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# BULLETIN

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

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Tuesday, May 7, 2013**

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**Affecting Calendar Numbers:**

1073-62-BZ	305 East 40 <sup>th</sup> Street, Manhattan
1111-62-BZ	201 East 56 <sup>th</sup> Street, Manhattan
11-80-BZ	146 West 28 <sup>th</sup> Street, Manhattan
8-98-BZ	106-108 West 13 <sup>th</sup> Street, Manhattan
551-37-BZ	232-02 Northern Boulevard, Queens
135-46-BZ	3802 Avenue U, Brooklyn
130-88-BZ	1007 Brooklyn Avenue, aka 3602 Snyder Avenue, Brooklyn
30-02-BZ	502 Park Avenue, Manhattan
328-02-BZ	3 Park Avenue, Manhattan
27-05-BZ	91-11 Roosevelt Avenue, Queens
103-12-A	74-76 Adelphi Street, Brooklyn
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304-12-A	42-32 147 <sup>th</sup> Street, Queens
251-12-A	350 East 59 <sup>th</sup> Street, Manhattan
317-12-A	40-40 27 <sup>th</sup> Street, Queens
346-12-A	179-181 Woodpoint Road, Brooklyn
60-13-A	71 & 75 Greene Avenue, aka 370 & 378 Clemont Avenue, Brooklyn
42-10-BZ	2170 Mill Avenue, Brooklyn
148-12-BZ	981 East 29 <sup>th</sup> Street, Brooklyn
294-12-BZ	130 Clinton Street, aka 124 Clinton Street, Brooklyn
298-12-BZ	726-730 Broadway, Manhattan
3-13-BZ	3231-3251 Richmond Avenue, Staten Island
4-13-BZ	1623 Flatbush Avenue, Brooklyn
113-12-BZ	32-05 Parsons Boulevard, Queens
138-12-BZ	2051 East 19 <sup>th</sup> Street, Brooklyn
206-12-BZ	2373 East 70 <sup>th</sup> Street, Brooklyn
242-12-BZ	1621-1629 61 <sup>st</sup> Street, Brooklyn
284-12-BZ	2047 East 3 <sup>rd</sup> Street, Brooklyn
338-12-BZ	164-20 Northern Boulevard, Queens
13-13-BZ & 14-13-BZ	98 & 96 DeGraw Street, Brooklyn
63-13-BZ	11-11 44 <sup>th</sup> Drive, Queens

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# DOCKETS

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New Case Filed Up to May 7, 2013  
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## 110-13-A

120 President Street, Between Hicks Street and Columbia Street, Block 00348, Lot(s) 0022, Borough of **Brooklyn, Community Board: 06**. An Appeal Challenging Department of Buildings interpretation seeking to reinstate a permit in reference to a post approval amendment in regards to the excavation and construction of an accessory swimming pool and covering. R6B district.  
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## 111-13-BZY

5031 Grosvenor Avenue, , Block 5831, Lot(s) 50, Borough of **Bronx, Community Board: 08**. Extension of time (§11-331) to complete construction of a major development commenced under the prior zoning district. R1-2 district.  
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## 112-13-BZY

5031 Grosvenor Avenue, , Block 5831, Lot(s) 60, Borough of **Bronx, Community Board: 08**. Extension of time (§11-331) to complete construction of a major development commenced under the prior zoning district. R1-2 district.  
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## 113-13-BZY

5021 Grosvenor Avenue, Block 5831, Lot(s) 70, Borough of **Bronx, Community Board: 08**. Extension of time (§11-331) to complete construction of a major development commenced under the prior zoning district. R1-2 district.  
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## 114-13-BZY

5030 Grosvenor Avenue, Block 5830, Lot(s) 3930, Borough of **Bronx, Community Board: 08**. Extension of time (§11-331) to complete construction of a major development commenced under the prior zoning district. R1-2 district.  
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## 115-13-BZY

5310 Grosvenor Avenue, Block 5839, Lot(s) 4018, Borough of **Bronx, Community Board: 08**. Extension of time (§11-331) to complete construction of a major development commenced under the prior zoning district. R1-2 district.  
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## 116-13-BZY

5300 Grosvenor Avenue, Block 5839, Lot(s) 4025, Borough of **Bronx, Community Board: 08**. Extension of time (§11-331) to complete construction of a major development commenced under the prior zoning district. R1-2 district.  
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## 117-13-BZY

5041 Goodridge Avenue, Block 5830, Lot(s) 3940, Borough of **Bronx, Community Board: 08**. Extension of time (§11-331) to complete construction of a major development commenced under the prior zoning district. R1-2 district.  
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## 118-13-BZY

5040 Goodridge Avenue, , Block 5829, Lot(s) 3635, Borough of **Bronx, Community Board: 08**. Extension of time (§11-331) to complete construction of a major development commenced under the prior zoning district. R1-2 district.  
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## 119-13-BZY

5030 Goodridge Avenue, , Block 5829, Lot(s) 3630, Borough of **Bronx, Community Board: 08**. Extension of time (§11-331) to complete construction of a major development commenced under the prior zoning district. R1-2 district.  
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## 120-13-BZ

1815 Forest Avenue, north side of Forest Avenue, 100 ft. west of intersection of Forest Avenue and Morningstar Road, Block 1180, Lot(s) 6 & 49, Borough of **Staten Island, Community Board: 01**. Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) with an accessory drive-through facility. C1-2/R3-2 zoning district. C1-1 (R3-2) district.  
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## 121-13-BZ

1514 57th Street, 100' southeasterly from the corner of the southerly side of 57th Street and the easterly side of 15th Avenue, Block 05496, Lot(s) 12, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to permit a UG 4 synagogue (Congregation Beth Aron Moshe), contrary to front yard (§24-34), side yards (§24-35) and rear yard (§24-36). R5 zoning district. R5 district.  
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## 122-13-BZ

1080 East 8th Street, West side of East 8th Street between Avenue J and Avenue K, Block 6528, Lot(s) 33, Borough of **Brooklyn, Community Board: 12**. This application is filed pursuant to section 73-621 of the zoning resolution as amended to request a special permit to allow an enlargement of a single family residence located in a residential R2X in the special ocean parkway district. R2X(op) district.  
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# DOCKETS

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## 123-13-A

86 Bedford Avenue, Northeastern side of Bedford Street between Barrow and Grove Streets, Block 00588, Lot(s) 0003, Borough of **Manhattan, Community Board: 2**. Appeal challenging the determination of the Department of Buildings to revoke Permit No. 120174658 on the basis that a lawful commercial use had not been established and the use as a restaurant has been discontinued since 2007 . R6 Zoning District . R6 district.

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## 124-13-BZ

95 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 03004, Lot(s) 0039, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district. M1-1 district.

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## 125-13-BZ

97 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 03004, Lot(s) 0038, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district. M1-1 district.

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## 126-13-A

65-70 Austin Street, 65th Road and 66th Avenue, Block 03104, Lot(s) 0101, Borough of **Queens, Community Board: 6**. Appeal from a Determination by New York City Department of Buildings that a rear yard is required at the boundary of a block coinciding with a railroad right-of-way located at or above ground level.R7B Zoning Distirct R7-B district.

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## 127-13-A

332 West 87th Street, South side of West 87th Street between West end Avenue and Riverside Drive, Block 01247, Lot(s) 0048, Borough of **Manhattan, Community Board: 7**. Application filed pursuant to Section 310 of the Multiple Dwelling Law "MDL" and requests that the Board vary MDL Sections 171-2(a) and 2(f) to allow for the vertical enlargement of the building. R8 Zoning District . R8 district.

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## 128-13-BZ

1668 East 28th Street, west side of East 28th Street 200' north of the intersection formed by East 28th Street and Quentin road, Block 06790, Lot(s) 0023, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-

141(b)); side yards (§23-461(a)); less than the required rear yard (§23-47) and perimeter wall height (§23-631(b)). R3-2 zoning district. R3-2 district.

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## 129-13-BZ

1010 East 22nd Street, west side of East 22nd Street, 264 feet south of Avenue I, Block 07585, Lot(s) 0061, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(a)); side yards (§23-461(a)); less than the required rear yard (§23-47). R2 zoning district. R-2 district.

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## 130-13-BZ

1590 Nostrand Avenue, southwest corner of Nostrand Avenue and Albemarie Road, Block 05131, Lot(s) 0001, Borough of **Brooklyn, Community Board: 17**. Re-Instatement (§11-411) of a previously approved variance which permitted a one-story storage garage for more than five motor vehicles with motor vehicle repair shop (UG 16B) limited to vehicles owned by tenants in an R6 zoning district which expired on February 14, 1981; Amendment (§11-413) to change the previously approved use to retail (UG 6); Waiver of the Rules. R6 zoning district. R6 district.

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

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# CALENDAR

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**MAY 21, 2013, 10:00 A.M.**

**APPEALS CALENDAR**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 21, 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**

**799-62-BZ**

APPLICANT – Sahn Ward Coschignano & Baker, PLLC, for 350 Condominium Association, owners.  
SUBJECT – Application March 28, 2013 – Extension of Term permitting the use of unused and surplus tenant parking spaces, within an accessory garage, for transient parking granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law (MDL) which expired on November 9, 2012; Waiver of the Rules. C2-5/R8, R7B zoning district.  
PREMISES AFFECTED – 501 First Avenue aka 350 East 30th Street, below-grade parking garage along the west side of First Avenue between East 29th Street and 30th Street, Block 935, Lot 7501, Borough of Manhattan.  
**COMMUNITY BOARD # 6M**

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**200-00-BZ**

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owners.  
SUBJECT – Application April 18, 2013 – Extension of Time to obtain a Certificate of Occupancy of a variance (§72-21) to operate a Physical Culture Establishment (Squash Fitness Center) which expired on April 25, 2013. C1-4(R6B) zoning district.  
PREMISES AFFECTED – 107-24 37<sup>th</sup> Avenue, southwest corner of 37<sup>th</sup> Avenue and 108<sup>th</sup> Street, aka 37-16 108<sup>th</sup> Street, Block 1773, Lot 10, Borough of Queens.  
**COMMUNITY BOARD #3Q**

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**93-08-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Worlds fair Development LLC, owner.  
SUBJECT – Application February 5, 2013 – Extension of Time to Complete Construction of a previously granted Variance ZR §72-21 for the construction of a six-story transient hotel (UG 5) which expired on January 13, 2013; Amendment to construct a sub-cellar. R6A zoning district.  
PREMISES AFFECTED – 112-12/24 Astoria Boulevard, southwest corner of intersection of Astoria Boulevard and 112<sup>th</sup> Place, Block 1706, Lot 5, 9, 11, Borough of Queens.  
**COMMUNITY BOARD #3Q**

**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 5th Street, north side of East 5th Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.  
**COMMUNITY BOARD #3M**

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**345-12-A**

APPLICANT – Barry Mallin, Esq./Mallin & Cha, P.C., for 150 Charles Street Holdings LLC c/o Withroff Group, owners.  
SUBJECT – Application December 21, 2012 – Appeal challenging DOB's determination that developer is in compliance with ZR 15-41.  
PREMISES AFFECTED – 303 West Tenth Street aka 150 Charles Street, West Tenth, Charles Street, Washington and West Streets, Block 636, Lot 70, Borough of Manhattan  
**COMMUNITY BOARD #2M**

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**ZONING CALENDAR**

**73-13-BZ**

APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub LLC, owner.  
SUBJECT – Application February 19, 2013 – Special Permit (§73-49) to allow proposed rooftop parking that is contrary to ZR§36-11 and §44-10. M1-1 and C4-4 zoning districts.  
PREMISES AFFECTED – 459 E. 149th Street, northwest corner of Brook Avenue and 149th Street, Block 2294, Lot 60, Borough of Bronx.  
**COMMUNITY BOARD #1BX**

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**74-13-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Chelsea W26 LLC, owner; Blink Eighth Avenue, Inc., lessee.  
SUBJECT – Application February 20, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) within a proposed mixed-use building. C6-2A zoning district.  
PREMISES AFFECTED – 308/12 8th Avenue, 252/66

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# CALENDAR

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West 26th Street, southeast corner of the intersection of 8th Avenue and West 26th Street, Block 775, Lot 7502, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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**80-13-BZ**

APPLICANT – Goldman Harris LLC., for Everett Realty LLC c/o Mildred Kayden, owner; Elizabeth Arden New York, lessee.

SUBJECT – Application February 27, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Red Door Spa*) in a C6-4A zoning district.

PREMISES AFFECTED – 200 Park Avenue South, northwest corner of Park Avenue South and East 17th Street, Block 846, Lot 33, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MAY 7, 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**

**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**

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a transient parking garage, which expired on March 5, 2013; and

WHEREAS, a public hearing was held on this application on April 9, 2013, after due notice by publication in *The City Record*, and then to decision on May 7, 2013; and

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

WHEREAS, Community Board 6, Manhattan, does not object to this application; and

WHEREAS, the subject site is located on the southeast corner of Second Avenue and East 40th Street, partially within an R10 zoning district and partially within a C1-9 zoning district; and

WHEREAS, the site is occupied by a 20-story and penthouse residential building;

WHEREAS, portions of the cellar and first floor are occupied by a 108-space accessory parking garage; and

WHEREAS, on March 5, 1963, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to

permit unused and surplus parking spaces to be used for transient parking for a term of 20 years; and

WHEREAS, most recently, on March 23, 2004, the Board granted a ten-year extension of term, which expired on March 5, 2013; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on March 5, 1963, so that, as amended, this portion of the resolution shall read: “to permit an extension of term for an additional 10 years from the expiration of the prior grant, to expire on March 5, 2023; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans and that all work shall substantially conform to drawings filed with this application and marked ‘Received January 15, 2013- (2) sheets; and *on further condition*:

THAT this term will expire on March 5, 2023;

THAT a sign stating that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days’ notice to the owner be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions will appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

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

(DOB Application No. 103634658)

Adopted by the Board of Standards and Appeals, May 7, 2013.

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**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 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

# MINUTES

4, Borough of Manhattan.

## COMMUNITY BOARD #6M

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a transient parking garage, which expired on March 26, 2013; and

WHEREAS, a public hearing was held on this application on April 9, 2013, after due notice by publication in *The City Record*, and then to decision on May 7, 2013; and

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

WHEREAS, Community Board 6, Manhattan, does not object to this application; and

WHEREAS, the subject site spans the full length of the block on Third Avenue between East 56th Street and East 57th Street, partially within a C6-6 zoning district, partially within a C5-2 zoning district and partially within a C1-9 zoning district; and

WHEREAS, the site is occupied by a 20-story residential building;

WHEREAS, the sub-cellar, and portions of the cellar and first floor are occupied by a 150-space accessory parking garage; and

WHEREAS, on March 26, 1963, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to permit unused and surplus parking spaces to be used for transient parking for a term of 20 years; and

WHEREAS, most recently, on June 7, 2005, the Board granted a ten-year extension of term, which expired on March 26, 2013; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on March 26, 2013, so that, as amended, this portion of the resolution shall read: “to permit an extension of term for an additional 10 years from the expiration of the prior grant, to expire on March 26, 2023; *on condition* that the use and operation of the site shall substantially conform to the

previously approved plans and that all work shall substantially conform to drawings filed with this application and marked ‘Received January 15, 2013- (3) sheets; and *on further condition*:

THAT this term will expire on March 26, 2023;

THAT a sign stating that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days’ notice to the owner be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions will appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

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) and/or configuration(s) not related to the relief granted.” (DOB Application No. 103829699)

Adopted by the Board of Standards and Appeals, May 7, 2013.

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## 11-80-BZ

APPLICANT – Richard Bass, Herrick, Feinstein, LLP, for West 28th Street Owners LLC.

SUBJECT – Application January 10, 2013 – Amendment of previously approved variance (§72-21) which allowed conversion of the third through seventh floor from commercial to residential use. Amendment would permit the additional conversion of the second floor from commercial to residential use. M1-6 zoning district.

PREMISES AFFECTED – 146 West 28<sup>th</sup> Street, south side of West 28<sup>th</sup> Street, between 6<sup>th</sup> and 7<sup>th</sup> Avenues, Block 803, Lot 65, Borough of Manhattan.

## COMMUNITY BOARD #5M

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance, which permitted residential use (Use Group 2) on the third through seventh stories of a seven-story building within a manufacturing district; and

WHEREAS, a public hearing was held on this application on March 19, 2013 after due notice by publication in the *City Record* with a continued hearing on April 16, 2013, and then to decision on May 7, 2013; and

# MINUTES

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

WHEREAS, the site is located on the south side of West 28th Street between Avenue of the Americas and Seventh Avenue, in an M1-6 zoning district; and

WHEREAS, the site is occupied by a seven-story commercial and residential building with ground floor retail use (Use Group 6), office use (Use Group 6) on the second story and residences (Use Group 2) on the third through seventh stories; and

WHEREAS, on July 8, 1980, under the subject calendar number, the Board granted a variance to permit residential use on the third through seventh stories in a manufacturing district, contrary to ZR § 42-00; and

WHEREAS, the applicant states that the building is in substantial compliance with all conditions of the prior grant except the second story residential use; and

WHEREAS, the applicant now requests an amendment to permit the conversion of the second story to residential use; the applicant notes that the second story has been occupied by residential use since 1980 and that the instant application would legalize the use; and

WHEREAS, the applicant states that the physical conditions of the building and neighborhood character that made residential use appropriate on the third through seventh stories remain today and apply with equal force with respect to the second story; and

WHEREAS, specifically, the applicant describes these conditions as: (1) narrow building floor plates that are too small and undesirable to accommodate the as-of-right commercial and manufacturing uses; (2) the small, awkward layout of the building's structural elements, stairs and elevators, which further reduce the amount of space for commercial or manufacturing uses; (3) the lack of interest in the space for commercial use and the general decline in the manufacturing sector; and (4) the increasingly mixed-use nature of the neighborhood, which includes many residential uses; and

WHEREAS, the applicant states that residential use is appropriate on the second story for the following reasons: (1) a commercial or manufacturing use on the second story would be incompatible with and detrimental to the residential use in the building; (2) the two small floor plates with approximately 1,600 sq. ft. each of usable space are not conducive to as-of-right uses; (3) there is no freight elevator; consequently, if a commercial or manufacturing use were to occupy the second floors, its occupants would be forced to share the entrances and elevators with the residents of the buildings; and (4) there is no loading dock, which is required for many as-of-right uses; and

WHEREAS, as to the requirement to share elevators, the applicant explored the feasibility of installing a dedicated elevator for the second story, and found that such an installation would eliminate valuable floor area on the ground floor and second and third stories, eliminate window display

space at the ground floor (making the commercial space less attractive to potential tenants), impact the cellar and building utilities, and increase cost substantially; and

WHEREAS, as to the impact on the neighborhood character of authorizing the second story residential use, the applicant examined the surrounding area (the subject block and the block directly south) and identified 14 tax lots containing second floor residential use; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, dated July 8, 1980, to permit residential use on the second story of the subject building; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received April 30, 2013'- two (2) sheets; and *on further condition:*

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

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

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." (Alt. 121440235)

Adopted by the Board of Standards and Appeals, May 7, 2013.

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## 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

**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

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Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance to permit certain retail uses (Use Group 6) at the cellar level of a six-story building within a residential zoning district; and

WHEREAS, a public hearing was held on this application on April 9, 2013 after due notice by publication in the *City Record*, and then to decision on May 7, 2013; and

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

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

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

WHEREAS, the site is located on the south side of West 13th Street between Avenue of the Americas and Seventh Avenue, in an R6 zoning district within the Greenwich Village Historic District; and

WHEREAS, the site is occupied by a six-story mixed-use building with cellar retail use and residential use on stories one through six; and

WHEREAS, on August 11, 1998, under the subject calendar number, the Board granted a variance to legalize the retail use that existed in the cellar, limiting the permitted Use Group 6 uses to: “antique store, art gallery, furniture store, or jewelry or art metal craft store” and limiting its size to 1,400 sq. ft.; the Board limited the hours of operation of the use to Tuesday through Friday, 10:00 a.m. to 7:00 p.m., Saturday and Sunday, 11:00 a.m. to 6:00 p.m. and closed Monday; and

WHEREAS, the variance was granted for a term of 20 years, to expire on August 11, 2018; and

WHEREAS, the applicant states that it has substantially complied with all conditions of the grant, except when the space was occupied by an art gallery, which remained open until 7:00 pm on Saturdays (one hour later than was permitted under the grant); and

WHEREAS, the applicant now requests an amendment to permit: (1) any Use Group 6 use in the cellar, except eating and drinking establishments and food stores; (2) an expansion of the hours of operation to Monday through Friday, 9:00 a.m. to 9:00 p.m. and Saturday and Sunday, 10:00 a.m. to 7:00 p.m.; and (3) amend the 20-year term date to begin as of the date of the Board’s action in the instant application; and

WHEREAS, the applicant states that the proposed expanded Use Group 6 uses would remain compatible with the neighborhood character and would greatly increase the marketability of the space; and

WHEREAS, in support of this assertion, the applicant represents that it has consulted with real estate brokers about leasing the space but has not been able to find a tenant due to the restrictions on use and hours of operation contained in the prior grant; and

WHEREAS, as to the effect on the neighborhood character, the applicant represents that the expansion in

permitted uses will have a minimal impact on the building’s appearance; the applicant also notes that the subject building is only 20 feet from a C6-2 zoning district, which permits a wide range of commercial uses; and

WHEREAS, the applicant submitted a Certificate of No Effect (“CNE”) from the Landmarks Preservation Commission (“LPC”), dated, January 30, 2013, approving the proposed interior alterations; and

WHEREAS, the Board notes that, initially, the applicant sought an amendment authorizing: (1) any Use Group 6 use, except eating and drinking establishments; (2) expanded hours of Monday through Sunday, 8:00 a.m. to 11:00 p.m.; and (3) the removal of the term of the variance; however, after consulting with Community Board 2, the applicant agreed to amend its request to include: (1) a food store restriction; (2) more limited weekend hours, as noted above; and (3) a 20-year variance term; and

WHEREAS, at hearing, the Board requested clarification regarding whether the applicant sought to retain the existing signage at its current size (18 sq. ft. in surface area) and whether LPC had approved such signage; and

WHEREAS, in response, the applicant submitted a letter indicating that no expansion was requested and that LPC would have to approve the new signage upon a full application for a CNE; the applicant noted that such an application has not yet been filed because the design of the signage will vary depending on the nature of the tenant obtained; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, dated August 11, 1998, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received April 30, 2013’- three (3) sheets; and *on further condition*:

THAT the term of this grant will expire on May 7, 2033;

THAT the commercial use in the cellar will be limited to any of the uses listed in Use Group 6, except eating and drinking establishments and food stores;

THAT the hours of operation will be limited to: Monday through Friday, 9:00 a.m. to 9:00 p.m. and Saturday and Sunday, 10:00 a.m. to 7:00 p.m.;

THAT the signage for the commercial use will be as per previously approved plans and will not exceed 18 sq. ft. in surface area, unless approved by the Board and by LPC;

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

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

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

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laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”  
(Alt. 121444286)

Adopted by the Board of Standards and Appeals, May 7, 2013.

## 551-37-BZ

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

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

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

### COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

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

## 135-46-BZ

APPLICANT – Eric Palatnik, P.C., for Arielle A. Jewels, Inc., owner.

SUBJECT – Application March 30, 2012 – Extension of Term (§11-411) of approved variance which permitted an automotive service station (UG 16B) with accessory uses, which expired on January 29, 2012, and an amendment (§11-413) to convert the use to auto laundry (UG 16B) hand car wash; waiver for the Rules. R4 zoning district.

PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38<sup>th</sup> Street, between Ryder Avenue and East 38<sup>th</sup> Street, Block 8555, Lot 37, 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 June 4, 2013, at 10 A.M., for decision, hearing closed.

## 130-88-BZ

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

SUBJECT – Application August 13, 2012 – Extension of Term of approved Special Permit (§73-211) for the continued operation of UG 16B gasoline service station (*Gulf*) which expired on January 24, 2009; Extension of

Time to obtain a Certificate of Occupancy which expired on October 12, 2003; Waiver of the Rules. C2-2/R4 zoning district.

PREMISES AFFECTED – 1007 Brooklyn Avenue, aka 3602 Snyder Avenue, southeast corner of the intersection formed by Snyder and Brooklyn Avenues, Block 4907, Lot 1, 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 June 4, 2013, at 10 A.M., for decision, hearing closed.

## 30-02-BZ

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

SUBJECT – Application January 28, 2013 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*New York City Sports Club*) which expired on July 23, 2012; Amendment to permit the modification of approved hours and signage; Waiver of the Rules. C5-3, C5-2.5(Mid) zoning district.

PREMISES AFFECTED – 502 Park Avenue, northwest corner of Park Avenue and East 59th Street, Block 1374, Lot 7502(36), Borough of Manhattan

### COMMUNITY BOARD # 8M

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

## 328-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Park Avenue Building Co., LLP, owner; Town Sports International dba New York Sports Club, lessee.

SUBJECT – Application January 30, 2013 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expired on January 1, 2013. C5-3/C1-9 zoning district.

PREMISES AFFECTED – 3 Park Avenue, southeast corner of Park Avenue and East 34th Street, Block 889, Lot 9001, Borough of Manhattan.

### COMMUNITY BOARD # 5M

THE VOTE TO CLOSE HEARING –

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

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

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## 27-05-BZ

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

SUBJECT – Application February 4, 2013 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on April 18, 2011; Amendment to permit the legalization of site layout and operational changes; Waiver of the Rules. C2-4/R6 zoning district.

PREMISES AFFECTED – 91-11 Roosevelt Avenue, north side of Roosevelt Avenue between 91st and 92nd Street, Block 1479, Lot 38, Borough of Queens.

### COMMUNITY BOARD #3Q

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

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## APPEALS CALENDAR

### 103-12-A

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

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

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

### COMMUNITY BOARD #2BK

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

#### THE VOTE TO GRANT –

Affirmative: .....0

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

#### THE RESOLUTION –

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

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, with continued hearings on July 24, 2012, September 11, 2012, January 8, 2013, February 26, 2013, and April 9, 2013, and then to decision on May 7, 2013; and

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

WHEREAS, Community Board 2, Brooklyn, recommends disapproval of this application; and

WHEREAS, City Councilperson Letitia James and State Assembly Member David Weprin, provided testimony in

opposition to the vesting application; and

WHEREAS, the Adelphi Street Residents, the Fort Greene Association, and certain neighbors provided testimony in opposition to the application, citing concerns about the limited amount of work performed and raising questions about whether the claimed expenditures were associated with the subject site or other sites controlled by the same owner/contractor; and

WHEREAS, the site is located on the west side of Adelphi Street, approximately 74.12 feet south of Park Avenue; and

WHEREAS, the applicant states that the site comprises two tax lots (Lots 52 and 53) having a lot area of 4,591 sq. ft., and is further augmented by additional floor area (4,116 sq. ft.) obtained through a zoning lot merger with the adjacent Lot 51; and

WHEREAS, the applicant proposes to develop the site with a seven-story residential building with an FAR of 2.63, and 16 dwelling units (the “Building”); and

WHEREAS, the subject site is currently located within an R5B zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters; specifically with respect to floor area and density; and

WHEREAS, however, on July 25, 2007 (the “Enactment Date”), the City Council voted to adopt the Fort Greene/Clinton Hill Rezoning, which rezoned the site to R5B, as noted above; and

WHEREAS, the Building does not comply with the R5B zoning district parameters as to floor area and density; and

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

WHEREAS, the applicant states that Permit No. 302384417-EW-OT (the “Alteration Permit”), an Alteration Type 2 permit for the construction of the Building’s foundation and structural work, was issued to the owner by the Department of Buildings (“DOB”) on July 24, 2007; and

WHEREAS, the applicant states that the Alteration Permit was filed in conjunction with New Building Application No. 302330680, which included complete plans and specifications for the proposed seven-story building, and was originally filed on April 24, 2007 (the “Original Application”); and

WHEREAS, the applicant notes that, subsequent to the Enactment Date, the Original Application was amended through a Post Approval Amendment to reflect a three-story residential building that complies with the R5B zoning district requirements, for which DOB states that a permit was issued on May 8, 2008; and

WHEREAS, the applicant notes that a separate application for the proposed seven-story residential building was filed under New Building Application No. 302360861, for which an NB permit was issued on July 23, 2007; however, that permit was subsequently withdrawn on March

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15, 2008 (the “Withdrawn Permit”); and

WHEREAS, the applicant asserts that lawful work commenced under the Withdrawn Permit for the one day differential between the date of its issuance (July 23, 2007) and the issuance of the Alteration Permit (July 24, 2007); and

WHEREAS, the site is the subject of an earlier common law vested rights application to continue construction pursuant to the Withdrawn Permit under BSA Cal. No. 219-10-A; the applicant withdrew BSA Cal. No. 219-10-A by letter dated November 9, 2011; and

WHEREAS; the applicant now seeks to continue construction pursuant to the Alteration Permit; and

WHEREAS, at hearing, the Board questioned the validity of the Alteration Permit for the purposes of vesting the proposed seven-story building, since the Alteration Permit authorizes only foundation and structural work and does not include zoning calculations or complete plans and specifications for the proposed seven-story building; and

WHEREAS, the Board further raised concerns regarding the connection between the Alteration Permit and the Original Application, the latter of which has been amended and now only permits the construction of an R5B compliant building; and

WHEREAS, in response, the applicant notes that the DOB Building Information System describes the job associated with the Alteration Permit as “New foundation and structural drawing details filed in conjunction with new building application at 74 Adelphi Street (Job # 302330680)”;

and

WHEREAS, the applicant states that at the time the Alteration Permit was issued, the Original Application contemplated the construction of the proposed seven-story building and included zoning calculations for the seven-story building; therefore, the Alteration Permit’s reference to the Original Application served to incorporate by reference the zoning calculations for the proposed seven-story building into the Alteration Permit; and

WHEREAS, the applicant cites to Glenel Realty Corp. V. Worthington (4 A.D.2d 7002, 703 (2d Dep’t 1957), where a developer proceeded based on validly issued permits for excavation and foundation work, and the court found that the developer’s vested right was not for the completion of the foundation, but rather “a vested right to the erection and use of the specific superstructure for which the foundation was designed;” and

WHEREAS, the applicant asserts that in the subject case, the set of foundation and structural plans associated with the Alteration Permit, which show a framing plan for a seven-story building, make the nature of the superstructure clear, and that case law does not require that the foundation permit or an alteration permit for foundation or structural work include zoning calculations; and

WHEREAS, the applicant notes that the application for the Alteration Permit states that it was filed in conjunction with the Original Application, and therefore the Alteration Permit both: (1) incorporates by reference the plans from the Original Application, which included zoning calculations for

the proposed seven-story building; and (2) contains plans for each floor, that reflects the building as contemplated in the Original Application; and

WHEREAS, by letter dated August 10, 2012, DOB confirmed that (1) the Alteration Permit is properly classified as an alteration permit and includes structural plans and foundation plans, (2) construction can commence under the Alteration Permit provided authorization to construct the remainder of the proposed building is obtained in additional permits, to the extent such permits are not already issued, and (3) the Alteration Permit was lawfully issued; and

WHEREAS, the Board has reviewed the record and concludes that the Alteration Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the Alteration Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new R5B zoning district regulations and DOB determined that the Building’s foundation was not complete; and

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

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

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

WHEREAS, as to substantial construction, the applicant initially asserted that prior to the Enactment Date, the owner had completed the following work: the completion of approximately 70 percent of the required excavation work; the installation of 30 percent of the required shoring; and the pouring of 19 yards of concrete in connection with underpinning the adjacent building and installation of certain footings, constituting 40 percent of the concrete required for the underpinning, and 12 percent of the concrete required for the foundation footings; and

WHEREAS, the Board notes that the applicant includes work performed on July 24<sup>th</sup> and 25<sup>th</sup>, pursuant to

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the Alteration Permit it seeks to proceed under, as well as work performed on July 23<sup>rd</sup>, pursuant to the Withdrawn Permit it has abandoned and no longer pursues; and

WHEREAS, the Board questions whether the work and expenditures from July 23<sup>rd</sup> should be included in the analysis for vesting as such work and expenditures were not under the subject relevant permit that was issued prior to the Enactment Date and the applicant seeks to proceed under; and

WHEREAS, in support of representations about the work performed, the applicant submitted the following evidence: excavation slips, concrete delivery slips, construction contracts, a foundation plan, and photographs of the site; and

WHEREAS, at hearing, the Board questioned the applicant's assessments due to the absence of documentation of the amount of completion at the time at the Enactment Date and ultimately the applicant conceded that only approximately 12-14 percent of excavation was complete and that no portion of the foundation walls or footings were constructed; and

WHEREAS, specifically, at hearing, the Board questioned the applicant's representations as to the amount of completed work and provided its own calculations, based on the available evidence, to conclude that (1) a maximum of 10 percent of excavation was completed; (2) a maximum of 20 percent of underpinning was completed; and (3) no shoring, footing, or foundation wall work was completed; and

WHEREAS, as to the excavation, the Board notes that the total site area is 4,600 sq. ft., to be excavated to a depth of 11 feet below grade, which amounts to approximately 1,874 cubic yards measured in place (or 2,435 cubic yards of loose volume); trucking tickets reflect a total removal of 245 cubic yards on July 23, 24, and 25, 2007, which is approximately 10 percent of the total required excavation; and

WHEREAS, the Board notes that if the work performed on July 23<sup>rd</sup>, pursuant to the Withdrawn Permit is subtracted, only 140 cubic yards (five percent of the total) was removed pursuant to the subject Alteration Permit; and

WHEREAS, as to the underpinning, the Board's analysis, based on the plans approved July 24, 2007, concludes that of the 24 required underpinning pits around the site, a maximum of two sets of pits of the ten required along the north wall could be completed; the concrete delivery tickets of 19 cubic yards on July 24 and 25, 2007 are associated with this work but finds that two days to complete two sets of pits would be extremely rapid progress given the care required to shore the excavated area under the adjacent building, placement of form work, and allowance of sufficient time for concrete to harden before beginning the next set of underpinning pits, so the Board questions whether that subsurface work could have actually been completed; and

WHEREAS, as to shoring, the Board notes that the site perimeter is 292 linear feet and all of the perimeter except

50 linear feet requires shoring; there is not any evidence of completed shoring work in the form of a survey or photograph taken at the time of the rezoning; there is, however, some evidence that no shoring was in place in June 2008; and

WHEREAS, the Board notes that DOB violations and complaints issued in June 2008 note no protection at the sides of the excavation which was 11 feet deep; and

WHEREAS, as to footings, the Board's analysis concludes that no foundation footings were constructed prior to the Enactment Date; in addition to the fact that the owner could not confirm the location of the footings, there is evidence that any footings constructed were placed after the Enactment Date; on May 14, 2008, a DOB inspector noted on complaint number 3264303 that the foundation had not begun; and

WHEREAS, further, as to the footings, the applicant states that a June 20, 2008 DOB violation, reflecting a requirement to stop work was associated with the installation of a footing to vest certain 421(a) tax abatement benefits and that it revised its work schedule to eliminate such post-Enactment Date work, which it had initially represented to be part of the pre-Enactment Date work; and

WHEREAS, the Board notes that after filing the PAA on June 2, 2008 to comply with the new zoning, a partial lift was approved in June 2008 to construct a foundation wall with a length of 15 feet, 15 feet from the adjacent building; this work could be the footing that is visible in the submitted undated photographs; however, there are questions about whether what is in the photograph is a footing at all as it does not appear level and could possibly be a remnant of the former building at the site; and

WHEREAS, the Board finds that there is significant basis to conclude that the amount of work performed as of the Enactment Date pursuant to a valid permit is actually even less based on the following: (1) the permit under which certain work was performed was actually issued after the Enactment Date; (2) the disparity between the photographs, claimed work performed, and work required per the plans; (3) the unreliable nature of the evidence due in part to there not being any distinction between the work performed prior to and after the Enactment Date; and (4) a significant amount of the work claim, including a concrete pour, was performed on the Enactment Date, possibly after the City Council vote; and

WHEREAS, as to the last point, the Board notes that the transcript from the July 25, 2007 City Council hearing reflects that the City Council voted to adopt the Fort Greene/Clinton Hill Rezoning at approximately 3:30 p.m. and no later than 4:45 p.m., so the Permit technically lapsed at that time and any work performed afterwards should not be considered; and

WHEREAS, further, the Board has questions related to the amount of work performed between the time of the permit issuance and the Enactment Date; the concerns arise from the following facts: (1) at the time DOB issued a Stop Work Order in June 2008, it stated that work had not begun;

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(2) photographs do not exist of the site as of the Enactment Date; (3) further excavation was performed after the Enactment Date, so it is difficult to say, how much excavation was done then; (4) the photographs show debris, partial shoring and old foundation walls that appear to be part of adjacent properties; (5) there is not enough documentation to establish whether the work performed was pursuant to the July 2007 Alteration Permit or in 2008 according to R5B plans under the New Building Permit; and (6) if the work performed pursuant to the Withdrawn Permit is excluded, then only the work performed on July 24 and 25 should be considered; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and finds that a nominal amount of work can be substantiated as having been performed prior to the Enactment Date pursuant to a valid permit; and

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

WHEREAS, as to expenditure, the applicant states that prior to the Enactment Date, the owner expended \$310,016.34, including hard and soft costs and irrevocable commitments, out of \$3,358,912 budgeted for the entire project; and

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

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$180,000 for the work performed at the site as of the Enactment Date; and

WHEREAS, the applicant further states that the owner paid an additional approximately \$133,448 in soft costs related to the work performed at the site as of the Enactment Date; and

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

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

WHEREAS, at hearing, the Board expressed concerns about reliance on the submitted financial records and asked the applicant to explain its method of payment and recordkeeping; and

WHEREAS, in response, the applicant stated that the \$180,000 check for foundation work, which reflects \$130,000 in excess of the \$50,000 specified in the June 2 contract for such work, was paid to ensure that the contractor would aggressively commence work at the site as soon as the construction permits were issued; and

WHEREAS, the applicant later reduced the \$180,000 figure to \$135,000 without any documentation to reflect the basis for the new number; and

WHEREAS, the Board notes that the owner of the site is a one-third owner of the contractor business and thus questions the need to incentivize one's own business to perform work at one's own site in order to perform work expeditiously, particularly when no foundation work was actually performed; and

WHEREAS, additionally, the Board notes that the \$180,000 check has notations on it for another address, 92 Adelphi Street - \$150,000, and \$30,000 for yet another project; and

WHEREAS, in response to the Board's concerns, the applicant stated that the notation was a reference to the source of the money (another nearby development project), not its destination (the subject project); and

WHEREAS, the Board is not persuaded that the documentation is evidence that the claimed expenditures are associated with the subject construction rather than with the project noted on the check itself; and

WHEREAS, the Board notes that even if it accepted the full revised \$135,000 for foundation costs (an amount that is neither reflected in contract or cancelled check), the total hard cost expenditure is only 5.6 percent of the total hard costs; and if the \$135,000 is reduced to \$50,000 to reflect the actual contract amount for the foundation work, the amount of hard costs expenditures out of the total required would be 4 percent; and

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

WHEREAS, the applicant states that if the owner is not permitted to vest under the former R6 zoning, the floor area ratio would decrease from the approved 2.63 FAR (based on the aggregate zoning lot) to 1.35 FAR, representing a loss of 8,591 sq. ft. of buildable floor area in the building; and

WHEREAS, the applicant further states that complying with the R5B zoning would result in a reduction of units from 16 to six, a 63 percent decrease in the total number of units permitted at the site; and

WHEREAS, the applicant represents that the 8,591 sq. ft. loss in floor area and the loss of ten units would reduce the annual rental income from approximately \$333,000 to \$126,000, a decrease of 62 percent; and

WHEREAS, the applicant also states that the diminution of the site value from the pre-Enactment Date \$1,550,000 to the current \$750,000 to \$800,000 contributes to a finding of serious loss; and

WHEREAS, the applicant asserts that the purchase price should be included in the serious loss analysis and that the Board has considered it in past cases (BSA Cal. Nos.

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368-05-A and 300-08-A); and

WHEREAS, the Board does not give any weight to the applicant's assertions about loss to the site value as it finds the figures to be conclusory and lacking any support; and

WHEREAS, the Board acknowledges that it has stated that there is not an impediment to considering the purchase price, but that it has never done so and the two noted cases in which the applicant sought to introduce it satisfied the three-pronged analysis for vesting without consideration of the purchase price; and

WHEREAS, the Board notes that (1) the applicant has not substantiated its claim of diminution in the site value; (2) because so little work has been performed, none of the construction expenditures would be lost if required to resume construction under the current zoning; and (3) no costs of the redesign contribute to the serious loss because the applicant proactively redesigned the project to comply with the current zoning and proceeded under that scenario prior to seeking to vest; and

WHEREAS, the Board notes that the three elements of the common law vested rights analysis are examined as a whole and that certain successful vesting applications may have a minimal amount of work yet are able to establish a greater extent of expenditures or serious loss or vice versa, but, for the reasons cited above, the Board is not persuaded that the applicant has satisfied the three-prong analysis, in the aggregate; and

WHEREAS, the Board finds that (1) the amount of work submitted into the record is minimal, even if all of it were corroborated with evidence, which it is not; (2) the bookkeeping is unreliable and significant expenses cannot be substantiated nor are they clearly related to the actual construction at the site; and (3) absent a sufficient case for the amount of work and expenditure, the serious loss finding, which itself is unpersuasive, cannot stand on its own; and

WHEREAS, the applicant cites to several New York State cases to support its position that the minimal level of work performed at the site may establish a right to vest the Alteration Permit; and

WHEREAS, primarily, the applicant cites to Ageloff v. Young, 282 A.D. 707 (2d Dept 1953) and Hasco Electric Corp. v. Dassler, 144 N.Y.S.2d 857 (Sup. Ct. Westchester County 1955); the applicant notes that in Ageloff, the court recognized vested rights for staking, clearing and excavating a site and contracting for architectural services, while in Hasco, the court recognized clearing trees and billboards, leveling the site, and excavating trenches for footings; and

WHEREAS, the applicant notes that the Board has cited to Ageloff and Hasco in three cases – BSA Cal. Nos. 337-05-A, 45-07-A, and 366-05-A (respectively Hering Avenue, East 19<sup>th</sup> Street, and 8<sup>th</sup> Avenue); and

WHEREAS, the applicant also cites to Ortenberg v. Bales, 224 A.D. 87 (2d Dept 1928) in which the court granted vested rights when substantial excavation had been performed and the owner had entered into construction contracts but not performed any foundation work and

Pehlham View Apts. v. Switzer, 130 Misc. 545 (Sup. Ct. Westchester County 1927) in which the developer had incurred certain expenses, employed the services of an architect, and excavated the cellar; and

WHEREAS, the applicant cites to two cases where the courts did not find vested rights because the work and expenditures were not deemed to be substantial: Smith v. M. Spiegel Sons, 31 A.D.2d 819 (2d Dept 1969) (demolition of existing houses and retaining of architects not sufficient to vest rights) and Cooper v. Dubow, 41 A.D.2d 843 (2d Dept 1973) (demolition of existing structures, preparation and filing of architect's plans, test borings, securing H.U.D. approval and negotiation with construction contractors not sufficient to vest rights); and

WHEREAS, the applicant asserts that the determining factor in the cases is whether a new development scheme has been physically imposed upon the site and asserts that the subject case with some excavation and underpinning clearly reflects that a new development scheme was being imposed on the site at the time of the zoning change; and

WHEREAS, the Board distinguishes the case law and the noted Board precedent and finds that the applicant has failed to satisfy the more recently articulated three-prong analysis; and

WHEREAS, specifically, the Board notes that the Ageloff and Hasco decisions do not provide details about the three prongs, which were not articulated until approximately 20 years after those decisions; and

WHEREAS, the Board notes that in the three instances that it has cited Ageloff or Hasco, it has also cited to the more recent decisions, like Kadin and Putnam, which emphasize the individuality of the cases and the imperative to review each case as a totality of the circumstances; and

WHEREAS, the Board distinguishes Ageloff and Hasco from the subject facts in that (1) both involved sites that were affected by a change of use under the new zoning, which would have supported a more significant argument for serious loss (both sites were rezoned from commercial or industrial use to residential use); (2) the amount of construction required to complete the projects appears to have been less in proportion to the total amount needed than in the current case for a seven-story building; and (3) the amount of work performed in Ageloff (staking and clearing land and excavating trenches for footings) and in Hasco (leveled land and excavated 400 linear feet of trenches for footings) was comparable to or greater than the amount of work on which the applicant can definitively rely; and

WHEREAS, further, the Board distinguishes the three prior Board cases in which it cited Ageloff and Hasco; first, in Hering Avenue (BSA Cal. No. 337-05-A), the applicant established that the excavation, installation of footing forms and rebar, and approximately one-third of the concrete required for the foundation had been poured; in East 19<sup>th</sup> Street (BSA Cal. No. 45-07-A), the applicant established that partial excavation, seismic monitoring, lagging and shoring of adjacent properties had been performed; and in 8<sup>th</sup> Avenue (BSA Cal. No. 366-05-A), the applicant

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established that installation of 164 of the 200 required piles, dewatering, shoring, and sheeting work had all been performed; and

WHEREAS, the Board notes that the complete excavation work performed in Ortenberg, and Pelham View decisively exceeds the amount of work in the subject case, which included only at most 12-14 percent of excavation; and

WHEREAS, the Board finds that the amount of work performed in the two cited unsuccessful vesting cases – Smith and Cooper – is more comparable to the amount of work performed in the subject case; and

WHEREAS, the Board agrees with the applicant that a guiding principle in the common law vesting analysis is whether a new development scheme has been physically imposed upon the site, but the Board reaches the conclusion that the applicant has failed to establish such a scheme through its 12-14 percent of excavation work and purported (although highly questionable) 20 percent of underpinning, both of which could be reused for any development scheme at the site; and

WHEREAS, the Board concludes by noting that the case law is clear that there is no fixed formula and that it must consider the totality of the conditions and the strength (and plausibility) of the evidence as it measures each case in accordance to its own circumstances; and

WHEREAS, the Board must consider the nature of construction, expenditure, and serious loss related to the individual project; and

WHEREAS, the Board has distinguished all of the relevant case law and prior Board cases and finds that the unique facts of this case together fail to match the circumstances of prior successful applications; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and claim of serious loss, and the supporting documentation for such representations, and finds that the applicant has failed to establish that a vested right to complete construction of the Building accrued to the owner of the premises as of the Enactment Date; and

*Therefore it is Resolved* that this application made pursuant to the common law of vested rights requesting a reinstatement of Permit No. 302384417, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is denied.

Adopted by the Board of Standards and Appeals, May 7, 2013.

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## 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

**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 Staten Island Borough Commissioner, dated September 7, 2012, acting on Department of Buildings Application Nos. 520110273, 520110282, and 520110291, read in pertinent part:

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

No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law; and

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 27-291 of the NYC Building Code; and

WHEREAS, a public hearing was held on this application on February 26, 2013 after due notice by publication in the *City Record*, with a continued hearing April 9, 2013, and then to decision on May 7, 2013; and

WHEREAS, the applicant proposes to construct three two family homes which do not front on legally mapped streets located north of Ramona Avenue, 72.56 feet west of the intersection of Ramona Avenue and Huguenot Avenue in an R3X zoning district within the Special South Richmond Development District, contrary to General City Law § 36; and

WHEREAS, by letter dated December 4, 2012, the Fire Department states that it has reviewed the proposal and has no objection as long the following conditions are met: (1) the private road section of Ramona Avenue will be maintained open at all times; and (2) no gates or obstructions shall be installed; and

WHEREAS, by letter dated March 27, 2013, the applicant provided a draft Declaration of Easement agreement that includes the Fire Department conditions; the agreement will be recorded against the property upon Board approval; 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 decision of the Staten Island Borough Commissioner, dated September 7, 2012 acting on Department of Buildings Application Nos. 520110273, 520110282, and 520110291, is modified by the

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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 shall substantially conform to the drawing filed with the application marked "Received February 7, 2013 - (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; 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 Declaration of Easement discussed above be recorded prior to obtaining building permits;

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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

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

Adopted by the Board of Standards and Appeals May 7, 2013.

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## 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

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 28, 2012, acting on Department of Buildings Application No. 420600497, reads in pertinent part:

1. The proposed building is in the bed of the mapped street. BSA approval is required; and

WHEREAS, this is an application to permit a seven-story residential development within the bed of mapped but un-built portion of Ash Avenue; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by

publication in *The City Record*, with a continued hearing on April 9, 2013, and then to decision May 7, 2013; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

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

WHEREAS, the subject site is located on the west side of 147<sup>th</sup> Street, approximately 280 feet south of the intersection of Sanford Avenue and 147<sup>th</sup> Street within an R6A zoning district; and

WHEREAS, the Board granted an application under GCL § 35 to permit the construction of a two-family house at the subject site on November 19, 1985 in the bed of a mapped street; and

WHEREAS, pursuant to that approval, a two-family house was constructed at the site; and

WHEREAS, the applicant intends to demolish the existing home and replace it with the proposed seven-story residential development; and

WHEREAS, the Fire Department at the on February 26<sup>th</sup> public hearing on this application raised concerns regarding the development of a seven-story building on a street with a 30-foot width from curb to curb, with parking permitted on both sides of the street; the Fire Department also indicated that the proposal failed to comply with Fire Code ("FC") § 503; and

WHEREAS, in addition, the Fire Department asserted that the narrowness of the street created a substandard condition for its operational needs; specifically, the Fire Department explained that, in the event of a fire, its truck would be impeded from accessing the street, and it would be required to use an aerial ladder instead of portable ladders; and

WHEREAS, the applicant at the hearing agreed to explore additional fire safety measures; and

WHEREAS, by letter dated March 13, 2013, the applicant provided an email between the Fire Department representative and the applicant in which both parties agreed that the placement of a fire hydrant in front of the premises would satisfy the Fire Department's concerns regarding the narrowness of the street; and

WHEREAS, by letter dated April 23, 2013, the Fire Department has stated they have no objections pending compliance of the following condition prior to the issuance of the Certificate of Occupancy: a hydrant be installed 50 feet north of the proposed building site; and

WHEREAS, the Board notes that FC § 503 does not apply to the proposal; and

WHEREAS, by letter dated January 28, 2103, the Department of Transportation ("DOT") stated that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the subject lot is not currently included in the agency's Capital Improvement Program; and

WHEREAS, by letter dated December 28, 2012, the

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Department of Environmental Protection (“DEP”) states that: (1) there are no existing City sewers or existing City water mains in the bed of Ash Avenue between 147th Street and Parsons Boulevard; and (2) Amended Drainage Plan No. 33A calls for a future 12-inch diameter combined sewer in the bed of Ash Avenue starting west of 147th Street to Parsons Boulevard; and

WHEREAS, DEP further states that according to the Final Tax map, all lots that could benefit from the future 12-inch diameter combined sewer in Ash Avenue between 147th Street and Parsons Boulevard are fronting on either an existing or future sewer on 147th Street, Parsons Boulevard, Sanford Avenue and/or Beech Avenue; therefore, there is no need for the future 12-inch diameter combined sewer in Ash Avenue between 147th Street and Parsons Boulevard; and

WHEREAS, based on the above, DEP has no objections to the proposal; 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 decision of the Queens Borough Commissioner, dated September 28, 2012, acting on Department of Buildings Application No. 420600497, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 6, 2013” -(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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

THAT the applicant shall install a fire hydrant approximately 50 feet north of the proposed building site, as reflected on the plans, prior to the issuance of the Certificate of Occupancy; 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, May 7, 2013.

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## 251-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for 330 Associates LLC c/o George A. Beck, owner; Radiant Outdoor, LLC, lessee.

SUBJECT – Application August 14, 2012 – Appeal from Department of Buildings' determination that a sign is not entitled to continued non-conforming use status as an advertising sign. C2-5 Zoning District.

PREMISES AFFECTED – 330 East 59<sup>th</sup> Street, west of southwest corner of 1st Avenue and East 59<sup>th</sup> Street, Block 1351, Lot 36, 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 June 4, 2013, at 10 A.M., for decision, hearing closed.

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## 317-12-A

APPLICANT – Eric Palatnik, P.C., for 4040 Management, LLC, owner.

SUBJECT – Application November 29, 2012 – Appeal seeking common law vested rights to continue construction commenced under the prior M1-3D zoning district regulations. M1-2/R5B zoning district.

PREMISES AFFECTED – 40-40 27th Street, between 40th Avenue and 41st Avenue, Block 406, Lot 40, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to June 18, 2013, at 10 A.M., for continued hearing.

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## 346-12-A

APPLICANT – Eric Palatnik, P.C., for Woodpoint Gardens, LLC, owners.

SUBJECT – Application December 12, 2012 – Appeal seeking common law vested rights to continue construction commenced under the prior R6 zoning district regulations. R6B zoning district.

PREMISES AFFECTED – 179-181 Woodpoint Road, between Jackson Street and Skillman Avenue, Block 2884, Lot 4, Borough of Brooklyn

### COMMUNITY BOARD #1BK

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

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## 60-13-A

APPLICANT – NYC Department of Buildings.  
OWNER OF PREMISES -71 Greene LLC, 75 Greene LLC, 370 Clermont LLC and Earle F. Alexander.  
SUBJECT – Application February 6, 2013 – Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy nos. 147007 & 172308 as they were issued in error. R6B zoning district.  
PREMISES AFFECTED – 71 & 75 Greene Avenue, aka 370 & 378 Clermont Avenue, northwest corner of Greene and Clermont Avenues, Block 2121, Lots 44, 41, 36, 39, 105, 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 21,

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

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## ZONING CALENDAR

### 42-10-BZ

APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.  
SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations. R3-1/C2-2 zoning district.  
PREMISES AFFECTED – 2170 Mill Avenue, 116’ west of intersection with Strickland Avenue, Block 8470, Lot 1150, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

ACTION OF THE BOARD – 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 March 21, 2013, acting on Department of Buildings Application No. 320117949, reads in pertinent part:

1. Proposed multi-family use is not permitted per ZR 22-10
2. Proposed floor area exceeds the maximum permitted per ZR 23-141

3. Proposed lot coverage and open space are less than required per ZR 23-141
4. Proposed dwelling units exceed the maximum permitted by ZR 23-22
5. Proposed front yard on interior portion of zoning lot is less than required per ZR 23-45
6. Proposed planting along Avenue V front yard is less than required per ZR 23-451
7. Proposed wall height and total height exceed the maximums permitted per ZR 23-631; and

WHEREAS, this is an application under ZR § 72-21, to permit the construction of a multi-family residential development partially within an R3-1 zoning district and partially within an R3-1 (C2-2) zoning district, contrary to ZR §§ 22-10, 23-141, 23-22, 23-45, 23-451 and 23-631; and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in the *City Record*, with continued hearings on December 11, 2012, and February 12, 2013, and April 9, 2013, and then to decision on May 7, 2013; and

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

WHEREAS, this application originally proposed a mixed residential and commercial building with 96,025 sq. ft. of floor area (2.09 FAR), including 3,760 sq. ft. of commercial floor area, 84 dwelling units, 103 parking spaces, 51.13 percent lot coverage, and a maximum building height of 64’-0”;

WHEREAS, during the hearing process, at the Board’s direction, the applicant revised the proposal several times; and

WHEREAS, the revised proposal now reflects a residential building with 54,615 sq. ft. of floor area (1.19 FAR), 48 dwelling units, 50 parking spaces, 46.54 percent lot coverage and a maximum building height of 41’-1”;

WHEREAS, Community Board 18, Brooklyn, recommended disapproval of the original version of this application; and

WHEREAS, members of the community appeared at the initial hearing and gave testimony in opposition to the large scale of the original proposal; and

WHEREAS, the subject site is a rectangular interior lot located on the south side of Mill Avenue approximately 116 feet west of its intersection with Strickland Avenue; the majority of the site is within an R3-1 district; the northwest corner of the site is within a C2-2 district mapped within the R3-1 district; and

WHEREAS, the site has 100 feet of frontage along Mill Avenue and a total lot area of 46,000 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant, one-story manufacturing building that contains approximately 8,000 sq. ft. of floor area (0.18 FAR) and measures approximately 30 feet in height; and

WHEREAS, the applicant states that the eastern lot line of the site abuts an unpaved, 60-foot wide right-of-way, hereafter known as the “Avenue V Easement”; and

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WHEREAS, the applicant represents that the Avenue V Easement provides access to the industrial properties to the west and south of the site, and is used by members of the public to access the properties on the Mill Basin waterfront; and

WHEREAS, the applicant states that the site is also entitled to use the Avenue V Easement for ingress and egress; and

WHEREAS, the applicant states that the site was historically part of a larger tract of land that was zoned and used for intense manufacturing uses, including lumber storage, a machine shop, an electrical shop, a warehouse, a steel fabrication shop and an open lot for motor vehicle storage; and

WHEREAS, the applicant proposes a multi-family residential building; however, per ZR § 22-10, only one- and two-family dwelling are permitted in the subject R3-1 (C2-2) district; and

WHEREAS, the applicant proposes 54,615 sq. ft. of floor area (1.19 FAR); however, per ZR § 23-141, the maximum permitted floor area is 27,000 sq. ft. (0.60 FAR); and

WHEREAS, the applicant proposes a lot coverage of 46.54 percent and an open space of 53.46 percent; however, per ZR § 23-141, the maximum permitted lot coverage is 35 percent and minimum required open space is 65 percent; and

WHEREAS, the applicant proposes 48 dwelling units; however, per ZR § 23-22, a maximum of 44 dwelling units are permitted; and

WHEREAS, the applicant proposes a front yard with a depth of eight feet along the Avenue V Easement; however, per ZR § 23-45, a front yard must have a minimum depth of 15 feet; and

WHEREAS, the applicant proposes 1,542.83 sq. ft. of front yard planting along the Avenue V Easement; however, per ZR § 23-451, 3,560 sq. ft. of planting is required; and

WHEREAS, the applicant proposes a maximum wall height and maximum building height of 41'-1"; however, per ZR § 23-631, the maximum permitted wall height is 21'-0", and the maximum permitted building height 35'-0"; and

WHEREAS, the applicant states that these non-compliances are the basis for the subject variance; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the subject building and zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the environmental remediation required, including the requirements concerning the site's (E) designation; (2) the irregular lot depth and lack of frontage on Mill Basin; (3) the relatively narrow lot width in relation to lot depth; (4) the site's poor soil quality combined with its high water table; and (5) the surrounding commercial and industrial uses; and

WHEREAS, as to the environmental remediation required due to groundwater and soil contamination and the (E) designation (specifically, E-71, per Zoning Resolution Appendix C), the applicant represents that, based on fifteen

boring samples, the soil at the site contains elevated concentrations of metals and semi-volatile compounds; additionally, groundwater sampling has revealed the presence of petroleum-related volatile organic compounds at levels above acceptable standards; and

WHEREAS, as to the (E) designation, the applicant states that, on March 21, 1996, the City Planning Commission placed the (E) designation on the site in acknowledgement of its historical manufacturing and industrial uses; pursuant to the designation, development of the site must include remediation of the contaminants and all soil excavation and disposal must be completed in accordance with Office of Environmental Remediation and Department of Environmental Protection standards and protocols; additionally, under the (E) designation, 30bBA of window/wall noise attenuation is required to allow for an indoor noise environment of 45dBA; and

WHEREAS, the applicant represents that environmental remediation, as well as compliance with the (E) designation filing and permitting requirements, will significantly increase the cost of development at the site; and

WHEREAS, as to the irregular lot depth and lack of frontage on Mill Basin, the applicant states that these conditions will require the installation of extensive sanitary sewer and storm water drainage infrastructure, which will be made more expensive by the site's high water table, which is between four and six feet below grade, and its (E) designation; and

WHEREAS, as to the relatively narrow lot width in relation to lot depth (as noted above, the site is 100 feet in width, but 460 feet in depth), the applicant states this condition constrains the configuration of complying buildings to a single row of detached or semi-detached houses; the applicant also notes that, in contrast, the majority of other vacant or predominantly vacant parcels in the R3-1 (C2-2) district have more lot area and greater lot widths, and can therefore, unlike the subject parcel, create an insular subdivision that is sheltered from any nearby commercial or industrial uses; and

WHEREAS, as to the site's poor soil quality and high water table, the applicant represents that the site is underlain by historic fill (sand and silt), and that such soil is unsuitable to support development; the applicant also represents that because the site's water table is between four and six feet below grade, constant dewatering is required during subsurface operations; consequently, the creation of basements or cellars at the site is infeasible due to cost; and

WHEREAS, the applicant further states that the poor quality soil coupled with the high water table makes pile installation necessary, at significant cost; and

WHEREAS, as to the site's location among a mix of commercial and industrial properties, the applicant states that the subject site is surrounded by uses that limit the demand and marketability of low-density residential developments; as a result, the applicant contends that any housing at the site will be discounted in order to compete with similar housing stock in more residential locations within Mill Basin; and

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WHEREAS, the applicant notes that the site is unique, in that it is only one of two tax lots out of 50 surveyed in the subject R3-1 (C2-2) district between Mill Basin and Strickland Avenue that does not have an existing usable structure, are burdened by a narrow lot, and do not have frontage on Mill Basin; and

WHEREAS, based upon the above, the Board finds that, in the aggregate, the noted conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant analyzed the feasibility of one conforming scenario and three lesser variance scenarios; and

WHEREAS, the applicant represents that a conforming development of the lot would consist of 16 two-story, single-family, semi-detached homes with the following bulk parameters: lot areas of approximately 2,800 sq. ft. per lot, floor areas of approximately 1,680 sq. ft. per home and two off-street parking spaces; the applicant notes that such a development would require General City Law § 36 waivers from the Board, because the buildings in the development would not front upon a mapped street; and

WHEREAS, the applicant states that the following lesser variance scenarios were analyzed: (1) a development comprising three-family buildings that complies with the bulk regulations of an R5 zoning district; (2) a two-story commercial building requiring a use variance; and (3) a multiple dwelling with a lower FAR and fewer dwelling units than the sought under this application; and

WHEREAS, as to the three-family development scenario, the applicant analyzed the feasibility of constructing 18 three-family, attached or semi-detached buildings, each with a floor area of approximately 3,000 sq. ft., 55 percent lot coverage and three parking spaces; and

WHEREAS, as to the commercial variance scenario, the applicant analyzed the feasibility of constructing a two-story commercial building with 22,932 sq. ft. of floor area (0.50 FAR) and 80 on-grade parking spaces; a variance is necessary because, as noted above, the majority of the lot is solely within an R3-1 district; and

WHEREAS, as to the smaller multiple dwelling, the applicant analyzed the feasibility of constructing a multiple dwelling with 40 dwelling units and an FAR of 0.99; and

WHEREAS, the applicant represents that neither the as-of-right scenario, nor the three lesser variance scenarios would provide a reasonable rate of return; and

WHEREAS, the applicant asserts that only the proposal results in an acceptable rate of return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

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

welfare; and

WHEREAS, the applicant states that the proposal is similar in bulk to the two existing buildings directly to the south along the Mill Basin waterfront; specifically, 2184 Mill Avenue is a four-story manufacturing building with 59,000 sq. ft. of floor area (1.74 FAR) and a building height of 76'-9", and 2186 Mill Avenue is a three-story community facility building with 60,242 sq. ft. of floor area (0.52 FAR) and a building height of 45'-0"; as such, the buildings are not out of context with their immediate neighbors in terms of size and shape; and

WHEREAS, the applicant states that the proposal has yards that meet or significantly exceed the minimum required along lot lines that are shared with potential residential development sites; and

WHEREAS, the applicant states that the proposed building's fourth story is set back from Mill Avenue approximately 105 feet, which mitigates the impact of the noncomplying height upon the surrounding area; and

WHEREAS, the applicant represents that the proposed density (48 dwelling units) only minimally exceeds that which is permitted as-of-right for this oversized lot (44 dwelling units); this minor deviation in density mitigates the fact that the dwelling units are, contrary to the use regulations, contained within one multiple dwelling building on the lot rather than spread among multiple one- and/or two-family dwellings on the lot; as noted above, a multiple dwelling is the most efficient use of the available density for the lot; and

WHEREAS, as to the impact of the use variance upon the surrounding neighborhood, the applicant asserts that it is necessary not because residential use is prohibited in the district, but because multiple dwellings are not permitted as-of-right; moreover, nearby areas—such as along Strickland Avenue—allow multiple dwellings with bulk similar to the proposal as-of-right; and

WHEREAS, the applicant notes that the overall bulk of the proposal complies with the majority of the requirements for R5 districts, which are mapped extensively in the vicinity and which City Planning had originally deemed appropriate for this area in connection with the Southeastern Brooklyn Rezoning; and

WHEREAS, in addition, the applicant notes that although its front yard along the Avenue V Easement is eight feet in depth instead of the required 15 feet and will have less than the required planting, the Avenue V Easement, as discussed above, is not a public street but an unpaved access road without significant pedestrian traffic; accordingly, the reduced front yard depth and diminished plantings will minimally impact the surrounding community; moreover, the applicant states that providing complying plantings is not feasible, because it must provide multiple curb cuts and a walkway with building access along the Avenue V Easement; and

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

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welfare; and

WHEREAS, the applicant states that the hardship was not created by the owner or a predecessor in title, but is the result of the configuration of the lot and the history of development at the site; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the applicant notes that the original proposal was for a mixed residential and commercial building with 96,025 sq. ft. of floor area (2.09 FAR), including 3,760 sq. ft. of commercial floor area, 84 dwelling units, 103 parking spaces, 51.13 percent lot coverage, and a maximum building height of 64'-0"; and

WHEREAS, the applicant states that the proposal was revised several times in response to the comments and concerns of the Board; and

WHEREAS, the applicant states that the current proposal is the minimum variance necessary to afford relief, in that, the building's lot coverage and open space are now within 15 percent of that required, its density (48) is only four dwelling units greater than what is permitted (44), its maximum height of 41'-0" is only 6'-1" higher than the maximum height of ridge line allowed in the district (35'-0"), and its required yards and plantings are either complying or appropriately reduced in light of the irregularities of the site; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA057K dated April 12, 2012; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and

Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit the construction of a multi-family residential development in partially within an R3-1 zoning district and partially within an R3-1 (C2-2) zoning district, contrary to ZR §§ 22-10, 23-141, 23-22, 23-45, 23-451 and 23-631; *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 11, 2013"-- nine (9) sheets; and *on further condition*;

THAT the following shall be the bulk parameters of the building: 54,615 sq. ft. of floor area (1.19 FAR), a maximum perimeter wall height and building height of 41'-1", a Mill Avenue street wall height of 29'-9", a front yard with a depth of eight feet along the Avenue V Easement, a front yard with a depth of 25 feet along Mill Avenue, a rear yard with a depth of 30 feet, 48 dwelling units, 1,542.83 sq. ft. of front yard planting along the Avenue V Easement, and 50 on-grade parking spaces, as indicated on the BSA-approved plans;

THAT all signage at the site shall be in accordance with the BSA-approved plans;

THAT all requirements associated with the (E-71) designation, as set forth in the EAS and in Zoning Resolution Appendix C, are satisfied;

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

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

THAT the approved plans shall 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, May 7, 2013.

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**148-12-BZ**  
**CEQR #12-BSA-131K**

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 (ZR§23-141(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** – Application granted on condition.

THE VOTE TO GRANT –

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

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Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 17, 2012, acting on Department of Buildings Application No. 320458492, reads, in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed floor area ratio exceeds .75;
2. Proposed plans are contrary to ZR 23-141(b) in that the proposed open space does not meet the 55% minimum requirement;
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage exceeds the 45% maximum requirement; and

WHEREAS, this is an application under ZR §§ 73-621 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, open space and lot coverage, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in *The City Record*, with a continued hearing on March 5, 2013, and April 9, 2013, and then to decision on May 7, 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 18, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the east side of East 29th Street, between Avenue I and Avenue J; and

WHEREAS, the subject site has a total lot area of 2,100 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,726.3 sq. ft. (0.72 FAR); and

WHEREAS, the applicant proposes to vertically and horizontally enlarge the cellar, first, and second stories at the rear of the building, and construct an attic level; and

WHEREAS, the applicant seeks an increase in the floor area from 1,726.3 sq. ft. (0.72 FAR), to 2,079 sq. ft. (0.99 FAR); the maximum floor area permitted is 1,890 sq. ft. (0.90 FAR); and

WHEREAS, the applicant seeks a decrease in open space ratio from 58.71 percent to 53.95 percent; the minimum required open space ratio is 55 percent; and

WHEREAS, the applicant seeks an increase in lot coverage from 41.29 percent to 46.05 percent; the maximum permitted lot coverage is 45 percent; and

WHEREAS, in an R4 zoning district, the special permit authorized by ZR § 73-621 is only available to enlarge homes that existed on June 30, 1989; therefore, as a threshold matter, the applicant must establish that the subject building existed as of that date; and

WHEREAS, the applicant represents, and the Board accepts, that the building existed in its pre-enlarged state prior to June 30, 1989; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed floor area ratio does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the open space ratio, the applicant represents that the proposed reduction in the open space ratio results in an open space ratio that is 90 percent of the minimum required; and

WHEREAS, as to the lot coverage, the applicant represents that the proposed increase in lot coverage results in a lot coverage that does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the floor area ratio, the applicant represents that the proposed floor area does not exceed 110 percent of the maximum permitted; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; 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 §§ 73-621 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 §§ 73-621 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, open space ratio and lot coverage, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received April 24, 2013”–(11) sheets and “May 2, 2013”–(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,079.54 sq. ft. (0.99 FAR), a minimum open space ratio of 53.95, and a maximum lot coverage of 46.05 percent, as illustrated on the BSA-approved plans;

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

THAT the approved plans shall 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, May 7, 2013.

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## **294-12-BZ**

### **CEQR #13-BSA-044K**

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.

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** – 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 September 26, 2012, acting on Department of Buildings Application No. 320418776, reads in pertinent part:

Proposed Physical Culture Establishment requires a special permit from the BSA pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-2A zoning district within the Special Downtown Brooklyn District and the Brooklyn Heights Historic District, the operation of a physical culture establishment (“PCE”) in the first story of a 13-story building occupied by residential use on the second through thirteenth stories, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in *The City Record*, with continued hearings on March 5, 2013, and April 9, 2013, and then to decision on May 7, 2013; and

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

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

WHEREAS, the subject site is located on the southeast corner of the intersection of Joralemon Street and Clinton Street; and

WHEREAS, the site is occupied by a 13-story building; and

WHEREAS, the site has 54 feet of frontage on Joralemon Street, 150.5 feet of frontage on Clinton Street, and a total lot area of 8,020 sq. ft.; and

WHEREAS, the proposed PCE will occupy a total of 1,312.38 sq. ft. of floor area on the first story; and

WHEREAS, the PCE will be operated as *Everyday Athlete*; and

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

WHEREAS, the hours of operation for the proposed PCE will be Monday through Friday, from 6:00 a.m. to 8:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 8:00 p.m.; however, the applicant is requesting the flexibility to remain open until 10:00 p.m. on both weekdays and the weekend; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission, dated July 31, 2012, approving the proposed exterior alterations at the ground floor storefront under its jurisdiction; and

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

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

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

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; 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

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Assessment Statement, CEQR No.13BSA044K, dated October 1, 2012; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C5-2A zoning district within the Special Downtown Brooklyn District and the Brooklyn Heights Historic District, the operation of a physical culture establishment in the first story of a 13-story building occupied by dwellings on the second through thirteenth stories, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 20, 2013" – Two (2) sheets and *on further condition*:

THAT the term of this grant will expire on May 7, 2023;

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

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

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

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

THAT the hours of operation will not exceed Monday through Friday, from 6:00 a.m. to 10:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 10:00 p.m.;

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

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

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

THAT the approved plans will be considered approved

only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, May 7, 2013.

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## 298-12-BZ

### CEQR #13-BSA-047M

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** – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated October 15, 2012, acting on Department of Buildings Application No. 121183584, reads, in pertinent part:

Proposed UG3A university use is not permitted; contrary to ZR 42-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district, the proposed conversion of nine floors of an existing ten-story building to a Use Group 3 college and university use, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on January 8, 2013, after due notice by publication in the *City Record*, and then to decision on April 9, 2013; and

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

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

WHEREAS, New York State Senator Brad Hoylman and New York State Assembly Member Deborah J. Glick recommend disapproval of this application; and

WHEREAS, the Greenwich Village Society for Historic Preservation, the NoHo Neighborhood Association, and

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certain community members submitted testimony in opposition to this application (collectively, the “Opposition”), citing the following primary concerns: (1) the proposed variance will set a precedent for similar variances in NoHo, (2) the applicant should be required to submit proof that there are no reasonable alternative sites available for the project; (3) the proposal will negatively impact the essential character of the neighborhood, (4) the proposal was not included in NYU’s 2031 plan (“NYU 2031”), which was intended to satisfy the university’s requirements for 20 years, (5) the compatibility of the proposed classroom and laboratory space with nearby uses and the potential negative impact of emissions from the site; and (6) the need for four stories of mechanical equipment; and

WHEREAS, the NoHo-Bowery Stakeholders, Inc., provided testimony in support of the proposal with the condition that undergraduate teaching spaces will be limited to no more than 25 percent of the building; and

WHEREAS, this application was brought on behalf of New York University (NYU), a not for profit educational institution; and

WHEREAS, the subject site is an irregularly-shaped through lot with frontage on Broadway and Lafayette Street, with a total lot area of 35,349 sq. ft., located within an M1-5B zoning district; and

WHEREAS, the site is occupied by a ten-story building with 313,188 sq. ft. of floor area (8.86 FAR), with Use Group 6 retail and Use Group 17 shipping on the ground floor and Use Group 6 offices on the second through tenth floors (the “Building”); and

WHEREAS, the applicant states that NYU currently uses the Building as a bookstore on the ground floor; administrative services on the second and fifth through eighth floors; the student health center on the third and fourth floors; financial operations on the ninth floor; and offices for the School of Nursing on the tenth floor; and

WHEREAS, on February 5, 1980, under BSA Cal. No. 1099-79-BZ, the Board granted a variance to permit the construction of three additional stories on an existing seven-story manufacturing building, contrary to the underlying zoning regulations for floor area, sky exposure plane, and rear yard equivalent (the “Existing Variance”); and

WHEREAS, on July 14, 2009, after NYU’s purchase of the Building in 2008, the Board issued a letter of substantial compliance stating that certain changes to the configuration of retail space and loading berths on the Building’s ground floor were in substantial compliance with the Existing Variance; and

WHEREAS, the applicant proposes to convert the Building to Use Group 3 college and university uses on the second through tenth floors, primarily for scientific research laboratories and teaching laboratories (the “Conversion”); and

WHEREAS, the applicant represents that the Conversion will proceed over time, with the eighth and ninth floors being converted to scientific research facilities immediately, and following this initial introduction of research space, the fifth through seventh and tenth floors would be converted to scientific research facilities, with the second floor being

converted to teaching laboratories and support spaces for other uses in the Building; and

WHEREAS, the applicant states that the third and fourth floors will continue to be used as the student health center for the foreseeable future, and although the Student Health Center is permitted as-of-right as Use Group 6 offices, it is more appropriately characterized as a Use Group 3 college and university use because of the NYU functions and populations that it serves; and

WHEREAS, the applicant further states that over time, the second through tenth floors of the Building may be occupied by other academic uses, however, they will not be used for dormitories; and

WHEREAS, the applicant represents that the ground floor will not be affected by the Conversion, and the Conversion will not entail any changes to the envelope of the Building except that certain rooftop mechanical equipment will be installed in connection with the introduction of academic uses in the Building; and

WHEREAS, because Use Group 3 college and university use is not permitted in the underlying M1-5B zoning district, the subject use variance is required; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of NYU, which seeks to add essential scientific research and teaching space in proximity to its existing facilities; and

WHEREAS, specifically, the applicant states that the following are the programmatic needs of NYU: (1) additional scientific research space; (2) additional science teaching laboratories; and (3) locating the new scientific research and teaching laboratory space in or near NYU’s Washington Square Core; and

WHEREAS, as to the need for additional scientific research space, the applicant states that NYU’s science facilities remain inadequate when compared to those of competing educational institutions; and

WHEREAS, specifically, the applicant states that a campus facilities survey of 284 institutions conducted in 2007 found that NYU has approximately one-third the mean amount of dedicated research laboratory space among institutions with more than 25,000 students, and that this is due in large part to NYU’s urban setting and, more particularly, to the difficulty in finding sufficiently large spaces for research facilities in or near the Washington Square Core; and

WHEREAS, the applicant notes that scientific research laboratories are generally occupied by teams of researchers conducting experiments for the purpose of furthering scientific knowledge or developing new products; and

WHEREAS, the applicant represents that the inadequacy of NYU’s existing science facilities impacts both faculty and students, as the lack of space significantly constrains the ability of faculty to conduct research and to compete for funding from federal, institutional, and philanthropic sources, and insufficient research space has also had a deleterious impact on faculty recruitment and retention, with a number of faculty candidates choosing to work for schools with more adequate on-campus facilities;

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and

WHEREAS, the applicant states that a 2007 study conducted by NYU projected that the science programs will likely grow between 55 and 72 percent over the next ten years and the applicant states that this growth, taken with the inadequacies of NYU's existing laboratory space, translates to a need for approximately 275,000 gross sq. ft. of additional space dedicated to science and scientific research, and one of the major constraints in accommodating this growth is the lack of adequate space available for science use; and

WHEREAS, the applicant submitted a letter from the architect stating that such facilities must be accommodated in buildings with large floor plates, high ceilings, heavy load capacity, and wide column spacing, and industry standards for research and teaching laboratories require sufficient space for eight to 12 principal investigators ("PI"), which is the "critical mass" needed to facilitate collaborative research in a laboratory setting; and

WHEREAS, the architect's letter states that each PI needs approximately 3,000 gross sq. ft. of dedicated research space to operate efficiently, for an optimal floor plate size of approximately 24,000 to 36,000 gross sq. ft., and structural supports and interior partitions should be spaced so as to accommodate laboratory modules, which have a typical width of 22 feet; and

WHEREAS, the architect's letter further states that to support an efficient and collaborative research environment, no two laboratory modules on a given floor should be located more than a one-minute walk apart, or the total length of approximately 12 contiguous 22-foot-wide modules; and

WHEREAS, as to the need for additional science teaching laboratories, the applicant states that NYU is also experiencing a shortfall of teaching laboratories to accommodate the increased student demand for science courses; and

WHEREAS, the applicant notes that a teaching laboratory is a group-learning space in which teams of students replicate experiments for educational purposes under the guidance of a faculty member, and the 2007 Survey found that NYU has approximately two-thirds the mean amount of teaching laboratory space among educational institutions with more than 25,000 students; and

WHEREAS, the applicant represents that teaching laboratories are heavily utilized to accommodate the demand for laboratory sections, and most of the teaching laboratories are decades old and in need of replacement or updating; and

WHEREAS, the applicant states that as a result of the inadequacy of these facilities, NYU is forced to limit student enrollment in its science courses and in other programs geared toward science, technology, engineering, and mathematics careers, which utilize such laboratories as part of their required curricula; and

WHEREAS, the applicant represents that NYU has an additional programmatic need to locate the new scientific research and teaching laboratory space in or near the

Washington Square Core, so as to allow efficient functional relationships with existing science and classroom facilities and so as to be physically accessible to the student body; and

WHEREAS, the applicant notes that NYU's major academic facilities are located within the Washington Square Core area, with six science facilities located to the immediate east of Washington Square, between Washington Square East and Broadway, and therefore the new scientific research and teaching laboratories facilities would most efficiently be located not only within or near the Washington Square Core, but near these facilities; and

WHEREAS, the applicant represents that the consolidation of science facilities within this area simplifies access to such facilities for faculty and students who concentrate in the sciences, and allows for the sharing of limited resources; and

WHEREAS, the applicant further represents that the physical proximity of facilities to one another is crucial for promoting integration of disciplines and interaction among faculty and students, and such interchange has become especially valuable as research agendas have grown increasingly cross-disciplinary in character; and

WHEREAS, the applicant represents that co-locating the needed scientific research and teaching laboratories with existing facilities that serve different science disciplines allows for efficient collaborations among such disciplines and, in turn, fosters a rich learning and research community; and

WHEREAS, the applicant states that locating the scientific research and teaching space at the subject site is necessary because the Building is capable of providing approximately 190,000 gross sq. ft. of interconnected space dedicated to science and scientific research, and this amount of space is more than any other NYU Arts and Sciences building within the immediate vicinity of the site, including Warren Weaver Hall at 251 Mercer Street (158,591 gross sq. ft.) and the Center for Genomics and Systems Biology at 12 Waverly Place (75,869 gross sq. ft.); and

WHEREAS, the applicant further states that the Building has uniquely large floor plates of 32,500 gross sq. ft., and few buildings in or near the Washington Square Core, and no others owned by NYU, have such large floor plates which are sufficient for the "critical mass" of eight to 12 PIs needed to facilitate a collaborative research environment and capable of accommodating laboratory program elements that require significant space, such as research benches, as well as needed adjacencies between such program elements; and

WHEREAS, the applicant represents that the Building is ideally suited for the proposed uses for the following additional reasons; (1) the 22-ft. column spacing is ideal for laboratory benches and equipment, as the typical laboratory module has a width of 22 feet; (2) the overall floor plate dimensions are capable of accommodating multiple modules without creating inefficient walking distances between research stations; (3) the 14-ft. floor-to-floor heights are sufficient for accommodating the extensive ductwork and piping requirements of scientific equipment; (4) the large

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floor plates and the Building's height allow for the strategic location of sensitive scientific equipment away from sources of electromagnetic fields, such as the subway and elevators; (5) the high floor load capacity, designed for the Building's original factory use, is capable of withstanding heavy laboratory equipment; (6) the steel and concrete construction, designed for the Building's original factory use, is sufficiently stiff to accommodate the maximum vibration requirements of sensitive scientific equipment; and (7) the Building has a robust electrical infrastructure capable of supporting intensive laboratory uses; and

WHEREAS, as to the argument raised by the Opposition that the applicant should be required to provide proof that there are no reasonable alternatives available to them which do not require a zoning variance, the Board notes that ZR § 72-21 does not require an alternative site search and, based upon the above, the Board finds that the applicant has submitted sufficient evidence in support of its need to locate the proposed programs at the subject site; and

WHEREAS, the applicant concludes that the requested use waiver to accommodate the Conversion is required to meet the programmatic needs of NYU; and

WHEREAS, in analyzing the applicant's waiver requests, the Board notes at the outset that NYU, as a non-profit educational institution, may use programmatic needs as a basis for the requested waiver; and

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, applications for variances that are needed in order to meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (see, e.g., Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, the Board also acknowledges that NYU, as an educational institution, is entitled to deference under the case 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, based upon the above, the Board finds that NYU's programmatic needs cannot be accommodated in a complying building on the site, thus creating 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 NYU is a not-for-profit organization and the proposed development will be in furtherance of its educational mission; and

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

WHEREAS, the applicant represents that the Conversion would introduce a use to the Building that is in keeping with the existing educational uses in the surrounding neighborhood and would be compatible with other uses in the area; and

WHEREAS, the applicant states that there are several college and university buildings in the surrounding area, such as the Hebrew Union College Brookdale Center, located to the southwest of the site at 1 West 4<sup>th</sup> Street, and Cooper Union facilities, located to the north of the site adjacent to Cooper Square, and NYU's Washington Square Core campus, which contains numerous academic facilities, is located to the immediate west of the site across Broadway, comprising the area generally surrounding Washington Square; and

WHEREAS, the applicant notes that the Washington Square Core contains six science buildings, all located within three blocks of the site, which provide an appropriate setting for the proposed Use Group 3 scientific research and teaching laboratories uses; and

WHEREAS, the applicant represents that the proposed uses in the Building would also be compatible with the office, retail, and residential uses in the surrounding area; and

WHEREAS, the applicant states that the Conversion would not impair the use and development of adjacent property, as it would not entail any new development or enlargement on the site or any changes to the existing Building envelope; and

WHEREAS, the applicant further states that the only change to the exterior of the Building would be the introduction of new rooftop mechanical equipment in connection with the proposed academic uses, which would not require any bulk waivers; and

WHEREAS, the applicant represents that the Conversion would provide a benefit to New York City by supporting NYU's research and educational programs with much needed facilities, and the increased inventory of appropriately located scientific research and teaching laboratories would, in turn, improve the quality of education offered to students, bolster efforts to recruit talented faculty, and ensure NYU's continued role as a vital and stable economic engine in the City; and

WHEREAS, as to the Opposition's concerns that the proposal was not included in the NYU 2031 plan and will set a precedent for similar variances in NoHo, the Board notes that its review of the subject variance application is limited to the specific site in question, and the relationship of the subject site to NYU 2031 is not part of the Board's consideration pursuant to ZR § 72-21; and

WHEREAS, the Board notes that the Building is already owned and operated by NYU as a bookstore, administrative services, the student health center, financial operations, and offices for the School of Nursing, and the applicant's agreement to limit undergraduate classroom use to no more than 25 percent of the gross sq. ft. of the Building will mitigate any impact caused by the additional density and pedestrian traffic that results from the introduction of Use Group 3 college and university uses to the site; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated February 4, 2013, approving the proposed conversion of the building; and

WHEREAS, as to the Opposition's concerns regarding

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the proposed rooftop mechanical space, the Board notes that the applicant is not requesting any bulk waivers for the proposed mechanical space, and such space is subject to review and approval by LPC; and

WHEREAS, as to the Opposition's concerns about emissions caused by the proposed use of the Building, the Board notes that the applicant submitted an Environmental Assessment Statement ("EAS") which concludes that the proposal does not have the potential for significant adverse impacts on air quality; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the programmatic needs of NYU; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the Building is designed to address NYU's present programmatic needs, which have been clearly established in the record; and

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board 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. 13BSA047M dated December 14, 2012; and

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

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

WHEREAS, DEP reviewed the applicant's mobile source, stationary source, and chemical spill air quality screening analysis and determined that the proposed project is not anticipated to result in significant air quality impacts; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a negative declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an M1-5B zoning district, the proposed conversion of nine floors of an existing ten-story building to a Use Group 3 college and university use, contrary to ZR § 42-10; *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 February 13, 2013"- sixteen (16) sheets; and *on further condition*:

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

THAT any changes to the BSA-approved plans, including the installation of rooftop mechanicals, may be subject to additional review and approval by the Landmarks Preservation Commission;

THAT construction shall proceed in accordance with ZR § 72-23;

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

THAT the approved plans shall 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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### **3-13-BZ CEQR #13-BSA-076R**

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**

**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

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## THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated January 10, 2013, acting on Department of Buildings Application No. 520118024, reads in pertinent part:

Proposed physical culture establishment in a C4-1 district is contrary to Section 32-10 and requires a special permit from the Board of Standards and Appeals pursuant to Section 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-1 zoning district within the Special South Richmond Development District, the operation of a physical culture establishment (“PCE”) on the ground floor of a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 13, 2013, after due notice by publication in *The City Record*, with a continued hearing on April 9, 2013, and then to decision on May 7, 2013; and

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

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is occupied by a one-story commercial building and has four street frontages: 451.18 feet along Richmond Avenue; 433.22 along Arthur Kill Road; 315.22 along Getz Avenue; and 705 feet along Gurley Avenue; and

WHEREAS, the site has 305,061 sq. ft. of lot area, including 371 parking spaces, and the building has 89,745 sq. ft. of floor area; and

WHEREAS, the proposed PCE will be located on the ground floor and occupy a total of 33,180 sq. ft. of floor area; and

WHEREAS, the applicant states that 221 parking spaces will be allocated for the PCE, which satisfies the parking requirement and parking demand; and

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

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

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; and

WHEREAS, the Board noted at hearing that the site was located near a landfill and requested clarification from the applicant regarding the landfill’s potential adverse impacts on the PCE; and

WHEREAS, in response, the applicant provided a letter from its consultant, Langan, which indicated that: (1) the landfill is down-gradient, approximately 1,000 feet away from the proposed PCE and, not an environmental threat to the PCE site; (2) the landfill site classified by the New York State Department of Environmental Conservation as an “Inactive Hazardous Waste Disposal Site”; (3) the landfill is

completely capped and a remediation project—to convert the landfill into a City park—is 98 percent complete; and (4) there is a long-term monitoring program in place to ensure that the contained hazardous waste does not leave the landfill; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA076R, dated March 20, 2013; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C4-1 zoning district within the Special South Richmond

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Development District, the operation of a PCE on the ground floor of a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 11, 2013” – Four (4) sheets; and *on further condition*:

THAT the term of this grant will expire on May 7, 2023;

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

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, May 7, 2013.

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## 4-13-BZ

### CEQR #13-BSA-077K

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

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 22, 2013, acting on

Department of Buildings Application No. 320484383, reads in pertinent part:

Proposed physical culture establishment is not permitted in a C8-2 zoning district. The use is contrary to Section 32-10 of the New York City Zoning Resolution and requires a special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C8-2 zoning district, the operation of a physical culture establishment (“PCE”) in the cellar and ground floor of an existing one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 9, 2013, after due notice by publication in *The City Record*, and then to decision on May 7, 2013; and

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

WHEREAS, Community Board 17, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located at the intersection of Flatbush Avenue and East 32nd Street and is occupied by a one-story commercial building; the site has 98.47 feet of frontage along East 32nd Street, 71.6 feet of frontage along Flatbush Avenue, and 72.34 feet of frontage along New York Avenue; and

WHEREAS, the site has approximately 46,611 sq. ft. of lot area and the building has approximately 13,558 sq. ft. of floor area; and

WHEREAS, the proposed PCE will occupy a total of 17,802 sq. ft. of floor space in the building, with 7,323 sq. ft. of floor area on the ground floor and 10,479 sq. ft. of floor space in the cellar; and

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

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

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

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

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

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA077K, dated January 8, 2013; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C8-2 zoning district, the operation of a PCE in the cellar and ground floor of an existing one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 19, 2013" – Three (3) sheets and "Received April 2, 2013" – One (1) sheet; and *on further condition*:

THAT the term of this grant will expire on May 7, 2023;

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

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, May 7, 2013.

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## **113-12-BZ**

APPLICANT – Mitchell S. Ross, Esq., for St. Paul CongHa-Sang R.C. Church, owners.

SUBJECT – Application April 23, 2012 – Variance (§72-21) to permit a proposed church (*St. Paul's Church*), contrary to front wall height (§§24-521 & 24-51). R2A zoning district.

PREMISES AFFECTED – 32-05 Parsons Boulevard, northeast corner of Parsons Boulevard and 32nd Avenue, Block 4789, Lot 14, Borough of Queens.

## **COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to June 11, 2013, at 10 A.M., for continued 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**

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 June 4, 2013, at 10 A.M., for decision, hearing closed.

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## **206-12-BZ**

APPLICANT – George Guttman, for Dmitriy Kotlarsky, owner.

SUBJECT – Application July 2, 2012 – Special Permit (§73-621) to legalize the conversion of the garage into

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recreation space, contrary to floor area regulations (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 2373 East 70<sup>th</sup> Street, between Avenue W and Avenue X, Block 8447, Lot 67, 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 June 4, 2013, at 10 A.M., for decision, hearing closed.

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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 June 11, 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.

## COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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## 338-12-BZ

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

SUBJECT – Application December 13, 2012 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Metro Gym*) located in an existing

one-story and cellar commercial building. C2-2/R5B zoning district.

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

## COMMUNITY BOARD #7Q

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

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## 13-13-BZ & 14-13-BZ

APPLICANT – Slater & Beckerman, P.C., for The Green Witch Project LLC, owners.

SUBJECT – Application January 25, 2013 – Variance (§72-21) to allow two single-family residential buildings, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 98 & 96 DeGraw Street, north side of DeGraw Street, between Columbia and Van Brunt Streets, Block 329, Lot 23, Borough of Brooklyn.

## COMMUNITY BOARD #6BK

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

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## 63-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Cel-Net Holdings, Corp., owner; The Cliffs at Long Island City, LLC, lessee.

SUBJECT – Application February 11, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*The Cliffs*). M1-4/R7A (LIC) zoning district.

PREMISES AFFECTED – 11-11 44th Drive, north side of 44th Drive between 11th Street and 21st Street, Block 447, Lot 13, Borough of Queens.

## COMMUNITY BOARD #2Q

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

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*