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# BULLETIN

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

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April 17, 2013

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### DIRECTORY

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# DOCKETS

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**92-13-BZ**

22 and 26 Lewiston Street, west side of Lewiston Street, 530.86 feet north of intersection with Travis Avenue., Block 2370, Lot(s) 238, Borough of **Staten Island, Community Board: 2**. Variance (§72-21) to permit the construction of two semi-detached one-family dwellings contrary to required rear yards §23-47. R3-1(LDGMA) zoning district. R3-1(LDGMA) district.  
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**93-13-BZ**

26 Leiston Street, west side of Lewiston Street, 530.86 feet north of intersections with Travis Avenue, Block 2370, Lot(s) 239, Borough of **Staten Island, Community Board: 2**. Variance (§72-21) to permit the construction of two semi-detached one-family dwellings contrary to required rear yards §23-47. R3-1(LDGMA) zoning district. R3-1(LDGMA) district.  
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**94-13-BZ**

11-11 40th Avenue, , Block 473, Lot(s) 548, Borough of **Queens, Community Board: 1**. Special Permit (§73-19) to allow a school contrary to use regulations, ZR 42-00. M1-3 zoning district. M1-3 district.  
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**95-13-BZ**

3120 Corlear Avenue, Corlear Avenue and West 231st Street, Block 5708, Lot(s) 64, Borough of **Bronx, Community Board: 8**. Variance (§72-21) to permit the enlargement of an existing school (UG 3) at the second floor contrary to §24-162. R6/C1-3 and R6 R6/C1-3 and R6 district.  
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**96-13-BZ**

1054 Simpson Street, 121.83 feet north of intersection of Westchester Avenue, Block 2727, Lot(s) 4, Borough of **Bronx, Community Board: 2**. Variance (§72-21) to permit construction of ambulatory diagnostic treatment health facility(UG4) that does not provide required rear yard pursuant to ZR 23-47. R7-1 and C1-4 zoning districts. R7-1 and C1-4 district.  
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**97-13-BZ**

1848 East 24th Street, West side of East 24th St, 380 feet south of Avenue R., Block 6829, Lot(s) 26, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home in an R3-2 zoning district. R3-2 district.  
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**98-13-A**

107 Haven Avenue, Corner of Hull Avenue and Haven Avenue, Block 3671, Lot(s) 15, Borough of **Staten Island, Community Board: 2**. Proposed two-story two family residential development which is within the unbuilt portion of the mapped street on the corner of Haven Avenue and Hull Street contrary to GCL 35.R3-1 zoning district R3-1 district.  
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**99-13-BZ**

32-27 Steinway Street, 200 feet south of intersection of Steinway and Broadway., Block 676, Lot(s) 35, Borough of **Queens, Community Board: 1**. Special Permit (§73-622) to allow the operation of a physical culture establishment within an existing cellar and two-story commercial building contrary to Section 32-10. C4-2A zoning district. C4-2A 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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**April 23, 2013, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 23, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**SPECIAL ORDER CALENDAR**

**853-53-BZ**

APPLICANT – Carl A. Sulfaro, Esq., for Knapp, LLC, owner; Bolla Management Corp., owners.

SUBJECT – Application January 18, 2013 – Amendment (§11-412) to permit the conversion of automotive service bays to an accessory convenience store and enlarge the building of a previously granted Automotive Service Station (Mobil) (UG 16B), with accessory uses. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, southwest corner of Avenue X, Block 7429, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**718-68-BZ**

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

SUBJECT – Application May 31, 2011 – Amendment to the Special Permit (§73-211) which permitted the operation of an automotive service station. The application seeks to permit additional fuel dispensing islands and conversion from existing service bays to accessory convenience store. C2-2/R5 zoning district.

PREMISES AFFECTED – 71-08 Northern boulevard, South side of Northern Boulevard between 71<sup>st</sup> and 72<sup>nd</sup> Street, Block 1244, Lot 1, Borough of Queens.

**COMMUNITY BOARD #3Q**

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**292-01-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Villa Mosconi Restaurant, owner.

SUBJECT – Application January 17, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG6 eating and drinking establishment (*Villa Mosconi*) which permitted the legalization of a new dining room and additional accessory cellar level storage which expired on January 7, 2013. R7-2 zoning district.

PREMISES AFFECTED – 69/71 MacDougal Street, west side of MacDougal Street between Bleecker Street and West Houston Street, Block 526, Lot 33, 34, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**150-04-BZ**

APPLICANT – Sheldon Lobel, P.C., for Shun K. and Oi-yee Fung, owners.

SUBJECT – Application January 25, 2013 – Extension of Time to Complete Construction of a previously granted Variance to build a new four-story residential building with a retail store and one-car garage on the ground floor which expired on March 29, 2009; Waiver of the Rules. C6-2G LI (Special Little Italy) zoning district.

PREMISES AFFECTED – 129 Elizabeth Street, west side of Elizabeth Street between Broome and Grand Street, Block 470, Lot 17, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**58-10-BZ**

APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner; Eckford II Realty Corp., lessee.

SUBJECT – Application March 18, 2013 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Physical Culture Establishment (*Quick Fitness*) which expired on February 14, 2013. M1-2/R6A zoning district.

PREMISES AFFECTED – 16 Eckford Street, east side of Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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**APPEALS CALENDAR**

**245-12-A & 246-12-A**

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

SUBJECT – Application August 9, 2012 – Appeal pursuant to Section 310(2) of the Multiple Dwelling Law, requesting that the Board vary several requirements of the MDL. Also, seeking a determination that the owner of the property has acquired a common law vested right to complete construction under the prior R7-2 zoning. R7B Zoning District.

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

**COMMUNITY BOARD #3M**

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# CALENDAR

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## ZONING CALENDAR

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*Jeff Mulligan, Executive Director*

### **8-13-BZ**

APPLICANT – Lewis E. Garfinkel, for Jerry Rozenberg, owner.

SUBJECT – Application January 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space ZR 23-141(a); less than the minimum side yards ZR 23-461. R2 zoning district.

PREMISES AFFECTED – 2523 Avenue N, corner formed by the intersection of the north side of Avenue N and west of East 28th Street, Block 7661, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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### **10-13-BZ & 11-13-BZ**

APPLICANT – Friedman & Gotbaum LLP, by Shelly Friedman, Esq., for Stephen Gaynor School and Cocodrilo Development Corporation, owners.

SUBJECT – Application January 18, 2013 – Variance (§72-21) The proposed action will facilitate (1) the construction of an addition to the South Building that will include an infill at the existing fifth floor and the construction of a 6th floor activity space (Addition); and (2) the construction of a connecting bridge (Bridge) at the fourth story level to connect the South and North Buildings to serve the School's educational mission and provide for more efficient operations. The proposed project will result in development of an additional 4,221 zsf of community facility floor area on the Site. C1-9 & R7-2 zoning districts.

PREMISES AFFECTED – 175 West 89th Street (South Building) and 148 West 90<sup>th</sup> Street (North Building), between West 89th Street and West 90th Street, 80ft easterly from the corner formed by the intersection of the northerly side of West 89th Street and the easterly side of Amsterdam Avenue, Block 1220, Lots 5 and 7506, Borough of Manhattan.

**COMMUNITY BOARD #7M**

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### **53-13-BZ**

APPLICANT – Sheldon Lobel, P.C., for Walker Memorial Baptist Church, Inc., owner; Grand Concourse Academy Charter School, lessee.

SUBJECT – Application January 31, 2013 – Variance (§72-21) to permit the enlargement of the existing UG 3 school, located within an R8 zoning district, which exceeds the 23' one-story maximum permitted obstruction in the required rear yard and is therefore contrary to ZR §§24-36 and 24-33(b). R8 zoning district.

PREMISES AFFECTED – 116-118 East 169th Street, corner of Walton Avenue and East 169th Street with approx. 198.7' of frontage along East 169th Street and 145.7' along Walton Avenue, Block 2466, Lots 11, 16, & 17, Borough of Bronx.

**COMMUNITY BOARD #4BX**

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, APRIL 9, 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**

**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**

**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 re-opening and an extension of term for a physical culture establishment (“PCE”); and

WHEREAS, a public hearing was held on this application on March 5, 2013 after due notice by publication in *The City Record*, and then to decision on April 9, 2013; and

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

WHEREAS, Community Board No. 11, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of the Horace Harding Expressway, approximately 140 feet west of Marathon Parkway in a (C1-2) R3-2 zoning district; and

WHEREAS, the subject site is occupied by a one-story building; and

WHEREAS, the PCE at the building occupies a total of 26,989 sq. ft. of floor space in the ground (13,955 sq. ft.) and cellar (13,034 sq. ft.) levels, and is operated as Bally’s; and

WHEREAS, on June 3, 1969, pursuant to BSA Cal. No.214-69-BZ, the Board granted a variance to allow a PCE

in an existing shopping center within a C-12 zoning district for a term of ten years; and

WHEREAS, on January 18, 1983, the Board re-established a variance, under the subject calendar number, to permit, in a C1-2 zoning district, the enlargement and maintenance of an extension to an existing PCE, for a term of ten years; and

WHEREAS, the variance was extended and amended at various times; and

WHEREAS, on September 27, 2005, the variance was extended until January 18, 2013 with certain conditions, including signs shall be posted stating that all users of the PCE are entitled to two hours of free parking and cautioning the PCE members not to park illegally; and

WHEREAS, on May 31, 2006, the applicant received an amendment to the variance allowing certain alterations to the approved signage on the building façade; and

WHEREAS, the applicant proposes no change to the existing hours of operation or the area of the building currently occupied by the PCE; and

WHEREAS, accordingly, 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 reopens and amends the resolution adopted on January 18, 1983, amended through May 31, 2006, so that as amended this portion of the resolution shall read “to extend the term for ten years from January 18, 2013; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received December 13, 2012’- (2) sheets and ‘March 7, 2013’-(1) sheet ; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on January 18, 2023;

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

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

THAT the above conditions shall 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) only; and

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

Adopted by the Board of Standards and Appeals, April 9, 2013.

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# MINUTES

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## 189-03-BZ

APPLICANT – Eric Palatnik, P.C., for 830 East 233<sup>rd</sup> 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 233<sup>rd</sup> Street, southeast corner of East 233<sup>rd</sup> Street and Bussing Avenue, Block 4857, Lot 44, 41, Borough of Bronx.

## COMMUNITY BOARD #12BX

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

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for an automotive service station, which will expire on October 21, 2013, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on August 21, 2012, after due notice by publication in *The City Record*, with continued hearings on October 16, 2012, November 20, 2012, January 8, 2013, February 12, 2013 and March 12, 2013, and then to decision on April 9, 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 12, Bronx, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of East 233<sup>rd</sup> Street and Bussing Avenue, within a C2-2 (R5) zoning district; and

WHEREAS, the site is currently occupied by an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 6, 1958 when, under BSA Cal. No. 292-58-BZ, the Board granted a variance to permit the extension of an existing gasoline service station on Lot 44; and

WHEREAS, on October 21, 2003, under BSA Cal. No. 189-03-BZ, the Board granted an application for a special permit under ZR § 73-211 to legalize the enlargement of the zoning lot to include Lot 41 for a term of ten years to expire on October 12, 2013; and

WHEREAS, the use of Lot 41 is limited to parking of vehicles awaiting storage; and

WHEREAS, on June 14, 2005, the Board granted an

application to permit the enlargement and conversion of the existing service bays to an accessory convenience store; and

WHEREAS, most recently, on August 15, 2006, under the subject calendar number, the Board granted an application to extend the time to complete construction and obtain a certificate of occupancy which expired on October 21, 2008; and

WHEREAS, the applicant states that it does not plan to construct the accessory convenience store; and

WHEREAS, the applicant now seeks to extend the term; and

WHEREAS, the applicant also seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant to (1) verify that all signage complies with the prior approval and to remove any excessive signage and (2) install planters along the perimeter of Lot 41 adjacent to the site and at the Bussing Avenue frontage, as reflected on the approved plans; and

WHEREAS, in response, the applicant submitted a revised signage analysis and photographs reflecting that the planters have been installed; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated October 21, 2003, so that as amended this portion of the resolution shall read: “to extend the term for a period of 10 years from the date of this grant; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received April 8, 2013’- (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 9, 2023;

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

THAT a certificate of occupancy be obtained by October 9, 2013;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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. 200869916)

Adopted by the Board of Standards and Appeals, April 9, 2013.

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## 78-08-BZ

APPLICANT – Stephen Grasso, Partners for Architecture, for South Bronx Charter School for International Cultures & The Arts, owners.

SUBJECT – Application February 12, 2013 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a five-story charter elementary school (*The South Bronx Charter School for International Cultures and the Arts*), which expired on August 26, 2012; Waiver of the Rules. M1-2/R-6A, MX-1(Special Mixed Use) zoning district.

PREMISES AFFECTED – 611 East 133<sup>rd</sup> Street, bound by East 133rd Street and Cypress Place, Block 2546, Lot 27, Borough of Bronx.

### COMMUNITY BOARD #1BX

**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 time to complete construction in accordance with the conditions of a variance; and

WHEREAS, a public hearing was held on this application on March 19, 2013, after due notice by publication in *The City Record*, and then to decision on April 9, 2013; and

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

WHEREAS, the site is located at the intersection of Bruckner Boulevard/Cypress Place and East 133<sup>rd</sup> Street within an MX-1 (M1-2/R6A) Special Mixed Use zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 26, 2008 when, under the subject calendar number, the Board granted a variance for construction of a five-story charter elementary school on a site within an MX-1 (M1-2/R6A) Special Mixed Use zoning district which does not comply with regulations for floor area, FAR, and setbacks, contrary to ZR §§ 24-11, 123-62 and 123-662; and

WHEREAS, a condition of the grant was that the construction be completed pursuant to ZR § 72-23, which requires substantial completion within four years, by August 26, 2012; and

WHEREAS, the applicant states that construction has been delayed due to financing constraints, but that it will resume in Spring 2013 with a scheduled completion date of August 2014; and

WHEREAS, the applicant now seeks to extend the time to complete construction in accordance with the variance for an additional four years; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on August 26, 2008, so that as amended this portion of the resolution shall read: “to extend the time to complete construction for a period of four years from April 9, 2013, to expire on April 9, 2017; *on condition* that all work will substantially conform to the approved plans; and *on further condition*:

THAT substantial construction be completed by April 9, 2017;

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. 210040784)

Adopted by the Board of Standards and Appeals, April 9, 2013.

## 1073-62-BZ

APPLICANT – Peter Hirshman, for 305 East 40<sup>th</sup> Owner's Corporation, owner; Innovative Parking LLC, lessee.

SUBJECT – Application January 15, 2013 – Extension of Term of a previously approved variance (MDL Section 60 (1d)), permitting 108 tenant parking spaces for transient use within an accessory garage, which expires on March 5, 2013, C1-9/R10 zoning district.

PREMISES AFFECTED – 305 East 40<sup>th</sup> Street, northeast corner of East 40 Street and Second Avenue, Block 1333, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #6M

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 7, 2013, at 10 A.M., for decision, hearing closed.

## 1111-62-BZ

APPLICANT – Peter Hirshman, for 200 East Tenants Corporation, owner; MP 56 LLC, lessee.

SUBJECT – Application January 15, 2013 – Extension of Term of a previously approved variance (MDL Section 60 (3)) permitting the use of tenant parking spaces for transient

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use within an accessory garage, which expires on March 26, 2013. C6-6, C5-2 and C1-9 zoning district.

PREMISES AFFECTED – 201 East 56 Street, northeast corner of East 56 Street and Third Avenue, Block 1330, Lot 4, Borough of Manhattan.

## COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to May 7, 2013, at 10 A.M., for decision, hearing closed.

## 982-83-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.

SUBJECT – Application August 17, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of retail and office use (UG 6) which expired on July 19, 2012. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of intersection of Northern Boulevard and 192<sup>nd</sup> Street, Block 5513, Lot 27, Borough of Queens.

## COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to May 14, 2013, at 10 A.M., for continued hearing.

## 103-91-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP for 248-18 Sunrise LLC, owner.

SUBJECT – Application October 18, 2012 – Extension of term of approved variance permitting an auto laundry use (UG 16B); Amendment to permit changes to the layout and extend hours of operation. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 248-18 Sunrise Highway, south side of Sunrise Highway, 103' east of the intersection of Hook Creek Boulevard, Block 13623, Lot 19, Borough of Queens.

## COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Laid over to April 23, 2013, at 10 A.M., for adjourned hearing.

## 8-98-BZ

APPLICANT – Sheldon Lobel, P.C., for 106 Associates, LLC, owner.

SUBJECT – Application December 27, 2012 – Amendment of a previously approved variance (§72-21) which permitted limited commercial uses in the cellar of a building located in a residential zoning district. The amendment seeks to permit additional UG 6 uses, excluding restaurant use, expand the limited operation hours, and remove the term restriction. R6 zoning district.

PREMISES AFFECTED – 106-108 West 13th Street, West 13th Street, 120' from the intersection formed by West 13th Street and 6th Avenue, Block 608, Lot 35, 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 May 7, 2013, at 10 A.M., for decision, hearing closed.

## 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 expired on February 1, 2004; Waiver of Rules. C6-6 zoning district.

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

## COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to April 23, 2013, at 10 A.M., for decision, hearing closed.

## 211-00-BZ

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

SUBJECT – Application August 10, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) which permitted the legalization of residential units on the second through fourth floors of a mixed use (UG 17 & 2) four-story building, which expired on April 17, 2005; Amendment for minor modification to the approved plans; Waiver of the Rules. M1-2 zoning district.

PREMISES AFFECTED – 252 Norman Avenue, southeast corner of the intersection of Norman Avenue and Monitor Street, Block 2657, Lot 1, Borough 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 April 23,

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# MINUTES

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2013, at 10 A.M., for decision, hearing closed.  
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## APPEALS CALENDAR

### 190-12-A, 191-12-A & 192-12-A

APPLICANT – Davidoff Hatcher & Citron, LLP, for Fuel Outdoor LLC.

OWNER OF PREMISES – JRR Realty Co., Inc.

SUBJECT – Application June 13, 2012 – Appeals from Department of Buildings' determination that signs are not entitled to continued legal status as advertising sign. M1-4 zoning district.

PREMISES AFFECTED – 42-45 12<sup>th</sup> Street, north of Northeast corner of 12<sup>th</sup> Street and 43<sup>rd</sup> Street, Block 458, Lot 83, Borough of Queens.

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Appeals 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 subject appeal comes before the Board in response to three Notice of Sign Registration Rejection letters from the Queens Borough Commissioner of the Department of Buildings (“DOB”), dated May 14, 2012, denying registration for the signs at the subject premises (the “Final Determinations”), which read, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Sign Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. 1998 Permit states not within 200 feet of arterial which is inaccurate. Even if signs were beyond 200 feet from arterial, surface area is excessive. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on February 5, 2012, after due notice by publication in *The City Record*, and then to decision on April 9, 2013; and

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

WHEREAS, the subject premises (“the Premises”) is located on the east side of 12th Street between 43rd Avenue and Queens Plaza South, and 343 feet from the Ed Koch Queensborough Bridge, in an M1-4 district; and

WHEREAS, the Premises is occupied with a six-story warehouse building; affixed to three walls of the building

are illuminated advertising signs; and

WHEREAS, this appeal is brought on behalf of the lessee of the sign structures (the “Appellant”); and

WHEREAS, the Appellant states that the north wall sign measures 30 ft. by 90 ft. and has a surface area of 2,700 sq. ft., the east wall sign measures 30 ft. by 58 ft., 6 in. and has a surface area of 1,755 sq. ft., and the west wall sign measures 30 ft. by 74 ft. and has a surface area of 2,250 sq. ft. (collectively, “the Signs”); and

WHEREAS, on February 18, 1998, DOB issued Permit No. 400809434-01-SG for the installation of a sign at the north wall with a surface area of 2,700 sq. ft., and Permit No. 400809425-01-SG for the installation of a sign at the east wall with a surface area of 1,800 sq. ft.; on June 30, 1998, DOB issued Permit No. 400851690-01-SG for the installation of a sign at the west wall with a surface area of 2,250 sq. ft. (collectively, the three 1998 sign permits shall be hereafter referred to as “the Permits”); and

WHEREAS, the Appellant seeks a reversal of DOB’s rejection of the registration of the Signs based on DOB’s determination that the Appellant failed to provide evidence of the lawful establishment of the Signs in 1998; and

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

### REGISTRATION REQUIREMENT

WHEREAS, the relevant statutory requirements related to sign registration have been in effect since 2005; and

WHEREAS, under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs; and

WHEREAS, the amendments are codified under Articles 501, 502, and 503 of the 2008 Building Code and were enacted to provide DOB with a means of enforcing the sign laws where signs had been erected and were being maintained without a valid permit; and

WHEREAS, pursuant to Article 502 (specifically, Building Code § 28-502.4), an outdoor advertising company is required to submit to DOB an inventory of:

all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

WHEREAS, further, Local Law 31 authorized the Commissioner of DOB to promulgate rules establishing permitting requirements for certain signs; the DOB rules, enacted under Rule 49, provide specific procedures for registration of advertising signs; Rule 49-15(5) reads in pertinent part:

Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign

# MINUTES

identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter; and

WHEREAS, subchapter B of Rule 49 (Registration of Outdoor Advertising Companies), (specifically, Rule 49-15(d)(15)(b)), sets forth the acceptable forms of evidence to establish the size and the existence of a non-conforming sign on the relevant date set forth in the Zoning Resolution; and

WHEREAS, the acceptable forms of evidence set forth at Rule 49 are, in pertinent part as follows:

Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date; and

WHEREAS, affidavits are also listed as an acceptable form of evidence; and

WHEREAS, a DOB guidance document sets forth the instructions for filing under Rule 49 and states that any one of the following documents would be acceptable evidence for sign registration pursuant to Rule 49: (1) DOB issued permit for sign erection; (2) DOB-approved application for sign erection; (3) DOB dockets/permit book indicating sign permit approval; and (4) publicly catalogued photograph from a source such as NYC Department of Finance, New York Public Library, Office of Metropolitan History, or New York State Archives; and

## REGISTRATION PROCESS

WHEREAS, on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted an inventory of outdoor signs under its control and Sign Registration Applications for the Signs and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Sign; (2) copies of the original Permits; and (3) four photographs; and

WHEREAS, on September 29, 2011, DOB issued Notices of Sign Registration Deficiency, stating, in pertinent part, that “[DOB is] unable to accept the sign for registration (due to) Failure to provide proof of legal establishment”; and

WHEREAS, by letter dated March 6, 2012, the Appellant submitted a response to DOB indicating that the Permits legally established the Signs; and

WHEREAS, accordingly, on May 14, 2012, DOB issued three Final Determinations, which indicated that the Signs were rejected for registration; and

## RELEVANT STATUTORY PROVISIONS

### ZR § 12-10 *Definitions*

Non-conforming, or non-conformity

A "non-conforming" #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent

amendment thereto. . .

\* \* \*

ZR § 42-55

Additional Regulations for Signs Near Certain Parks and

Designated Arterial Highways

M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.

(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:

- (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
- (2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed.

(b) Beyond 200 feet from such arterial highway or #public park#, the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway or #public park#.

(c) The more restrictive of the following shall apply:

- (1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or
- (2) any #advertising sign# erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in #surface area# on its face, 30 feet in height and 60 feet in length, shall have legal #non-conforming use# status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All #advertising signs# not in conformance with the standards set forth herein shall terminate.

\* \* \*

ZR § 42-58

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# MINUTES

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Signs Erected Prior to December 13, 2000

M1 M2 M3

In all districts, as indicated, a #sign# shall have #non-conforming use# status pursuant to Sections 52-82 (Non-Conforming Signs Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the degree of #non-conformity# of such #sign# as of such date with the provisions of Section 42-52, 42-53 and 42-54, where such #sign# shall have been issued a permit by the Department of Buildings on or before such date.

\* \* \*

ZR § 52-11 *Continuation of Non-Conforming Uses*  
General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter; and

\* \* \*

ZR § 52-61 *Discontinuance*

General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

\* \* \*

Building Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:

- (1) The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more...

\* \* \*

RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

...(d)(5) Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

\* \* \*

RCNY § 49-16 – Non-conforming Signs

- (a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming; and

## THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because: (1) the Signs were established pursuant to Permits and may be maintained as legal non-conforming uses; and (2) equitable estoppel prevents DOB from taking enforcement action against the Signs; and

### The 1998 Permits

WHEREAS, the Appellant assert that the Signs were established in 1998 pursuant to the Permits as advertising signs in an M1-4 zoning district beyond 200 feet from an arterial highway according to Appendix H of the Zoning Resolution; and

WHEREAS, the Appellant asserts that the Permits “have remained in full force and effect since their issuance”; and

WHEREAS, the Appellant asserts that the Premises “has been used for the display of advertising signage without any discontinuance for a period of two or more years after December 2000”; and

WHEREAS, the Appellant asserts that, as such, the Signs are entitled to non-conforming use protection and DOB improperly rejected the registration of the Signs in its Final Determinations; and

### Estoppel Against the City

WHEREAS, the Appellant asserts that under established principles of equity, DOB should be estopped from ordering the removal of the Signs; and

WHEREAS, the Appellant asserts that it has relied on the Permits for several years and made substantial investments relative to the continued operation of the Signs; and

WHEREAS, the Appellant contends that although as a general rule estoppel or laches cannot be used against a municipality enforcing its zoning law, New York courts have ruled that these doctrines are not foreclosed entirely and may be invoked as a rare exception; and

WHEREAS, the Appellant states that two New York State court decisions – Town of Hempstead v. DeMasco, 2007 WL 4471362 (Sup. Ct. 2007), aff’d, 62 A.D.3d 692 (2d Dept. 2009) and Inner Force Econ. Dev. Corp. v. Dep’t of Educ. Of the City of New York, 36 Misc.3d 758, 559 (Sup. Ct. 2012) – to support its conclusion that the City should be estopped; and

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WHEREAS, the Appellant notes that in DeMasco, the Town sought to enforce its zoning ordinance against a metal salvage business which had existed for many years prior to a zoning change, and the Appellate Division affirmed that the Town was equitably estopped in part because it continued business with the junkyard and “gave an imprimatur to the businesses’ continued operation”; and

WHEREAS, the Appellant asserts that this appeal is similar to DeMasco, in that DOB “did not prohibit the [Appellant] from continuing to maintain its advertising signage during the period following the issuance of the Permit[s]” and that “by not enforcing against the signage [DOB] implicitly permitted its continued use”; and

WHEREAS, the Appellant notes that Inner Force involved an action against the New York City Department of Education in which a plaintiff filed its Notice of Claim with the Comptroller’s Office instead of the Office of the Corporation Counsel, which should have received the claim instead, and the Comptroller’s Office acknowledged the receipt of the Notice, informed the plaintiff that it was conducting an investigation and ultimately denied the claim based in part on the improper notice; and

WHEREAS, the Appellant notes that the Inner Force court found estoppel applicable to the conduct of the Comptroller’s Office because the Comptroller’s response to the plaintiff’s erroneous notice wrongfully or negligently induced reliance by the plaintiff to its detriment to believe that its notice of claim was proper and that the proper party had been served; and

WHEREAS, the Appellant contends that this appeal is similar because “DOB clearly understood or should have understood that by not pursuing enforcement action against the maintenance of valuable advertising signage there was every reason for the [Appellant] to continue its operation”; and

WHEREAS, accordingly, the Appellant argues that DOB should be estopped from taking any enforcement action against the Signs and DOB’s Final Determinations with respect to the Signs should be reversed; and

## DOB’S POSITION

WHEREAS, DOB contends that: (1) the Permits for the Signs were issued contrary to ZR § 42-53 and cannot be relied upon to establish non-conforming uses pursuant to ZR § 42-58; and (2) the Signs were not entitled to non-conforming use protection under ZR § 42-55; and

WHEREAS, DOB contends that the Permits for the Signs were issued in error, in that the Permits failed to comply with ZR § 42-53—the pre-cursor to the current ZR § 42-55—which limits advertising signs in manufacturing districts beyond 200 feet from an arterial highway to a surface area equal to their distance from such highway; and

WHEREAS, DOB asserts that the Signs are 343 feet from an arterial highway (Ed Koch Queensborough Bridge) and within view of such highway; and

WHEREAS, DOB contends that, pursuant to the 1998 version of ZR § 42-53, advertising signs at the Premises were limited to 343 feet or less in surface area; and

WHEREAS, DOB asserts that the Permits—which purport to authorize the erection of signs measuring 2,700, 1,800, and 2,250 sq. ft. in surface area—were issued contrary to the Zoning Resolution and cannot be relied upon as establishing the Signs; and

WHEREAS, DOB notes that insofar as the Appellant relies on ZR § 42-58 as protecting the Signs, such reliance is misplaced, because ZR § 42-58 only applies where permits have been lawfully issued; and

WHEREAS, DOB notes that the Appellant has failed to submit credible evidence that any of the Signs is protected by ZR § 42-55(c)(1) by virtue of being in existence prior to June 1, 1968 or protected by ZR § 42-55(c)(2) by virtue of being in existence between June 1, 1968 and November 1, 1979 and being a certain size; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determinations denying registration of the Signs; and

## CONCLUSION

WHEREAS, the Board finds that (1) DOB properly denied the Sign registrations because the Appellant has not demonstrated that the Signs were lawfully established; and (2) DOB is not equitably estopped from correcting its erroneous issuance of the Permits; and

WHEREAS, the Board agrees with DOB that the Permits were issued in 1998 in violation of ZR § 42-53 in that the Permits authorized the construction of three wall signs measuring 2,700, 1,800, and 2,250 sq. ft. in surface area, respectively, at the Premises in excess of 343 feet of surface area and at a distance of 343 feet from and within view of the Ed Koch Queensborough Bridge, an arterial highway pursuant to Appendix H of the Zoning Resolution; and

WHEREAS, because the Permits failed to comply with ZR § 42-53, the Board concludes that the Permits were invalidly issued; and

WHEREAS, the Board finds that the Signs are not protected by ZR § 42-58, because that provision only protects signs erected pursuant to lawfully-issued permits; and

WHEREAS, thus, the Board finds that the Appellant cannot rely on the invalid Permits to establish the Signs as non-conforming; and

WHEREAS, the Board agrees with DOB that the Appellant has failed to demonstrate that any of the Signs existed prior to June 1, 1968 such that any of the Signs would be protected by ZR § 42-55(c)(1); and

WHEREAS, the Board agrees with DOB that the Appellant has failed to demonstrate that any of the Signs existed within the date and size limitations set forth in ZR § 42-55(c)(2) such that any of the Signs would be protected by that provision; and

WHEREAS, the Board notes that even if the Permits had been validly issued in 1998 and the Signs had become non-conforming, the Appellant has failed to demonstrate with sufficient evidence that the Signs were not thereafter discontinued pursuant to ZR § 52-61; and

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WHEREAS, the Board does not find the Appellant's arguments regarding equitable estoppel persuasive; and

WHEREAS, the Board distinguishes the Appellant's case law on the matter of equitable estoppel on the primary basis that in DeMasco the City actually maintained a business relationship with the junkyard on which the junkyard relied as an indication that its rights were preserved and in Inner Force, the City made a specific procedural decision that deprived the claimant of a right he might otherwise have had, if the City had not accepted his claim without notifying him of its defective notice; and

WHEREAS, the Board notes that the Court of Appeals has squarely held that DOB cannot be estopped from enforcing the Zoning Resolution where a permit was invalid when issued pursuant to Matter of Parkview Associates v. City of New York, 71 N.Y.2d 74 (1988); and

WHEREAS, the Board also notes that the Appellant has enjoyed approximately 15 years' worth of revenue from advertising signs that are five to eight times larger in surface area than what has ever been permitted by the Zoning Resolution at the Premises; and

WHEREAS, therefore, the Board finds that DOB's enforcement against the Signs is warranted, and as such, DOB properly rejected the Appellant's registration of the Signs.

*Therefore it is Resolved* that this appeal, challenging Final Determinations issued on May, 14, 2012, is denied.

Adopted by the Board of Standards and Appeals, April 9, 2013.

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## 197-12-A

APPLICANT – Davidoff Hatcher & Citron LLP, for Interstate Outdoor Advertising.

OWNER OF PREMISES – Hamilton Plaza Associates.

SUBJECT – Application June 21, 2012 – Appeal from Department of Buildings' determination that a sign is not entitled to continued legal status as advertising sign. M1-2/M2-1 zoning district.

PREMISES AFFECTED – 1-37 12<sup>th</sup> Street, east of Gowanus Canal between 11<sup>th</sup> Street and 12<sup>th</sup> Street, Block 10007, Lot 172, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

**ACTION OF THE BOARD** – Appeals 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 subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated May 25, 2012, denying registration for a sign at the subject premises (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 Sign Enforcement Unit and in support of the legal establishment of this sign. Unfortunately, we find this documentation inadequate to support the registration for advertising use. We note that the permit provided is for an accessory sign, and such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on February 5, 2013, after due notice by publication in *The City Record*, and then to decision on April 9, 2013; and

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

WHEREAS, the subject premises (“the Premises”) is located on the north side of 12th Street between Hamilton Place and the Gowanus Canal, in an M1-2 zoning district; and

WHEREAS, the Premises is occupied by a five-story commercial building and, on the roof of the building, a south-facing advertising sign (“the Sign”); and

WHEREAS, this appeal is brought on behalf of the lessee of the sign structure (the “Appellant”); and

WHEREAS, the Appellant states that the Sign is a rectangular advertising sign measuring 24 feet in height by 75 feet in length for a surface area of 1,800 sq. ft. and located within 900 feet of the Gowanus Expressway; and

WHEREAS, on August 29, 1968, DOB issued a permit in connection with application BN 4655/68 for the construction of a “steel structure on roof as per plan filed herewith (Business Sign)” (the “Permit”); and

WHEREAS, DOB states that the Sign is located 550 feet from the Gowanus Expressway; and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the registration of the Sign based on DOB's determination that the Appellant failed to provide evidence of the establishment of an advertising sign; and

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

## REGISTRATION REQUIREMENT

WHEREAS, the relevant statutory requirements related to sign registration have been in effect since 2005; and

WHEREAS, under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs; and

WHEREAS, the amendments are codified under Articles 501, 502, and 503 of the 2008 Building Code and were enacted to provide DOB with a means of enforcing the sign laws where signs had been erected and were being maintained without a valid permit; and

WHEREAS, pursuant to Article 502 (specifically, Building Code § 28-502.4), an outdoor advertising company is required to submit to DOB an inventory of:

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all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

WHEREAS, further, Local Law 31 authorized the Commissioner of DOB to promulgate rules establishing permitting requirements for certain signs; the DOB rules, enacted under Rule 49, provide specific procedures for registration of advertising signs; Rule 49-15(5) reads in pertinent part:

Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter; and

WHEREAS, subchapter B of Rule 49 (Registration of Outdoor Advertising Companies), (specifically, Rule 49-15(d)(15)(b)), sets forth the acceptable forms of evidence to establish the size and the existence of a non-conforming sign on the relevant date set forth in the Zoning Resolution; and

WHEREAS, the acceptable forms of evidence set forth at Rule 49 are, in pertinent part as follows:

Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date; and

WHEREAS, affidavits are also listed as an acceptable form of evidence; and

WHEREAS, a DOB guidance document sets forth the instructions for filing under Rule 49 and states that any one of the following documents would be acceptable evidence for sign registration pursuant to Rule 49: (1) DOB issued permit for sign erection; (2) DOB-approved application for sign erection; (3) DOB dockets/permit book indicating sign permit approval; and (4) publicly catalogued photograph from a source such as NYC Department of Finance, New York Public Library, Office of Metropolitan History, or New York State Archives; and

## REGISTRATION PROCESS

WHEREAS, on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching one undated photograph and a copy of the Permit as evidence of establishment of the Sign; and

WHEREAS, on September 29, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that “[DOB is] unable to accept the sign for registration (due to) “Failure

to provide proof of legal establishment – 1972 BN 4655 for accessory sign”; and

WHEREAS, by letter dated February 29, 2012, the Appellant submitted a response to DOB, asserting that the Permit established the use in 1968 and that the applicable date for lawful establishment under the Zoning Resolution was actually October 31, 1979; and

WHEREAS, DOB determined that the February 29, 2012 arguments lacked merit, and issued the Final Determination on May 25, 2012; and

## RELEVANT STATUTORY PROVISIONS

### ZR § 12-10 *Definitions*

Non-conforming, or non-conformity

A “non-conforming” #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .

\* \* \*

### ZR § 42-55

Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways

M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a),

(b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.

(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:

- (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
- (2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed.

(b) Beyond 200 feet from such arterial highway or #public park#, the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway or #public park#.

(c) The more restrictive of the following shall apply:

- (1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to

# MINUTES

- Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or
- (2) any #advertising sign# erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in #surface area# on its face, 30 feet in height and 60 feet in length, shall have legal #non-conforming use# status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All #advertising signs# not in conformance with the standards set forth herein shall terminate.

\* \* \*

## ZR § 52-11 *Continuation of Non-Conforming Uses* General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter; and

\* \* \*

## ZR § 52-61 *Discontinuance* General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

\* \* \*

## Building Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:

- (1) The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more...

\* \* \*

## RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

... (d)(5) Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be

identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

\* \* \*

## RCNY § 49-16 – Non-conforming Signs

(a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming; and

## THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because: (1) the Sign was established as an advertising sign prior to June 1, 1968 and may therefore be maintained as a legal non-conforming advertising sign; (2) the Sign has not been discontinued; and (3) equitable estoppel prevents DOB from taking enforcement action against the Sign; and

### Lawful Establishment

WHEREAS, the Appellant contends that that the Sign was established prior to June 1, 1968 because the text of the Permit contains references to DOB applications from 1966; and

WHEREAS, the Appellant contends that such references are sufficient proof that the Sign existed as an advertising sign rather than a business sign prior to June 1, 1968; and

### Continuous Use

WHEREAS, the Appellant asserts that the Sign has not been discontinued for a period of two or more years since establishment as a non-conforming use on June 1, 1968; and

WHEREAS, the Appellant contends that it has submitted sufficient evidence proving the requisite continuity in the form of DOB Buildings Information System printouts showing “numerous BN and electric sign applications” from 1965-1984 and one undated photograph; and

### Estoppel Against the City

WHEREAS, the Appellant asserts that it has relied on the Permit for several years and made substantial investments relative to the continued operation of the Sign; and

WHEREAS, the Appellant asserts that under established principles of equity, DOB should be estopped from ordering the removal of the Sign; and

WHEREAS, the Appellant asserts that although as a general rule estoppel or laches cannot be used against a municipality enforcing its zoning law, New York courts have ruled that these doctrines are not foreclosed entirely and may be invoked as a rare exception; and

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WHEREAS, the Appellant states that two New York State court decisions – Town of Hempstead v. DeMasco, 2007 WL 4471362 (Sup. Ct. 2007), aff'd, 62 A.D.3d 692 (2d Dept. 2009) and Inner Force Econ. Dev. Corp. v. Dep't of Educ. Of the City of New York, 36 Misc.3d 758, 559 (Sup. Ct. 2012) – to support its conclusion that the City should be estopped; and

WHEREAS, the Appellant notes that in DeMasco, the Town sought to enforce its zoning ordinance against a metal salvage business which had existed for many years prior to a zoning change, and the Appellate Division affirmed that the Town was equitably estopped in part because it continued business with the junkyard and “gave an imprimatur to the businesses’ continued operation”; and

WHEREAS, the Appellant argues that this appeal is similar to DeMasco, in that DOB “did not prohibit the [Appellant] from continuing to maintain its advertising signage during the period following the issuance of the Permit[s]” and that “by not enforcing against the signage [DOB] implicitly permitted its continued use”; and

WHEREAS, the Appellant notes that Inner Force involved an action against the New York City Department of Education in which a plaintiff filed its Notice of Claim with the Comptroller’s Office instead of the Office of the Corporation Counsel, which should have received the claim instead, and the Comptroller’s Office acknowledged the receipt of the Notice, informed the plaintiff that it was conducting an investigation and ultimately denied the claim based in part on the improper notice; and

WHEREAS, the Appellant notes that the Inner Force court found estoppel applicable to the conduct of the Comptroller’s Office because the Comptroller’s response to the plaintiff’s erroneous notice wrongfully or negligently induced reliance by the plaintiff to its detriment to believe that its notice of claim was proper and that the proper party had been served; and

WHEREAS, the Appellant contends that this appeal is similar because “DOB clearly understood or should have understood that by not pursuing enforcement action against the maintenance of valuable advertising signage there was every reason for the [Appellant] to continue its operation”; and

WHEREAS, accordingly, the Appellant argues that DOB should be estopped from taking any enforcement action against the Sign and DOB’s Final Determination with respect to the Sign should be reversed; and

## DOB’S POSITION

WHEREAS, DOB asserts that the Appellant has not submitted sufficient evidence to demonstrate that an advertising sign was established at the Premises; and

WHEREAS, DOB states that in order to show proof of establishment of an advertising sign under the non-conforming use provisions of ZR § 42-55, an applicant only needs to demonstrate that the advertising sign was constructed prior to June 1, 1968 or November 1, 1979 (depending on the size of the sign); and

WHEREAS, DOB explains that the Department does

not require proof of an advertising sign permit under this Zoning Resolution section because the section was promulgated on February 21, 1980 to legalize, as non-conforming, certain advertising signs that were previously prohibited; and

WHEREAS, DOB asserts that there is insufficient evidence of the establishment of an advertising sign at the Premises; and

WHEREAS, DOB contends that the only evidence the Appellant has produced to demonstrate establishment of an advertising sign at the Premises is the Permit, which by its terms indicates that it is for a “business sign”; and

WHEREAS, however, DOB states that the designation of “business sign” on the Permit indicates that the Permit was for an “accessory sign” and not for an “advertising sign”; and

WHEREAS, consequently, DOB asserts that the Permit cannot be relied upon as evidence of the establishment of anything other than an accessory sign; and

WHEREAS, DOB notes that the Appellant has also not produced any evidence that the 1968 accessory sign was converted to an advertising sign; and

WHEREAS, DOB notes that if an advertising sign was in fact constructed at the Premises between June 1, 1968 and November 1, 1979, the advertising sign could only obtain non-conforming status under ZR § 42-55(c)(2) if the advertising sign did not exceed 1,200 sq. ft. in surface area because the Premises is within 900 feet of an arterial highway; and

WHEREAS, DOB notes that the Sign measures 1,800 sq. ft. in surface area; and

WHEREAS, thus, DOB asserts that the Appellant has not demonstrated the lawful establishment of an advertising sign; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determination denying the registration of the Sign; and

## CONCLUSION

WHEREAS, the Board finds that: (1) DOB properly denied the Sign registration because the Appellant has not met its burden of demonstrating that the Sign was established prior to June 1, 1968 or November 1, 1979 as an advertising sign; and (2) DOB is not equitably estopped from correcting its erroneous issuance of the Permit; and

WHEREAS, the Board finds that, in fact, there is no basis to conclude that an advertising sign was ever lawfully established at the Premises; and

WHEREAS, the Board agrees with DOB that the Permit is evidence of the establishment of an accessory sign rather than an advertising sign; and

WHEREAS, the Board notes that, historically, the Zoning Resolution defined a “business sign” as “an accessory sign which directs attention to a profession, business, commodity, service, or entertainment conducted, sold, or offered upon the same zoning lot”; and

WHEREAS, the Board finds that Permit authorized the construction of an accessory business sign rather than an

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advertising sign because: (1) the “proposed work” noted on the Permit was the construction of a “business sign”; and (2) the two sketches included with the Permit contain a note stating that the sign is “For Business Conducted on the Premises”; and

WHEREAS, the Board finds that, contrary to the Appellant’s assertions, the references to two 1966 alteration applications on the Permit are not relevant to the question of whether an advertising sign existed at the Premises prior to 1968; and

WHEREAS, thus, the Board finds that the Appellant’s reliance on the Permit as evidence of the establishment of an advertising sign is misplaced; and

WHEREAS, the Board concludes that, since the Appellant has offered no other evidence regarding the establishment of an advertising sign pursuant to ZR § 42-55(c), an advertising sign has never been lawfully established at the Premises; and

WHEREAS, the Board does not find the Appellant’s arguments regarding equitable estoppel persuasive; and

WHEREAS, the Board distinguishes the Appellant’s case law on the matter of equitable estoppel on the primary basis that in DeMasco the City actually maintained a business relationship with the junkyard on which the junkyard relied as an indication that its rights were preserved and in Inner Force, the City made a specific procedural decision that deprived the claimant of a right he might otherwise have had, if the City had not accepted his claim without notifying him of its defective notice; and

WHEREAS, the Board finds the Appellant’s assertions about reasonable reliance to be particularly dubious since it is unreasonable to rely on a “business sign” permit but maintain an “advertising sign”; and

WHEREAS, the Board notes that the Appellant, by its own admission, has enjoyed approximately 45 years’ worth of revenue from an advertising sign that has never been permitted by the Zoning Resolution at the Premises; and

WHEREAS, therefore, the Board finds that DOB’s enforcement against the Sign is warranted, and as such, DOB properly rejected the Appellant’s registration of the Sign.

*Therefore it is Resolved* that this appeal, challenging a Final Determination issued on May, 25, 2012, is denied.

Adopted by the Board of Standards and Appeals, April 9, 2013.

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## 203-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for CBS Outdoor, Inc.

OWNER OF PREMISES – Gemini 442 36<sup>th</sup> Street H LLC.

SUBJECT – Application June 28, 2013 – Appeal from Department of Buildings’ determination that a sign is not entitled to continued legal status as advertising sign. C2-5 /HY zoning district.

PREMISES AFFECTED – 442 West 36<sup>th</sup> Street, east of

southeast corner of 10<sup>th</sup> Avenue and 36<sup>th</sup> Street, Block 733, Lot 60, Borough of Manhattan.

## COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Appeals 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 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 May 30, 2012, denying registration for the sign at the subject premises (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 Sign Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on February 5, 2013, after due notice by publication in *The City Record*, and then to decision on April 9, 2013; and

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

WHEREAS, the subject premises (“the Premises”) is located on the south side of West 36th Street between Tenth Avenue and an exit roadway for the Lincoln Tunnel, in an R8A (C2-5) zoning district within the Special Hudson Yards District; and

WHEREAS, the site is occupied by a 14-story hotel building and, on the east wall of the building, an advertising sign (“the Sign”); and

WHEREAS, on May 8, 2001, DOB issued Permit No. 102955287-01-SG which authorized the installation of “a non-illuminated advertising wall flex sign”; and

WHEREAS, this appeal is brought on behalf of the lessee of the sign structure (the “Appellant”); and

WHEREAS, the Appellant states that the Sign is a rectangular advertising sign with a surface area of 2,100 sq. ft. and located within 900 feet of an arterial highway; and

WHEREAS, DOB states that the Sign is located 184.92 feet from the nearest boundary of an exit roadway for the Lincoln Tunnel and within view of such roadway; and

WHEREAS, the Appellant seeks a reversal of DOB’s rejection of the registration of the Sign based on DOB’s determination that the Appellant failed to provide evidence of the establishment of an advertising sign; and

WHEREAS, DOB appeared and made submissions in

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opposition to this appeal; and

## REGISTRATION REQUIREMENT

WHEREAS, the relevant statutory requirements related to sign registration have been in effect since 2005; and

WHEREAS, under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs; and

WHEREAS, the amendments are codified under Articles 501, 502, and 503 of the 2008 Building Code and were enacted to provide DOB with a means of enforcing the sign laws where signs had been erected and were being maintained without a valid permit; and

WHEREAS, pursuant to Article 502 (specifically, Building Code § 28-502.4), an outdoor advertising company is required to submit to DOB an inventory of:

all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

WHEREAS, further, Local Law 31 authorized the Commissioner of DOB to promulgate rules establishing permitting requirements for certain signs; the DOB rules, enacted under Rule 49, provide specific procedures for registration of advertising signs; Rule 49-15(5) reads in pertinent part:

Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter; and

WHEREAS, subchapter B of Rule 49 (Registration of Outdoor Advertising Companies), (specifically, Rule 49-15(d)(15)(b)), sets forth the acceptable forms of evidence to establish the size and the existence of a non-conforming sign on the relevant date set forth in the Zoning Resolution; and

WHEREAS, the acceptable forms of evidence set forth at Rule 49 are, in pertinent part as follows:

Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date; and

WHEREAS, that affidavits are also listed as an acceptable form of evidence; and

WHEREAS, a DOB guidance document sets forth the instructions for filing under Rule 49 and states that any one of the following documents would be acceptable evidence for sign registration pursuant to Rule 49: (1) DOB issued permit for sign erection; (2) DOB-approved application for

sign erection; (3) DOB dockets/permit book indicating sign permit approval; and (4) publicly catalogued photograph from a source such as NYC Department of Finance, New York Public Library, Office of Metropolitan History, or New York State Archives; and

## REGISTRATION PROCESS

WHEREAS, on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Sign; (2) DOB Buildings Information System printouts showing application data regarding the Permit; (3) copies of the original and subsequent issuance of the Permit; (4) an OASIS map of the Premises and surrounding area and (5) excerpts from a Sanborn map showing the Premises; and

WHEREAS, on February 22, 2010, the Appellant submitted an amended Sign Registration Application for the Sign; the amended application clarified the surface area of the Sign; and

WHEREAS, on September 27, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that “[DOB is] unable to accept the sign for registration (due to) ‘Failure to provide proof of legal establishment – 2003 Permit # 102955287-01 and other permits, for non-arterial sign’”; and

WHEREAS, by letter dated February 28, 2012, the Appellant submitted a response to DOB indicating that it had no further documentation to submit regarding the Sign; and

WHEREAS, accordingly, on May 25, 2012, DOB issued a Final Determination that the Sign was rejected for registration; and

## RELEVANT STATUTORY PROVISIONS

### *ZR § 12-10 Definitions*

Non-conforming, or non-conformity

A “non-conforming” #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .

\* \* \*

### *ZR § 42-55*

Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways

M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.

(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such

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arterial highway or #public park# shall be subject to the following provisions:

- (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
  - (2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed.
- (b) Beyond 200 feet from such arterial highway or #public park#, the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway or #public park#.
- (c) The more restrictive of the following shall apply:
- (1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or
  - (2) any #advertising sign# erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in #surface area# on its face, 30 feet in height and 60 feet in length, shall have legal #non-conforming use# status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All #advertising signs# not in conformance with the standards set forth herein shall terminate.

\* \* \*

## ZR § 52-11 *Continuation of Non-Conforming Uses* General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter; and

\* \* \*

## ZR § 52-61 *Discontinuance* General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

\* \* \*

## ZR § 52-83

### Non-Conforming Advertising Signs

In all Manufacturing Districts, or in C1, C2, C4, C5-4, C6, C7 or C8 Districts, except as otherwise provided in Section...42-55, any non-conforming advertising sign except a flashing sign may be structurally altered, reconstructed, or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

- (a) The creation of a new non-conformity or an increase in the degree of non-conformity of such sign;
- (b) An increase in the surface area of the sign; or
- (c) An increase in the degree of illumination of such sign; and

\* \* \*

## Building Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:

- (1) The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more...

\* \* \*

## RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

...(d)(5) Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

\* \* \*

## RCNY § 49-16 – Non-conforming Signs

- (a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until

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the Department has issued a determination that it is not non-conforming; and

## THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because: (1) the Sign was established with a permit and became a non-conforming use when the Premises was rezoned; (2) the Sign has not been discontinued; and (3) equitable estoppel prevents DOB from taking enforcement action against the Sign; and

### The 2001 Permit

WHEREAS, the Appellant asserts that it established the Sign when it obtained its Permit<sup>1</sup> because, on the date of issuance, the Premises was located in an M1-5 zoning district and not within 200 feet of the nearest arterial highway (Lincoln Tunnel);

WHEREAS, although the Appellant does not dispute that the Sign is visible from an exit roadway of the Lincoln Tunnel, the Appellant maintains that because such roadway leads *from* the tunnel rather than *to* it, the roadway is not an "approach" as that term is defined in Rule 49 and referenced in Appendix H of the Zoning Resolution; and

WHEREAS, consequently, the Appellant contends that the Permit was properly issued and, as such, a sufficient basis for the lawful establishment of the Sign; and

WHEREAS, the Appellant contends that because the Sign was lawfully established, it became a non-conforming use when, on January 19, 2005, the zoning district for the Premises changed from M1-5 to (R8A) C2-5; and

### Continuous Use

WHEREAS, as to the continuous use of the Sign, the Appellant relies on an October 26, 2000 lease agreement between the Appellant and the owner of the Premises providing for a ten-year term with two five-year renewal options; and

WHEREAS, the Appellant contends that the lease is sufficient evidence that the Sign has been in continuous use since its construction pursuant to the Permit; and

### Estoppel Against the City

WHEREAS, the Appellant asserts that under established principles of equity, DOB should be estopped from ordering the removal of the Sign; and

WHEREAS, the Appellant asserts that it has relied on the Permit for years and made substantial investments relative to the continued operation of the Sign; and

WHEREAS, the Appellant contends that although as a general rule estoppel or laches cannot be used against a municipality enforcing its zoning law, New York courts have ruled that these doctrines are not foreclosed entirely and may be invoked as a rare exception; and

WHEREAS, the Appellant states that two New York State court decisions – Town of Hempstead v. DeMasco, 2007 WL 4471362 (Sup. Ct. 2007), aff'd, 62 A.D.3d 692

(2d Dept. 2009) and Inner Force Econ. Dev. Corp. v. Dep't of Educ. Of the City of New York, 36 Misc.3d 758, 559 (Sup. Ct. 2012) – to support its conclusion that the City should be estopped; and

WHEREAS, the Appellant notes that in DeMasco, the Town sought to enforce its zoning ordinance against a metal salvage business which had existed for many years prior to a zoning change, and the Appellate Division affirmed that the Town was equitably estopped in part because it continued business with the junkyard and "gave an imprimatur to the businesses' continued operation"; and

WHEREAS, the Appellant asserts that this appeal is similar to DeMasco, in that DOB "did not prohibit the [Appellant] from continuing to maintain its advertising signage during the period following the issuance of the Permit" and that "by not enforcing against the signage [DOB] implicitly permitted its continued use"; and

WHEREAS, the Appellant notes that Inner Force involved an action against the New York City Department of Education in which a plaintiff filed its Notice of Claim with the Comptroller's Office instead of the Office of the Corporation Counsel, which should have received the claim instead, and the Comptroller's Office acknowledged the receipt of the Notice, informed the plaintiff that it was conducting an investigation and ultimately denied the claim based in part on the improper notice; and

WHEREAS, the Appellant notes that the Inner Force court found estoppel applicable to the conduct of the Comptroller's Office because the Comptroller's response to the plaintiff's erroneous notice wrongfully or negligently induced reliance by the plaintiff to its detriment to believe that its notice of claim was proper and that the proper party had been served; and

WHEREAS, the Appellant contends that this appeal is similar because "DOB clearly understood or should have understood that by not pursuing enforcement action against the maintenance of valuable advertising signage there was every reason for the [Appellant] to continue its operation"; and

WHEREAS, accordingly, the Appellant asserts that DOB should be estopped from taking any enforcement action against the Sign and DOB's Final Determination with respect to the Sign should be reversed; and

## DOB'S POSITION

WHEREAS, DOB asserts that: (1) the Sign was not lawfully established with the Permit because the Permit was issued in error; and (2) DOB cannot be equitably estopped from enforcing the Zoning Resolution where a permit was invalid when issued; and

### The 2001 Permit

WHEREAS, DOB contends that the Permit for the Sign was issued in error on May 8, 2001, in that it failed to comply with ZR § 42-55(a), which prohibits advertising signs within 200 feet of an arterial highway and became effective on February 27, 2001; and

WHEREAS, DOB asserts that, according to a measurement made using Pictometry (computer software

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<sup>1</sup> The Appellant's written submissions indicate that the permit was first issued on January 16, 2003; however, according to DOB records, the permit was first issued on May 8, 2001.

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that measures distances using geographic information systems), the Sign is 184.92 feet from the nearest boundary of an exit roadway from the Lincoln Tunnel and within view of such roadway; and

WHEREAS, DOB contends that roadways connecting the Lincoln Tunnel to and from the local street network are “approaches” according to Rule 49 and Appendix H of the Zoning Resolution; and

WHEREAS, DOB disagrees with the Appellant’s distinction between, on the one hand, a roadway connecting the local street network *to* Lincoln Tunnel (which the Appellant considers an “approach” to an arterial highway, as that term is defined in Rule 49 and referenced in Appendix H of the Zoning Resolution), and, on the other hand, a roadway connecting the local street network *from* the Lincoln Tunnel (which the Appellant does not consider an “approach”); and

WHEREAS, DOB notes that in BSA Cal. No. 100-12-A, the Board agreed that an exit roadway from the Holland Tunnel constituted an “approach”; and

WHEREAS, accordingly, DOB contends that the Permit improperly authorized the construction of a Sign within 200 feet of an arterial highway contrary to ZR § 42-55(a); and

WHEREAS, DOB notes that even if the Board were to adopt the Appellant’s position with respect to the term “approach,” the Permit would still be contrary to ZR § 42-55(b), which provides in pertinent part that “beyond 200 feet from such arterial highway . . . the surface area of such sign may be increased one square foot for each linear foot such sign is located from the arterial highway,” because the Permit purports to authorize the construction of a sign measuring 2,100 sq. ft. less than 2,100 linear feet from an arterial highway; and

WHEREAS, DOB asserts that because the Permit was issued contrary to the Zoning Resolution, it cannot be relied upon as establishing the Sign; and

### Estoppel Against the City

WHEREAS, DOB states that it cannot be estopped from enforcing the Zoning Resolution where a permit was invalid when issued, citing Matter of Parkview Associates v. City of New York, 71 N.Y.2d 74 (1988); and

WHEREAS, DOB asserts that, consistent with Parkview Associates, to the extent that DOB erred in issuing the original Permit, it cannot be estopped from correcting that error now; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determination denying the registration of the Sign; and

### CONCLUSION

WHEREAS, the Board finds that: (1) DOB properly denied the Sign registration because the Appellant has not demonstrated that the Sign was lawfully established; and (2) DOB is not equitably estopped from correcting its erroneous issuance of the Permit; and

WHEREAS, the Board agrees with DOB that the Permit was issued on May 8, 2001 in violation of ZR § 42-55(a), in that it authorized the construction of a sign at the

Premises within 200 feet of a roadway that constitutes an approach to the Lincoln Tunnel, which is an arterial highway pursuant to Appendix H of the Zoning Resolution, and within view of such roadway; and

WHEREAS, the Board is guided by its analysis of the term “approach” in BSA Cal. No. 100-12-A; specifically, the Board finds the Appellant’s position that the definition of an “approach” under Rule 49 was meant to excluded exit roadways because the definition does not state “to or from” a bridge or tunnel to be misguided, and agrees with DOB that the definition does not state which direction the traffic needs to flow from the “roadway” in order to be an approach; and

WHEREAS, the Board finds that the Rule 49 definition of “approach” is clear and that the exit roadway to the Lincoln Tunnel meets the relevant criteria of the definition, in that it is a “roadway connecting the local street network to a bridge or tunnel and from which there is no entry or exit to such network”; and

WHEREAS, the Board notes that the Rule 49 definition of “approach” makes no distinction as to whether traffic is entering or exiting the tunnel via the roadway, and the Board does not find the Appellant’s attempt to insert the direction of the traffic as an additional criteria in the definition to be compelling; and

WHEREAS, the Board concludes that the Premises and the Sign are within 200 feet of an arterial highway; and

WHEREAS, thus, the Board finds that the Permit was issued contrary to ZR § 42-55(a); and

WHEREAS, the Board agrees with DOB that the Permit was invalid when issued; and

WHEREAS, the Board notes even if the Board were to accept the Appellant’s definition of “approach” (and therefore measure the distance to the nearest arterial highway approach connecting *to* the Lincoln Tunnel rather than *from* it), the Sign is within 900 feet of such approach; consequently, even under the Appellant’s definition of approach, the Permit was issued contrary to ZR § 42-55(b)—which limits the surface area of an advertising sign in a manufacturing district beyond 200 feet of an arterial highway to its linear distance from such arterial highway—because the Permit purports to authorize a sign measuring 2,100 sq. ft. in surface area less than 2,100 linear feet from an arterial highway; and

WHEREAS, the Board also notes that even if the Permit had been validly issued in 2001 and the Sign had become non-conforming, the Appellant has failed to demonstrate with sufficient evidence that the Sign was not thereafter discontinued pursuant to ZR § 52-61; and

WHEREAS, the Board does not find the Appellant’s arguments regarding equitable estoppel persuasive; and

WHEREAS, the Board distinguishes the Appellant’s case law on the matter of equitable estoppel on the primary basis that in DeMasco the City actually maintained a business relationship with the junkyard on which the junkyard relied as an indication that its rights were preserved and in Inner Force, the City made a specific procedural decision that deprived the claimant of a right he might otherwise have had, if the City

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had not accepted his claim without notifying him of its defective notice; and

WHEREAS, the Board notes that the Court of Appeals has squarely held that DOB cannot be estopped from enforcing the Zoning Resolution where a permit was invalid when issued pursuant to Matter of Parkview Associates v. City of New York, 71 N.Y.2d 74 (1988); and

WHEREAS, the Board also notes that the Appellant, by its own admission, has enjoyed almost 12 years' worth of revenue from an advertising sign that has a surface area in excess of ten times what has ever been permitted by the Zoning Resolution at the Premises; and

WHEREAS, therefore, the Board finds that DOB's enforcement against the Sign is warranted, and as such, DOB properly rejected the Appellant's registration of the Sign.

*Therefore it is Resolved* that this appeal, challenging a Final Determination issued on May, 25, 2012, is denied.

Adopted by the Board of Standards and Appeals, April 9, 2013.

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## 15-13-A thru 49-13-A

APPLICANT – Eric Palatnik, P.C., for Block 7094 Associates, LLC, owners.

SUBJECT – Application January 25, 2013 – Proposed construction of thirty-five (35) one and two-family dwellings that do not front on a legally mapped street, contrary to General City Law Section 36. R3-1(SRD) zoning district.

### PREMISES AFFECTED –

16, 20, 24, 28, 32, 36, 40, 44, 48, 52, 56, 60, 64, 68, 78, 84, 90, 96, 102, 108, 75, 79, 85, 89, 93, 99, 105, 109, 115, 119 Berkshire Lane. Block 7094, Lot 70, 69, 68, 67, 66, 65, 62, 61, 60, 59, 54, 53, 52, 51, 43, 44, 45, 46, 47, 48, 41, 40, 39, 38, 37, 36, 35, 34, 33, 32.

19, 23, 27, 31, 35, Wiltshire Lane. Block 7094, Lot 57, 56, 55, 50, 49. Borough of Staten Island.

### COMMUNITY BOARD #3SI

**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 decisions of the Staten Island Borough Commissioner, dated January 16, 2013, acting on Department of Buildings Application Nos. 520008759, 520008777, 520008795, 520008839, 520008820, 520008802, 520008811, 520008848, 520008857, 520008866, 520008900, 520008875, 520008884, 520008893, 520008991, 520009026, 520009035, 520009044, 520008928, 520009099, 520008982, 520008973, 520009124, 520009179, 520009188, 520009197, 520009204, 520009213, 520008964, 520008955, 520116785, 520009053, 520009062, 520009071, 520009080 read in pertinent part:

The street giving access to the proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law.
- B) Proposed construction does not have at least 8% of the total perimeter of Building fronting directly upon a legally mapped street or frontage space contrary to Section 502.1 of the 2008 NYC Building Code; and

WHEREAS, a public hearing was held on this application on March 12, 2013 after due notice by publication in the *City Record*, and then to decision on April 9, 2013; and

WHEREAS, this application seeks a waiver to construct sixteen (16) one-family homes and nineteen (19) two-family homes at Veterans Road East and Berkshire Lane within an R3-1 zoning district within the Special South Richmond District (SSRD) not fronting upon a mapped street, contrary to General City Law Section 36; and

WHEREAS, there are an additional four homes proposed which do not seek General City Law Section 36 relief and are not the subject of this application; and

WHEREAS, as part of the initial filing, the applicant provided a letter from the Fire Department, dated March 24, 2012, which recommends approval subject to the following conditions: (1) that there be no parking anytime on the side of the street and at the corners indicated by the cross hatching on the approved plans; (2) that no parking signs will be installed throughout the development as shown on the approved plans and will conform with Fire Code Section 503.7; (3) private hydrants will be installed as indicated on the approved plan and a private hydrant is required to be within 250 feet of the main front entrance of the homes; (4) that the installation of new fire service mains will conform to the requirements of Fire Code Section 508.2.1 and private fire service mains and appurtenances will be installed in accordance with NFPA 24 and the requirements of the NYC Department of Environmental Protection; (5) once the installation of private fire service mains are complete, the requirements of Fire Code Section 508.4 which requires that a flow test be conducted to verify that the private fire hydrant system delivers the flow test will be conducted to verify that the private fire hydrant system delivers the minimum design capacity required by Fire Code Section 508.3; (6) that all required fire protection systems be installed, including the private hydrant system and associated piping be maintained in good working order; and (7) that the approval and the conditions are appurtenant to the property, binding the property owner and any and all successors in interest including any homeowner condominium association; and

WHEREAS, in response, the applicant submitted plans reflecting the conditions in accordance with the Fire Department's request; and

WHEREAS, by letter dated March 7, 2013 the Fire Department states it has no objections and no further requirements regarding the proposed application ; and

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WHEREAS, at hearing, the Board inquired about the access to Veterans Road East; and

WHEREAS, in response, the applicant stated that Veterans Road East will extend to Wirt Avenue and be a New York State roadway, and that construction on Veterans Road East is subject to New York State Department of Transportation approval; and

WHEREAS, the Board also notes that the approvals from the Department of City Planning (for subdivision, arterial streets, and school seats, the Department of Environmental Protection, and DOB for a Builders Pavement Plan have been received as part of the subject filing; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decisions of the Staten Island Borough Commissioner, dated January 16, 2013 acting on Department of Buildings Application Nos. 520008759, 520008777, 520008795, 520008839, 520008820, 520008802, 520008811, 520008848, 520008857, 520008866, 520008900, 520008875, 520008884, 520008893, 520008991, 520009026, 520009035, 520009044, 520008928, 520009099, 520008982, 520008973, 520009124, 520009179, 520009188, 520009197, 520009204, 520009213, 520008964, 520008955, 520116785, 520009053, 520009062, 520009071, 520009080 are modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawing filed with the application marked "Received February 21, 2013"- one (1) sheet; and *on further condition*:

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

THAT the site and roadway will conform with the BSA-approved plans;

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

THAT the construction on Veterans Road East is subject to New York State Department of Transportation review and approval;

THAT any changes to the site plan, associated with the Department of City Planning approval process, are subject to review and approval from the Board; and

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

Adopted by the Board of Standards and Appeals April 9, 2013.

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## 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 12<sup>th</sup> Street, west side of East 12<sup>th</sup> Street approx. 75’ north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

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## 119-11-A

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application August 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

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

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## 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

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 May 7, 2013, at 10 A.M., for decision, hearing closed.

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## 256-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, City Outdoor.

OWNER OF PREMISES: 195 Havemeyer Corporation.

SUBJECT – Application August 28, 2012 – Appeal challenging Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. C4-3 zoning district.

PREMISES AFFECTED – 195 Havemeyer Street, southeast corner of Havemeyer and South 4th Street, Block 2447, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Laid over to May 21, 2013, at 10 A.M., for continued hearing.

## 265-12-A & 266-12-A

APPLICANT – Jesse Masyr, Watchel Masyr & Missry, LLP, for Related Retail Bruckner LLC.

OWNER OF PREMISES – Ciminello Property Associates.

SUBJECT – Application September 5, 2012 – Appeal challenging Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. M1-2 & R4/C2-1 zoning district.

PREMISES AFFECTED – 980 Brush Avenue, southeast corner of Brush Avenue and Cross Bronx Expressway/Bruckner Expressway, Block 5542, Lot 41, Borough of Bronx.

### COMMUNITY BOARD #10BX

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 May 14, 2013, at 10 A.M., for decision, hearing closed.

## 288-12-A thru 290-12-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Orin, Inc., owner.

SUBJECT – Application October 9, 2012 – Proposed construction of three two-family homes not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SRD) zoning district.

PREMISES AFFECTED – 319, 323, 327 Ramona Avenue, northwest corner of intersection of Ramona Avenue and Huguenot Avenue, Block 6843, Lot 2, 3, 4, Borough of Staten Island.

### COMMUNITY BOARD #3SI

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 May 7, 2013, at 10 A.M., for decision, hearing closed.

## 304-12-A

APPLICANT – Eric Palatnik, P.C., for Success Team Development, LLC, owner.

SUBJECT – Application October 26, 2012 – Proposed seven-story residential development located within mapped but inbuilt portion of Ash Avenue, contrary to General City Law Section 35. R6A zoning district.

PREMISES AFFECTED – 42-32 147<sup>th</sup> Street, west side, south of the intersection of Sanford Avenue and 147<sup>th</sup> Street, Block 5374, Lot 59, 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 May 7, 2013, at 10 A.M., for decision, hearing closed.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## ZONING CALENDAR

### 57-12-BZ

#### CEQR #12-BSA-090K

APPLICANT – Eric Palatnik, P.C., for Mykola Volynsky, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); less than the required rear yard (§23-37). R4 zoning district.

PREMISES AFFECTED – 2670 East 12<sup>th</sup> Street, between Shore Parkway and Gilmore Court, Block 7455, Lot 85, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 8, 2012, acting on Department of Buildings Application No. 320443748, reads in pertinent part:

1. Proposed floor area ratio is contrary to ZR 23-141(a)

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2. Proposed open space is contrary to ZR 23-141(a)
3. Proposed lot coverage is contrary to ZR 23-141(a)
4. Proposed side yards (exist. non-compliance) contrary to ZR 23-461(a)
5. Proposed rear yard is contrary to ZR 23-47  
Minimum required: 30'  
Proposed: 20'; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards and rear yard contrary to ZR §§ 23-141, 23-46, and 23-47; and

WHEREAS, a public hearing was held on this application on December 11, 2012, after due notice by publication in *The City Record*, with continued hearings on December 11, 2012, January 15, 2013, February 5, 2013 and March 5, 2013, and then to decision on April 9, 2013; and

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

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

WHEREAS, the subject site is located on the west side of East 12th Street, between Gilmore Court and Shore Parkway, within an R4 zoning district; and

WHEREAS, the subject site has a total lot area of 1,645 sq. ft., and is occupied by a single-family home with a floor area of 750.5 sq. ft. (0.45 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 750.5 sq. ft. (0.45 FAR) to 2,031 sq. ft. (1.23 FAR); the maximum permitted floor area is 1,485.5 sq. ft. (0.9 FAR); and

WHEREAS, the applicant proposes an open space ratio of 0.48; the minimum permitted open space ratio is 0.55; and

WHEREAS, the applicant proposes a lot coverage of 52 percent; the maximum permitted lot coverage is 45 percent; and

WHEREAS, the applicant proposes to enlarge the single existing side yard with a width of 5'-3"; the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each; and

WHEREAS, the applicant proposes a rear yard with a depth of 20 feet; the minimum required rear yard depth is 30 feet; 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, based upon its review of the record, the

Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards and rear yard contrary to ZR §§ 23-141, 23-46, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 4, 2013"-(10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,031 sq. ft. (1.23 FAR), a maximum lot coverage of 52 percent, a minimum open space ratio of 0.47, one side yard measuring 5'-3", and a rear yard with a minimum depth of 20 feet, as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 9, 2013.

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## 312-12-BZ

### CEQR #13-BSA-054M

APPLICANT – Jay A. Segal, Esq./Greenberg Traurig LLP, for 33 Beekman Owner LLC c/o Naftali Group, owners; Pace University, lessee.

SUBJECT – Application November 19, 2012 – Variance (§72-21) to facilitate the construction of a new 34-story, 760-bed dormitory (*Pace University*), contrary to maximum permitted floor area. C6-4 district/Special Lower Manhattan District.

PREMISES AFFECTED – 29-37 Beekman Street aka 165-169 William Street, northeast corner of block bound by Beekman, William, Nassau and Ann Streets, Block 92, Lot 1,3,37,38, Borough of Manhattan.

### COMMUNITY BOARD #1M

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 15, 2012, acting on Department of Buildings Application No. 104697507, reads in pertinent part:

Floor Area greater than allowed by Sec. 91-22;

and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C6-4 zoning district within the Special Lower Manhattan District, the construction of a 34-story dormitory building (Use Group 3) which does not comply with zoning requirements related to floor area, contrary to ZR § 91-22; and

WHEREAS, a public hearing was held on this application on March 12, 2013 after due notice by publication in the *City Record*, and then to decision on April 9, 2013; and

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

WHEREAS, Community Board 1, Manhattan, recommends approval of the application on condition that the developer minimizes construction impacts on the surrounding community and that Pace offers community members programs and services; and

WHEREAS, a member of the community from several blocks away provided testimony in opposition to this application, citing concerns about the new building blocking views; and

WHEREAS, the application is brought on behalf of Pace University (“Pace”), a not for profit educational institution; and

WHEREAS, the zoning lot (Tax Lots 1, 3, 37, and 38) (the “Zoning Lot”) is located on the southeast corner of William Street and Beekman Street, within a C6-4 zoning district within the Special Lower Manhattan District; and

WHEREAS, the Zoning Lot has approximately 120.4

feet of frontage on Beekman Street, 102 feet of frontage on William Street, and a total lot area of 13,436.9 sq. ft.; and

WHEREAS, the proposed building will be constructed on the portion of the Zoning Lot consisting of Lots 1, 37, and 38 (the “Development Site”), which has 120.4 feet of frontage on Beekman Street, 49.3 feet of frontage on William Street, and 9,866.5 sq. ft. of lot area; and

WHEREAS, Lot 3 is occupied by a ten-story building constructed in approximately 1908 (the “Lot 3 Building”) with commercial use on the ground floor and residential use on the upper floors; and

WHEREAS, in 1989, the Board authorized the exclusion from payment of the conversion contribution then required under ZR § 15-50 in connection with the conversion of 17,892 sq. ft. of floor area in the Lot 3 Building (BSA Calendar No. 735-89-ALC); the Lot 3 Building is under separate ownership and control and no changes to it are proposed; and

WHEREAS, the applicant states that the Development Site and Lot 3 were merged into a single zoning lot pursuant to a Declaration of Zoning Lot Restrictions and Zoning Lot Development and Easement Agreement (the “ZLDA”) that were executed by the prior owners of the parcels and recorded in 2007; and

WHEREAS, the applicant states that it has submitted draft materials to the Department of City Planning to amend a pending application (No. N090178 ZCM) seeking a certification from the Chair of the City Planning Commission for a proposed public plaza (the “Public Plaza”) and floor area bonus pursuant to ZR §§ 73-78 and 91-24; and

WHEREAS, the applicant proposes to construct a 34-story dormitory building with 146,963 sq. ft. of floor area (10.94 FAR) and to maintain the existing Lot 3 Building with 31,977 sq. ft. of floor area (2.38 FAR) for a total of 178,963 sq. ft. of floor area (13.3 FAR) across the Zoning Lot; and

WHEREAS, the applicant proposes to increase the permitted base floor area of 134,369 sq. ft. (10.0 FAR) across the site by (1) installing a 3,012 sq. ft. Public Plaza on the northeast corner of the Development Site pursuant to City Planning Commission approval that will generate 18,072 sq. ft. (1.34 FAR) of bonus floor area; and (2) obtaining a variance for the additional required 26,522 sq. ft. (1.97 FAR); and

WHEREAS, the applicant asserts that a maximum of 12.0 FAR is contemplated for the site (10.0 FAR base and 2.0 FAR bonus for plaza or inclusionary housing), but that it cannot accommodate the maximum size plaza, so it can only generate 1.34 FAR in bonus floor area, rather than 2.0 FAR; and

WHEREAS, the applicant represents that the proposal will comply with all relevant zoning provisions except total floor area and FAR; and

WHEREAS, the applicant states that the proposed building provides the following uses: (1) accessory spaces for student recreational facilities and meeting rooms, administrative office space, lobby space, a gym, a kitchen, a laundry room, a storage room, and utility rooms on the cellar

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level, first and second floors; (2) an approximately 400 sq. ft. retail space (which is required for the Public Plaza) on the first floor; and (3) 760 beds in 381 units on the 3<sup>rd</sup> through 34<sup>th</sup> floors and one staff apartment on the 3<sup>rd</sup> floor; and

WHEREAS, the site will also include an approximately 3,012 sq. ft. Public Plaza at the corner of Beekman and William Streets, subject to City Planning Commission review; and

WHEREAS, because the proposed building does not comply with the underlying zoning district regulations, the subject variance is requested; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the irregular shape of the Development Site; and (2) the easement benefitting the New York City Transit Authority (NYCTA) and the L-shaped turn of the subway directly beneath the Development Site; and

WHEREAS, the applicant also relies on Pace's primary programmatic needs of accommodating the increased number of out-of-state students and the high demand for dormitory beds in close proximity to Pace's facilities; and

WHEREAS, as to the irregular shape of the Development Site, which is roughly L-shaped and varies in depth (measured from Beekman Street) from 49.3 feet to 100.5 feet and in width from 66.5 feet to 120.4 feet; and

WHEREAS, as to the presence of the NYCTA transit easement, it precludes excavation and foundation work on a portion of the site, and therefore any substantial development, on approximately 22 percent of the buildable portion of the Development Site and the presence of the subway results in construction premiums related to foundation and excavation work of approximately 1.78 million dollars; and

WHEREAS, as to the uniqueness of this condition, the applicant states that there are no other development parcels in the C6-4 portion of the Special District or in other districts within a half-mile of the Development Site below which the subway turns as it does under the Development Site; and

WHEREAS, the applicant provided an area map, which reflects that within a half-mile of the site, the subway lines all run beneath the street beds except at the subject site where the 2/3 subway makes a turn at the corner of Beekman Street and William Street within the site, below grade; and

WHEREAS, the applicant asserts that the irregular shape of the Development Site and the presence of the transit easement result in an inefficient floor plate for the Proposed Building that reduces the number of beds that can be achieved; and

WHEREAS, the applicant states that these factors also limit the ability to maximize the area of the Public Plaza and, therefore, reduce the potential floor area bonus from 2.0 FAR to 1.34 FAR; and

WHEREAS, the applicant states that these conditions are illustrated by comparing the drawings and zoning calculations for the as-of-right scenario with the drawings and zoning calculations for the regularly-shaped scenario; and

WHEREAS, the applicant states that the building in the complying scenario would contain 120,464 sq. ft. of floor area

and 624 beds on 28 floors, which amounts to approximately 193 sq. ft. of floor area per bed and that due to the shape of the Development Site, the maximum feasible area of the Public Plaza is 3,012 square feet, which generates a bonus of 18,072 square feet of floor area; and

WHEREAS, the applicant states that the regularly-shaped scenario assumes the same lot area for the Development Site (approximately 9,860 square feet) but with a rectangular shape: approximately 113.3 feet of frontage along Beekman Street and 87 feet of frontage along William Street and assumes the absence of the transit easement; and

WHEREAS, under the regularly-shaped scenario, the applicant states it would be possible to increase the area of the Public Plaza to 4,030 square feet, (with the inclusion of portion of the Lot 3's lot area) and generates 24,180 sq. ft. of bonus floor area (1.8 FAR), which is 6,168 sq. ft. more than under the complying alternative; such a scenario would also contain 126,572 sq. ft. of floor area and 755 beds on 34 floors, which amounts to approximately 168 sq. ft. per bed (a 15 percent increase in efficiency over the complying scenario; and

WHEREAS, the applicant states that in addition to reducing the efficiency of the building floor plates and limiting the size of the Public Plaza, the irregular shape of the Zoning Lot coupled with the presence of the transit easement also result in significant additional construction costs; and

WHEREAS, specifically, the applicant states that the estimated foundation and excavation costs would increase by \$1,785,473, from \$1,596,226 under the regularly-shaped scenario to \$3,381,699 under the complying due primarily to the presence of the transit easement, an increase which includes the cost of additional piles and lagging necessitated by the presence of the subway, as well as special monitoring and inspection costs required under applicable NYCTA guidelines; and

WHEREAS, as to Pace's programmatic needs, it currently houses students in four buildings containing a total capacity of 1,900 beds and it has determined that it needs a minimum of 2,160 beds due to the increased number of applications from out-of-state students for Pace's general programs and, in particular, its Performing Arts Program; and

WHEREAS, the applicant submitted a letter from Pace, which describes that need and its exhaustive search for potential development sites in Lower Manhattan for a new dormitory to replace the leased 500-bed facility at 55 John Street; and

WHEREAS, the applicant also states that Pace has identified a number of factors including efficiency, student expectations, and industry standards, to help it establish standards regarding dormitory layouts, which it has applied to the design for the dormitory currently under construction at 180 Broadway as well as to the design for the proposed building; and

WHEREAS, the applicant states that Pace's goal is that the overwhelming majority of beds (83 percent) are within two-bed units and that in addition, each floor in the dormitory generally is permitted one one-bed unit (the majority of which

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are reserved for resident advisors) and one three-bed unit and that each unit has a private bathroom with a shower, sink and toilet and is furnished with a single bed, desk/chair, and small bureau for each occupant as well as a small closet; and

WHEREAS, the applicant states that in order to accommodate these furnishings and provide a reasonable amount of circulation space, it has concluded that each unit contain approximately 100 net sq. ft. per bed; and

WHEREAS, the applicant asserts that the site's location within central proximity to the other Pace facilities made it an excellent choice to satisfy Pace's need for students to reside near the university's buildings; and

WHEREAS, the applicant states that due to the presence of the transit easement and the irregular shape of the Development Site, however, the maximum number of beds that could be provided in an as-of-right building on the Development Site, taking into account Pace's design standards, is 624, which is 136 few beds than is necessary to accommodate Pace's needs; and

WHEREAS, the applicant states that the variance allows for an additional 136 beds which otherwise could only be constructed if the Development Site were regularly shaped and not burdened by the transit easement; and

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

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

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

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

WHEREAS, based upon the above, the Board finds that the limitations of the existing site, when considered in conjunction with the programmatic needs of Pace, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant notes that the use of the site

as a dormitory is permitted as-of-right in the subject zoning district; and

WHEREAS, the applicant states that the neighborhood surrounding the Zoning Lot is predominantly characterized by institutional, commercial, parking, and some residential uses; and

WHEREAS, the applicant states that in addition to the residential and ground floor retail use in the Lot 3 Building, uses on the block include a four-story public parking garage, a ten-story garage, a number of commercial buildings, ranging from four to 22 stories in height, with ground-floor retail and offices above and one seven-story building with ground floor retail and residential use above; the block also includes a 22-story building occupied by Pace; and

WHEREAS, the applicant notes that other nearby buildings include the eight-story New York Downtown Hospital, the 76-story mixed-use Frank Gehry building, and eight Pace buildings including the main building at One Pace Plaza, a 16-story building at 41 Park Row, a 22-story building, located at 163 William Street, a performing arts center at 140 William Street, and a 12-story building located at 156 William Street; and

WHEREAS, as to dormitory use, students currently occupy a portion of One Pace Plaza, a 12-story (200-bed) building located at 106 Fulton Street, and a 500-bed leased facility at 55 John Street; construction of a new 600-bed dormitory at 180 Broadway is nearing completion; and

WHEREAS, at hearing, the Board directed the applicant to submit an expanded analysis of the surrounding streetscape; and

WHEREAS, in response, the applicant analyzed the buildings along Beekman Street and William Street within an 800-ft. radius of the site; the analysis reflects that to the south, along William Street, there is one building with a height of 341 feet and another with a height of 468 feet and to the east there is a series of buildings with height of 272 feet; and

WHEREAS, the applicant asserts that the proposed bulk is compatible within this portion of the Special Lower Manhattan District, which allows for a maximum permitted base FAR of 10.0 for C6-4 districts, 15.0 for C5-5 districts, and 6.5 for R8 districts; and

WHEREAS, further, the applicant states that pursuant to ZR § 91-24, the basic maximum permitted floor area may be increased by 6 sq. ft. for every square foot of public plaza provided to a maximum FAR of 12.0 in C6-4 districts and by 10 sq. ft. for every square foot of public plaza to a maximum FAR of 18.0 in C5-5 districts and a 12.0 FAR may also be achieved in the C6-4 district by providing inclusionary housing pursuant to ZR § 23-90; and

WHEREAS, additionally, the applicant states that other than FAR, all bulk conditions, including the height of the proposed building, comply with the underlying district regulations and will fit within the character of the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or

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

WHEREAS, the applicant states that the hardship was not self-created and that no development in conformance with zoning would meet the programmatic needs of Pace at the site; and

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

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

WHEREAS, in sum, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA054M, dated November 19, 2012; and

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

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a negative declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within a C6-4 zoning district within the Special Lower Manhattan District, the construction of a 34-story dormitory building (Use Group 3) which does not comply with zoning requirements related to floor area, contrary to ZR § 91-22, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 4, 2013" –

seventeen (17) sheets; and *on further condition:*

THAT the following will be the bulk parameters of the site: a floor area of 146,986 sq. ft. (10.94 FAR) for the Pace building; a total floor area of 178,963 sq. ft. (13.3 FAR) across the site; and a total height of 339 feet; as reflected on the BSA-approved plans;

THAT the proposed floor area relies on (1) the Public Plaza certification from the City Planning Commission to allow a bonus of 18,072 sq. ft. (1.34 FAR) and (2) the Board's grant for 26,522 sq. ft. (1.97 FAR);

THAT in the absence of the Public Plaza certification from the City Planning Commission and the associated bonus of 18,072 sq. ft., the applicant must seek subsequent review and approval from the Board to increase the floor area from 128,914 sq. ft. to the 146,986 sq. ft. reflected on the Board-approved plans;

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

THAT the conditions of the proposed Public Plaza are subject to review and approval by the City Planning Commission;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 9, 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**

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 May 7, 2013, at 10 A.M., for decision, hearing closed.

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## 43-12-BZ

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

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

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

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to June 4, 2013, at 10 A.M., for deferred decision.

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## 50-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 177-90 Holding LLC/Donald McLoughlin, owner.

SUBJECT – Application March 5, 2012 – Variance (§72-21) to allow for the construction of a commercial building, contrary to use regulations (§22-00). R3-2 zoning district.

PREMISES AFFECTED – 177-60 South Conduit Avenue, south side of South Conduit Avenue, 229/83’ west of corner of South Conduit Avenue and Farmers Boulevard, Block 13312, Lot 146, Borough of Queens.

### COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Laid over to May 14, 2013, at 10 A.M., for adjourned hearing.

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## 63-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Harris and Marceline Gindi, owner; Khai Bneu Avrohom Yaakov, Inc. c/o Allen Konstam, lessee.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship (*Khal Bnei Avrohom Yaakov*), which is contrary to floor area (24-11), lot coverage, front yard (24-34), side yard (24-35a) parking (25-31), height (24-521), and setback requirements. R2 zoning district.

PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27<sup>th</sup> Street and Avenue N. Block 7663, Lot 6. Borough of Brooklyn.

### COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to May 21, 2013, at 10 A.M., for decision, hearing closed.

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## 72-12-BZ

APPLICANT – Raymond H. Levin, Wachtel Masyr & Missry, LLP, for Lodz Development, LLC, owner.

SUBJECT – Application March 28, 2012 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to off-street parking (§25-23), floor area, open space, lot coverage (§23-145), maximum base height and maximum building height (§23-633) regulations. R7A/C2-4 and R6B zoning districts.

PREMISES AFFECTED – 213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue. Block 1135, Lot 11. Borough of Brooklyn.

### COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Laid over to July 9, 2013, at 10 A.M., for adjourned hearing.

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## 138-12-BZ

APPLICANT – Harold Weinberg, for Israel Cohen, owner.

SUBJECT – Application April 27, 2012 – Special Permit (§73-622) for the legalization of an enlargement to a single family residence, contrary to side yard requirement (§23-461). R-5 zoning district.

PREMISES AFFECTED – 2051 East 19th Street, between Avenue U and Avenue T, Block 7324, Lot 64, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to May 7, 2013, at 10 A.M., for continued hearing.

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## 139-12-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, PC, for Alvan Bisnoff/Georgetown Realty Corp., owner.

SUBJECT – Application April 30, 2012 – Special Permit (§73-53) to allow the enlargement of an existing non-conforming manufacturing building, contrary to use regulations (§22-00). R5 zoning district.

PREMISES AFFECTED – 34-10 12<sup>th</sup> Street, southwest corner of 34<sup>th</sup> Avenue and 12<sup>th</sup> Street, Block 326, Lot 29, Borough of Queens.

### COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to May 14, 2013, at 10 A.M., for decision, hearing closed.

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## 148-12-BZ

APPLICANT – Eric Palatnik, P.C., for Esther Kuessous, owner.

SUBJECT – Application May 8, 2012 – Special Permit (§73-621) for the enlargement of an existing single family semi-detached residence, contrary to floor area, lot coverage and open space (ZR23-141(b)). R4 zoning district.

PREMISES AFFECTED – 981 East 29<sup>th</sup> Street, between Avenue I and Avenue J, Block 7593, Lot 12, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to May 7, 2013, at 10 A.M., for continued hearing.

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## 238-12-BZ

APPLICANT – Harold Weinberg, for Stuart Ditchek, owner.

SUBJECT – Application August 1, 2012 – Special Permit (§73-622) for the enlargement of single family home contrary floor area and lot coverage (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1713 East 23<sup>rd</sup> Street, between Quentin Road and Avenue R, Block 6806, Lot 86, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to April 23, 2013, at 10 A.M., for continued hearing.

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## 242-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Toldos Yehuda, owners.

SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Toldos Yehuda*), contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district.

PREMISES AFFECTED – 1621-1629 61<sup>st</sup> Street, northeast side of 61<sup>st</sup> Street, 170' southeast from the intersection of 16<sup>th</sup> Avenue and 61<sup>st</sup> Street, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to May 7, 2013, at 10 A.M., for deferred decision.

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## 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 (§23-141) and perimeter wall height (§23-631) requirements. R2X (OP) zoning district.

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

**ACTION OF THE BOARD** – Laid over to May 7, 2013, at 10 A.M., for continued hearing.

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## 293-12-BZ

APPLICANT – Eric Palatnik, P.C., for Mr. and Mrs. Angelo Colantuono, owners.

SUBJECT – Application October 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141(b)) and side yard (§23-461(a)) regulations. R3X zoning district.

PREMISES AFFECTED – 1245 83<sup>rd</sup> Street, north side of 83rd Street, between 12<sup>th</sup> Avenue and 13<sup>th</sup> Avenue, Block 6302, Lot 60, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

**ACTION OF THE BOARD** – Laid over to May 14, 2013, at 10 A.M., for continued hearing.

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## 294-12-BZ

APPLICANT – Eric Palatnik, P.C., for David Katzive, owner; Thomas Anthony, lessee.

SUBJECT – Application October 11, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Everyday Athlete*). C5-2A/DB special zoning district.

Special Permit (§73-36) to allow a physical culture establishment (*Everyday Athlete*). C5-2A/DB special zoning district.

PREMISES AFFECTED – 130 Clinton Street, aka 124 Clinton Street, between Joralemon Street and Aitken Place, Block 264, Lot 17, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to May 7, 2013, at 10 A.M., for deferred decision.

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## 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 4<sup>th</sup> Street, Block 545, Lot 15, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to May 7, 2013, at 10 A.M., for deferred decision.

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## 3-13-BZ

APPLICANT – Ellen Hay/Wachtel Masyr Missry LLP, for Greenridge 674 Inc., owner; Fitness International LLC DBA LA Fitness, lessees.

SUBJECT – Application January 11, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*LA Fitness*). C4-1 (SRD) zoning district.

PREMISES AFFECTED – 3231-3251 Richmond Avenue, aka 806 Arthur Kill Road, east side Richmond Avenue between Arthur Kill Road, Getz and Gurley Avenues, Block 5533, Lots 47, 58, 62, 123, Borough of Staten Island.

### COMMUNITY BOARD #3SI

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 May 7, 2013, at 10 A.M., for decision, hearing closed.

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## 4-13-BZ

APPLICANT – Francis R. Angelino, Esq., for 1625 Flatbush, LLC, owner; Global Health Clubs, LLC, owner.

SUBJECT – Application January 11, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Retro Fitness*). C8-2 zoning district.

PREMISES AFFECTED – 1623 Flatbush Avenue, East 32nd Street and New York Avenue, Block 7578, Lot 49, Borough of Brooklyn.

### COMMUNITY BOARD #17BK

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 May 7, 2013, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## \*CORRECTION

This resolution adopted on March 19, 2013, under Calendar No. 201-10-BZY and printed in Volume 98, Bulletin No. 12, is hereby corrected to read as follows:

### 201-10-BZY

APPLICANT – Kramer Levin Naftalis & Frankel, for 180 Orchard LLC., owner.

SUBJECT – Application January 18, 2013 – Extension of time to complete construction (§11-332) for an additional two years for a minor development, which will expire on March 15, 2013. C4-4A zoning district.

PREMISES AFFECTED – 180 Orchard Street, Orchard Street to Ludlow Street, Block 412, Lot 5, Borough of Manhattan.

### COMMUNITY BOARD #3M

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in *The City Record*, and then to decision on March 19, 2013; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, Commissioner Ottley-Brown, and Commissioner Montanez; and

WHEREAS, the subject site is an L-shaped through lot with frontage on Orchard Street and Ludlow Street, between Houston Street and Stanton Street, within a C4-4A zoning district; and

WHEREAS, the subject site has 128'-3" of frontage along Orchard Street, 50'-1" of frontage along Ludlow Street, a depth ranging from 87'-10" to 175'-8", and a total lot area of 41,501 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 24-story building containing approximately 246 hotel rooms, community facility uses, retail stores on the lower levels and an accessory underground parking garage (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of 154,519.6 sq. ft.; and

WHEREAS, the applicant states that the owner will be filing an application with the City Planning Commission ("CPC") requesting a special permit pursuant to ZR § 13-561 to expand the size of the underground accessory parking garage at the site; and

WHEREAS, the applicant represents that the proposed CPC special permit for the garage has no effect on the subject

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proposal and that the plans for the garage, as approved by the Department of Buildings (“DOB”), have not changed; and

WHEREAS, the development complies with the former C6-1 zoning district parameters; and

WHEREAS, on November 23, 2005, New Building Permit No. 104297850-01-NB (hereinafter, the “Permit”) was issued by the DOB permitting construction of the Building; and

WHEREAS, however, on November 19, 2008 (hereinafter, the “Enactment Date”), the City Council voted to adopt the East Village/Lower East Side Rezoning, which rezoned the site from C6-1 to C4-4A; and

WHEREAS, accordingly, the Building does not comply with the current zoning with respect to floor area ratio, building height and street wall location; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the two years subsequent to the Enactment Date, construction was not completed and a certificate of occupancy was not issued; and

WHEREAS, accordingly, an application was filed with the Board for an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, on March 15, 2011, the Board granted a two-year extension of time to complete construction and obtain a certificate of occupancy under the subject calendar number; and

WHEREAS, accordingly, the applicant had until March 15, 2013 to complete construction and obtain a certificate of occupancy; and

WHEREAS, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

WHEREAS, for a “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the

building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the Board notes that the subject site was initially vested by DOB in 2008, granted an extension of time to complete construction and obtain a certificate of occupancy by the Board in 2011, and now seeks an additional extension under ZR § 11-332; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated February 1, 2011, DOB stated that the New Building Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant, and directed the applicant to exclude pre-permit expenditures; and

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WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of November 19, 2010 has been considered; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the original permit includes: 100 percent of the excavation, footings and foundation; 100 percent of the underground parking garage and cellar levels; and 100 percent of the first and second floor retail space; and

WHEREAS, the applicant states that work on the proposed development subsequent to the Board's March 15, 2011 extension of time to complete construction under the permit includes: installation of sprinklers in the sub-cellar, ground and second floors; installation of concrete and masonry block in the sub-cellar, cellar and ground floors, construction of columns throughout the cellar and sub-cellar; construction of additional support for columns below grade; installation of a new glass storefront; reconfiguration of elevator and stair cores; and installation of roof protection on the adjacent properties; and

WHEREAS, additionally, the applicant has substantially revised the plans to comply with changes in applicable codes since 2005, including: the 2010 ADA Code; the life safety provisions of the 2008 NYC Construction Codes; and the NYC Energy Conservation Code; and

WHEREAS, in support of these statements, the applicant has submitted the following: a breakdown of the construction costs by line item; plans showing recent foundation, sub-cellar, cellar, ground, mezzanine and second-story work; copies of cancelled checks; invoices; photographs of the site; and court actions taken in furtherance of continuing construction; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$25,205,136, or 36.5 percent, out of the \$69,014,234 cost to complete; and

WHEREAS, further as to costs, the applicant represents of the \$25,205,136 expended to date, \$6,612,054 has been expended since the Board's March 15, 2011 extension of time to complete construction; and

WHEREAS, as noted, the applicant has submitted invoices and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the

applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permit, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

*Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104297850-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on March 19, 2015.

Adopted by the Board of Standards and Appeals, March 19, 2013.

**\*The resolution has been amended to correct part of the APPLICANT, clause and to change the filing date of the Application. Corrected in Bulletin Nos. 13-15, Vol. 98, dated April 17, 2013.**