysis and evidence in support of its claim that the amount of construction it completed satisfies the three elements of the common law vested rights analysis including a description of the amount of work performed, expenditures, and the loss that would be incurred to remove the enlargement to the building; and

WHEREAS, finally, the Appellant asserts that the vested rights doctrine applies to sites subject to landmark designation, and cites to the Court of Appeals for the 9th Circuit’s decision in R.C. Hedreen Co. v. the City of Seattle, 74 F.3d 1246 (1996) for the point that the vested rights doctrine applies in the landmark designation context; and The Department of Buildings’ Position

WHEREAS, DOB asserts that (1) reinstatement of the permit is subject to LPC approval because the permit, issued

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prior to LPC designation, was invalid; (2) it appropriately exercised its authority by revoking the permit; and (3) it does not have the authority to reinstate the permit without LPC approval; and

- The Requirement for LPC Approval

WHEREAS, DOB finds that because the permit was invalid, LPC approval is required; and

WHEREAS, DOB asserts that it has not been inconsistent or arbitrary and capricious as to what constitutes a correctable error; and

WHEREAS, as to the Appellant's assertion that DOB's actions are inconsistent with the prior decision in East 6th Street, DOB notes that as in the subject case, it issued a vertical extension permit for East 6th Street despite MDL violations; and

WHEREAS, DOB states that shortly before the Board directed the revocation of the East 6th Street permit for MDL noncompliance, a rezoning occurred that further prohibited the enlargements that were the subject of the revoked permits; and

WHEREAS, DOB notes that the Appellant for East 6th Street then successfully obtained an MDL waiver under MDL § 310 from the Board, which allowed part of the extension to be built (BSA Cal. No. 217-09-A) and then sought relief again (BSA Cal. No. 125-11-A) to secure the common law vested right to complete construction under the revoked permit (as amended by BSA's decision in BSA Cal. No. 217-09-A) under the old zoning regulations; and

WHEREAS, DOB states that during the proceedings of the East 6th Street common law vested rights application, it informed the Board that:

if this Board directs DOB to reinstate permit 104744877 with the plans and MDL waiver previously approved in BSA Cal. No. # 217-09-A, such reinstatement would not present a correctable error issue for DOB as long as this Board also granted the applicant vested rights under the old R7-2 zoning

(DOB January 10, 2012 submission in Cal. No. 125-11-A)(emphasis added); and

WHEREAS, DOB asserts that the quoted language is consistent with DOB's position in the subject case and that without a ruling in BSA Cal. No. 125-11-A granting vested rights to continue construction under old zoning, the Appellant in that case was in a position analogous to Appellant in this case (i.e., having a permit revoked for MDL errors with a subsequent change in law); and

WHEREAS, DOB states that in both cases, the MDL error would not be deemed correctable, and new construction would have to comply with current law (i.e., new zoning in 125-11-A and LPC designation in the instant case); however, as per the above BSA Cal. No. 125-11-A quote, if the Board granted vested rights under old zoning (which it ultimately did), then the Appellant was restored to a position before the change in law, thus making the MDL error correctable; DOB made an analogous statement in its September 11, 2012 submission in this case, saying:

If, however, the Board finds good faith reliance and reverses [rather than simply reinstating] the permit revocation, then LPC approval would be necessary only to the extent that a new Post Approval Amendment ("PAA") needs to be filed to address deviations from the last approved PAA prior to LPC designation; and

WHEREAS, accordingly, DOB concludes that it has not been inconsistent regarding its policies of correctable and non-correctable errors in the above-referenced cases; and

WHEREAS, DOB states that if the Board finds good faith reliance and reverses the permit revocation, then LPC approval would be necessary only to the extent that a new PAA needs to be filed to address deviations from the last approved PAA prior to LPC designation; and

WHEREAS, therefore, in determining whether to grant the MDL waiver and to rescind the permit revocation, DOB respectfully requests that the Board review the plans submitted in connection with the PAA issued on or about March 11, 2009, the last approved PAA prior to LPC designation as any deviations from these previously approved plans will require a new PAA and the requisite LPC approval prior to DOB's renewal of the permit; and

- DOB Properly Revoked the Approval at Issue

WHEREAS, DOB asserts that it properly revoked the approval because it was, undisputedly, not in compliance with the MDL; and

WHEREAS, DOB states that there was ample notice to the Appellant of the MDL deficiency before the revocation took place; and

WHEREAS, specifically, DOB asserts that the Appellant was on notice that DOB improperly waived the MDL as a necessary precondition to the approval as of November 25, 2008, when the Board decided the MDL Appeal, finding that DOB did not have the authority to so waive the MDL; and

WHEREAS, DOB notes that more than six months after the Board's decisions on appeal, the Appellant had not addressed the MDL violations, and, thus, DOB issued objections and an intent to revoke letter dated May 27, 2009 (the "May Intent Letter") and the Appellant had still failed to remedy the MDL objections for an additional two months when DOB finally revoked the approval and permit on July 23, 2009 (the "July Revocation"); and

WHEREAS, DOB states that even after the revocation, the Appellant could have obtained the MDL waiver and reinstated the permit without being affected by any change in law, as the district in which the premises is located was not designated by LPC until October 13, 2009; and

WHEREAS, DOB states that, however, the Appellant did not even get plans approved to remedy the MDL issues until about March 24, 2010 (and the PAA based on these plans was never issued), 16 months after the MDL Appeal was decided, and approximately ten months after the notice of intent to revoke; and

WHEREAS, DOB asserts its position that it has the

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authority to revoke approval of construction documents that it issued in error; and

WHEREAS, DOB cites to AC § 28-104.2.10, which provides, in relevant part:

Revocation of approval. The commissioner may, on notice to the applicant, revoke the approval of construction documents for failure to comply with the provisions of this code *or other applicable laws or rules ...; or whenever an approval has been issued in error and conditions are such that approval should not have been issued.* Such notice shall inform the applicant of the reasons for the proposed revocation and that the applicant has the right to present to the commissioner or his or her representative within 10 business days of personal service or 15 calendar days of the posting of service by mail, information as to why the approval should not be revoked. (emphasis added); and

WHEREAS, DOB also states that it is undisputed that it issued the approval in error and that significantly more notice was provided to Appellant between the May Intent Letter and the July Revocation than was required by Code; and

WHEREAS, DOB states that it is under no obligation to refrain from revoking the Approval for more than 15 days after the notification required by Code and that because it waited approximately two months after this notification (and about eight months after the MDL Appeal) to revoke the Approval, DOB's revocation in this case was clearly proper; and

- Buildings May not Reinstate the Revoked Permit

WHEREAS, DOB asserts that because: (1) it properly revoked the approval because of MDL violations; and (2) the building was subsequently designated to be within a historic district subject to LPC's jurisdiction, it may not properly reinstate the approval and permit (either on equitable grounds or otherwise) without LPC approval; and

WHEREAS, DOB asserts that as of October 13, 2009, LPC designated the historic district, and thus, any new permit, or change from an existing permit, would require LPC approval (see AC § 25-305(b)(1)); and

WHEREAS, DOB states that it cannot "reinstate" the permit in the sense of the term used in AC § 28-105.9 as such reinstatement triggers compliance with all laws at the time application for reinstatement is made; and

WHEREAS, DOB asserts that, with respect to the job at the subject premises, this means that the Appellant would need to obtain LPC approval for all construction, including the extension on the third and fourth floors and the addition of the fifth floor; and

WHEREAS, accordingly, DOB asserts that because the approval had been properly revoked, DOB could not reinstate and allow the Appellant to avoid the construction regulations imposed by its new designation within a historic district; and

WHEREAS, DOB states that while DOB allows correction of minor construction document deficiencies after a change in applicable law (e.g., LPC designation), such correction is only allowed *before* permit revocation, or when the permit revocation was in error; and

WHEREAS, DOB states that furthermore, and as explained at the hearing on these matters, its position is that failure to obtain a discretionary approval from another agency as a necessary precondition to a permit (e.g., the Board's MDL waiver) is considered a major deficiency and renders the permit invalid and such deficiency cannot be corrected without compliance with the new law; and

WHEREAS, DOB states that it does not have the authority to change its position on revocation in this case by considering factors of equity, such as its original erroneous waiver of the MDL; and

WHEREAS, DOB asserts that an exclusive list of the Commissioner of Buildings' powers and duties is set forth in NYC Charter § 645(b), and while this list covers such technical matters as the examination of plans, issuance of certificates of occupancy, and enforcement of construction laws, it does not grant the Commissioner equitable powers; and

WHEREAS, finally, DOB states that in the exercise of its technical power under the Charter, it properly revoked the Approval, and it has no powers to reinstate after a change in law, either on equitable grounds or otherwise; and

Conclusion

WHEREAS, the Board upholds DOB's determination for the following primary reasons (1) the AC requires LPC approval for reinstated permits; (2) the AC supports DOB's decision to revoke the permit; (3) there is no basis for DOB or the Board to reinstate the permit without LPC approval; and (4) a vested rights analysis is not applicable; and

WHEREAS, the Board finds that the language of AC § 25-305(b)(1), which states that LPC approval is required for a proposal on a site within LPC jurisdiction prior to DOB's issuance of a permit, is clear and unambiguous; and

WHEREAS, the Board also agrees with DOB that the AC requires a revoked permit to follow the code and laws at the time of reinstatement and, therefore, the permit is subject to LPC approval prior to reissuance; and

WHEREAS, in the context of a case subject to the Landmarks Law, the Board concludes that there is no basis for it to direct DOB to reinstate the permit, contrary to the AC, after a potential approval of MDL waivers; and

WHEREAS, the Board states that although the basis for DOB to revoke the permits is not the issue on appeal, if it were, the basis for the revocation is clear in that DOB issued its notice of intent to revoke in July 2009, the Board rendered its decision in the MDL Appeal in November 2008, and DOB issued its MDL bulletin in March 2009; and

WHEREAS, accordingly, the Board notes that the Appellant had time to pursue an MDL waiver, prior to the revocation, and failed to do so; and

WHEREAS, the Board notes that, instead, the Appellant pursued an MDL cure and received approval and a rescission

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of the revocation based on MDL reliant drawings in February and April 2010, but still did not pursue the MDL waiver or correct any illegalities on the site based on the permit, and thus the permit was again revoked in December 2010; and

WHEREAS, the Board agrees with DOB that the permit was properly revoked in December 2010 (one and one-half years prior to the filing of this appeal) and therefore the appeal of the revocation is untimely; however even if the permit revocation is considered, the basis for such revocation is grounded in law since the MDL waiver was erroneous, and therefore the permit was not valid when issued; and

WHEREAS, the Board does not take a position regarding DOB's policy on what is a correctable error; however, it notes that the Appellant has not established that precedent requires that it correct the failure to secure the required MDL waiver on equitable grounds; and

WHEREAS, the Board also accepts DOB's assertion that cures to permits that require discretionary actions are not considered correctable unless the agency correcting them instructs DOB to reinstate the permit, which the Board finds to be consistent with DOB's position in East 6th Street; and

WHEREAS, the Board distinguishes the facts in Menachem and GRA, which both involved vested rights in a zoning context; and

WHEREAS, the Board accepts DOB's position that certain errors in certain contexts are not correctable, such as in BSA Cal. No. 121-10-A (25-50 Francis Lewis Boulevard), in which it upheld DOB's determination that the sequencing of permits including demolition was not a correctable error; and

WHEREAS, the Board also notes that the Appellant has not cited any cases that involve the requirement of sequencing or another agency's discretionary approval to discredit DOB; and

WHEREAS, although the Board does not find that the vested rights criteria applies to the subject case, it does note that a valid permit prior to the rezoning date is a threshold element for a vesting application, similar to the requirement that a valid permit be issued prior to landmark designation; and

WHEREAS, the Board cites to the Zoning Resolution and case law for the prerequisite of a valid permit: "[t]he provisions of this Section shall apply to minor developments, major developments or other construction authorized by building permits lawfully issued before the effective date of an applicable amendment of this Resolution" (ZR § 11-33) and New York State courts which repeat that vested rights can only be obtained where there is reliance on a valid permit (See Perrotta v. Department of Buildings, 107 A.D.2d 320, 325 (N.Y. App. Div. 1st Dept. 1985); Village of Asharoken v. Pitassy, 119 A.D.2d 404, 417 (N.Y. App. Div. 2nd Dept. 1986); and Natchev v. Klein, 41 N.Y.2d 834, 834 (1977)); and

WHEREAS, the Board notes that in Perrotta, DOB erroneously issued a permit due to its own initial failure to notice that a builder's plans did not comply with zoning regulations, and the court agreed with DOB that the permit was not valid and stated that "[a] determination as to

whether [a] petitioner had vested rights under [its] building permit must, of necessity, involve an examination of the validity of the permit, as well as compliance with technical provisions of the Zoning Resolution, and this is clearly an appropriate inquiry for agency expertise" (107 A.D.2d at 324); and

WHEREAS, the Board notes that the courts have upheld agencies' determinations regarding permit validity on the principle that they were reasonable and based on substantial evidence, without evaluating the criteria for assessing permit validity; and

WHEREAS, the Board notes that only Menachem questions DOB's and the Board's conclusion on permit validity as DOB ultimately conceded in GRA that minor zoning non-compliance was curable; Menachem, similarly involved minor non-compliance not associated with the rezoning (the absence of a ramp and tree pits); and

WHEREAS, the Board distinguishes the MDL Appeal as a case where the Board actually directed DOB to revoke the permit, which is not the case here (the Board also notes that in the MDL Appeal, the permit had actually lapsed by operation of law prior to the Board's decision and, thus, the revocation took place after the rezoning); and

WHEREAS, the Board notes that in the MDL Appeal, the revocation was by the Board in the context of an interpretive appeal, rather than by DOB during the course of remedying its error; and

WHEREAS, the Board finds that the only relevant questions are those associated with whether the permit was issued prior to the historic district designation and the Board agrees with DOB that permit issuance must mean issuance of a *valid* permit; and

WHEREAS, the Board accepts DOB's determination that the permit is not valid since it was issued absent the Board's MDL waivers and thus was MDL non-compliant; and

WHEREAS, further, the Board notes that there was not a permit in place at the time of the historic district designation; and

WHEREAS, the Board agrees with DOB that the Appellant misreads the Board's answer in the East 5th Street litigation to say that once an MDL is granted, such permit will become valid; and

WHEREAS, the Board finds that the Appellant's arguments regarding vesting are misplaced as there is not any precedent, which extends the vesting doctrine to landmarking as neither the Zoning Resolution nor New York State case law have set forth findings for allowing a property owner to establish a vested right to continue construction on a site not affected by a zoning change but, rather affected by an LPC designation; and

WHEREAS, the Board distinguishes zoning changes and LPC designation in that in the rezoning context, the work being performed would not be allowed under the new zoning scheme, whereas the proposal and work in the landmark context may ultimately be allowed, but is just subject to LPC review and approval so the standard may be different; and

WHEREAS, the Board finds that the Appellant's

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reliance on the Seattle case Hedreen is misplaced in that it involved a moratorium on landmarking a historic theater to allow for construction, was decided against the developer who sought to extend the moratorium on landmarking, and did not involve New York State laws or statutes; further, against the Appellant's case, the court actually said: "Hedreen asks us to broaden the scope of the vesting doctrine to cover the proceedings and designating ordinances authorized by the landmarks ordinance. The Washington Supreme Court has recently expressed its unwillingness to expand the doctrine, which is one of the most protective of developers' rights in the country. [Erickson, 872 P.2d at 1096-97] We too are unwilling to expand it and we decline Hedreen's invitation"; and

WHEREAS, the Board notes that the AC clarifies that a continued right to construct on a site affected by an LPC designation is achieved by establishing the issuance of the permit prior to designation and not through the showing of work done and expenditures as in a rezoning action; and

WHEREAS, accordingly, the Board finds that the Appellant's analysis regarding work performed and expenditures is irrelevant in the context of seeking exemption from LPC review post-designation; and

WHEREAS, the Board concludes that, contrary to the Appellant's contention, questions of fairness are beyond the scope of its administrative appeals and that, instead, it relies on the text of the AC; and

WHEREAS, accordingly, the Board has not considered questions of fairness; and

WHEREAS, as to the Board's Charter authority regarding hardship, the Board does not find that LPC review and approval constitutes a hardship to be remedied by its general Charter authority; the Board asserts that the Appellant has the ability to obtain approval from LPC; further, the Board cannot make the finding that the spirit of the law is preserved and substantial justice is done; and

WHEREAS, the Board finds that if it were to instruct DOB to reinstate the permit, it would be tantamount to waiving the AC related to permit reinstatement under current law and the basis would be in equity; and

WHEREAS, the Board finds that the Appellant has mischaracterized the Board's statements in the East 5th Street litigation and that the meaning of the Board's statement was that there would be a potential for reinstatement after an MDL approval, not that a reinstatement was guaranteed or even warranted; and

WHEREAS, based on the above, the Board agrees with DOB that LPC approval is required and the permit should not be reinstated without it.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination, dated April 3, 2012, determining that *inter alia* LPC approval is required, is hereby denied.

Adopted by the Board of Standards and Appeals, February 12, 2013.

103-12-A

APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.

SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for deferred decision.

144-12-A

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal of the Multiple Dwelling Law pursuant to §310 to allow the enlargement to a five-story building, contrary to §171(2)(f). R8B zoning district.

PREMISES AFFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, 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 April 23, 2013, at 10 A.M., for decision, hearing closed.

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.

SUBJECT – Application September 5, 2012 – Reopening for a court remand to review the validity of the permit at issue in a prior vested rights application.

PREMISES AFFECTED – 1882 East 12th Street, west side of East 12th Street approx. 75' north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 12, 2013
1:30 P.M.**

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

ZONING CALENDAR

9-12-BZ

CEQR #12-BSA-065K

APPLICANT – Eric Palatnik, P.C., for Mikhail Dadashev, owner.

SUBJECT – Application January 17, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 186 Girard Street, corner of Oriental Boulevard and Girard Street, Block 8749, Lot 278, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 15, 2012, acting on Department of Buildings Application No. 320396308, reads in pertinent part:

Proposed floor area ratio is contrary to ZR 23-141(a); and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on July 17, 2012, after due notice by publication in *The City Record*, with continued hearings on August 21, 2012, September 25, 2012, October 30, 2012 and January 29, 2013, and then to decision on February 12, 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Girard Street and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 10,800 sq. ft., and is occupied by a single-family home with a floor area of 2,978 sq. ft. (0.28 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,978 sq. ft. (0.28 FAR) to 9,388 sq. ft. (0.86 FAR); the maximum permitted floor area is 5,400 sq. ft. (0.50 FAR); and

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

WHEREAS, at hearing, the Board questioned which portions of the original home were being retained, and whether the proposed home fits within the permitted building envelope in the underlying R3-1 zoning district; and

WHEREAS, in response, the applicant submitted revised plans which reflect that portions of the floors and walls at the cellar, first, and second floors of the home will remain; and

WHEREAS, the applicant represents that the revised plans reflect a complying building envelope, and provided a Zoning Resolution Determination form that it submitted to DOB to request confirmation that the proposed roof design complies with the permitted building envelope, pursuant to ZR § 23-631; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, contrary to ZR § 23-141; *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 January 15, 2013”-(13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the

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building; a maximum floor area of 9,388 sq. ft. (0.86 FAR), as illustrated on the BSA-approved plans;

THAT the envelope of the building will be reviewed by DOB for compliance with the underlying R3-1 district regulations;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 12, 2013.

261-12-BZ

CEQR #13-BSA-027M

APPLICANT – Sheldon Lobel, P.C., for One York Property, LLC, owner; Barry’s Bootcamp Tribeca LLC, lessee.

SUBJECT – Application August 31, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Barry’s Bootcamp*) on the first and cellar floors of existing building. C6-2A (TMU) zoning district.

PREMISES AFFECTED – 1 York Street, south side of Laight Street between Avenue of Americas, St. John’s and York Streets, Block 212, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 27, 2012, acting on Department of Buildings Application No. 104220683, reads in pertinent part:

The proposed Physical Culture Establishment is not permitted, as of right, in a C6-2A zoning district, per ZR 32-10 and, therefore, requires a special permit for the Board of Standards and Appeals per ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-2A zoning district and the Special Tribeca Mixed-Use District, the operation of a physical culture establishment (PCE) on

the cellar and first floor of a twelve-story mixed-use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in *The City Record*, and then to decision on February 12, 2013; and

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

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

WHEREAS, the subject site is located on the south side of Laight Street between Avenue of the Americas, St. John’s Lane and York Street, in a C6-2A zoning district within the Special Tribeca Mixed-Use District; and

WHEREAS, the site has 184 feet of frontage on Avenue of the Americas, 100 feet of frontage on York Street, 66 feet of frontage on Laight Street, and a total lot area of 15,354 sq. ft.; and

WHEREAS, the site is occupied by a twelve-story mixed-use building; and

WHEREAS, the proposed PCE will occupy 2,197 sq. ft. of floor area on the first floor, with an additional 980 sq. ft. of floor space at the cellar; and

WHEREAS, the PCE will be operated as Barry’s Bootcamp; and

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

WHEREAS, the hours of operation for the proposed PCE will be seven days a week from 5:00 am to 11:00 pm; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant

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information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA027M, dated August 31, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C6-2A zoning district and the Special Tribeca Mixed-Use District, the operation of a physical culture establishment (PCE) on the cellar and first floor of a twelve-story mixed-use building contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 7, 2013” - Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on February 12, 2023;

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

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

THAT the hours of operation for the proposed PCE will be seven days a week from 5:00 a.m. to 11:00 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;

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

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

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

Adopted by the Board of Standards and Appeals, February 12, 2013.

291-12-BZ

CEQR #13-BSA-042M

APPLICANT – Rothkrug Rothkrug & Spector, LLP for 301-303 West 125, LLC, owner; Blink 125th Street Inc., lessee.

SUBJECT – Application October 9, 2012 – Special permit (§73-36) to allow a physical culture establishment (*Blink*) within proposed commercial building. C4-4D zoning district.

PREMISES AFFECTED – 301 West 125th Street, northwest corner of intersection of West 125th Street and Frederick Douglas Boulevard, Block 1952, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 2, 2012, acting on Department of Buildings Application No. 120616057, reads in pertinent part:

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

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-4D zoning district within the Special 125th Street District, the operation of a physical culture establishment (PCE) at the cellar floor and mezzanine level with a first floor lobby shared entrance area, in a four-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 5, 2013, after due notice by publication in *The City Record*, and then to decision on February 12, 2013; and

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

WHEREAS, Community Board 10, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the

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northwest corner of West 125th Street and Frederick Douglass Boulevard, in a C4-4D zoning district within the Special 125th Street District; and

WHEREAS, the site is occupied by a partially constructed four-story commercial building; and

WHEREAS, the proposed PCE will occupy 1,581.12 sq. ft. of floor area on the first floor for an entrance and lobby and 1,195.22 sq. ft. of floor area at the mezzanine for storage, with an additional 16,021 sq. ft. of floor space at the cellar; and

WHEREAS, the site has 100 feet of frontage on West 125th Street, 199.83 feet of frontage on Frederick Douglass Boulevard, and 100 feet of frontage on West 126th Street, and a total lot area of 19,983 sq. ft.; and

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

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

WHEREAS, the hours of operation for the proposed PCE will be Monday through Saturday, from 5:30 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA042M, dated October 5, 2012; and

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

Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C4-4D zoning district within the Special 125th Street District, the operation of a PCE at the cellar floor and mezzanine level, with a shared first floor lobby entrance area in a four-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 7, 2013" - Seven (7) sheets and *on further condition*:

THAT the term of this grant will expire on February 12, 2023;

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

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

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, February 12, 2013.

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42-10-BZ

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

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

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

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to April 9, 2013, at 1:30 P.M., for continued hearing.

1-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Harran Holding Corp., owner; Moksha Yoga NYC LLC, lessee.

SUBJECT – Application January 3, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Moksha Yoga*) on the second floor of a six-story commercial building. C4-5 zoning district.

PREMISES AFFECTED – 434 6th Avenue, southeast corner of 6th Avenue and West 10th Street, Block 573, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to March 12, 2013, at 1:30 P.M., for decision, hearing closed.

16-12-BZ

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

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

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

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to March 12, 2013, at 1:30 P.M., for adjourned hearing.

55-12-BZ

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

SUBJECT – Application March 13, 2012 – Special Permit (§73-19) to permit the legalization of an existing Use Group 3 religious-based, non-profit school (*Kollel L’Horoah*), contrary to use regulations (§42-00). M1-2 zoning district.

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

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to March 12, 2013, at 1:30 P.M., for decision, hearing closed.

56-12-BZ

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

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

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

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for continued hearing.

67-12-BZ

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

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

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

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for decision, hearing closed.

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75-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 547 Broadway Realty, Inc. c/o Andrews Building Corporation, owner.

SUBJECT – Application March 30, 2012 – Variance (§72-21) to permit the legalization of retail use (UG 6) on the first floor and expand the use into the cellar and sub-cellar, contrary to use regulations (§42-14 (D)(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 547 Broadway, between Prince Street and Spring Street, Block 498, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for deferred decision.

82-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Benabu, owner.

SUBJECT – Application April 5, 2012 – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2011 East 22nd Street, between Avenue S and Avenue T, Block 7301, Lot 55, 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 March 12, 2013, at 1:30 P.M., for decision, hearing closed.

149-12-BZ

APPLICANT – Alexander Levkovich, for Arkadiv Khavkovich, owner.

SUBJECT – Application May 9, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141(b)) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 154 Girard Street, between Hampton Avenue and Oriental Boulevard, Block 8749, Lot 265, 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 March 12, 2013, at 1:30 P.M., for decision, hearing closed.

153-12-BZ

APPLICANT – Harold Weinberg, for Ralph Bajone, owner.
SUBJECT – Application May 10, 2012 – Special Permit (§73-36) to legalize a physical culture establishment (*Fight Factory Gym*). M1-1/OP zoning district.

PREMISES AFFECTED – 23/34 Cobek Court, south side, 182.0' west of Shell Road, between Shell Road and West 3rd Street, Block 7212, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for continued hearing.

199-12-BZ

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

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

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

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for continued hearing.

298-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.

SUBJECT – Application October 17, 2012 – Variance (§72-21) to permit the conversion of nine floors of an existing ten-story building to Use Group 3 college or university use (*New York University*), contrary to use regulations. M1-5B zoning district.

PREMISES AFFECTED – 726-730 Broadway, block bounded by Broadway, Astor Place, Lafayette Street and East 4th Street, Block 545, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to February 26, 2013, at 1:30 P.M., for deferred decision.

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306-12-BZ

APPLICANT – Eric Palatnik, P.C., for Vincent Passarelli, owner; 2 Roars Restored Inc aka La Vida Massage, lessee.

SUBJECT – Application November 5, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*La Vida Massage*). M1-1 zoning district.

PREMISES AFFECTED – 2955 Veterans Road West, Cross Streets Tyrellan Avenue and W Shore Expressway, Block 7511, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 5, 2013, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.